

# The Penetration of Canon Law into the Duchy of Bohemia up to the End of the 12<sup>th</sup> Century

**Pavel Krafl**

ORCID: <https://www.orcid.org/0000-0003-0595-7904>  
Faculty of Arts, Constantine the Philosopher University, Slovakia  
Professor of Medieval History  
Hodžova 1, SK-949 74 Nitra, Slovakia  
E-mail: [paotk@proton.me](mailto:paotk@proton.me)

The subject of this article is the reception of Canon Law in the Duchy of Bohemia in the period until the end of the 12<sup>th</sup> century. The period from the beginnings of the Duchy of Bohemia to the end of the 12<sup>th</sup> century is a period in which the Duke held all the power in the State. Ecclesiastical Law was thus reduced to State Ecclesiastical Law.

**Keywords:** medieval Canon Law, Duchy of Bohemia, State Ecclesiastical Law, ducal statutes, archdeacon, Burchard of Worms, Ivo of Chartres.

## Kanonų teisės skverbimasis į Bohemijos kunigaikštystę iki XII amžiaus pabaigos

Šio straipsnio tema – kanonų teisės recepcija Bohemijos kunigaikštystėje iki XII amžiaus pabaigos. Laikotarpiu nuo Bohemijos kunigaikštystės pradžios iki XII amžiaus pabaigos kunigaikštis turėjo visą valdžią valstybėje. Taip bažnytinė teisė buvo redukuota į valstybinę bažnytinę teisę.

**Pagrindiniai žodžiai:** viduramžių kanonų teisė, Bohemijos kunigaikštystė, valstybinė bažnytinė teisė, kunigaikščių statutai, arkidiakonas, Buchardas iš Vormso, Ivas iš Chartreso.

## Introduction

Canon Law was playing an important role in high medieval society. The early Middle Ages and the beginning of the High Middle Ages represent a period in which the conditions were shaped for the later crucial role of this law. Canon Law itself was gradually built up and formed through the decrees of ecumenical councils and decretals issued by the Holy See, as well as regional synods. Progressively, through steps of varying intensity, Canon Law penetrated life in different countries. We focus our attention on the situation in the Duchy of Bohemia and the reception of Canon Law in the Diocese of Prague (established in 973) and in the Diocese of Olomouc (restored in 1063). Our study covers the period to the end of the 12<sup>th</sup> century, when Innocent III's papacy began (1198–1216), and preparations were made for the Fourth Council of the Lateran (1215), involving fundamental changes which marked a new phase in the enforcement of Canon Law within the Czech dioceses.

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## Main claims of the research

The first attempts at enforcing the Christian principles in Bohemia more thoroughly are linked to Adalbert, Bishop of Prague (982–994/996). Adalbert criticised polygamy, marriages to close family members, and the sale of slaves to pagans, and prohibited Prague citizens from brewing beer to sell. This shaming of vices of the elites focused around the Duke roused opposition (Charvát, 2004, p. 149–151). In 992, on the initiative of Bishop Adalbert, Duke Boleslav II of Bohemia issued a directive based on Canon Law, according to which, all his leaders were to dissolve any marriages which were concluded between family members against the ‘sacred law’, and further gave them permission to build churches in appropriate locations, and collect tithes for them (Friedrich, 1904, p. 43, no. 37).<sup>1</sup>

The Břetislav Decrees represent the oldest coherent legal document, and the oldest law of the Duchy of Bohemia we know of for certain. In 1039, Duke Břetislav I of Bohemia was on a military campaign to Poland, specifically, to Gniezno, where an archbishopric had been established at the site of Bishop Adalbert of Prague’s remains in 1000, and which had become a major ecclesiastical centre in Poland. The success of Břetislav I’s military campaign in Poland from 1038 to 1039 was to be supported by the adoption of demands previously formulated by Bishop Adalbert. This involved matters which Czechs had previously rejected and wanted to atone for. The codification of these provisions was designed to placate the saint so he would be willing to return to Prague (the transferral of his remains), while also assuring the legitimacy of Břetislav’s actions. Břetislav announced his decrees from the pulpit of the cathedral church in Gniezno over St. Adalbert’s grave (Krzemieńska, 1999, p. 219–226, 243–253; Bláhová *et al.*, 1999, p. 384–394; Boháček, 1949; Boháček, 2005, p. 5–11).

The legal norm was described by the chronicler Cosmas. The decrees were mainly directed against the remnants of paganism (the celebration of non-Christian feasts was prohibited). They incorporated provisions which were directed against the broadest spectrum of the population – in particular, the common people. His demands directed exclusively against magnates and the clergy are overlooked. The statutes included a ban on polygamy and provisions regarding the closure and indissolubility of marriage and against female extra-marital sex, as well as provisions on the punishment of capital offences, in particular, patricide, fratricide and the murder of priests. They also banned the running of a tavern, the holding of markets, the undertaking of any kind of physical work on Sundays and on other religious feast days, and the burial of the dead outside churchyards. They did not include Adalbert’s demand for a ban on the sale of Christian prisoners and slaves and a ban on marriage for the clergy. The ban on selling slaves would have immediately impacted the Duke and his retinue, as it remained one of the largest sources of income following successful military campaigns for the nobility and the Duke, and so remained unacceptable. The prohibition of marriage for the clergy was not respected for a long period of time in Bohemia. Trial by ordeal was permitted as evidence in marital disputes and in cases of murder. In cases of murder, the administration of justice was in the hands of the governors of the Duke’s castles (Bretholz, 1923, p. 83–90; cf. Krafl, 2023a, p. 61; Malý, 1995, p. 12–14; Bláhová *et al.*, 1999, p. 386–387).

The Břetislav Decrees repeatedly mention the archpriest residing at the administrative castle, who acted as the Duke’s official. The archpriest was to give the castle governor the names of people who were rumoured to have committed a murder, and these were then to be called before the court. Cosmas further states that the archpriest was to give the castle governor or duke the most serious cases of the murder of a brother, father or priest and persons accused of similar capital offences, in order

<sup>1</sup> Boleslav II’s edict can be found in manuscript No. 217 at Heiligenkreuz Monastery, alongside an admonition to priests which D. Třeštík links to Bishop Adalbert (Zachová, Třeštík, 2001, p. 279, 281).

that they could be handcuffed and banished from the country. The archpriest was also to play a role if anyone was caught working on a Sunday or a religious feast: he was to seize his oxcart, and this was to be followed by a fine of three hundred coins to the Duke. Archpriests<sup>2</sup> were also to be paid an ox fine and three hundred coins for the Duke by persons who buried the dead in fields and woods instead of in churchyards. As the chronicler Cosmas states, Bishop Šebřít of Prague seconded the Duke with repeated brief statements agreeing with the Duke, thus affirming the Duke's provisions, and, in most cases, anathema was also sanctioned (Bretholz, 1923, p. 86–88).

The orders of Boleslav II and Břetislav I show that all laws in the State were in the hands of the Duke, including those that dealt with ecclesiastical matters, which should really have been issued through a bishop's decree. Ecclesiastical Law was thus reduced to State Ecclesiastical Law. Further evidence of the implementation of Canon Law provisions comes at the end of the 11<sup>th</sup> century. In 1096, in relation to the arrival of crusaders heading for the Levant, Jews were involuntarily baptised, and Bishop Cosmas of Prague was said to have stated that this had occurred "contra statuta canonum" (Bretholz, 1923, p. 164).<sup>3</sup>

Evidence of the penitential practice during the earliest period of the Diocese of Prague comes in the form of a confession manual in the *Gregorian-Gelasian Sacramentary*, which is a manuscript of the St. Vitus chapter library of Regensburg or of the Bavarian origin from the last quarter of the 8<sup>th</sup> century. The so-called St. Adalbert Penitential (Heiligenkreuz, rkp. 217) and a translation of the Merseburg Penitential into the Czech version of Old Church Slavonic, *Někatoraja zapověď*, (both from the 11<sup>th</sup> century) are also extant. A penitential from the *Opatovice Homiliary* dates back to the turn of the 12<sup>th</sup> century (Krafl, 2022, p. 47; 2023b, p. 72). The chronicler Cosmas further tells us that, in March 1093 [1094?], the ordination of priests by the fake bishop Rotpert took place in Bohemia. This matter was apparently dealt with by Antipope Clement III (1084–1100) (Bretholz, 1923, p. 158–159). Otherwise, the first directive regarding the ordination of the clergy appears under the Bishop of Olomouc Henry Zdík (1126–1150), who came up with the ritual of clergy ordination (Friedrich, 1904, p. 168–169, No. 163). With regard to ordination of the clergy, one could also mention an event in 1193, when the Bishop of Olomouc Kaim (1186–1194) forgot to lay his hands on the ordinand during ordination. The matter was subsequently dealt with by the papal legate, Cardinal Peter (Emler, 1874, p. 510–512).

During the episcopate of Henry Zdík, there was a scriptorium at the Olomouc Cathedral Church which produced still extant manuscripts containing copies of the works of Burchard of Worms and Ivo of Chartres. One of the gems of the Olomouc Chapter Library is manuscript CO 202: *Liber conciliorum et collecta Purcardi XIII librorum*. Three sections of this work contain procedural provisions on the holding of synodal courts and council canons, and a large text which is a special edition of the *Decretum* of the Bishop Burchard of Worms (965–1025) in thirteen books. Some of the books of the original twenty books of the *Decretum* were left out, while extracts of others were included. Contrastingly, some chapters were added. These are a reworking of the South German collection, *Collectio XII partium*, from the eighth book drawn from Burchard's collection *Decretorum libri XX*. A second important Canon Law manuscript produced in the Zdík scriptorium is CO 205, containing the *Tripartita* by Ivo of Chartres (1040–1116). Thus, the Olomouc Chapter Library is one of seventeen European libraries containing extant copies of Ivo's *Tripartita*. The manuscript marked CO 135 contains liturgical rules: the so-called *Ordines Romanae ecclesiae* details the procedure for performing the core ecclesiastical ceremonies such as baptism, mass, ordination, etc. (Boháček, 1956–1958, p. 327–337; Flodr, 1960,

<sup>2</sup> The chronicle evidently erroneously states 'archidiaconus'.

<sup>3</sup> For the situation in Bohemia, see Bláhová *et al.*, 1999, p. 479–480.

p. 66–76, 120–124, 128, 244–254; Kejř, 1985, p. 22–23; Hehl, 2000, p. 854–856; Kéry, 2013, p. 142, 245). Bishop Henry Zdík also played a major part in expanding the Charter as a legal instrument (Bistrický, 1980, p. 135–158; 1983, p. 32–74; 1998, p. 292–306).

The State District Archive in Děčín holds a fragment of Burchard of Worms' *Decretum* from the end of the 11<sup>th</sup> century. It contains a segment of the chapter *De oppresionibus pauperum* in the *Decretum*'s sixteenth book (Havel, 2018, p. 160, 162, 163; Migne, 1853, col. 915). One can also note manuscript F 80/3 in Prague's Metropolitan Chapter which contains a section of the work by Ivo of Chartres (Kejř, 1982, p. 19–20). In 1159, the Bishop Daniel of Prague sent the priest and chronicler Vincencia to Bologne in order to purchase the “decretum” and other books. This note provides evidence of the first appearance of the *Decretum Gratiani* in the Czech Lands (Emler, 1874, p. 445; cf. Krafl, 2023a, p. 72).

The archdeacon held certain judicial competences. Within the Diocese of Olomouc, Bishop Henry Zdík introduced archdeacons. These were set up in six archdeaconries. The archdeaconries were built on the seats of the former archpriesthood from the period when the castle administration system was operating in the duchy. Within the Diocese of Prague, an archdeaconry was set up during the 1160s under Bishop Daniel I (1148–1167). A total of ten archdeaconries were set up there. The archdeaconries in Bohemia evidently developed independently of the archpriest system (Krafl, 2023a, p. 104–105). In Bohemia and Moravia, a separate institutionalised archdeacon's court, a send or synodal court, was not set up. The archdeacon only exercised his authority.<sup>4</sup>

The first list of liturgical books which every priest was to own was given in the Opatovice Homiliary from the mid-12<sup>th</sup> century. Until the 13<sup>th</sup> century, neither Prague nor Olomouc dioceses had a compilation of texts for the mass within one code. Some common imports included, for example, the sacramentaries. These include the Prague Sacramentary from the turn of the 9<sup>th</sup> century. The illuminated St Wenceslas's Evangeliary from the third quarter of the 9<sup>th</sup> century came from northern France, and it was used in the 11<sup>th</sup> century by the collegiate chapter in Stará Boleslav. In connection with the coronation of Vratislav II in 1086, an evangeliary was produced, known as the Vyšehrad Codex, alongside the St. Vitus Evangeliary. The Olomouc Horologium was produced in the Olomouc scriptorium, and it is presently stored in the Royal Library in Stockholm. It is a collectary of the Bishop of Olomouc, Henry Zdík. In the final quarter of the 12<sup>th</sup> century, the Olomouc Chapter Deacon Balduin, originally from Rome, instructed that songs at the Olomouc church be sung in line with music books, graduals, and nocturnals (Krafl, 2023a, p. 139–140). Of the liturgical codes of the monasteries, the psalter of the Benedictine monastery in Ostrov from the end of the 12<sup>th</sup> century is extant, as is the lectionary from the same place. The St George's Psalter, which is of the Bavarian origin, was produced prior to 1200. The Zábřovice Evangeliar dates back to the first half of the 1080s. The library at the monastery in Rajhrad contains a Benedictine breviary and gradual from the mid-12<sup>th</sup> century (Krafl, 2023a, p. 147–148). Slavonic liturgy survived only in Sázava Monastery, and it was banned in 1080 by Pope Gregory VII. The Slavonic priests in the monastery were finally expelled from the monastery in 1096, at which time its library with liturgical books in Old Church Slavonic also closed (Krafl, 2023a, p. 135).

The first extant papal decretal issued for a Bohemian recipient dates back to the end of this early period. Specifically, it is the decretal *Intelleximus ex litteris tuis* issued by Pope Lucius III (1181–1185). It was addressed to the Bishop of Prague, Henry Břetislav. The decretal was incorporated into the so-called *Collectio Cassellana* and later into *Liber extra* (X 5.10.2, with the Bishop of Paris erroneously

<sup>4</sup> Evidence of synodal courts under Bishop Henry Zdík was found in manuscript CO 202 in the Olomouc Chapter Library, with this containing a compilation of the collections of Burchard of Worms (with a provision on sends, i.e. synodal courts). The manuscript is not evidence of the application of a legal institute (Krafl, 1996, p. 740–741, adnot. 13).

given as the addressee in the text). The decretal suggests that a certain woman killed her daughter in anger, for which she was given the punishment of separation from her husband by Duke Fridrich. Considering that they had other sons, the Pope commanded that the woman receive another penance, to be decided upon by the Bishop of Prague, so that she could return to her husband and bring up their children. The Pope made this decision on the basis of a submission from the Bishop of Prague, with the main content of his request to the Pope likely the monarch's decision on the dissolution of the marriage, not the killing of the child. The decretal corresponds to the activities of Henry Břetislav, under whom there was a new wave of the application of episcopal power against sovereign power (Landau, 2008, p. 248; Kejř, 2012, p. 265–266).

The collection *Compilatio prima*, produced in 1198 by Bernard of Pavia, is documented in the Czech lands in a later period. Medieval catalogues of libraries demonstrate the presence of this collection of decretals at two institutions, specifically, the Augustinian St Thomas's Monastery in Prague's Lesser Town set up at the end of the 13<sup>th</sup> century, and also at the Olomouc Cathedral Chapter library (Kejř, 1985, p. 31–32). The latter library contains the first compilation, which remains extant today in two manuscripts dating back to the 13<sup>th</sup> century; Tancred's apparatus is attached (CO 589, CO 590) (Boháček, 1960, p. 38–41; 1962, p. 356–360).

Until the start of the 13<sup>th</sup> century, the bishop essentially held the status of chaplain to the Bohemian Duke, or the Bohemian King. Dukes and noblemen considered gifts to ecclesiastical institutions more as permanent loans. The dukes and noblemen rejected the canonical principle according to which anything gifted to the Church belongs to it. In this early period, the relationship between the church founder and church was governed in the spirit of a system of proprietary churches. The church represented a specific type of an asset of the founder, whether he be the monarch or a nobleman; it was private property. The owner appointed the church's priest. The officials of the castle administrative bodies exacted benefits, services and obligations from the Church (Krafl, 2023a, p. 63, 175–176).

Ecclesiastical institutions gradually began to secure immunity from the Duke, i.e., the exemption of estates and people, specifically, the serfs settled in these estates, from the powers of the duke and his officials. The first immunity document was acquired by the Bishopric of Olomouc in 1144. The generally formulated document related to the castle of Podivín, with all people of the bishopric exempted from the powers of all persons of rank or status. This was followed by a document from 1146–1148 issued by Vladislav II, which exempted the people of the bishopric from the powers of the Moravian local princes and their heirs, and also exempted them from taxes, fees, and land corvée. By the end of the 12<sup>th</sup> century, the Premonstratensian monastery in Hradisko, Olomouc (1160), the Benedictine monastery in Kladruby (1177), and the collegiate chapter in Vyšehrad (1187) had received immunity privileges with a limited number of specific prerogatives (Janiš, 2013, p. 157–159; Vaněček, 1937, p. 77–78).

One of the milestones in the progressive transformation of the relationship between the secular powers and the Church was the final provision of Duke Conrad Otto's Statutes of 1189, in which the Duke accepted the privileges of the monks awarded to them by dukes, and the rights of the clergy to the Church property, which was governed by Canon Law. The statutes are only extant in confirmations for the Bítov, Brno, and Břeclav provinces.<sup>5</sup> According to Václav Vaněček, these represent a later interpolation which entered Conrad Otto's statutes in 1222 at the earliest, i.e., when the first confirmation

<sup>5</sup> "In hiis omnibus excipimus privilegia virorum religiosorum a principibus eis concessa et iura clericorum cum dotibus ecclesiarum, qui reguntur secundum ius canonicum." Friedrich, 1912, p. 225, No. 234 (confirmation of Přemysl Ottokar II of 1222 for the Bítov Province); Friedrich, 1912, p. 331, No. 325 (confirmation of Přemysl Ottokar II of 1229 for the Brno Province); Friedrich, 1942, p. 205, No. 164 (confirmation of Ulricus of Carinthia of 1237 for the Břeclav Province).

was being prepared (Vaněček, 1941, p. 158). One might note that there are extant copies of the texts of confirmations in the archives of the Louka and Velehrad Monastery demonstrating the eminent interest of monasteries in this legal standard (Horák, 1961, p. 272–278). In 1201, Pope Innocent III commanded Prague and Olomouc bishops to prevent damage to the Church property and its theft from benefactors (Friedrich, 1912, p. 14, No. 19).

## Conclusion

The period from the beginnings of the Duchy of Bohemia to the end of the 12<sup>th</sup> century is a period in which the Duke held all the power in the State. Throughout the Duchy, only Common Law, in which the Duke, relying on his noble retinue, played a key role, was applied; it was limited more or less only by Customary Law. There was no room for Canon Law, and only those rules which the Duke himself declared were enforced. One example of this is the unsuccessful endeavour of Bishop Adalbert of Prague to lay down Christian rules within the life of the society. These were not implemented until Duke Břetislav I ordered them be observed in 1039, four decades after St. Adalbert's death. The role of Canon Law was also reduced in the period to the end of the 12<sup>th</sup> century in that bishops essentially held the status of the Duke's chaplain. When a bishop's position was vacant, it was the Duke himself who chose the bishop.

The property gifted to the Church was considered a specific part of the property of the founder or donor. The law of patronage was not enforced until the period following the Fourth Council of the Lateran up to the mid-14<sup>th</sup> century. By the end of the period we are looking at, ecclesiastical institutions were beginning to receive immunities from the Duke, which were exemptions from Common Law. This began with the immunity document received by the Olomouc Church in 1144. Immunities were awarded to a greater extent over the course of the 13<sup>th</sup> century. Bishop Henry Zdík played an important role in enforcing Canon Law in the Diocese of Olomouc. He initiated the establishment of the archdeaconry, and it was on his initiative that the Olomouc Church received the above-noted immunity privilege. He also contributed to the expansion of the document as a condition for the development of Law in general. Copies of many major works were made in his scriptorium, in particular, the works of Burchard of Worms and Ivo of Chartres.

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## The Penetration of Canon Law into the Duchy of Bohemia up to the End of the 12<sup>th</sup> Century

**Pavel Krafl**

(Constantine the Philosopher University in Nitra (Slovakia))

### S u m m a r y

The subject of this article is the reception of Canon Law in the Duchy of Bohemia in the period until the end of the 12<sup>th</sup> century. During this period, the Duchy's land contained the Diocese of Prague (established in 973), and later also the Diocese of Olomouc (from 1063). The State ecclesiastical law played a crucial role in the discussed territory. All the power in the Duchy was in the hands of the Duke, who also issued decrees with regard to the enforcement of the Christian rules, and directly appointed bishops. The Decrees of Duke Břetislav I of 1039 serve as an example. The administration of the assets donated to churches and monasteries was undertaken in the spirit of the law of proprietary churches. Beginning in 1144, ecclesiastical institutions began receiving immunity, exempting them from Common Law. Duke Conrad Otto's Statutes of 1189 were significant, with the Duke accepting the privileges of the monks awarded to them by previous dukes, and the right of the clergy to the Church property, which was governed by Canon Law. Bishop of Olomouc Henry Zdík (1126–1150) played an important role, with copies of significant works by Burchard of Worms and Ivo of Chartres being produced in his scriptorium. He was involved in introducing archdeacons with visitation and certain judicial powers in the Diocese of Olomouc.

## Kanonų teisės skverbimasis į Bohemijos kunigaikštystę iki XII amžiaus pabaigos

**Pavel Krafl**

(Konstantino Filosofo universitetas Nitroje (Slovakija))

### S a n t r a u k a

Šio straipsnio tema – kanonų teisės recepcija Bohemijos kunigaikštystėje iki XII amžiaus pabaigos. Šiuo laikotarpiu kunigaikštystės žemėje buvo Prahos vyskupija (įkurta 973 m.), o vėliau ir Olomouco vyskupija (nuo 1063 m.). Valstybinė bažnytinė teisė vaidino lemiamą vaidmenį. Visa valdžia kunigaikštystėje buvo kunigaikščio rankose, jis taip pat leido dekretus dėl krikščioniškų taisyklių vykdymo ir tiesiogiai skyrė vyskopus. Kaip pavyzdys yra 1039 m. kunigaikščio Břetislavo I dekretai. Bažnyčioms ir vienuolynams dovanotas turtas buvo administruojamas laikantis Bažnyčių nuosavybės įstatymo. Nuo 1144 m. bažnytinės institucijos pradėjo gauti imunitetą, atleidžiantį jas nuo bendrosios teisės. Reikšmingi buvo 1189 metų kunigaikščio Konrado Otto statutai, kunigaikštis priimdamas ankstesnių kunigaikščių jiems suteiktas vienuolių privilegijas ir kanonų teisės reglamentuojamą dvasininkų teisę į bažnyčios turtą. Svarbų vaidmenį atliko Olomouco vyskupas Henry Zdík (1126–1150), jo skriptoriume buvo išleistos svarbių Burchardo iš Vormso ir Ivo iš Charteso kūrinių kopijos. Jis dalyvavo Olomouco vyskupijoje pristatant arkidiaonus, turinčius vizitaciją ir tam tikras teismines galias.

Pavel Krafl is a Professor at the Faculty of Arts, Constantine the Philosopher University in Nitra, Slovakia. He focuses on the medieval Canon Law in the Kingdom of Bohemia and on medieval synods and synodical legislation in Bohemia and Poland.

Pavelas Kraflas yra Konstantino Filosofo universiteto Nitroje, Slovakijoje, Menų fakulteto profesorius. Jis daugiausia dėmesio skiria viduramžių kanonų teisei Bohemijos karalystėje ir viduramžių sinodams bei sinodiniam teisės aktams Bohemijoje ir Lenkijoje.