Preface

Medieval Europe was a jumble of overlapping, often competing legal jurisdictions. Norms varied from city to city, from region to region, and even within politico-territorial units, such as kingdoms, princedoms, or city-states. Litigants often had a choice of tribunal for the resolution of private disputes, and the venue of a criminal trial could vary in light of the accused's juridical status. Nevertheless, from the mid-twelfth century onwards, jurists also spoke of the *ius commune* or "common law" that transcended *iura propria*, the laws peculiar to specific regions and jurisdictions.

The *ius commune* consisted of the great compilations of canon and Roman law and was the subject of instruction in the law faculties of all European universities until the seventeenth century. For this reason the common law is often called "learned law," "droit savant," or "gelehrtes Recht." The label, however, is misleading because it implies that the *ius commune* was somehow a narrowly academic rather than a fully functional system of law. In fact, the common law increasingly provided the conceptual framework through which medieval lawyers interpreted and applied the multitude of *iura propria* in their practical activities as judges, advocates, and consultants. The literature generated by the *ius commune* embraced a range of genres from glosses and commentaries on the Justinian corpus, the *Decretum* of Gratian and the compilations of papal law, to thematic treatises, procedural manuals, university disputations, and above all, countless *consilia*, opinions written by lawyers at the request of courts, governments, or litigants.

This vast body of jurisprudence, likened by a fifteenth-century commentator to an "ocean of law," might be better described today as a "lost continent of law," especially in the English-speaking world, but also in Europe and elsewhere, such as the Americas, Asia, and Africa, where legal institutions descend directly from the *ius commune*. There are many

reasons for this. To begin with, almost all of this literature was written in Latin, and beyond the core texts of the Justinian and canon law corpora, only a fraction of it has been published in modern critical editions. Even less has been translated into modern vernaculars. The overwhelming bulk of material, if published at all, is accessible only in early modern editions, and much survives solely in manuscript form. Medieval jurists also made use of technical language, modes of reasoning, and systems of citation foreign to modern readers. Because almost everyone in medieval Europe – whether merchant, prince, serf, or emperor – was subject to the common law in some way or other, these factors combine to deny historians access to a vital source of evidence on almost any conceivable issue in private and public law. The publication of *Jurists and Jurisprudence in Medieval Italy: Texts and Contexts* therefore marks an important milestone by making available original sources of the common law of medieval Europe for a nonspecialist, English-language audience.

This volume is the fruit of thirty years of research, editing, collating, translation, and annotation by Osvaldo Cavallar of Nanzan University in Japan and Julius Kirshner of the University of Chicago, both of them leading historians of the *ius commune*. The topics treated – legal education, the legal profession itself, civil and criminal court procedure, crime and punishment, citizenship, and family – focus on Italy and, as the editors modestly admit, only scratch the surface of the riches contained in the medieval juristic literature. Their sources include both published and unpublished material; indeed, several texts included here have never been edited or previously published in any form. No comparable anthology exists in English, and therefore *Jurists and Jurisprudence in Medieval Italy* will prove invaluable to anyone teaching a course on the *ius commune*, as I can readily attest. Between 2003 and 2017 Professors Cavallar and Kirshner kindly allowed me to distribute draft versions of many of the translations published here in my graduate course “The Common Law of Medieval Europe,” an introduction to the history and basic concepts of the *ius commune* and to the use of juristic sources for the writing of history. Such sources present a challenge even to students with a solid preparation in Latin, and the editors’ elegant translations, historically grounded introductions, and helpful annotations allow students at any level, graduate or undergraduate, to orient themselves in what, for most of them, is the foreign, indeed exotic, discourse of medieval jurists.

It is with pleasure therefore that the University of Toronto Press now presents *Jurists and Jurisprudence in Medieval Italy: Texts and Contexts* as volume 4 of the Toronto Studies in Medieval Law series, a project sponsored by the Centre for Medieval Studies, in the hope that it will stimulate

wider interest in the common law of medieval Europe not only among legal historians and students of comparative law, but also among medieval social, economic, and institutional historians, and, indeed, medievalists more generally who wish to familiarize themselves with an important dimension of medieval culture.

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