

NOVELLAE

News of Medieval Canon Law

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OBITUARY

Mary Gwendolen Cheney (1917-2007)

Mary Hall was born on 30 July 1917; her father served in the Malayan civil service. She went up to read History at Somerville College, Oxford in 1933, and remained there as a post-graduate student for a further year before continuing research at Westfield College, University of London (1939-1940). In 1940 she married Christopher Robert Cheney (1906-1987), an historian and fellow of Magdalen College, Oxford. From 1940 until the birth of their first child in 1943, Mary worked in the Civil Service in the Ministry of Supply. In 1945 Christopher Cheney became professor of medieval history at Manchester but then moved to Cambridge in 1955 on his election to the chair of medieval history, and to a fellowship at Corpus Christi College. He retired in 1972.

With the youngest of their three children at school, Mary returned to teaching in 1957, undertaking supervisions for various Cambridge Colleges in Medieval History. She was invited to become a Senior Member of Lucy Cavendish College in 1966, and was elected a Fellow in 1971. She became the College's first Director of Studies in History in 1972, a position she held until 1983.

Hers was an exacting scholarship: source-based, careful and always perceptive. Everything she touched she illuminated, from the Becket controversy, to the recen-

sions of FitzStephen's Life of St Thomas, to the intricacies of English common law in its first phase. Her first love, however, was the career of Bishop Roger of Worcester, one of the 'twin lights of the English Church', and especially his creative relationship with Pope Alexander III. She unveiled her penetrating interpretation in a 21-page paper at the fourth international congress of medieval canon law in Toronto in 1172, and followed it up in 1980 with a full study of Roger's episcopate, laying special emphasis on his contribution to the development of canonical science in England. All canonists are in her debt for the calendar of 126 papal letters in its Appendix II.

They are also in her debt for the two splendid books in which she collaborated with her husband, Christopher R. Cheney. From 1967 came the monumental calendar of the *Letters of Pope Innocent III (1198-1216) Concerning England*; from 1979 came their *Studies in the Collections of Twelfth-Century Decretals*, which scholars throughout the world use as a fundamental reference tool. In it, Cheney and Cheney edited and translated the hand-written drafts of Walther Holtzmann's studies on twelfth-century decretal collections, and in both aspects Mary made a distinctive contribution. Her mastery of the German language gave great clarity to Holtzmann's analyses; and her own understanding of that most complex of subjects brought the studies up to date. Running through all her work, like

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to be announced

golden chains, were two imperatives: accuracy and faithfulness to text and context.

Mary and Christopher Cheney formed a remarkable partnership, not only in their shared devotion to their family and in the academic work in which they worked together so closely, but also in their generous hospitality to visitors and to younger scholars. First at Hills Road and then at Pinehurst they brought together distinguished incomers and the most anxious beginners, providing a warm welcome to both, and conversation which was an unfailing source of amusement and instruction. If Christopher produced the immediately memorable judgements, Mary's perceptive observations tended to work on the mind slowly. It was sometimes a week or so before one realised that her tentative 'I've sometimes wondered' had laid waste a world of one's favoured illusions. In her last years she had to contend with much pain and distress, little of which was ever apparent to visitors. Nevertheless, her gallantry in confronting them commanded the admiration of an army of friends.

Mary Cheney died on 21 December 2007.

*Martin Brett
Karen Davies
Anne Duggan*

Mary Cheney: A Memoir

My friendship with Mary and Christopher Cheney goes back to 1949; and I could talk of many happy encounters, from my first meeting with Mary when she and Christopher were having tea with Philip Grierson in Caius. I could talk of the pleasure of welcoming them to Cambridge when they moved from Manchester in 1955; and after my own translation to Liverpool in 1956 of occasional delightful visits to Hills Road and later the Pinehurst Flat – more frequent after my return to Cambridge in 1977. But of Mary in her home circle there are many of her family who can speak with much greater authority. I want to say a word now about Mary as a scholar – both on her own account and in collaboration with Christopher.

The main thrust of Christopher's work lay in the thirteenth century, of Mary's in the twelfth; so that it was specially appropriate that they should meet about 1200, at the turn of the centuries, and that their most

substantial work of collaboration should relate to the most celebrated of all the popes of the era, Innocent III (1198-1216) – whose letters for England they calendared and edited in a volume of superb scholarly acumen published in 1967.

Meanwhile Mary had long before staked out her own territory in a generation earlier than Innocent III. The mid and late twelfth century was an exciting time in the history of the English church, and two of the rank and file bishops of the age are particularly well recorded: Roger of Worcester and Gilbert Foliot of Hereford and London. Mary's work as a scholar from the 1930s to 1980 and in a measure beyond centred in Roger of Worcester, my own from the 1940s to the 1960s (in collaboration with Dom Adrian Morey of Downside) centred in Gilbert Foliot. Her work on Roger had three issues: some celebrated articles, the book *Roger of Worcester* of 1980, and the edition of his acta – his charters and other records – which was published a few weeks before her death. Of her *Roger* Professor Nicholas Vincent has very justly written that it 'is a masterpiece, and certainly the best existing account of the impact of papal lawmaking in twelfth-century England'. This was partly because she was a pioneer mining gold in twelfth-century English bishops' records; partly because of the exceptional number of lawsuits which the popes of the day delegated to Roger. To put the matter very crudely, papal lawmaking largely consisted of instructions to local judges-delegate; and these instructions, or decretals, were gathered together with great zeal, especially in England, especially in the circle of Bishop Roger.

Thus Mary and Christopher were ideally qualified for the second of the two great collections of fundamental material on which they collaborated: their edition of Walther Holtzmann's *Studies in the Collections of Twelfth-Century Decretals*. I myself have potted to a fair extent in decretal collections, and can testify to the quite exceptional technical skills the editors showed – for which both of them indeed have long been famous. But there is more to it than that: for it is only by penetrating this opaque material that one can come to an understanding – to which both of them contributed so much – of some of the central problems of medieval history. How did the papacy come to exercise so wide a jurisdiction in the church courts of western Chris-

tendom? – What were the scope and limits of the universal authority of the popes?

But both Mary and Christopher studied this material first of all for the light it shed on the inner workings of the English church; and Christopher had laid foundations for this in his *English Bishops' Chanceries* (1950). This led on in the early 1970s to his initiative in forming a project, sponsored, under his inspiration, by the British Academy, for editing all the English Episcopal Acta – charters and other documents – of the English bishops of the twelfth and thirteenth centuries. In due course Mary agreed to extend her work on Bishop Roger to include an edition of the acta of all the bishops of Worcester from 1062 to 1218. In the Acta project I myself have been much involved. It is moved forward by a team of about twenty editors, who regularly meet to discuss their problems and their progress. In earlier days we met in York, for the headquarters has always been in the Borthwick Institute in York, home of the general editors, Professor David Smith and Dr Philippa Hoskin; in more recent times we have enjoyed the hospitality of Dr Martin Brett in Robinson College, Cambridge. Of these friendly and often lively gatherings Mary was a much valued member – until failing health prevented her. She worked steadily away at her own volumes and contributed kindly and penetrating comments on others. Sadly, she was not able to complete the work herself. In 2004 she handed over her draft volumes to David Smith, Philippa Hoskin and myself, and we have now completed them. *EEA 33*, her first volume, was published in October 2007 and reached her a few weeks before her death. *EEA 34* came out in October 2008. Although a fair amount of addition and revision was needed, they are, as we said in the preface to the first volume, ‘essentially Mary Cheney’s’ – a monument to years of scholarly work and a notable contribution to the infrastructure of twelfth and thirteenth century English church history.

A scholar who is also a housewife leads a double life: Mary filled both roles with grace and skill. She also filled another of which I can only make a passing mention. She was one of the pioneer fellows of Lucy Cavendish College – the first director of studies in History in that inspired venture for the higher education of underprivileged women.

May I at the end look back for a moment to a sentence in the memoir I wrote of Christopher? ‘In 1940 he and Mary passed through the fine Norman portal of St Peter-in-the-East in Oxford for the central event of their lives, an event which led to a delectable collaboration in the two activities most characteristic of [them]: in the formation of a happy family, and in the creation of lasting works of scholarship’.

Christopher Brooke

Mary G. Cheney, Select bibliography

‘The Compromise of Avranches of 1172 and the Spread of Canon Law in England’, *English Historical Review* (1941).

Innocent III. The letters of Pope Innocent III (1198-1216) concerning England and Wales: a calendar with an appendix of texts, edited by C. R. Cheney and Mary G. Cheney. Oxford, 1967.

‘William FitzStephen and his Life of Archbishop Thomas’, *Church and Government in the Middle Ages. Essays Presented to C.R. Cheney on his 70th Birthday*, ed. C. N. L. Brooke, et al. (Cambridge, 1976).

Studies in the collections of twelfth century decretals from the papers of the late Walther Holzmann, edd. Christopher R. Cheney, Mary G. Cheney (MIC Corpus Collectionum 3; Città del Vaticano, 1979).

Bishop Roger of Worcester. Oxford, 1980.

‘The Litigation between John Marshal and Archbishop Thomas Becket in 1164: a pointer to the origins of Novel Disseisin’, *Law and Social Change in British History*, ed. J. A. Guy and H. G. Beale (London, 1984);

‘A Decree of King Henry II on Defect of Justice’, in *Tradition and Change. Essays in Honour of Majorie Chibnall Presented by her Friends on the Occasion of her Seventieth Birthday*, ed. D. E. Greenway, et al. (Cambridge, 1985)

English Episcopal Acta 33, Worcester 1062-1185, edd. Mary Cheney, David Smith, Christopher Brooke and Philippa Hoskin. British Academy 2007.

English Episcopal Acta 34, Worcester 1186-1218, edd. Mary Cheney, David Smith, Christopher Brooke and Philippa Hoskin. British Academy 2008.

BULLETIN OF MEDIEVAL CANON LAW

The *Bulletin of Medieval Canon Law* is back to publishing regular issues each year. Camera-ready pages of vol. 27 (its table of contents was published in *Novellae* 1) are with the publisher in Rome, and work is continuing on vol. 28 in Washington. The editors welcome submissions of essays. Please write to Peter Landau and Ken Pennington at Peter.Landau@jura.uni-muenchen.de and pennington@cua.edu.

RECENT PUBLICATIONS

Torsten Behle, *Der Magister Walfred von Bologna: Ein Beitrag zu den Anfängen der Bologneser Rechtsschule*, Ius vivens, Abt. B: Rechtsgeschichtliche Abhandlungen 21 (Berlin: LIT, 2008). 215 pp. € 24.90.

Mit der Zeichnung des Lebensbildes des Rechtslehrers Walfred von Bologna kann Licht in das Dunkel der Entstehung der Bologneser Rechtsschule zu Beginn des 12. Jhds. gebracht werden. Denn der erstmals im Mai 1127 auftretende "magister Gualfredus" stand im Mittelpunkt einer sich im 2. Viertel des 12. Jhds. dynamisch entwickelnden Bologneser Rechtsschule. In einem die Wissenschaften begünstigenden Umfeld der bologneser Kanonikatsstifte kam es durch die Weiterführung des Rechtsunterrichts durch Walfred und weitere religiös geprägte Laien zu einer Verweltlichung und Emanzipation des Rechtsstudiums. – We note, in particular, that the book contains, pp. 184-185, an image and a new edition of the famous charter containing the name of Gratian (alongside that of Walfred) from Venice 1143. It is one of more than a dozen sources given a new edition in the book.

<http://www.lit-verlag.de/isbn/3-8258-1064-1>

Bruce C. Brasington and Kathleen G. Cushing, eds., *Bishops, Texts, and the Use of Canon Law around 1100: Essays in Honour of Martin Brett* (Aldershot: Ashgate, 2008). 242 pp. € 55 or 49.50 if ordered online.

http://www.ashgate.com/default.aspx?page=637&calcTitle=1&title_id=9265&edition_id=10076

James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago 2008). 560 pp. \$ 49.

Brundage traces the history of legal practice from its genesis in ancient Rome to its rebirth in the early Middle Ages and eventual resurgence in the courts of the medieval church. By the end of the eleventh century, renewed interest in Roman law combined with the rise of canon law of the Western church to trigger a series of consolidations in the profession. New legal procedures emerged, and formal training for proctors and advocates became necessary in order to practice law in the reorganized church courts. Brundage demonstrates that many features that characterize legal advocacy today were already in place by 1250. <http://www.press.uchicago.edu/presssite/metadata.epl?mode=synopsis&bookkey=256902>.

Peter D. Clarke, *The Interdict in the Thirteenth Century: A Question of Collective Guilt* (Oxford: Oxford University Press, 2007). 320 pp. € 65.

The book explores, among other things, how the interdict was meant to work according to the medieval canonists, and how it actually worked in practice. Evidence including detailed case-studies of the interdict in action, is drawn from across thirteenth-century Europe.

<http://www.oup.com/uk/catalogue/?ci=9780199208609>.

Ruth Mazo Karras, Joel Kaye, and E. Ann Matter, eds., *Law and the Illicit in Medieval Europe*, Middle Ages Series (Philadelphia 2008). 328 pp. \$ 59.95.

A collection of essays by distinguished scholars, dedicated to Edward M. Peters.

<http://www.upenn.edu/pennpress/book/14449.html>.

Sacri canones servandi sunt. Ius canonicum et status ecclesiae saeculis XIII-XV, ed. Pavel Krafl, Praha (=Prague) Historický ústav AV ČR, v. v. i. (= Institute of History of the Academy of Sciences CR, v.v.i.), 2008, 686 + XL pp. (Opera Instituti historici Praegae, series C Miscellanea, volumen 19).

The book, which contains contributions in several languages, is distributed by www.hiu.cas.cz/cs/nakladatelstvi/o-

nakladatelstvi.ep (semotanova@hiu.cas.cz) and www.kosmas.cz/knihy/141623/sacri-canones-servandi-sunt (info@kosmas.cz).

Peter Landau, *Die Kölner Kanonistik des 12. Jahrhunderts: Ein Höhepunkt der europäischen Rechtswissenschaft*, Kölner rechtsgeschichtliche Vorträge 1 (Badenweiler: Bachmann), 39 pp. € 8.49.

Hierin weist der Autor nach, dass in Köln zwischen 1165 und 1190 eine bisher fast unbekannte eigenständige Rechtsschule lebte, die nicht nur juristische Lehrbücher und Einführungen verfasste, sondern auch grundlegende Erkenntnisse über das Verhältnis von Gerechtigkeit und Solidarität, von "ius naturale" und "ius positivum" und von göttlicher Gerechtigkeit und irdischem Recht gewann, vor allem aber erstmals den Satz Quod omnes tangit, ab omnibus approbari debet formulierte, der auch heute noch als Grundsatz jede Demokratie beherrscht.

<http://www.bachmann-verlag.de/index.php?sub=7&lang=de>.

Sara Risberg and Kirsi Salonen, *Auctoritate papae: The Church Province of Uppsala and the Apostolic Penitentiary, 1410-1526*, Diplomatarium Suecanum: Appendix, Acta pontificum Suecica, II: Acta Poenitentiariae (Stockholm, 2008). 526 pp. 250 SEK.

An edition of 453 penitentiary cases from Sweden. Entries from the registers of the Apostolic Penitentiary are edited in full, as are a few other related documents of different provenance. We draw attention to the long introduction, which is the first full and detailed account of the Penitentiary material available in English. The publication of the edition was celebrated

<http://www.statensarkiv.se/default.aspx?id=15996>.

Ludwig Schmutz, *Ehen vor Gericht. Paare der Renaissance vor dem Papst* (Berlin University Press, 2008). € 44.90.

The book treats 6387 matrimonial supplications from couples in the Holy Roman Empire to the Apostolic Penitentiary. The book mixes narrative, statistics and wide-ranging analysis of the social and legal background of these cases. There are many exciting, almost unbelievable, even scandalous stories retold here by the leading ex-

pert on the Penitentiary materials.

<http://berlinuniversitypress.de/das-programm/fruehjahr-08/ehen-vor-gericht.html>.

James Q. Whitman, *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial* (New Haven 2008). 288 pp. \$ 40.

To be convicted of a crime in the United States, a person must be proven guilty "beyond a reasonable doubt." But what is reasonable doubt? Even sophisticated legal experts find this fundamental doctrine difficult to explain. It was not originally a legal rule at all but a theological one. The original concern of the rule was to protect the souls of jurors. In Christian tradition, a person who experienced doubt yet convicted an innocent defendant was guilty of a mortal sin. Jurors fearful for their own souls were reassured that they were safe, as long as their doubts were not "reasonable."

<http://yalepress.yale.edu/yupbooks/book.asp?isbn=9780300116007>.

WORK IN PROGRESS

Penitentiary notices for England and Wales

Peter Clarke, Southampton, and Patrick Zutshi, Cambridge, work on publishing (probably in three volumes) register entries from the Apostolic Penitentiary concerning England and Wales. The more routine dispensations will be calendared while the more complicated cases will be reproduced in complete editions. calendar/edition will be published in the Canterbury and York Society Series. We are all welcome to become members of the Society at very reasonable rates, see www.canterburyandyork.org.

WEBLINKS

Roman Legal Tradition

Roman Legal Tradition: A Journal of Ancient, Medieval and Modern Civil Law is a peer-reviewed journal published online by the Ames Foundation and the University of Glasgow School of Law. The journal aims to promote the study of the civilian tradition in English. The editors welcome contributions on any aspect of the civilian tradition in ancient, medieval, and modern

law. All articles and reviews published in Roman Legal Tradition are available from this site free of charge: <http://www.romanlegaltradition.org/>

Digital books from Munich

The Munich Digitisation Centre (MDZ) handles the digitisation and online publication of the cultural heritage preserved by the Bavarian State Library and by other institutions. It provides one of the largest and fastest growing digital collections in Germany, now comprising 33,399 titles available online. Access is free of charge! The volumes digitized include many incunabula of legal works as well as several manuscripts. We found, e.g., three Gratian manuscripts: cdm [10244](#) (*Md*), [16084](#), [27337](#). <http://www.digital-collections.de/index.html?c=startseite&l=en>.

AUDITA ODOFREDI

Simon of Bisignano

We spotted a copy of Pier Aimone's edition of (at least a part of) the important *Summa* on the *Decretum* by Simon of Bisignano in Esztergom. It is included in the *Monumenta iuris canonici*. We have not, however, been able to find any bibliographical record of this much desired edition. When we do, it will be included under the heading of Institute publications. A text of the edition is available as pdf-files at http://www.unifr.ch/cdc/summa_simonis_de.php.

Schmugge's Stockholm gift

When Ludwig Schmugge came to Stockholm as a featured speaker for the conference to celebrate the new edition of Swedish penitentiary materials (see above under Recent publications), he brought a gift. He had discovered a text in the Penitentiary archives that, while not registered under any Swedish diocese, concerned a man, Jacobus Piper, who had hid from his creditors in the Franciscan convent of Stockholm. Jacobus supplicated the Penitentiary in 1511 from his home diocese of Pomesania. This is why the Swedish editors had overlooked it; it was not registered under any Swedish diocese.

Penitentiary Papers

We heard rumors that the Apostolic Penitentiary, which opened the medieval parts of its archives in 1983, might soon open yet more material for research.

Archbishop Øystein of Trondheim

A conference in Trondheim in mid-October addressed the twelfth-century second archbishop of Trondheim Øystein Erlandsson as a legislator. He presided over a provincial council, probably in 1164, which issued canons based on Gratian, he collected decretals, which he brought with him into exile into England and which thus circulated in English decretal collections, and he stood behind some of the church law in the Norwegian *Gulatingslova*. The conference was organized by Tore Iversen, who will edit the papers given at the conference (among the international participants were Peter Landau, Anne Duggan, and Martin Brett).

FROM THE EDITOR

I am very grateful to everyone who contributed, especially to the four who wrote in memory of Mary Cheney.

Please send notices when you publish a book, or discover an interesting website. Also, if you are organizing a conference, editing a journal, reading a new book, please let me know, preferably in a form that is ready to include in the newsletter (in any commonly read language).

Novellae 2 comes close on the heels of *Novellae 1*. Please do not conclude that this will be a monthly newsletter. I will put it out as often as I have enough news. The more you contribute, the more often it will come out.

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