The Medieval Academy of America

THE UNIVERSITY OF CHICAGO PRESS JOURNALS

Review
Reviewed Work(s): The History of English Law: Centenary Essays on "Pollock and Maitland" by John Hudson
Review by: Bruce R. O'Brien
Source: *Speculum*, Vol. 75, No. 3 (Jul., 2000), pp. 702-704
Published by: The University of Chicago Press on behalf of the Medieval Academy of America
Stable URL: http://www.jstor.org/stable/2903419
Accessed: 30-04-2018 23:34 UTC

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at http://about.jstor.org/terms

JSTOR

Medieval Academy of America, The University of Chicago Press are collaborating with JSTOR to digitize, preserve and extend access to *Speculum*

This content downloaded from 199.111.91.13 on Mon, 30 Apr 2018 23:34:42 UTC
All use subject to http://about.jstor.org/terms

claim for biblical style, Howlett provides a footnote (n. 21, p. 506) referring to several "earlier discussions of this sort of structure," but he does not pause long enough to explain how his proposal for biblical structure in *Beowulf* differs from those earlier proposals. A relatively brief discussion of the poem's authorship leads to the suggestion that "Æthelstan, Alfred's learned Mercian priest and chaplain, presented *Beowulf* to Æthelstan ætheling on the occasion of his ceremonial investiture by Alfred" (p. 537). This attribution, at this point in the book clearly labeled a suggestion, later slips toward the implication of fact when Howlett refers to "the *Beowulf* poet, or, as I hope we may now call him, Æthelstan the Chaplain" (p. 619). To many readers, this reviewer included, a purported discovery of such major significance as the identity of the author of *Beowulf* would seem to merit far fuller explication than is provided here. (For a recent review of work on the authorship of *Beowulf,* see Robert E. Bjork and Anita Obermeier, "Date, Provenance, Author, Audiences," in *A Beowulf Handbook,* ed. Robert E. Bjork and John D. Niles [Lincoln, Nebr., 1997], pp. 13–34, esp. pp. 28–31.)

A further viewpoint that will not win universal assent is the proposal that "we may apply the rules of Biblical style to the mending of texts that have been altered in transmission" (p. 63). Such a procedure would assume, as a principle of textual criticism, that each text should necessarily be fully regular. However, the opposite principle, that deviations from a pattern can carry their own significance, might also be worthy of consideration. In this respect as in others, the book is frustrating in its habit of asserting, rather than arguing, its positions.

It is possible that this book could have been written in no other way. In order to lay out a claim for the existence of a longstanding British tradition (not just isolated instances) of biblical style, there may have been no alternative to the strategy of presenting a great many examples. And in order to encompass so many examples within one volume of manageable length (the book runs to 625 pages), there may have been no alternative to often treating the texts quite briefly, taking a great deal for granted, and omitting much of the usual scholarly matrix. But if this is indeed the only way such a book could have been written, then it should not be surprising if it is met with a warm welcome in some quarters but puzzlement or rejection in others.

Overall, for many of the claims made in this book, an appropriate response would be the Scots verdict "not proven." Total dismissal of the idea that many works of medieval British literature exhibit formal patterns relying upon parallelism, chiasmus, and mathematical structures would be foolish. Total assent to the interpretations made in this book would also be problematical. To convince skeptics the case may need to be made somewhat differently: with greater reference to previous scholarship; a more extensive investment in explanations, in order to defend some of these analyses against the appearance of arbitrariness; more attention to the literary implications of the proposed structural patterns; and a fuller allowance for alternative ways of reading these texts.

Caroline D. Eckhardt, Pennsylvania State University

John Hudson, ed., *The History of English Law: Centenary Essays on "Pollock and Maitland."* (Proceedings of the British Academy, 89.) Oxford and New York: Oxford University Press, for the British Academy, 1996. Pp. xii, 288 plus 4 black-and-white plates; black-and-white portrait frontispiece. $45.

I suspect that Frederic William Maitland would have been rather alarmed by reports of scholars commemorating the publication of Frederick Pollock's and his *History of English Law* in a 1995 conference at Cambridge University; at first glance, the fact that historians are still dwelling on his admittedly pioneer work would dismay a man who had such great

This content downloaded from 199.111.91.13 on Mon, 30 Apr 2018 23:34:42 UTC
All use subject to http://about.jstor.org/terms

expectations of the future progress of English legal history and whose own short life robbed him of anything more than the slightest glimpse of it. Nevertheless, once Maitland had perused the recently published papers from that conference, he would have received a modicum of relief from how far we have come in some ways from his methods, if not always from his conclusions. The collection of essays, more or less held together by the axis of Pollock and Maitland's *History,* is thoughtful, provocative, and unsentimental—in short, just the kind of commemoration Maitland would have applauded.

The sequence of essays mirrors the order in the *History,* starting with the Anglo-Saxons. Patrick Wormald argues, persuasively, that Maitland "drastically underestimated the power and aggression of the Old English state" (p. 6); most of the components of Maitland's common law were in place in the late Anglo-Saxon period. Furthermore, Wormald points out, as do many of the contributors, how much Maitland was the king's man in perspective, rarely looking at the law from the perspective of the human suffering it inevitably entailed. John Hudson's careful reconstruction of the drafting of the *History* in order to explain the lacuna of Anglo-Norman law suggested to me, at least, that Maitland's decision to exclude a third book on Domesday Book and feudalism from his *History* has indeed worked a great mischief on our understanding of the common law's origins (or at least of its parentage). By setting the excluded material in the brilliant but foreign landscape of *Domesday Book and Beyond* (1897), Maitland removed Anglo-Norman law from the bright light in which the Angevin period basks in the *History,* where it is clearly explained and sensibly reconstructed. Hudson sketches Anglo-Norman developments in "a more gradualist explanation of the formation of the Common Law" (p. 46). Working with the late-twelfth-century material, Sir James Holt poses a paradox for those who would have an Angevin Empire: how is it, he asks with the arsenal of Angevin *acta* in support, that the role of royal justice was so much less in demand in southern France than in England if justice was so much a manifestation of a single king's royal will? Holt offers this and other observations arising from the collection of Angevin *acta,* not as an impeachment of "imperialists," but as a description of the problems they and other historians need to consider (p. 56). Paul Brand wrestles Maitland's great guide to thirteenth-century law—Henry de Bracton's *De legibus*—away from Bracton (and J. L. Barton) and the mid-thirteenth century and drags it back to William de Raleigh, writing before c. 1240. So far the movement of essays has followed closely the structure of the background chapters in volume 1 of Maitland's *History.*

As Maitland, after reaching the age of Bracton, turned to the great themes in English law, so, too, the writers of the succeeding essays in this collection. Stephen White's lucid explanation of Maitland's witting and unwitting belief that the individual, not the community, was the basic legal unit of medieval society calls into question the place of the family in Maitland's common law. White's criticism comes with nothing but sympathy; Maitland's distaste for "archaic" groups in old laws was a healthy reaction to the pablum of the archaic in the works of his contemporaries. Reaching similar conclusions, Henry Summerson finds that Maitland transferred his late-nineteenth-century Liberal politics into the Angevin court of Henry II and thus emphasized centralized government over the role of communities in law enforcement in the thirteenth century. The result for Maitland was that he saw medieval justice as ineffective, a position Summerson labels "fundamentally flawed" (p. 143). R. H. Helmholz evaluates the role of the learned laws in Maitland's *History* (as well as where things stand today) and uncovers in Maitland's language a conviction that the common law and the learned laws were engaged in a "quasi-Darwinian struggle for survival" (p. 156), a conviction betraying Maitland's sympathies rather than anything taking place in the twelfth or thirteenth centuries. Helmholz's setting the record straight offers revision of many things, including the famous Stubbs-Maitland debate, but also shows Maitland to have often and surprisingly—given the limited resources in print

This content downloaded from 199.111.91.13 on Mon, 30 Apr 2018 23:34:42 UTC
All use subject to http://about.jstor.org/terms

in his day—been right. George Garnett's extended essay (twice as long as most others) on the origin of the abstract "crown" in English law is rich in insight concerning the oftentimes ironic context where one finds the crown. Garnett's case is clearly argued with evidence from all quarters, and persuasive. The crown was no child of the interregnum, nor a French import, but rather a creation of ecclesiastical draftsmen who, insofar as their institutions were perpetual, wished to know that the jurisdictional rights they received from the king were also perpetual. Ergo, the crown became immortal, no matter how mortal its individual wearers. If Garnett follows Maitland to his most theoretical positions, the next essay, by Paul Hyams, removes Maitland from the Olympus of abstraction and places him squarely, flesh and bones, in the midst of his Victorian contemporaries. Hyams considers the limitations in Maitland's perspective reflected in his narrow vision of such groups as Jews, victims of the law, serfs, and homosexuals. Hyams reminds us that Maitland himself, unlike the crown, can never really be abstracted from his age, regardless of his genius. Lastly, S. F. C. Milsom, whose studies of the early workings of the common law have unseated a number of Maitlandish orthodoxies, offers a curious rebuke to almost all of the papers published in the volume, seeing in them historians' perspectives of a man who, for all his historical wisdom, was in truth a lawyer. We forget that fact at our own peril—that much I will agree with. Nevertheless, it still remains true that too often lawyers' legal history, where the legal idea rules over its context, is no history since anachronism all too often plays Virgil to the lawyer's Dante. Though we rarely read the *Paradiso,* we should remember that Virgil cannot guide Dante through that blessed place.

John Hudson is to be commended for initiating the conference and then editing the splendid collection of papers it produced. The British Academy is to be thanked for publishing the papers in its proceedings, where they can get the kind of attention they deserve.

Bruce R. O'Brien, Mary Washington College

Jean Jolivet, *La théologie d'Abélard.* (Initiations au Moyen Age.) Paris: Cerf, 1997. Paper. Pp. 137. F 105.

No modern scholar has done more than Jean Jolivet to reveal the intricacy and subtlety of Abelard's thought. The appearance of a new and wide-ranging study of Abelard by him raises high expectations, which the present volume may somewhat disappoint simply because here Jolivet has restricted himself to providing (as part of a series) an introductory survey of Abelard's theology. Detailed analyses of Abelard's logical and linguistic theories and techniques are eschewed, as is any attempt at a synthetic view of Abelard's theological position. Rather, Jolivet looks at Abelard's theological writings one by one, explaining their striking characteristics and the main lines of their arguments.

Jolivet is particularly thorough and perceptive in his treatment of Abelard's first theological work, the *Theologia Summi boni,* although at the cost of minimizing the importance of the new material added to turn it into the *Theologia Christiana* and finally into the *Theologia Scholarium.* Jolivet suggests that the first of these revisions consisted mainly in the addition of many more quotations: the remarkable, and almost entirely new, paean of pagan virtues that occupies most of book 2 is passed over in a single sentence, and the intricate and puzzling metaphysical discussions motivated by Abelard's attempt to refine his account of the Trinity receive less than a page. *Sic et non,* Abelard's dossier of mainly patristic quotations, receives a brief but illuminating discussion in which Jolivet uses his great knowledge of Abelard's intellectual context and suggests that, despite his reputation as a bold and even heterodox thinker, Abelard's attitude to conflicts among his authorities was more timorous than that of some of his close contemporaries. Jolivet also has a special suggestion to make about the *Collationes* (or *Dialogue between a Christian, a Philosopher,*

This content downloaded from 199.111.91.13 on Mon, 30 Apr 2018 23:34:42 UTC
All use subject to http://about.jstor.org/terms