Henry Ansgar Kelly

Law and Religion in Chaucer's England

Henry Ansgar Kelly

Law and Religion in Chaucer's England

ASHGATE
VARIORUM

Published in the Variorum Collected Studies Series by

Ashgate Publishing Limited
Wey Court East
Union Road
Farnham, Surrey
GU9 7PT
England

Ashgate Publishing Company
Suite 420
101 Cherry Street
Burlington, VT 05401–4405
USA

Ashgate website: http://www.ashgate.com

ISBN 978–1–4094–0751–5

British Library Cataloguing in Publication Data
Kelly, H.A.
Law and religion in Chaucer's England.
– (Variorum collected studies series ; CS957)
1. Canon law – History – To 1500. 2. Religion and law – England – History – To 1500. 3. Canon law in literature. 4. Chaucer, Geoffrey, d. 1400 – Criticism and interpretation.
I. Title II. Series
262.9'0942'09023–dc22

ISBN 978–1–4094–0751–5

Library of Congress Control Number: 2010923097

VARIORUM COLLECTED STUDIES SERIES CS957

Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall

Also in the Variorum Collected Studies Series:

HENRY ANSGAR KELLY
Inquisitions and Other Trial Procedures in the Medieval West

ROGER E. REYNOLDS
Studies on Medieval Liturgical and Legal Manuscripts from Spain and Southern Italy

JAMES A. BRUNDAGE
The Profession and Practice of Medieval Canon Law

EDWARD PETERS
Limits of Thought and Power in Medieval Europe

MARJORIE CHIBNALL
Piety, Power and History in Medieval England and Normandy

BRIAN TIERNEY
Rights, Laws and Infallibility in Medieval Thought

RICHARD KAY
Councils and Clerical Culture in the Medieval West

ROGER E. REYNOLDS
Law and Liturgy in the Latin Church, 5th–12th Centuries

JOHN GILCHRIST
Canon Law in the Age of Reform, 11th–12th Centuries

ROBERT SOMERVILLE
Papacy, Councils and Canon Law in the 11th–12th Centuries

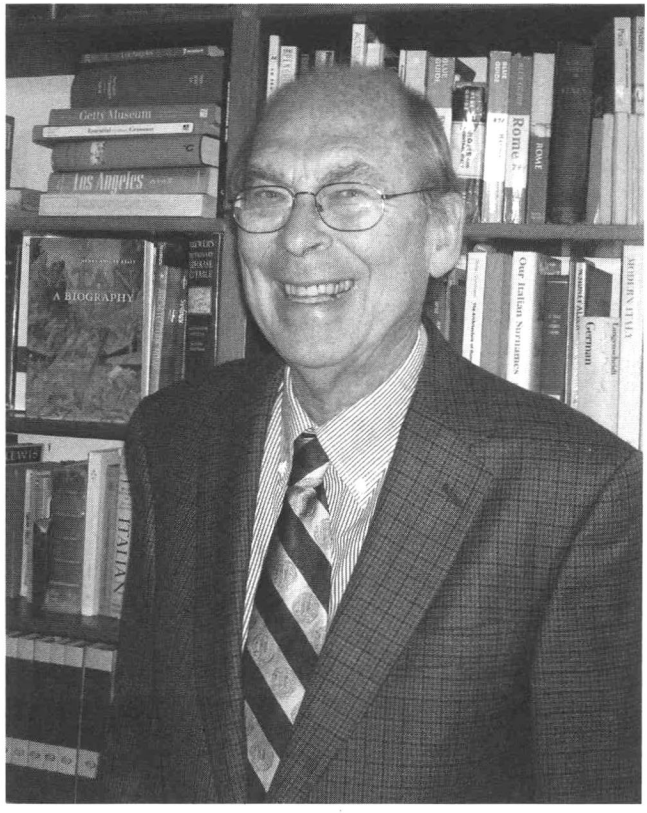
STEPHAN KUTTNER
Medieval Councils, Decretals and Collections of Canon Law

ADAM VETULANI
Institutions de l'Eglise et canonistes au Moyen Age
De Strasbourg à Cracovie

STEPHAN KUTTNER
Studies in the History of Medieval Canon Law

VARIORUM COLLECTED STUDIES SERIES

Law and Religion in Chaucer's England



Henry Ansgar Kelly

INTRODUCTION

The following essays all deal with the works of Geoffrey Chaucer in some way, often centrally, sometimes peripherally, but the main topic explored in each case concerns a point of law or religion historically considered. The law that I am chiefly concerned with is that of the Catholic Church collectively known as canon law. I first immersed myself in the intricacies of this discipline when researching my study of Richard III's alleged plan to marry his niece,[1] which came out of my dissertation work on Shakespeare's History plays.[2] This led to my book on Henry VIII and the history of legal incest,[3] which in turn inspired my studies on inquisitorial procedure.[4] I first applied the study of canon law to Chaucer in an essay on the possible clandestine marriage of Troilus and Criseyde,[5] which was incorporated into a book on love and marriage in Chaucer's time.[6]

The secret to unlocking the treasures of canon law is to start not with the modern edition of the laws by Emil Friedberg,[7] but with one of the older glossed editions, which have abundant cross-references and indexes. There is no modern edition, but we at UCLA have put the official 1582 edition online.[8] The first volume contains Gratian's *Decretum*, and volume 2 has the so called *Liber Extra*, or *Decretales Gregorii IX* (abbreviated *X*), with volume 3 containing the *Sext* (*Liber Sextus*), *Constitutiones Clementinae*, and the *Extravagantes Johannis XXII* and *Extravagantes Communes*. In addition I have edited and expanded the two indexes to the *Liber Extra*, namely, the *Margarita* (to the decretals) and the *Materiae Singulares* (to the Ordinary Gloss) and included them on the website. One should have at hand James Brundage's guide to the contents and

---

[1] "Canonical implications of Richard III's plan to marry his niece," *Traditio* 23 (1967) 269–311.

[2] Published as *Divine Providence in the England of Shakespeare's Histories* (Cambridge, MA 1970, repr. Eugene, OR 2004).

[3] *The Matrimonial Trials of Henry VIII* (Stanford 1976, repr. with new Foreword, Eugene 2004).

[4] Reprinted in *Inquisitions and Other Trial Procedures in the Medieval West*, Variorum Collected Studies (Aldershot 2001).

[5] "Clandestine marriage and Chaucer's *Troilus*," in *Marriage in the Middle Ages*, ed. John Leyerle, *Viator* 4 (1973) 413–501, Chapter 2, pp. 435–57.

[6] *Love and Marriage in the Age of Chaucer* (Ithaca, NY 1975, repr. Eugene 2004).

[7] *Corpus iuris canonici* (*CIC*), ed. Emil Friedberg, 2 vols (Leipzig 1879–81).

[8] *Corpus juris canonici* (*CJC*), 3 vols (Rome 1582), http://digital.library.ucla.edu/canonlaw/index.html

abbreviations used.[9] He also includes information on Roman civil law, which was incorporated into canon law.[10]

My early themes are revisited in Essay I below, "Shades of incest and cuckoldry: Pandarus and John of Gaunt," which was in effect commissioned by John Fisher, to shed light on the possibility that John of Gaunt had an incestuous relationship with Catherine Swynford, who later became his third wife, because of his alleged sexual relations with Catherine's sister Philippa, Chaucer's wife (hence cuckolding Chaucer). I relate this real-life question to the literary portrayal of Pandarus, Troilus's best friend and uncle of Criseyde in Chaucer's *Troilus and Criseyde*, who in the view of some imaginative critics similarly indulged in incest and betrayal. I summarize the canonical laws on incest, drawing on the above-noted studies of Richard III (a matter of consanguinity) and Henry VIII (falling mainly in the category of affinity). I conclude that there is no basis to the Gaunt/Philippa story, from the fact that he did not seek a dispensation for affinity. I analyze the dispensation that he did receive, for spiritual kinship, and edit and translate the whole document in the appendix to the article. I dismiss the notion of Pandarus's incest with Criseyde as an appalling lapse in critical judgment on the part of those who have entertained it, but take the opportunity to discuss other places in Chaucer that do have relevance to the laws of kinship. I group this first essay and the three following, as can be seen from the table of Contents, under the category of "Sex/Gender."

Essay II, "Bishop, prioress, and bawd in the Stews of Southwark," began as an inquiry into the allegation that that the prioress and community of the Benedictine monastery of St Leonard at Stratford-at-Bow near London (which Chaucer associated with his Prioress in the *Canterbury Tales*) maintained a house of prostitution in the Stews district, which was in the liberty of the bishop of Winchester. I begin with an overview of how prostitution was dealt with in theory and practice in medieval Europe, before focusing on England and the Stews. The district received its name, from around the mid-fourteenth century, from the fishponds (stews) or rooming houses (stewhouses/stovehouses) of the area. Reports of prostitution in the district go back to the fourteenth century (Chaucer's reference to the women of the "styves" in the Friar's Tale may be an example), but names of bordellos do not surface until the turn of the sixteenth century, and some of them are unstable. There is no reason for suspecting that the bishop's own properties, the Bell, the Barge, and the Cock contained bordellos. The bishop's manor officials allowed bordellos in the district to function, but under regulation and subject to regular fines for alleged infringements. If there

---

[9] James Brundage, *Medieval Canon Law* (New York 1995).

[10] The glossed edition of Johannes Fehius of Gailsdorf, *Corpus juris civilis cum glossa ordinaria*, 6 vols (Lyons 1627), has been reprinted in modern times (Osnabrück 1965–66).

was a bordello named the Unicorn or the Bear on the Stratford property, it would have been under the personal direction not of the prioress's steward, but of a tenant, and the steward may have been unable to evict the tenant if so desired. In England, sexual offenses were investigated and punished in the church courts and also sometimes in local city courts, as in London from 1382 on, but perpetrators could resist by appealing to the royal courts. This happened in Chaucer's day when Bishop Braybrooke of London was unable to break the lease on a house within St Paul's churchyard where prostitution was allegedly being practiced.

Essay III, "Medieval laws and views on wife-beating," deals mainly with the commentators on canon law, which reached an authoritative position in the Ordinary Gloss to Gratian (ca. 1215), that husbands did not have the right to beat their wives. But this view was later modified by other commentators, for instance the Archdeacon Guy of Baysio in 1300, who allows moderate beating for serious reasons, and there is also some vacillation among the commentators on Roman civil law and English common law. Examples of disciplinary beatings in Chaucer are given, including the Wife of Bath's allegation that her fifth husband used to beat her in futile attempts to keep her in line.

Essay IV, "The Pardoner's voice, disjunctive narrative, and modes of effemination," deals more with the law of nature than with the laws of man, concerning differences between human males and females. The Wife of Bath notes the differentiating functions of our private parts, but the subject becomes complicated when Chaucer at one point surmises that the Pardoner was either a gelding or a mare, after saying that he had a voice like a goat's, while elsewhere indicating that he had a very strong voice. I detail sometimes contradictory indications of eunuchry and other sexual irregularities in the medical lore of the time, as well as other instances of contradictory (disjunctive) narration in Chaucer. I conclude that there is nothing to the recent idea that the Pardoner is portrayed as same-sex-oriented; he is an active womanizer (so presented by his own testimony and seen as such by the earlier readers of the *Canterbury Tales*) who has himself become womanized by his sexual activities.

The next two essays are categorized in Section B, "The Sacraments," and deal with the liturgical and devotional life of the clergy and laity. Essay V, "Sacraments, sacramentals, and lay piety in Chaucer's England," concentrates on the Mass and the Divine Office as reflected in the *Canterbury Tales* and the status of the various clerics mentioned therein, including parish clerks, parish priests and other kinds of secular priests, and friars and monks (and the restrictions on their sacramental activities) and pardoners, and the function and uses of sacramentals like holy water and relics. I satirize the current fad for French-based theoretical criticism by suggesting the use of home-grown American approaches: organization theory and care-management methodologies.

Essay VI, "Penitential theology and law at the turn of the fifteenth century" is a chapter from a survey of the history of penitence and confession, *A New History of Penance*, and treats primarily of the coverage given to the sacrament of penance by John Burgh in his *Pupilla oculi* (1385) and the legal aspects treated by William Lyndwood in his *Provinciale* (1432). One new aspect of penance discussed is the various understandings of attrition as opposed to contrition, and also the question of why confession is necessary (asking what it adds, if anything, to the forgiveness effected by contrition); I take these subjects up to the Council of Trent in the sixteenth century. Many of the topics dealt with impinge on the works of Chaucer, especially the Parson's Tale, which is a treatise on how to go to confession. The appendix gives a detailed summary of all of the topics treated by Burgh and Lyndwood.

The following three essays are in Section C, "Non-Christians and England," and concern attitudes towards Jews, Muslims, and pagans in fourteenth-century England. Essay VII, "Jews and Saracens in Chaucer's England: a review of the evidence," looks at reports of Jews and other non-Christians actually staying or living in England, beginning with the converted Jews put up at the House of Converts (which included the daughter of Rabbi Moses, Bishop of the Jews), and Muslim and pagan converts (the latter from northern Europe), and the pensions that they received upon conversion. I give details of a new district called Poor Jewry near Chaucer's residence at Aldgate, and analyze the sermons of Bishop Thomas Brinton addressed to the clergy on their obligations to try to convert the rich Jews of the city.

Essay VIII, "'The Prioress's Tale' in context: good and bad reports of non-Christians in fourteenth-century England," is a companion piece to the previous one, detailing attitudes towards Jews and other non-Christians in Chaucer's time, detectable in sermons, chronicles, and miracle-stories, notably in the genre of Miracles of the Virgin (of which Chaucer's Prioress's Tale is one). Attitudes range from hatred to indifference to concern for their salvation. One frequently-met-with notion is that Jews and Muslims are morally superior to Christians in their devotion to their religious obligations and in their charity towards the unfortunate among them. The most likely explanation for the Prioress's Tale is that Chaucer came upon a version of the *Chorister* miracle-story that ended in the punishment rather than the conversion of the miscreant Jews, and that he was simply following his source. It is most unlikely that he was criticizing the Prioress for being anti-Jewish.

Essay IX, "Chaucer's Knight and the northern 'crusades': the example of Henry Bolingbroke," expands upon the previous two essays in exploring attitudes towards non-Christians and conversion, adding also schismatic Christians, both Eastern (the "Orthodox") and Western (adherents of the Pope of Avignon as opposed to the Pope of Rome). I focus here on the Teutonic Knights and their

so-called crusades against Lithuania, even after the Lithuanians had converted in 1387. The fact that the Lithuanians had become Christians (of the Roman persuasion) was apparently not understood by the guest combatants like Henry Bolingbroke from England and John Boucicaut from France who joined the fight against them in 1390 (a campaign in which Chaucer includes his Knight). I conclude that knights such as Bolingbroke, who, then and later as King Henry IV, had an interest in making converts, were opportunists rather than religious idealists when they sought out military action, and Chaucer portrays his Knight similarly (he is said to have fought on the side of one heathen ruler against another in Turkey).

The final three papers, in Section D, "Case Studies," address specific topics connected with the *Canterbury Tales*. Essay X, "A neo-revisionist look at Chaucer's nuns," takes its point of departure from Chaucer's description of the Prioress in the General Prologue (unlike Essay VIII, which deals with the Prioress's Tale – a tale that, in my judgment, Chaucer assigned to the Prioress without adapting it to her character). Chaucer's characterization of the Prioress has led to the conclusion that she was a very lax nun and that she was typical of all nuns in the England of Chaucer's time. I argue that this view is unwarranted, showing, for instance, that there was no prohibition in force against nuns' going on pilgrimage or keeping pets, and pointing to likely justifications for her manners and mannerisms (for instance, her concern for decorum fits with her presumed position as head of a school for girls).

Essay XI, "How Cecilia came to be a saint and patron (matron?) of music," deals with Chaucer's Second Nun's Tale and its source, laying out what it subtracts from the original fictional account of this virgin martyr, who was also a widow by the time that she was killed. This account was a fanciful transformation of the historical Roman matron Cecilia who donated property in Trastevere for church use. I end by detailing how she came to be regarded as patroness of music, beginning in the fourteenth century.

Essay XII, "Canon law and Chaucer on licit and illicit magic," which appears in a disguised festschrift for Edward Peters, *Law and the Illicit in Medieval Europe*, concerns the question of what was regarded as morally and theologically acceptable in the practice of magic, defined as the exploitation of the occult properties of things. Canon law provided little guidance on the subject, in spite of the three dozen canons on sorcery collected by Gratian in Cause 26 of his *Decretum*. The canons received no explication by Huguccio of Pisa or the Ordinary Gloss, but the Bolognese canonist John of God provided a commentary in 1243, and in it he allowed the use of medicinal magic employing herbs, stones, and words, as long as they were not "incantatory." His commentary was adopted by Archdeacon Guy of Baisio in his *Rosarium* of 1300, which in turn was drawn on by William Lyndwood in his *Provinciale* (1432) in his comments

on the prohibition of John Peckham, Archbishop of Canterbury (1281), against "all sorceries and all incantations, along with superstitions of characters and other suchlike figments." I analyze uses of magic in the *Canterbury Tales* in light of these commentaries, focusing particularly on John the Carpenter's "charm" and other restorative measures in the Miller's Tale, as they might have been adjudicated by the local archdeacon (for Oxford). According to the Friar at the beginning of his Tale, witchcraft was one of the offenses prosecuted in the courts of archdeacons.

One more essay that is relevant to this collection but not contained here (both because it is not yet published and because there would be no room for it) is "Wives and property in Chaucer's London: testimony of Husting wills,"[11] which contrasts the rules of the common law and the custom of London with the actual practice of testators in their wills. I find that husbands are much more generous towards their wives than they supposedly have a right to be, and that the Wife of Bath presents a realistic picture of the actual possibilities of the time. The Wife's skimping on the funeral arrangements for her fourth husband dramatizes the reality that the Church's supposed right to a third or half of estates was usually more a matter of wishing than receiving, entirely voluntary on the part of the testator and often at the discretion of the executor (usually the surviving spouse). Wives were guaranteed the right to dispose of their own property by canon law, under pain of automatic excommunication of husbands and other impeders (a point noted in Essay VI below, p. 295).

I hope that gathering these essays together under one roof and in the purview of a single index will make it easier to access my findings and perhaps also to inspire similar studies on the part of others, especially in the way of interdisciplinary investigations. I was first attracted to UCLA in 1967 by the recently formed Center for Medieval and Renaissance Studies, under the direction of Lynn White, and I have been closely associated with it ever since. The interdisciplinary and intercultural goals of CMRS have always been an inspiration to me, and I have tried to be a source of such inspiration to my students and colleagues. In this volume, I trust that interesting examples can be seen of how the study of literature can stimulate historical investigations in various other fields, and also how findings in these fields can in turn throw light on literary works.

HENRY ANSGAR KELLY

Los Angeles, California
January 2010

---

[11] H.A. Kelly, "Wives and property in Chaucer's London: testimony of Husting wills," forthcoming in *Studies in Medieval and Renaissance History* 8 (2011).

ACKNOWLEDGEMENTS

Grateful acknowledgement is made to the following individuals, institutions and publishers for their kind permission to reproduce the articles included in this volume: the Trustees of the New Chaucer Society (*Studies in the Age of Chaucer*), Saint Louis, MO (for Essays I and VII); the Medieval Academy of America (*Speculum*), Cambridge, MA (II); Ken Pennington, the Catholic University of America (III); R.F. Yeager, former Director of Pegasus Press (IV); Penn State Press (*Chaucer Review*), University Park, PA (V, X); Brill, Leiden (VI); AMS Press, New York, NY, and the Arizona Center for Medieval and Renaissance Studies, Tempe, AZ (VIII); the University of Wales Press, Cardiff (IX); Harmonie Park Press, Warren, MI (XI); and the University of Pennsylvania Press, Philadelphia, PA (XII).

PUBLISHER'S NOTE

The articles in this volume, as in all others in the Variorum Collected Studies Series, have not been given a new, continuous pagination. In order to avoid confusion, and to facilitate their use where these same studies have been referred to elsewhere, the original pagination has been maintained wherever possible.

Each article has been given a Roman number in order of appearance, as listed in the Contents. This number is repeated on each page and is quoted in the index entries.

Asterisks in the margins are to alert the reader to additional information supplied at the end of the volume in the Addenda and Corrigenda.

CONTENTS

C Non-Christians and England

D Case Studies

This volume contains xiv + 400 pages

I

Shades of Incest and Cuckoldry: Pandarus and John of Gaunt

ON THE SUBJECT OF INCEST in Chaucer's works, scholars in the past have generally alluded only to the Man of Law's assertion that Chaucer wrote no word of the wicked example and cursed story of Canace, who sinfully loved her own brother. They have not always remembered that Chaucer named Canace in *The Legend of Good Women* as an example of "trouthe," clearly intending to write a legend about her.[1] But more recently many Chaucerians speak of incest in a perceived or suspected sexual encounter between Pandarus and his niece Criseyde on the morning after the consummation of her love for Troilus.[2] Incest enters Chaucer's real world with the speculations that John of Gaunt actually fathered Thomas Chaucer, and perhaps a daughter, Elizabeth Chaucer, on Geoffrey's wife, Philippa, who was allegedly the sister of Catherine Swynford,[3] John's

[1] See H. A. Kelly, *Love and Marriage in the Age of Chaucer* (Ithaca, N.Y.: Cornell University Press, 1975), pp. 103, 107–108, 113. Patricia Eberle reports the traditional critical reactions to the Man of Law's comment in her notes on lines 77–89 of the *Introduction to the Man of Law's Tale* in Larry D. Benson, gen. ed., *The Riverside Chaucer* (Boston: Houghton Mifflin, 1987), p. 856.

[2] The supposedly incriminating lines are these: "With that she gan hire face for to wrye / With the shete, and wax for shame al reed; / And Pandarus gan under for to prie, / And seyde, 'Nece, if that I shal be ded, / Have here a swerd and smyteth of myn hed!' / With that his arm al sodeynly he thriste / Under hire nekke, and at the laste hire kyste. / / I passe al that which chargeth nought to seye. / What! God foryaf his deth, and she al so / Foryaf, and with here uncle gan to pleye, / For other cause was ther noon than so. / But of this thing right to the effect to go, / Whan tyme was, hom til here hous she wente, / And Pandarus hath fully his entente" (3.1569–82). Chaucerians who affirm or hint at such a sexual relationship, including E. Talbot Donaldson and George Kane, are discussed by Robert P. apRoberts, "A Contribution to the Thirteenth Labor: Purging the *Troilus* of Incest," in J. Bakker et al., eds., *Essays on English and American Literature and a Sheaf of Poems Offered to David Wilkinson*, Costerus, n.s., vol. 63 (Amsterdam: Rodopi, 1987), pp. 11–25, and listed chronologically on p. 23 n. 6.

[3] Donald R. Howard, *Chaucer: His Life, His Works, His World* (New York: E. P. Dutton, 1987), pp. 94–95, 551, sums up versions of the theory and lists some of those who support or