

BOOK REVIEWS

THE MEDIEVAL COURT OF ARCHES edited by FD LOGAN, Woodbridge, Suffolk and Rochester NY, the Boydell Press for the Canterbury and York Society, 2005, xlvi + 240 pp. (Hardback, £25) ISBN 0-907239-65-X.

The Court of Arches was and is the provincial court of the province of Canterbury, and F D Logan has been studying the history of the court during the Middle Ages for a period of more than forty years. He was inspired to undertake and to persevere in such a lengthy study, according to his own testimony, by the idea that canon law had played a great part in informing the lives of ordinary people as well as being a fount of concepts and concerns for discussion by lawyers, ecclesiastics and other scholars. During the course of his sustained studies, the author has visited many great collections and repositories and has corresponded and collaborated with some of the leading scholars of his generation. It is clear from the end-product of his efforts, published here, that he has not merely enjoyed but relished the whole endeavour.

The study extends from the mid thirteenth century through to 1533, the latter date suggested by the Act in Restraint of Appeals. Much of the records of the mediaeval court were unfortunately lost as a consequence of their destruction in the Great Fire of London in 1666. Scattered fragments only remain to bear witness to the court's activities. This volume is a collection of some of the key documentation – statutes, customs, treatises, lists of office holders and the court calendar. The editor's introduction, itself an important scholarly essay, examines the history and procedure of the court. In it, he recalls that the first extant record of the court comes from the year 1251, and he attributes the rise of the court at this time to the contemporaneous growth of devolved government within the province of Canterbury and the decline in the use of papal judges delegate to try cases in the provinces of the English Church. With regard to why the Canterbury provincial court should have settled in London, Logan argues that the city was its 'natural' location, although it is difficult to agree with him when he asserts that the city was the 'seat of government' and the Archbishop of Canterbury's principal residence, both of which views reflect a modern perspective of the city which would not have been shared by contemporaries who would have demarcated more clearly between London, Westminster and Lambeth.

Logan sees the second half of the thirteenth century as the period which saw the establishment of the court, citing as his evidence the first statutes, those of Archbishop Kilwardby in 1273, the first set of customs, which he sees as flowing from the controversy between Archbishop Pecham and his suffragans in 1283, and the emergence of settled professional procedures for admission before the end of the century. Taken together, he feels that these manifest that the court was well and truly constituted by the close of

the century. His introductory examination of the court's history continues through to the sixteenth century and, in passing, he discusses the origins and later history of Doctors' Commons. He notes how diocesan bishops came to retain proctors and advocates to look after their interests before the court. Your reviewer could not help but read this section with a view to a question which has for some years been interesting him, namely why so many of the practitioners – over a quarter in the sixteenth century – hailed from Wales. It may well be that the retaining of lawyers by the Welsh diocesans in the manner described by Logan opened the door to legal practice in England which might otherwise have been shut to aspiring young Welshmen, and it is noticeable that advocates of clearly Welsh provenance – for instance, David ap Rhys and Maurice Glynn – are to be found in the lists of the court's mediaeval personnel supplied by the editor. This comment is not entirely an indulgence, for it points to the usefulness of the work to others working in the field, and there is no doubt that many will find themselves indebted to this collection in future years. One criticism however may be in order; the author's explanation of the distinction between proctors and advocates would have benefited from connections with similar professional divisions in other civilian jurisdictions.

Logan also supplies an introduction to the two sets of customs relating to the court, dating the earlier to the years 1282–1295 and the later, shorter version to Archbishop Stratford's endeavours *circa* 1342. Regarding the former, he notes that Archbishop Winchelsey had in 1295, when issuing his statutes, emphasized the importance of the customs being observed as well. The second, shorter set he also connects with the issuing of statutes, in this case those of 1342. Archbishop Stratford expressly stated that, in preparation for the production of these statutes, he had had compiled a written text of those customs which had proved necessary and useful to the running of the court. Logan believes that the shorter set are connected with Stratford's work, the archbishop having clearly stated that he had had removed those customs which were superfluous or uncertain.

Logan's collection also contains several treatises relating to the procedure of the court, the last and longest of which, the *Tractatus super appellacionibus tam directis quam tuitoriis secundum consuetudinem curie Cantuarensis*, he tells us resembles lecture notes, thus indicating that a 'school' of some kind may have been in existence at the end of the thirteenth or the beginning of the fourteenth century. An intriguing comparison is thus suggested with the development of education in the common law and the didactic provenance sometimes attributed to the treatise *Casus Placitorum* of roughly the same date, of which Professor Plucknett famously commented that it 'positively reeked of chalk and duster and ink'.

The lists of the mediaeval personnel of the court include officials, deans of the Arches, examiners general, registrars, scribes and apparitors, as well as advocates and proctors. The volume closes with a description and reconstruction of the court's annual calendar.

This is an immensely useful and serviceable collection of sources, for which, together with his scholarly introductions, the editor is to be both congratulated and warmly praised. Its shelf life will extend far beyond the forty years devoted to its production.

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HUMAN RIGHTS AND THE IMAGE OF GOD by ROGER RUSTON, SCM Press, 2004, 310 pp (Paperback, £18.99) ISBN 0-3340-2959-7.

Christians who support human rights and who use the language associated with that tradition have often suffered the criticism that, in doing so, they have given in to secular and enlightenment assumptions about human life and society. This weighty and important book is a powerful rebuttal of that charge.

In the context of an exploration of Catholic moral theology Roger Ruston has recovered a substantial and positive Christian language for human rights. He has done so in a manner encouraging a critical Christian engagement with the Human Rights tradition.

Underpinning the theme of the book is the mind of Thomas Aquinas. Aquinas represents the full flowering of a tradition of thought that Ruston traces back to the early centuries of the church – to Basil and to Ambrose as well as Augustine. At the heart of this language is the doctrine of the '*imago Dei*'. The Thomist development of the themes of creation, of nature and grace have, according to Ruston, laid a foundation for a long Catholic tradition of the exposition of human rights. That argument is enriched by a further exploration of John Locke's thinking rooted in the Protestant world of the seventeenth century. Ruston seeks to rescue Locke from the perception that he is the father of secular thinking on human rights and on individualism.

The heart of the book is taken up in encounter with the struggle of both Francisco de Vittoria and Bartoleme de Las Casa who developed their thinking in the face of the abuses of the Spanish conquests in South and Central America in the sixteenth century. They were especially concerned at the abuse of the Indian peoples of these lands.

Both, making full use of the Thomist tradition, challenged the King of Spain and the Pope to act to fulfil their moral duty as Christians to bring an end to the abuses. They argued for the '*imago Dei*' in Indian human life and so for their freedom and their rights over their land and property. Casas is especially radical in his approach. Ruston maintains that some of the essential features of the development of the human rights tradition are here. They are rooted in eternal principles to do with justice and human dignity.