Chaucer and the Law by Joseph Allen Hornsby (review)

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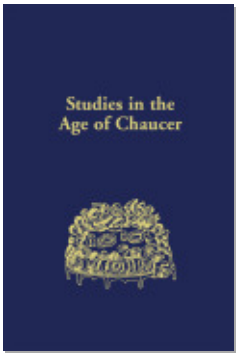

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books are conspicuous among the Digby manuscripts containing Middle English prose. No work of the kind undertaken in such a handlist is likely to be entirely without flaws. Indexing is a thankless but necessary task, and students of Middle English prose owe much gratitude to Horner, as well as to the other contributors to this project.

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JOSEPH ALLEN HORNSBY. *Chaucer and the Law*. Norman, Okla.: Pilgrim Books, 1988. Pp. ix, 180. $32.95.

Joseph Allen Hornsby's *Chaucer and the Law* is the first book-length study of the relationship between the nature of medieval English law and Chaucer's literary works. That field has been relatively unploughed to date but is highly promising for future yield. The present volume makes a good start, bringing before a wider audience a fair number of medieval legal concerns that heretofore have lain hidden in volumes not often consulted by literary critics. The structure of the book is clear and helpful; the writing is straightforward; and the historical information is well researched. The main weaknesses of the book lie in what it does and does not do with the legal information it presents.

The strongest point of the volume is the quality of its historical information. The bibliography will be helpful to anyone who wishes to venture into this cross-disciplinary field. The brief introductions to basic legal concepts are achieved with clarity, accuracy, and dispatch. The footnotes are continually interesting and on occasion more critically engaged than the text itself. As an introduction to the legal knowledge necessary to understand Chaucer more fully, the book can make a substantial contribution.

The problems arise when Professor Hornsby attempts to put this historical knowledge to work. He spends the first fifth of the volume debating the assumption that Chaucer was legally trained. He reviews the evidence and the established theories, only to conclude that (1) Chaucer knew a good deal about the law, but that (2) Chaucer need not have studied law formally because he could have learned it all informally. His conclusion strikes me as essentially unhelpful, something like the discovery that the plays of William Shakespeare were not written by William Shakespeare, but rather by another man of the same name. The problem is not so much that

Hornsby's arguments seem unconvincing (although some of them do: Is it likely that Chaucer would have learned his law "on the job," so to speak, on his ambassadorial missions to France and Italy? Does the possibility of learning law informally indicate the probability that Chaucer did so?) Rather the problem is that playing pick-lock biographer here yields no apparent gain. Professor Hornsby fails to indicate exactly why the *locus* of Chaucer's legal education should be significant for our consideration of the effect of that education on his poetry.

The same kind of problem recurs when Hornsby argues about the function of the Inns of Court during Chaucer's life. The fact is, quite simply, that we lack the necessary information. We do not know when the Inns of Court ceased being mere inns and began to assume the character of law schools; nor need it matter for us, as far as our engagement with Chaucer's work is concerned. Fourteenth century English lawyers were formally trained somewhere, somehow, whether it was at the Inns of Court or not. Chaucer was trained either formally or informally, as we can tell from his multifarious legal references and uses of legal theory throughout his work. The count of yeas versus nays concerning historical theories of his biography can be of no import for us in our present state of factlessness. Best to leave the curious question behind and concentrate on what we have—Chaucer's texts.

That is what Professor Hornsby attempts to do after his first chapter. The results are mixed. He investigates two main questions throughout (although he never quite articulates them as such): (1) Did Chaucer's knowing something about law make a difference in his writing?; and (2) Would our knowing more about medieval English law make a difference in our reading his writing? It is in responding to these questions that for me the book fails to make an interesting contribution.

Hornsby complicates the first of these questions by the importance he attaches to his biographical theories mentioned above. By the book's end, he still has avoided coming to grips with the question. His implication seems to be that Chaucer knew a good deal about legal matters but was not affected intellectually by an engagement with that material. Having created a critical opportunity here, Professor Hornsby has neglected to take advantage of it.

His response to the second question is even more disappointing. In this age of critical reading theory, Hornsby has ignored the ways in which readers read and has presented to us only some terms and instances that should no longer escape our notice. He seems content to point out that through knowing about medieval law, we can see the presence of law in

Chaucer's work where before we would have missed it. He articulates his purpose just prior to the beginning of Chapter 2:

> The following chapters explore aspects of contractual law, criminal law, and criminal procedure found in Chaucer's works in an effort to show some of the kinds of law with which he was familiar.

That seems to me too limited a goal.

Despite announcing that intent, Hornsby occasionally manages to venture into more interesting avenues of investigation. An example is his attempt to introduce us to the strangeness of a world lacking a fully–developed law of contract. It is hard to fathom what life would be like without the legal right to hold people accountable for their promises. In the age of Chaucer an exchange of promises was not by itself considered a legal act that would bind two people to perform. As a fourteenth century English citizen, if I promised to sell you my cow and you promised to pay $500 for it, we would have no litigatible issue should either of us fail to perform. There were only a few exceptions:

a) When either the cow or the money had changed hands, the empty-handed party had a legal remedy;

b) If the non–performing party had promised by swearing an oath, non–compliance might endanger his or her soul; but this matter would be triable only in the church courts, not the civil courts;

c) If the agreement had been written down and formally sealed, the civil courts would afford a remedy; but cow sales were unlikely to be evidenced by sealed agreements; that greater formality was reserved almost exclusively for real estate transactions;

d) If we had struck our bargain in London (the City only) or in Bristol, the aggrieved party might have some chance in court, since the international law of commerce in those cities had hastened somewhat the increase in the legal importance of a *nuda pacta* (a "naked promise"—one made in exchange for another promise only).

Professor Hornsby is aware of all this and treats us to many such distinctions; however, he stops short of problematizing Chaucer's texts as a result of this knowledge. Instead, he tries to simplify those texts by passing judgment on whether, for example, the characters in *The Franklin's Tale* "actually" had binding contracts or not. He ignores entirely the question of what *should* happen when people make rash promises to each other, leaving us instead with an implied conclusion that Dorigen would have

been better off had she taken herself not to the garden, but to the nearest lawyer's office.

Another example: Hornsby gets drawn into H. A. Kelly's argument about the possibility that Troilus and Criseyde had entered into a clandestine marriage. He winds up treating this as if it were an actual case, hoping to use his legal perspective to settle the "truth" of the matter. With this as his procedure, Hornsby makes the *Troilus* an imaginative hypothetical case upon which to investigate the law of clandestine marriages; but he has done little in the way of using the law to investigate the literary complexities of the poem.

Hornsby notes (p. 36) that oral agreements were considered binding throughout the local English courts but not in the more centrally organized king's courts. In emphasizing this, he neglects the important fact that the steady and inexorable progression of the development of English law was *towards* the king's courts. If oral agreements did not carry the day there, then their day might well be limited.

> In a nutshell, the moral principle behind English law governing agreements in the later Middle Ages was that every man should act in good faith upon the promises he made. The king's courts, however, required greater proof of the existence of a legally binding agreement before they would force someone to keep his promise. (p. 38)

That "moral principle" is no less true today; but equally consistent is the likelihood that if you cannot prove what has transpired between you and another, you are unlikely to prevail. The more formal and centralized English justice became, the more it depended on the reification of intentions. English law struggled from the thirteenth through the seventeenth centuries with the balancing of the burden of proof concerning promissory rights. Professor Hornsby oversimplifies the case significantly by suggesting the more demanding law of the king's courts was somehow merely an aberrant practice concerning the enforcement of promises.

Professor Hornsby does us a good service in pointing out that while the king's common law (the civil law) was refusing to recognize a promise as legal "consideration" for another promise, the canon law (the law of the church) often did. He argues that the canon law has been overlooked as a source for our understanding how Chaucer's contemporaries conceived of their litigative possibilites. But having pointed this out, he does not push on to analyze for us the turf wars between the civil and church courts. The mere availability of certain remedies in the latter is not sufficient proof that those remedies were easily available to all those who might need them.

It is indeed the case that the ecclesiastical courts would enforce a *nuda pacta* if taken on oath, since non–performance could jeopardize the well-being of the soul. But the very slowness of the development of a parallel remedy in the common law courts indicates the lack of threat they must have felt from such a remedy being available elsewhere. Over a period of two to three hundred years, the royal courts slowly attracted to themselves the control over law that beforehand had been distributed inefficiently and unevenly amongst any number of local courts throughout the country. Engaged in such a conscious and inexorable move on the part of the crown to centralize legal power, the crown would hardly have allowed the ecclesiastical courts to maintain an attractive contract remedy for their own if the populace had easy access to it. As Professor Hornsby rightly notes (p. 32, note 2), although the Writ of Assumptsit opened the door to the possibilities of modern contract law in 1415, it was not until *Slade's Case* in 1602 that the courts were willing to acknowledge a promise as sufficient consideration for another promise in the formation of a contract. However, Hornsby constantly underestimates the significance of "legal coercion" by overestimating the power of "moral integrity" in these matters:

> Thus the impetus to keep this type of agreement comes not from legal coercion but from the moral integrity of the person making the promise, one which has been laden with the necessary legal baggage to show that the promise is soundly sealed. (p. 45)

Moreover, I think he underestimates the power of the errant word in the legal process of fourteenth century England. When he notes that the characters in *The Franklin's Tale* "perform promises pledged on nothing more than the image of 'trouthe,'" he is forgetting the threatening control the letter of the law maintained over the spirit of people's intentions. Though not as disastrously as in the century before, a single word out of place or ill chosen could still do a great deal of damage to one's legal cause in the fourteenth century. Hornsby himself offers us a stunning example of that in the technical interpretations that govern a 1271 clandestine marriage case that he details at length at p. 63ff.

Hornsby concludes that Chaucer's purpose in being so specific in his legal details is to underscore the importance of "trouthe" (a word closer to our "troth" than our "truth"), and thereby to make a plea for greater honesty amongst folk:

> Through the keeping of "trouthe," one honors and fulfills the expectation that motivates anyone entering into any sort of relationship with another; that is, that

the terms which both parties to the relationship have agreed will govern their conduct in that relationship will be adhered to in good faith. These are the elements that bind every type of bargain at its lowest level, and these are the values which must be honored and maintained not only if commerce is to function properly but also if individuals are to deal with their fellows in any civilized or humane fashion. (p. 104)

This noble sentiment unfortunately disregards entirely the matter and process of interpretation. When elsewhere he mentions the word "signifier" and "signified," he seems to mourn the possibility that the two might occasionally not coincide:

. . . there is always a chance of a rift between signifier and signified that renders any meaning one wants to extract from them indeterminate." (p. 55)

I confess to being baffled by this attitude. The history of Anglo-American jurisprudence can be read most convincingly as the history of our struggle to contain the uncontainable—to stabilize the constantly unstable act of interpretation. In our legal system, we have long ago learned to abandon efforts at discovering "truth" (what *actually* happened—what *must* be done) and to accept in its place the only thing we can control, namely "fact" (what a particular community *agrees* upon as having happened—what *might* best be done). Professor Hornsby has found himself locked in his self-imposed limitations of using the law to uncover *truth* in and about Chaucer. What we now need is to use our knowledge of medieval law to study *interpretation in* Chaucer so that we may offer new ideas about *interpretation of* Chaucer.

In sum, Professor Hornsby manages to demonstrate that there is a good deal in Chaucer's poetry that will signify differently for a reader once the reader knows a certain amount about medieval law. The book is most helpful in illuminating individual points of law that shed new definitional light on a term or a relationship. By the end, we know that there is a great deal of law in Chaucer and that Chaucer might make medieval law more interesting to contemplate. However, Hornsby does not succeed in demonstrating how all this new knowledge can offer us different perspectives for viewing Chaucer's work; he restricts himself to pointing out for us new things to see in Chaucer's work. We may be delighted to learn that "the scene in which the hag demands performance of the covenant [in *The Wife of Bath's Tale*] follows the typical pattern of a lawsuit to recover a debt

brought in local courts" (p. 87); but eventually we wonder whether something further might be made of this kind of information. Although he occasionally makes efforts in that direction, his brief Conclusion at the end of the volume removes any doubt as to his basic goals. There he tells us that

> an examination of these legal elements . . . shows that Chaucer was conscious of the prominent position of law in the lives of the people of his day and that he understood the different ways law was administered by medieval English courts. (p. 159)

The biographical inquiry with which he had begun the book turns out to be the main point of the book at its end. His final words:

> What can be concluded from the law found in Chaucer's works, then, is that they reflect the facility with and apprehension of law that one would expect of a man who had occasional dealings with the law both as a civil servant and a private citizen: a competent but not extraordinary command of the subject. . . . I have attempted to reclaim legal allusions that might otherwise be lost on the reader who possesses little or no knowledge of law in Chaucer's day. Perhaps I have also provided some insight into the extent of Chaucer's command of law and how he understood law to operate. (p. 160)

Given his limited ambitions for this project, he has done well at fulfilling his own contract. In his preface, he warned that he could only "scratch the surface" of this field; it was a surface that needed scratching. Now we need to dig below the surface.

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GRACE JANTZEN. *Julian of Norwich: Mystic and Theologian*. London: SPCK, 1987; New York: Paulist Press, 1988. Pp. x, 230. £8.95 paper, $9.95 paper.

In 1987 anyone seeking to know Julian of Norwich had access to a vast panoply of books, ranging from five translations to commentaries, studies, dissertations, and derivative texts. It was quite a library! And when I was asked to recommend a book about Julian, the best I could do was to provide