

# NOVELLAE

## News of Medieval Canon Law

No. 1 October 2008

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### OBITUARIES

#### Hubert Mordek (1939-2006)

Hubert Mordek was born in Silesia in 1939. With the expulsion of the German population he had to leave his native province with his mother at the end of the Second World War and grew up in Holstein in Western Germany. He began his study of history at the University of Kiel, where he met his teacher Horst Fuhrmann, whom he followed later to Tübingen University. Already as a student he could also work at the German Historical Institutes in Rome and Paris. His academic career as a professor for Medieval History brought him to the University of Freiburg/Br., where he taught since 1978.

Mordek's scholarly work in medieval history began with outstanding contributions to the history of the canonical collections of the early Middle Ages. His doctoral dissertation dealt with the collection of Bonneval, whereas his Habilitation was an edition and analyse of the *Collectio Vetus Gallica*, whose great importance as the first systematic canonical collection in Gaul was recognized by him already in the 60s. He gave a first report on his discovery on the Third Congress of Medieval Canon Law in Strasbourg in 1968. His comprehensive book on the *Vetus Gallica*, published in 1975, is a milestone in the history of the

sources of medieval canon law, very valuable also by the manuscript descriptions of other canonical collections of these centuries. This major book can only be compared to Friedrich Maaßen's famous history of 1870.

Before and after 1975 Mordek also published many other articles on canonical collections. One of his most important articles might be his work on the first *Corpus Canonum* in the Latin language, compiled around 430 in Africa or Rome. It is an essay in the *Studies in Honour of Cardinal Stickler* (1991), correcting some theses of Eduard Schwartz. Mordek was also interested in the institutional history of medieval canon law, so he dealt with the development of papal primacy in the Middle Ages.

After 1980 Mordek's research covered also the *Capitula episcoporum* and the *Capitularies* of the Frankish kings. He had been commissioned by the *Monumenta Germaniae Historica* in 1979 to prepare a new critical edition of these texts, replacing the old edition by Boretius. Mordek published a series of studies on the *Capitularies*, sometimes also discovering and editing unknown texts. In 1995 he gave a survey of the whole manuscript tradition of the *capitularies* in his magisterial *Bibliotheca capitularium regum Francorum manuscripta*, certainly until now the most important work of historical research dealing with these sources of legal history. The manuscripts containing *Capitula-*

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to be announced

ries are described also for other texts found in them. This second major book written by Mordek is a testimony for his admirable knowledge in all aspects of early medieval sources. It was the indispensable first step for the new edition of the Capitularies which could not be finished during his lifetime.

Hubert Mordek died in 2006 after some years of suffering from illness. He had a remarkable number of disciples, following him in the difficult field of analysing medieval legal sources. His disciples organized the publication of an important Festschrift for his 65th birthday with the title *Scientia veritatis* reminding us of St. Paul's Second letter to Timothy. Mordek's insight and discoveries will be a fundament for all future research in medieval canon law. This great scholar will never be forgotten in our community.

*Peter Landau*

#### **Alfons Maria Card. Stickler (1910-2007)**

*and*

#### **Eva Susanne Kuttner (1914-2007)**

I have been asked to say a word about two friends of medieval canon law who have passed from us since the Washington Congress. Although they knew one another and shared the same mother tongue, their lives could not have been more different.

Alfons Maria Cardinal Stickler was born in Neunkirchen, Niederösterreich, in 1910. He entered the congregation of the Salesians of Don Bosco at the age of 18. He was ordained a priest in Rome in 1937. Although did not know it at the time, Rome was to be the center of his life. He studied the history of canon law at the *Institutum Utriusque Iuris* at the Apollinare under Stephan Kuttner, and after a brief period at the Salesian University in Torino, he returned to Rome to join the faculty of the Salesianum, where he served as dean of the faculty of canon law and then as *rector magnificus*. Pope Paul VI appointed him prefect of the Vatican Library in 1971. Cardinal Stickler was a member of three commissions of the Second Vatican Council, a member of the commission for the new Code of Canon Law, and of the Pontifical Committee

for Historical Sciences. In 1983, Pope John Paul II made him Pro-Librarian of Holy Roman Church, and ordained him titular bishop of Volsinium. A year later the Pope made him Pro-Archivist of Holy Roman Church, and in May of 1985, elevated him to the dignity of cardinal-deacon of San Giorgio in Velabro. Although Cardinal Stickler retired from his official positions in 1988, he remained active in church affairs for a number of years. When he died on 12 December 2007, he was 97, the oldest living member of the college of cardinals. Pope Benedict XVI preached the homily at his funeral.

In this group, we remember Cardinal Stickler for his *Historia iuris canonici latini*, a textbook first published in 1950 that could be reprinted in 1985 without embarrassment, for being a founding and sustaining editor of *Studia Gratiana*, and for a series of works in which he defended current positions of the Roman Church on the basis of careful analysis of the historical sources. The most recent of these, a defense of clerical celibacy, he published when he was well into his 80s. We remember him too for the unfailing support that he gave to our work from his positions in the Vatican Library and Archives. We honored him in 1992 with a *Festschrift* to which many here contributed. We regret that he was unable to see the completion of the edition of Huguccio that he undertook many years ago. But let me let the Pope have the last word, who said of him quoting the book of Daniel (12:3), "Qui autem docti fuerint, fulgebunt quasi splendor firmamenti, et qui ad iustitiam erudierint multos, quasi stellae in perpetuas aeternitates."

Eva Susanne Kuttner was born Eva Susanne Ilch in Berlin in 1914. She attended the girls' gymnasium in Berlin, which we have since come to realize was a quite extraordinary place in the history of the education of women. In 1933, she married Stephan Kuttner, and from there followed a whole series of moves, brought on first by the virulent anti-Semitism of the times and then by her husband's peripatetic academic career: first Rome, then Washington, DC, then New Haven, Connecticut, where I first met her, and finally Berkeley, California. She died, at the age of 93, at her home in Berkeley, on 14 November 2007.

All of us who knew her remember what a warm and welcoming person she was. She did not dwell on the traumatic experiences of her life. We may not all have been aware that she also was the mother of nine extraordinary children, eight of whom survive her. She is also survived by eighteen grandchildren and nineteen great grandchildren.

The pope did not preach at Eva's funeral. Had he, he might well have chosen his text from the book of Proverbs (31:10, 11, 26, 28, 30):

*Mulierem fortem quis inveniet?  
Longe super gemmas pretium eius.  
Confidit in ea cor viri sui et spoliis non indigebit.*

*Os suum aperuit sapientiae,  
et lex clementiae in lingua eius.*

*Surrexerunt filii eius et beatissimam praedicaverunt,  
vir eius et laudavit eam.*

*Fallax gratia et vana est pulchritudo;  
mulier timens Dominum ipsa laudabitur.*

Requiescant in pace.

*Charles Donahue*

### **Alfons Maria Card. Stickler, SDB (1910-2007)**

Alfons Maria Stickler naque a Neunkirchen, in Austria, il 23 agosto 1910, secondo di dodici figli di Michael e Teresa Schachner. Dopo aver frequentato le scuole elementari nella città natale ed il ginnasio-liceo classico presso l'Istituto salesiano di Vienna, entra nel noviziato di Ensdorf e professa come salesiano il 15 agosto 1928. Studia filosofia in Germania e in Austria e, dopo il periodo di tirocinio, teologia a Benediktbeuern e successivamente a Torino e a Roma. Il 27 marzo 1937 viene ordinato sacerdote.

Dopo aver seguito i corsi di Diritto Canonico e Civile presso l'Università Lateranense, ove è il primo allievo di Stephan Kuttner (1907-1996), celebre storico del diritto canonico. Si laurea nel 1940; insegna Diritto Canonico presso l'allora Pontificio Ateneo Salesiano, prima nella sede di Torino e poi in quella di Roma.

Negli anni del trasferimento della sede del PAS a Roma è Decano della facoltà di Diritto Canonico (1953 – 1958) e successivamente, dal 1958 al 1966, viene nominato Rettore Magnifico ricoprendo, sul finire del suo mandato, anche l'incarico di Preside del neonato Institutum Altioris Latinitas dal 1965 al 1968, preconizzato da Giovanni XXIII con la Costituzione Apostolica Veterum Sapientia del 22 febbraio 1962, e affidato alla Società Salesiana da Paolo VI col motu proprio Studia Latinitatis del 22 febbraio 1964. D. Stickler si impegnò affinché il nuovo istituto avesse una sede degna e una biblioteca adatta alla sua finalità, con ampi spazi per le attività didattiche. Si preoccupò che ad insegnare nell'Istituto venissero chiamati i migliori docenti e le migliori firme nel campo accademico italiano e mondiale, esperti sia nella ricerca che nel parlare e scrivere, come imposto dagli statuti, sia in lingua latina che versati nella conoscenza del greco. E seppe, infine, circondarsi di esperti per redigere la «ratio tudio rum» che dopo una certa sperimentazione doveva essere approvata dagli organismi della Sede Apostolica. Qui la sua esperienza e i suoi contatti con la scuola di filologia europea e particolarmente germanica diedero i migliori frutti, e la sua impostazione rimase e forse rimane tutt'ora salda e valida.

Il 25 marzo 1971 Paolo VI lo nominò Prefetto della Biblioteca Apostolica Vaticana. Grande il contributo che egli ha apportato con la realizzazione del vasto deposito sotterraneo per la conservazione di tutti i codici della Biblioteca, e con gli altri ampliamenti compiuti per favorire il lavoro di consultazione degli studiosi. Questa ardita operazione culturale-editoriale venne promossa dallo stesso Prefetto in collaborazione con la casa editrice internazionale "Belser", che ha pubblicato in perfetto fac-simile molti codici preziosi.

A lui si devono vari volumi e saggi di Storia del Diritto Canonico e, in qualità di curatore ed editore, gli "Studia Gratiana" mentre come coeditore gli "Studi Gregoriani". Venne nominato perito in tre Commissioni conciliari durante il Concilio Vaticano II e consultore di Congregazioni Romane; Membro della Commissione per il nuovo codice sin dall'inizio, Membro del Pontificio Comitato di Scienze Storiche e del direttivo dell'Istituto per la storia medievale del diritto canonico di Berkeley in California; è stato

inoltre uno dei tre Vicepresidenti del Bureau dell'Associazione internazionale di Storia del Diritto e delle istituzioni.

È stato Membro corrispondente delle Accademie delle Scienze di Vienna, di Bologna, di Siena, dell'Accademia medievale d'America, della Direzione centrale dei Monumenta Germaniae Historia, del Consiglio della Società Goerresiana, della Pontificia Accademia delle Scienze. Membro onorario delle seguenti Accademie: Teologica Romana, dei Virtuosi al Pantheon, di Archeologia. Per la sua intensa attività di studioso ha conseguito la laurea honoris causa in Diritto nelle Università statali di Monaco di Baviera, di Innsbruck e di Salisburgo.

L'8 settembre 1983 venne nominato Pro-Bibliotecario di Santa Romana Chiesa e, contemporaneamente, Arcivescovo titolare di Bolsena. Giovanni Paolo II lo ordinò vescovo il 1° novembre chiamandolo anche a far parte, come membro, della Pontificia Commissione per l'Interpretazione autentica del Codice di Diritto Canonico.

Il 7 luglio 1984 venne nominato anche Pro-Archivista di Santa Romana Chiesa. Creato Cardinale da Giovanni Paolo II nel Concistoro del 25 maggio 1985 ricevette il Titolo di S. Giorgio in Velabro e dal 1985 fino al 1988 fu Bibliotecario e Archivista di Santa Romana Chiesa, dedicando fino alla fine della sua vita le sue energie e le sue conoscenze al servizio della Santa Sede. Morì il 12 dicembre 2007.

Nel ricordo della figura del Cardinale Stickler, il Rettor Maggiore dei Salesiani Don Bosco, D. Pascual Chávez evidenziò i tratti portanti della sua personalità: "Una fede solida, profondamente radicata nella tradizione, segnata da una chiara comunione ecclesiale e dal riferimento al Papa. Una fede qualificata e competente che ha saputo farsi presente e interloquire a pieno diritto negli ambiti alti della cultura e ha saputo incarnarsi in progetti arditissimi e di grande prospettiva".

Nel suo diario spirituale, il Cardinale rivelò la motivazione profonda della sua vita e della sua attività scientifica, già espresso nel suo motto episcopale *Omnia et in omnibus Christus*: "Alla base della mia

attività c'è sempre stato l'ideale della fede e della vita cristiana che si incentra in Cristo redentore e poi fondatore della Chiesa. Tutti i miei studi sono serviti ad approfondire soprattutto il sapere religioso con piena fedeltà al Papa."

*Markus Graulich, SDB*

## NECROLOGY

Professor Jean Bernhard (born on 14 April 1914), Université de Strasbourg, died on 4 May 2006. [http://www.droitcanon.com/55\\_2.pdf](http://www.droitcanon.com/55_2.pdf)

Professor René Metz (born in 1910), Université de Strasbourg, died in 2006.

Mary G. Cheney has died.

Professor Gerard Ernest Caspary (born in 1929), University of California, Berkeley, died on 6 April 2008. [http://berkeley.edu/news/media/releases/2008/04/09\\_casparyobit.shtml](http://berkeley.edu/news/media/releases/2008/04/09_casparyobit.shtml)

Stephanie Jefferis Tibbetts, whom so many historians of canon law knew and worked with when the Institute of Medieval Canon Law was at Berkeley, died on September 21, 2008. She is survived by her husband Jeffrey, and children Rachel and Robert.

We hope to publish fuller obituaries in a later issue.

## RECENT INSTITUTE PUBLICATIONS

*Magistri Honorii Summa De iure canonico tractaturus*. 1, ediderunt Rudolf Weigand, Peter Landau, Waltraud Kozur; ad laborantibus Stephan Haering, Karin Miehner-Vent, Martin Petzolt. Monumenta iuris canonici. Series A: Corpus glossatorum 5 (Città del Vaticano: Biblioteca apostolica Vaticana, 2004). xxx, 445 pp. ISBN: 88-210-0762-6.

*A team in Würzburg continues to work on the edition. It is hoped that the edition will be finished with vol. 2 by the end of 2008.*

Huguccio Pisanus, *Summa decretorum*, 1: Distinctiones 1-20, edidit Oldřich Přešovský. Monumenta iuris

canonici. Series A: Corpus glossatorum 6 (Città del Vaticano: Biblioteca apostolica Vaticana, 2006). xxxiv, 372 pp. ISBN: 88-210-0804-5.

*The edition of Huguccio, which will span five volumes, continues under the leadership of Professor Martin Graulich.*

*Summa Omnis qui iuste iudicat, sive Lipsiensis*, 1, ediderunt Rudolf Weigand, Peter Landau, Waltraud Kozur, adlaborantibus Stefan Haering, Karin Mithaner-Vent, Martin Petzolt. Monumenta iuris canonici. Series A: Series A: Corpus glossatorum 7 (Città del Vaticano: Biblioteca apostolica Vaticana, 2007). xlvi, 557 pp. ISBN: 978-88-210-0808-9.

*A team in Würzburg continues to work on the edition, which will span four volumes.*

*Collectio canonum trium librorum*, Pars prior: Liber I et II, edidit Joseph Motta. Monumenta iuris canonici. Series B: Corpus collectionum 8 (Città del Vaticano: Biblioteca apostolica Vaticana, 2005). xlix, 548 pp. ISBN: 88-210-0772-3

*The second volume of the edition, comprising book 3, is in proofs.*

*Proceedings of the Eleventh International Congress of Medieval Canon Law, Catania, 30 July-6 August 2000*, edited by Manlio Bellomo, Orazio Condorelli. Monumenta iuris canonici. Series C: Subsidia 12 (Città del Vaticano: Biblioteca apostolica Vaticana, 2006). xxviii, 804 pp. ISBN: 88-210-0810-X.

*The volumes in the Monumenta iuris canonici may be bought from several vendors, including [www.casalini.it](http://www.casalini.it).*

## BULLETIN OF MEDIEVAL CANON LAW

### Volume 26 (2004-2006)

Peter Landau, Annual Report (p. xi)

Anders Winroth, "Recent Work on The Making of Gratian's Decretum" (p. 1)

Titus Lenherr, "Zur Redaktionsgeschichte von C.23 q.5 in der '1. Rezension' von Gratians Dekret: 'The Making of a Quaestio'" (p. 31)

Atria A. Larson, "The Evolution of Gratian's *Tractatus de penitentia*" (p. 59)

Anne Lefebvre-Teillard, "Un curieux témoin de l'école de Petrus Brito: Le manuscrit Paris, Bibliothèque Nationale latin 9632" (p. 125)

Anna Irene Riisøy, "From Law to List" (p. 153)

### Volume 27

Peter Landau, Annual Report xi

Kriston R. Rennie, "The Council of Poitiers (1078) and Some Legal Considerations" (p. 1)

Atria A. Larson, "Early Stages of Gratian's *Decretum* and the Second Lateran Council: A Reconsideration" (p. 21)

Enrique De León, "Collectio Sangallensis" (p. 57)

Carlos Larrainzar, "La edición crítica del Decreto de Graciano" (p. 71)

Melodie Harris Eichbauer, "St. Gall Stiftsbibliothek 673 and the Early Redactions of Gratian's *Decretum*" (p. 105)

John Wei, "A Reconsideration of St. Gall, Stiftsbibliothek 673 (Sg) in Light of the Sources of Distinctions 5-7 of the *De penitentia*" (p. 141)

*We have no information on how to order issues of the BMCL. Its publisher is Il cigno ([www.ilcigno.org](http://www.ilcigno.org)), but another company is in charge of distribution.*

## RECENT PUBLICATIONS

Andreas Hetzenecker, *Stephan Kuttner in Amerika 1940-1964: Grundlegung der modernen historisch-kanonistischen Forschung*. Schriften zur Rechtsgeschichte 133 (Berlin 2007).

Jean Gaudemet, *Formation du droit classique et gouvernement de l'église de l'antiquité à l'âge classique: Recueil d'articles* (Strasbourg: Presses universitaires de Strasbourg, 2008). 446 pp. ISBN 978-2-86820-367-0.

Wilfried Hartmann and Kenneth Pennington, eds., *The History of Medieval Canon Law in the Classical Period, 1140-1234* (Washington, D.C.: Catholic University of America Press, 2008). 442 pp. ISBN 978-0-8132-1491-7.

## WORK IN PROGRESS

### Kuttner Institute projects

The Deutsche Forschungsgemeinschaft supports a project to work on English decretal collection, which is being pursued by Gisela Drossbach and Peter Landau. Drossbach will edit the *Collectio Cheltenhamensis*.

Chris Coppens is working on an edition of the gloss composition *Anima est substantia*.

Tatsushi Genka is working on an edition of the decretist summa *Permissio quedam*.

Peter Landau is working with the assistance of Genka on an edition of the decretist summa *Antiquitate et tempore*.

Andreas Their works on an edition of the *Summa decretorum* of Sicard of Cremona.

John Wei is working on an edition of the decretist summa *Reverentia sacrorum canonum*.

Anders Winroth is working on an edition of the first recension of Gratian's *Decretum*.

Mary E. Sommar has finished the manuscript of a soon to be published book on the work of the *Correctores Romani*.

Gero Dolezalek is working on the third volume of the *Catalogue of Canon and Roman Law Manuscripts in the Vatican Library*.

### Studia Gratiana to be published again

At the Thirteenth International Congress of Medieval Canon Law in Esztergom, Hungary, it was announced that Raffaele Card. Farina and Fr. Markus Graulich, SDB, intend to restart the series *Studia Gratiana*. Giuseppe Forchielli and Alphons Maria Card. Stickler published twenty-nine volumes of the series 1953-1998. The editors invite submissions from scholars. One volume is in advanced preparation: the thesis by Buchner on the *paleae* in Gratian's *Decretum*. Planned for the future is a volume on the *status quaestionis* of

research on the text of the *Decretum*. Contact: [graulich@unisal.it](mailto:graulich@unisal.it).

## UPCOMING CONFERENCES

### Carlsberg Academy Legal History Conference

We are happy to announce the upcoming sixth Carlsberg Academy conference in the interdisciplinary series on medieval legal history and therefore invite colleagues whose research touches upon aspects of law and private life in the Middle Ages to submit proposals for papers. The conference will take place in Copenhagen from 29 April to 1 May 2009 and deadline for proposals is 22 December 2008. Richard H. Helmholz will deliver the keynote lecture. For a Call for papers, write [pa@jura.au.dk](mailto:pa@jura.au.dk), or access [http://jur.ku.dk/crs/english/calendar/medieval\\_legal\\_history/](http://jur.ku.dk/crs/english/calendar/medieval_legal_history/).

*Mia Münster-Swendsen, Helle Vogt, Ditlev Tamm, and Per Andersen*

### Conference on to honor Cardinal Stickler

Professor Fr. Markus Graulich, SDB, of the Università Pontificia Salesiana, Rome, plans to celebrate the centenary of Alphons Maria Card. Stickler's birth with a conference in Rome during the first half of September, 2010. The conference will be devoted to themes in Stickler's scholarly interests, including the history of canon law.

## ICMAC NEWS

The ICMAC board will consult about the future direction of the organization. The President Kathleen G. Cushing hopes to be able to send out more information about this in mid-November.

The Fourteenth Congress will take place in Toronto in 2012. Joseph Goering leads the preparations.

## WEBLINKS

The 1582 edition of the *Corpus Juris Canonici* has been put online by UCLA's Charles E. Young Research Library. This edition is known as the "Correc-

tores Romani" edition. The site also features corrected, expanded and searchable versions of indexes to the Liber Extra and its gloss.

<http://digidev.library.ucla.edu/canonlaw-dev/>

**English Medieval Legal Documents AD 600 - AD 1535: A Compilation of Published Sources.** Prepared by Hazel D. Lord, Senior Law Librarian, University of Southern California School of Law: "The goal of this project is to create a collaborative database on the published sources of English medieval legal documents, and to provide links to the growing number of online sources currently being developed.

<http://emld.usc.edu/tiki-index.php>

The previous two notices come courtesy of the Yale Law Library Rare Books Blog.

<http://blogs.law.yale.edu/blogs/rarebooks/>

## AUDITA ODOFREDI

### That thank you note to Peter Card. Erdő

Odofredus was able to copy down the text of the large sheet with heartfelt thanks expressed to their host by the congregated congressisti of the Thirteenth International Congress of Medieval Canon Law in Esztergom, Hungary:

*Petro dei et apostolicae sedis gratia archiepiscopo Strigonensi primate Hungariae tituli sanctae Balbinae cardinali presbytero SRE nos canonum amatores ex multis nationibus in hac civitate inclita omnium ecclesiarum Hungariae matre capite magistraque congregati grates maximas intimasque agimus. Dat' in congressu canonico Strigonensi Pannoniae in festivitate sancti Dominici VI Id. aug. anno quarto pontificatus domini Benedicti papae XVI anno Dominicæ incarnationis MMVIII.*

[Signed by about hundred participants in the congress]

Despite his best efforts at detection, Odofredus was unable to find out who produced the text of the document. That a non-privilege contains the year of the current pontificate suggests that the writer(s) is most familiar with papal letters issued after 1188, while the lack of indiction suggests familiarity with letters issued before 1187 (see Paulus Rabikauskas, *Diplomatica pontificia* [1972], 42).

### Absent friends

James A. Brundage, who was prevented by illness from attending the congress in Esztergom, is recuperating well.

Antonio García y García lives among Franciscans in Salamanca. He is well taken care of.

*Ut optime valeant!*

### New jobs

After finishing his dissertation on *Law and Religion in Gratian's Decretum* at Yale University, John Wei has begun his teaching career as assistant professor of history at Grinnell College, Iowa, a small liberal arts college with a great reputation.

Enrique De Leon now holds Antonio García y García's old chair in Salamanca.

### Various unsubstantiated rumors

About half the membership of ICMAC claim not to have understood how to vote on amendments in accordance with the system outlined in Robert's Rules of Order. General Henry Martyn Roberts retired from the U.S. Army in 1901 as Chief of Engineers. He published the first edition of his in the U.S. famous rules for parliamentary proceedings in 1876.

Cambridge University Press will publish a revision of Fred Blume's translation of Justianian's *Code*. We have also heard that there is movement to publish John T. Noonan's translation of the Marriage treatise in Gratian's *Decretum*, but we know nothing definite.

We have heard that the proceedings from the Twelfth Congress in Washington either are out already or will be out any day.

## FROM THE EDITOR

Instead of waiting for perfection, I send out these notes now. I hope it inspires those who have news to let me know, and as soon as I fill a suitable number of pages, I shall put out a new issue. Apologies for oversights and misstatements! Thanks to those who have contributed!