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Hudson, John, the Oxford History of the Laws of England: Volume II Book Review

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Hudson, John. *The Oxford History of the Laws of England: Volume II, 871-1216*. Oxford, U.K.: Oxford University Press, 2012. xxiii, 956 pp. 9780198260301. $300.

Hudson's legal history of England from Saxon to Angevin times begins with AD 871, the first regnal year of Alfred, King of the West Saxons and conqueror of the Danes. It ends in 1216, when the famously ill-reputed King John was locked in a civil war with the barons and churchmen who had forced him, in June 1215, to sign Magna Carta. Hudson's voluminous work is the second in a series that presently stands at thirteen volumes. The present reviewer cannot claim to have read all the other twelve, but he is confident that Volume II can stand with any of its siblings. In fact, we can now add Hudson's name to those of Maitland and Holdsworth[1] as authors of indispensable works on early-medieval law.

Hudson's plan is to present parallel treatments of legal institutions, procedures, and doctrines across what he perceives as three periods: First is "Late Anglo-Saxon England" (871-1066), spanning the rise and remarkable persistence of the Wessex dynasty established by Alfred, popularly known as "The Great." Second is "Anglo-Norman England" (1066-1154) covering the rule of William I, popularly known as "The Conqueror," and his descendants. Third is "Angevin England" (1154-1216), beginning with the long reign (1154-1189) of Henry II, a legal revolutionary, empire-builder, and perplexed family man.[2] Within each of these periods Hudson presents chapters on "Kings and Law," "Courts," "Procedure," and "Land," and "Moveables"; by the Angevin third of the book, land-law practice has taken over the procedural chapter. The three major divisions are in effect parallel books-within-a-book. There is some variation within each; but for all three eras Hudson (in addition to the topics mentioned above) also addresses legal issues related to crime, status, and families. This struc-

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[1] For Maitland, see Frederick Pollock and Frederic William Maitland, The History of English Law Before the Time of Edward I, 2nd ed., 2 volumes (1898; Indianapolis: Liberty Fund, [2009]). For Holdsworth, see William S. Holdsworth, A History of English Law, 17 volumes (London: Methuen, 1903-1972); note that most of the material pertinent to readers of this review is found in Volume II of Holdsworth.

[2] The "Angevin" kings were Henry II and his sons Richard I and John. Henry II was the son (and Richard and John the grandsons) of Geoffrey of Anjou, husband of the Empress Maud, who was herself daughter of England's King Henry I (died 1135). The term "Angevins" come from the French lands of Anjou.

ture makes it very easy for the reader to trace particular developments across time.

Like Maitland before him, Hudson is at his best when exploring complex problems in reasonable language. He lacks Maitland's epigrammatic brilliance,[3] but his work shines when he addresses matters of procedure. If Maitland allows us to imagine that we that we have learned to think like a medieval person, then Hudson allows us to feel what it was like to have "been there." Consider Hudson's patient and lucid treatment (pp. 67-92) of the stages and possible outcomes of a trial before the "suitors" of an Anglo Saxon shire court. After formal (and formulaic) accusation, denial, and presentation of information and arguments, the court would reach a "mesne" or intermediate judgment (pp. 78-79) as to what would constitute proof in the matter. Proof might involve oath-giving, and not just the oath of the accused, but of varying numbers of his equals, neighbors, or sureties—in short, of his "oath helpers" (pp. 81-82).

Failing to satisfy the court with oaths, the defendant might be put to the ordeal.[4] If the accused party was reputed to be of bad character, the court might skip the oath phase and go straight to the ordeal. Hudson presents this topic, always so appealing to students, with a clear sense of its increasing appeal to Alfred and his successors. He makes it clear that kings of the Wessex line saw the union of state power and religious awe (ordeals were administered by priests) as a force for order and civilization, and quite possibly as a means "to counter a major problem [false swearing?] in a system resting on oaths" (pp. 85-87; see also pp. 181-186). Following the success or failure of oaths and/or boiling water, the court would issue its final ruling (pp. 87-91) based on consensus among its senior members, typically the leading landholders or "thegns." Having wrapped his readers up in a nice package of community or collective judgment, however, Hudson is quick to point out that there were exceptions—that some "evidence presents judgments being given by kings, great men, or officials, that is by those presiding over the court" (p. 88). Throughout the book, indeed, Hudson's mastery of sources allows him to be candid about the gaps in our knowledge.

Hudson does an outstanding job of clarifying points that can easily, in such a transitional world as that of the Anglo-Normans, es-

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[3] But then, who doesn't?

[4] The Ordeal was associated with Shire Courts; it was not allowed in cases before lower, even more local tribunals such as the "Hundred Courts" (p. 85).

cape our full grasp. To take one of many such, Hudson enhances our appreciation of manorial courts, which were essentially an innovation of the Normans (p. 273, 284-289). It is a basic and widely taught fact that royal courts, from Henry II onward, absorbed legal business formerly decided by feudal tribunals.[5] But Hudson reminds us that Norman and Angevin kings viewed all landholding as derived from royal power, from Saxon grants of "sake and soke" to post-Conquest feudal or honorial grants. Therefore from the kings' point of view, aristocratic courts were useful, and remained so, as an integral part of the machinery of royal government (pp. 289-290, 528, 556-562).

Hudson also reinforces our understanding of the Normans' strong connection between landholding and military service. Given this approach to state security, it was inevitable that the security of military tenures should be a continuing interest of the crown. Henry II inherited the chaos born of the civil wars of his predecessors.[6] His responses, as Hudson demonstrates systematically, took the form of the celebrated "possessory assizes." These were forms of action tried by royal courts on behalf of individuals whose had unlawfully lost (1) possession or "seisin" of a free tenement, (2) inheritance of the tenement, or (3) exercise of customary rights and privileges such as that of "advowson," i.e., the right to nominate priests to serve in a parish (pp. 520, 524-527, 603-626).[7] Plaintiffs initiated these actions by purchasing writs issued from the royal chancery, thereby enriching the crown and repressing land-grabbers. In common with the "Grand Assize"[8] (pp. 600-603), the possessory assizes worked through local fact-finding juries. Together with the juries of presentment introduced in criminal proceedings by the Assize of Clarendon[9] (pp. 514-

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[5] Likewise, royal courts superceded some of the authority of the shire courts; but like manorial courts, they continued to exist Shire Courts served both as courts with substantive powers and as procedural way stations for litigation destined for royal courts; see Hudson, pp. 550-556.

[6] Between the Empress Maud (note 2, above) and King Stephen (1135-1154).

[7] These phrases describe the assizes of "novel disseisin" (1166), "mort d'ancestor" (1176), and "darrein presentment" (late 1170s).

[8] The Grand Assize (1179) was a new wrinkle in the earlier, still-existing system of "Writs of Right." It offered defendants (in trials of the right to land) the opportunity to substitute trial by jury for judicial combat. Its introduction marked a decline in trial by combat—and of all the abuses to which that form of justice had been subject.

[9] The Assize of Clarendon dates to 1166.

515), the new forms of action moved English justice away from the law of wergild and firmly toward the notion of a common law.

Hudson benefits from decades of scholarship on medieval English law, consisting not only of the painstaking presentation of original sources offered year after year by the Selden Society, but also of numerous useful secondary works.[10] He thus has advantages denied to either Maitland or Holdsworth; though like both historians he often draws upon deep study of a classic treatise. In Maitland's case the definitive work was the mid-thirteenth century production associated with royal judge Henry de Bracton.[11] In Hudson's case the treatise is the late twelfth-century work named for Henry II's warrior-justiciar Ranulf de Glanville, who recorded, organized, and promoted his master's revolution in law. Hudson frequently comments upon this Tractatus de Legibus et Consuetudinibus Regni Angliae,[12] or relies upon it; the term "Glanvill" rates more than sixty entries in Hudson's "index of subjects" (p. 937).

It is simply giving Hudson his due to say that his accomplishment is inspiring (as well as intimidating); but this does not mean that, in our search for one-stop treatises, we can dispense with Maitland or Holdsworth. Hudson, to take one example, contains several references to "final concords" or "feet of fines"; but Maitland

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[10] For a selection of useful secondary works from recent decades, consider H.G. Richardson and G.O. Sayles, Law and Legislation: From Aethelberht to Magna Carta (Edinburgh: University Press, 1966); S.F.C. Milsom, The Legal Framework of English Feudalism (New York: Cambridge University Press, 1976); Ralph V. Turner, The English Judiciary in the Age of Glanvill and Bracton, 1176-1239 (New York: Cambridge University Press, 1985); R.C. Van Caenegem, The Birth of English Common Law, 2nd edition (New York: Cambridge University Press, 1988); and J.C. Holt, Magna Carta, 2nd edition (New York: Cambridge University Press, 1992).

[11] See Henry de Bracton, De Legibus et Consuetudinibus Angliae (New Haven: Yale University Press, 1915). The first major accomplishment of Maitland's scholarly career was F.W. Maitland, editor, Bracton's Note Book: A Collection of Cases Decided in the King's Courts During the Reign of Henry the Third, 3 volumes (London: C.J. Clay and Sons, 1887). For Holdsworth's confession that he "owes much to Bracton" see his History of English Law, II: 320. For Maitland's influence upon Holdsworth see H.E. Bell, Maitland: A Critical Examination and Assessment (Cambridge, MA: Harvard University Press, 1965), 64.

[12] Ranulf de Glanville, The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill, edited by G.D.G. Hall (New York: Clarendon Press, 1993).

presents us with a fluidly written essay on these early written records, proving by his exposition that the technical and procedural can become an agency of cultural change.[13] Likewise Hudson discusses the rise of a legal profession at only a few points, more or less in passing—and this is natural, since there was no developed "legal profession" by the time of Magna Carta. For a more through treatment (and one that takes us beyond Hudson's end-point) we can be grateful for Holdsworth.[14] This is after all the way of great legal works. The publication of one inspired synthesis (think of Blackstone) does not obliterate the usefulness, and certainly not the pleasures of its predecessor (think Coke).

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[13] Pollock and Maitland, History of English Law, II: 99-110.
[14] Holdsworth, History of English Law, II: 311-319, and (for the beginnings of the Inns of Court) 506-512.