

March 1948

Book Reviews

R. D. Netherton

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>

 Part of the [Law Commons](#)

Recommended Citation

R. D. Netherton, *Book Reviews*, 26 Chi.-Kent L. Rev. 194 (1948).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol26/iss2/6>

This Book Review is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.

BOOK REVIEWS

THE COURT OF COMMON PLEAS IN FIFTEENTH CENTURY ENGLAND: A Study of Legal Administration and Procedure. Margaret Hastings. Ithaca, New York: Cornell University Press, 1947, Pp. xviii, 302.

It has been suggested that people are inclined to carry the tendency toward specialization to extremes. As such a tendency generally appears with maturing civilization, the western world has carried specialization to the point where in fact it now tends to make us less civilized as individuals.¹ Overspecialization, wherever it arises at the expense of general perspective in education, should be approached with caution. So, because Dr. Hasting's study may appear at first sight to have usefulness only for antiquarians and historical bibliographers and, therefore, a bit uncivilizing in its specialization, there may be a natural concern about the place of this book in the literature of the law.

The avowed objectives of the study are two. First, by collecting in one volume information heretofore widely scattered and not easily manageable by the ordinary student, the author sought to facilitate the use and interpretation of the original records of the central courts of common law during the late Middle Ages. Secondly, by studying the workings of the most active of these courts from its actual records, to-wit: the plea rolls and the correspondence of the period, the author believed it possible to correct certain erroneous impressions contained in studies heretofore made based upon the Yearbooks, ancient treatises and secondary sources. The author has arranged the information gathered from her chosen sources into four divisions. One deals with the business of the court, its records and a typical day in court; a second describes its personnel, from the justices and the sergeants down to the filacers and messengers; a third contains illustrations of the use of the original writs, mesne process, pleadings, as well as the trial, judgment and execution; the final part discusses hinderances upon the administration of justice and undertakes to make an overall evaluation of the work of the court during the period in question. Five appendices contain valuable compilations of such mysteries as the schedule of fees to be paid into court in the course of a law suit, a list of the return days for the writs, and the identities of the various clerks and keepers of the writs whose marks appear on the original plea rolls of the period. All of this handily accomplishes Dr. Hasting's immediate purpose and should inspire other similar projects designed to free students of social and legal history from dependence upon theories reconstructed from secondary sources.

¹ Hurst, "Legal History: A Research Program," 1942 Wis. L. Rev. 319-333.

Studies such as this contain much that would be of great value in an essential rewriting of Anglo-American legal history now waiting to be undertaken. It is clear that our legal history should be rewritten with the common law kept more firmly in mind than has been usual in the past. There is need, for example, to explain how our present dichotomy of public and private law is not entirely a product of sixteenth and seventeenth century experiences without ancestral roots in the common law. There is occasion to note how, prior to the seventeenth century, the King's Prerogative and Littleton's Tenures were but parts of the same ancient customary common law functioning as the fundamental law of the land. Often overlooked is the fact that, even in the age of uncontested legislative supremacy, the common law remained a reserve of experience from which statutory law could be drawn. Too often this common source of all public and private law is insufficiently understood or its lessons not applied with full advantage to present day problems of interpretation.² Dr. Hasting's study, dealing as it does with what Sir Matthew Hale once called the "golden age of common law pleading," furnishes many valuable insights into the litigious past of English society. It should prove of great value to anyone undertaking a reexamination of the common law.

One thing more might be said, and that rather by way of notice than criticism. It is inevitably a delicate matter to present a study dealing with legal administration and procedure in a way that catches and holds the reader's attention. One preparing a study of the type Dr. Hastings has undertaken must write with a certain audience in mind. There are parts of this book that will please and fascinate anyone who enjoys historical reading but it is principally a book for scholarly consumption. Many of its points are elaborated and explained with far more detail than the casual historian will care to follow as he fills out his knowledge of the subject. The arrangement of that information, within each unit of the study, is almost always such that the reader must resort to solid reading; he may not scan. These, however, are inevitable characteristics of the style of presentation chosen by the author. Far from being a detraction, they should enhance the value of the work to those who form the audience to which it was addressed.

R. D. NETHERTON

² See, for example, comments by Charles H. McIlwain on reviewing Knappen, "Constitutional and Legal History of England," 10 U. of Chi. L. Rev. 97-8. See also Boorstin, "Tradition and Method in Legal History," 54 Harv. L. Rev. 424-36, and Pound, "New Possibilities of Old Materials of American Legal History," 40 W. Va. L. Q. 205-11.