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Review of “Contracts in the Local Courts of Medieval England,” By Robert L. Henry

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thorough-going examination of the causes of crime and of all of the possible and actual means of dealing with it. Nor was it deemed possible to study cases of misdemeanor. (Introduction, p. 11.) Except in the report on Mental Disorder, Crime and the Law and in that on Pardons, Paroles, and Commutations, the survey is a study of the operation of the State's machinery for dealing with felonies alone. The object of the study is to judge that machinery in the light of the purposes and standards which, in modern times, have caused its maintenance, the central theory of which is that the apprehension of offenders and the adequate punishment of those who can be proved guilty of crime is the surest and best way to prevent further crime.

Taken for what it is, the volume under review is an invaluable contribution to the literature of criminal law. The methods which were pursued in its preparation have led to the accumulation and publication in understandable form of a mass of statistical data regarding the actual operation of law which will be indispensable to students of the subject for a long time to come. Light has been shed upon the operation of every court and office in the State which deals with felonies or those accused of felonies. It has been brought out as an irrefutable and challenging fact that the notion that our machinery of justice deals with criminals according to law is little more than a myth. Finally the specific recommendations for statutory changes and administrative improvements, which are made in the various reports, furnish a model which is far in advance of existing practice. The lawyers who initiated the project for an association for criminal justice, and who then conducted the survey largely within the recognized legal field, have cast squarely upon the profession at large and upon the people of the State the responsibility of effecting immediate, concrete improvement.

It is to be hoped that the Missouri Association for Criminal Justice will not rest content with what has been done but will proceed with further investigations into those aspects of the problems of crime which have not been dealt with in the present survey. Prison and jail conditions and administration, the effectiveness of punishment as a preventive of crime, the municipal and justices' courts into which minor offenders come, and the relation of crime to social and economic conditions, constitute problems which cry out for thorough treatment. Only when they have been adequately dealt with can the problem of crime come to be understood and actually to be on the way to a solution.

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CONTRACTS IN THE LOCAL COURTS OF MEDIEVAL ENGLAND. By *Robert L. Henry*, J. D. (Chicago), D. C. L. (Oxon). pp. 250. London: Longmans, Green and Co. Ltd., 1926. Price \$6.00.

This is the book of an American author and a British publisher. It is the result of a painstaking and intelligent study of material from the county, seignoral, borough, and merchant courts of England from the twelfth to the fifteenth century, with particular reference to the influence on that material of the Anglo-Saxon laws of the pre-Norman period in English history. It is of course a truism that what we call English common law never would have manifested its modern form without the distinctive activity of the royal courts after the Norman Conquest. Throughout his pages Dr. Henry takes this for granted. At the same time he successfully shows that on its substantive side the common law was essentially Anglo-Saxon throughout the middle ages, and also that even on its procedural side the common law secured much of its development in medieval courts of England other than the royal courts.

Dr. Henry confines his study to contract cases in the middle ages—before the action of *assumpsit* made its appearance in the royal courts. Perhaps the most interesting feature of the book is Dr. Henry's positive statement (page 211) that a hundred years before the action of *assumpsit* was invented a breach of parol promise, quite independent of debt, could be the subject of a successful action in the local courts of England. Twenty-seven years ago, Professor Maitland suggested this as a possibility, and Dr. Henry says that since a certain essay was "written by Maitland, much material has become accessible in which parol covenants as enforced in the local courts may be studied. There is not the slightest doubt that they were enforced. Not only are there cases in the seignoral courts, but we also find them in the courts merchant, and parol covenants were provided for in the borough *customals*."

According to the developed common law of England, a gratuitous promise never was binding unless it was in the form of a writing under seal. Dr. Henry believes and endeavors to show (page 133) that gratuitous promises, when made with certain formalities, were enforceable even before the use of a seal on wax was introduced into English civilization. This would seem to indicate that by the test of ancient history Lord Mansfield was right in asserting before *Rann v. Hughes* was decided by the House of Lords in 1778, that there could be a valid contract without a seal and without a consideration.

Another interesting theory of Dr. Henry's is that the action of debt, in the King's courts and also in the seignoral courts, was originally of a quasi criminal nature and that the quasi criminal nature was emphasized for the purpose of ousting the popular courts (the county courts) of their jurisdiction. On page 16 Dr. Henry says "the word 'deforces' was put into the royal writ of debt when it was first formulated, to give colour to the jurisdiction. The recognized courts in which to bring debt proceedings, in which they had been brought for many centuries, from time immemorial, were those of the county and the hundred. The king was innovating when he offered a remedy for debt in his own central courts. His best excuse for assuming jurisdiction was on the theory that the non-payment of a debt was a breach of the king's peace. That was a well-established ground for his interference. It may therefore have been thought wise to insert in the writ that the defendant had deforced the plaintiff. After a time, when the writ had come to be taken as a matter of course, the fictitious word could well be omitted, as in fact it was. In the seignoral courts we might well expect precisely the same phenomenon. Not only would there quite naturally be a tendency for pleadings in them to imitate those of the central courts of the king, but the lords had exactly the same reason as the king for seeking colour for debt jurisdiction, as to their free tenants. The latter might claim that they need answer suits upon debts only in county and hundred courts. But the lords, like the king, had their peace to maintain, and so breaches of debt were alleged to be deforcings and against the peace of the lord. When the lord's jurisdiction in such suits came to be looked upon as a matter of course, the fictitious words were dropped."

Dr. Henry, who at one time was a Rhodes scholar from Illinois at Oxford, has had experience as a teacher in various American law schools, as a judge advocate in the army, and as a judge of the "Mixed Courts" of Alexandria, Egypt.

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PROFITS, DIVIDENDS, AND THE LAW. By *Prosper Reiter, Jr.*, J. D. With an introduction by *Prof. Henry Rand Hatfield*. pp. xi and 260. New York: The Ronald Press Company, 1926. Price \$4.50.