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# THE MEDIEVAL ENGLISH COUNTY COURT

*Stephen D. White\**

THE COUNTY COURTS OF MEDIEVAL ENGLAND, 1150-1350. By *Robert C. Palmer*. Princeton: Princeton University Press. 1982. Pp. xvii, 360. \$35.

Before Dr. Robert C. Palmer began his intensive work on the medieval English county court, the legal history of this institution had never aroused much interest among modern historians of the common law, who wrote about it, if at all, only cursorily. Because it was thought that medieval county court judgments continued to be rendered by mere landholders, long after the time when judicial power in some other courts had been assumed by professionals, the county court could be regarded as a curiosity. Its nonprofessional and vaguely democratic character looked backward, perhaps, to the era before the Norman conquest of England. Its primary role in post-conquest legal history was to suffer certain decline, though not a total demise, when it was confronted by the advance of centralized, bureaucratic, professional legal procedures. Because the medieval county court eventually took on the task of selecting knights of the shire to sit in Parliament, it had some claim on the attention of historians. But as the modern study of medieval legal history became almost as specialized and professionalized as the medieval legal system itself, that claim on scholarly interest, like suit to the old county court, could be discharged by others — the constitutional (as opposed to legal) historians.<sup>1</sup>

This way of looking (or sometimes not looking) at the medieval county court was recently challenged by Palmer in several impressive articles,<sup>2</sup> and has now been completely undermined by the arguments set forth in his even more impressive book. In this new work, Palmer's objective is to rescue the once-despised medieval county court from what E. P. Thompson calls "the enormous condescension of posterity."<sup>3</sup> But Palmer's rescue strategy differs totally from that of recent writers on the past history of down-trodden people, marginal cultures, or obsolete institutions, which, like the old county court, eventually faded away.<sup>4</sup> Palmer wishes to accord some dignity to the medieval county court. But this is not because he sees

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1. For recent notes on the medieval English county court, with brief biographical references, see S. MILSOM, *HISTORICAL FOUNDATIONS OF THE COMMON LAW* 13-15 (2d ed. 1981); J. BAKER, *AN INTRODUCTION TO ENGLISH LEGAL HISTORY* 21-25, 32-33 (2d ed. 1979).

2. See Palmer, *County Year Book Reports: The Professional Lawyer in the Medieval County Court*, 91 *ENG. HIST. REV.* 776 (1976); Palmer, *The Origins of the Legal Profession in England*, 11 *IRISH JURIST* 126 (1976).

3. E. THOMPSON, *THE MAKING OF THE ENGLISH WORKING CLASS* 13 (2d ed. 1968).

4. On the ultimate demise of the old county court, see J. BAKER, *supra* note 1, at 22.

in it, as Thompson now sees in the jury, "a lingering paradigm of an alternative mode of participatory self-government" that can rival more up-to-date paradigms reflecting "the rule over the people by bureaucrats, 'experts', or a substitutionist vanguard."<sup>5</sup> Instead, having found incontrovertible proof, through much reading and analysis, that the medieval county court was actually dominated, not by local landholders, but by expert professional lawyers, their noble patrons, and royally appointed sheriffs, Palmer establishes the importance of this body — if not its dignity — by showing that in the long march of English law towards professionalism and modernity, the county court stood, at least briefly, in the vanguard.

In ten closely reasoned chapters, Palmer first argues that the county court was run by real professional lawyers,<sup>6</sup> and not by those whom he regards as "amateurs."<sup>7</sup> He further maintains that instead of focusing primarily on the "decline" of this court, legal historians should closely examine its changing place in the medieval legal system. They should show how, by the thirteenth century, this type of court first became integrated into a unified judicial structure, or "legal system,"<sup>8</sup> but later lost its close association with other courts, as the king's court assumed many of its judicial powers (p. 306), and as English judicial organization lost much of its earlier unity.<sup>9</sup> Palmer also shows how the study of this one species of court can illuminate other subjects, such as the origins of the legal profession.<sup>10</sup> Palmer's work is therefore valuable for its substantive and methodological contributions to medieval legal history; and while he does not really substantiate his insistent claim that the county court generally proceeded fairly and justly, this belief of his is not essential to what is, in other respects, a convincing and important historical argument.

Palmer first sets out to discuss "The Institutional Framework and Personnel" of the medieval county court (Part I: chs. 1-5). Here, his objective is both to answer certain central questions about the workings of county courts and to use his answers to challenge received opinions about how these judicial bodies really functioned. When and where did the county court meet? What role did the sheriff and his subordinates play in this institution? What sorts of people owed suit to this type of court? And who actually served as its judges? Who carried on the work of pleading in the

5. E. THOMPSON, *The Secret State*, in WRITING BY CANDLELIGHT 169, 170 (1980).

6. Palmer considers "a person involved in legal activities a professional lawyer when, for a period of years, that person appears to be spending the major part of his time in legal functions and deriving the greater part of his income from those activities or, at least, from the investments made from that income, and when that person possesses a specialized knowledge differentiating him from laymen." P. 89 n.1.

7. On the claim that the county court was an "amateur" body, see, e.g., pp. 56 & 112. It is worth noting that nonprofessionals need not be amateurs.

8. Although Palmer frequently uses the term "legal system," (see, e.g., pp. xiii, xiv, 141, 173, 182, 297, 300, 301 & 304), he does not clearly define it. When using this term, he is concerned more with the relationship between courts than with the kind of law that courts administer.

9. Thus, in the fifteenth century, Palmer maintains, the English courts did not constitute "a legal system." P. 304.

10. In his two articles, see note 2 *supra*, Palmer has additional things to say about the origins of the legal profession.

county court? And what roles did these pleaders play outside this forum? Having found new evidence bearing on "every topic of importance" concerning the county court (p. xi), Palmer uses his new findings as elements in a complex discussion of medieval English judicature. Thus, his treatment of venue and scheduling (ch. 1) really serves an argumentative purpose, as well as a purely descriptive one. He finds, for instance, that the timing of royal hundred court meetings was not dictated by a provision of the Magna Carta calling for meetings every three weeks. It evidently was determined instead by the sheriff's wish to coordinate the schedules of these lesser courts with the established schedule of county court meetings. From this, he can argue, first, that the county court was "the primary royal court" in every county, and, second, that careful planning, implemented by the sheriff and "a sophisticated staff of competent bailiffs," went into the scheduling of county court meetings (p. 27). While one may wonder how much sophistication was really required for the performance of this task, Palmer's findings on this point certainly help him to move toward his goal of showing that the county court was under royal control and formed part of an integrated legal system.

Palmer provides further support for this general thesis in chapter two, where he demonstrates that some of the county officials who managed county court meetings and/or enforced county court judgments had close connections at the royal court. He also tries to justify his own favorable judgment on the county court by arguing that the viscontiel bureaucracy, composed of the sheriff and his subordinates, was relatively efficient, responsible and law-abiding. Between 1180 and 1340, he shows, the workings of the county courts were shaped by the crown policy of appointing sheriffs with close ties to royal government. These men held their offices "for a limited time and in a succession of counties" and did not regard them simply as a source of monetary gain. This appointments policy, he maintains, was "vital to the rapid implementation of judicial innovations and the avoidance of legal chaos" (p. 31). Palmer acknowledges that sheriffs wielded power in the county courts and profited financially from county court proceedings (p. 36), and that they sometimes abused their power there. But he stresses that their oath of office made them legally liable for "unjust and inefficient conduct" (p. 37), that they were sometimes prosecuted for breach of these obligations, and that they even had "a vested interest in making the county court operate efficiently and justly" (p. 37).

Similarly, Palmer first notes that some of the sheriff's underlings purchased their offices for fixed fees and thus had a financial incentive to take more than what he calls a "fair" profit for their work (pp. 50, 53). But he then points out that these men were legally accountable to the sheriff and were bound by contract to perform their duties properly. Sometimes they were even fined for their failure to honor this obligation (p. 53). These facts suggest to Palmer that a sheriff's bailiff normally possessed "a knowledge of the law sufficient to fulfill his duties competently, so that he could avoid amercement and make a profit" (p. 53). Palmer therefore concludes that while the viscontiel bureaucracy was hardly "a faultless servant of the public interest," it was probably not "as corrupt as the occasional virulent protest might indicate" (p. 55). One need not share Palmer's sunny view of medieval county bureaucracy to appreciate the persuasiveness of the claim

that, when viewed from one or perhaps several perspectives, the work of the sheriff and his underlings was carried out quite successfully.

Palmer's claims about the efficiency of the county court's proceedings and about its close ties to other judicial bodies are supported in a particularly arresting way by his original and important findings about what sorts of people actually judged county court cases. Introducing this exceptionally well-argued section of his book (ch. 3), Palmer writes:

Medieval legal theory, the words of the common law writs, and modern legal historians identify suitors as the judges of the county, hundred and baronial courts. They had a specific tenurial obligation to attend the court and render judgments. . . . Since the obligation of suit was tenurial and not based on professional qualifications, the position of the suitors as the judges of the lower courts has made the county and hundred courts seem irrevocably amateur [and "democratic" (pp. 88, 113)] to the historian. . . . Moreover, it has been assumed that the doctrine, the actual obligation, and the consequence of suit of court continued through and well beyond the thirteenth century. [P. 56.]

Moving from a detailed discussion of the Cheshire county court to an analysis of county courts in general, Palmer tears down this received view.

He first shows that in Cheshire, a clear distinction was regularly made between "judges" and "suitors" (p. 60): the former held the real power of judging cases, while the latter had only an opportunity to influence the former's decisions (pp. 64-65). Although "judges" and "suitors" thus played different roles in county court cases, members of both groups were fulfilling generally similar obligations to do "suit" to the county court. This obligation was normally imposed, not on townships or individual people, but on manors, and it could be fulfilled either by the immediate lords of manors or by people sent in their place (p. 69). The difference between mere "suitors" and "judges" (who also did "suit" to the county court) seems to have arisen simply from the fact that by ancient custom, some manors were obliged to send "judges" to the county court, while other manors were bound only to provide mere "suitors" (p. 74). The mere "suitors" of the Cheshire county court were apparently an obscure lot, about whom little can be learned (p. 74); but the "judges" Palmer skillfully identifies as "the bailiffs or seneschals of those who owed suit and were obliged to find a judge" (p. 72). After arguing that the Cheshire county court was not "atypical,"<sup>11</sup> Palmer goes on to show that after about 1270, the duty of suitors to attend the county court was allowed to lapse, as this institution itself began to lose importance (p. 81). Even before that date, however, the county court judges had been professionals. In Cheshire and elsewhere, powerful landholders had

a vested interest in maintaining a high level of excellence in the county court and in seeing to it that their interests were intelligently and forcefully represented. The seneschals and bailiffs were among the most skilled legal people working in the county and they were the logical choice to be judges in the county court. [P. 72.]

Thus, certain political facts, along with a certain sort of logic, determined that the medieval county court would not be "a democratic assembly of

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11. P. 74; cf. pp. 74-78.

knights of the county."<sup>12</sup>

Equally significant for Palmer's overall argument is his discovery that real professional lawyers were working in the county courts as pleaders, thus performing another complex activity demanding great "legal expertise and knowledge" (p. 91). Palmer draws several conclusions from this finding. First, he uses it to question the traditional assumption that professional secular lawyers only began to appear in England in around 1200, when they can be found practicing in the king's courts. Having found bailiffs and seneschals practicing in the county courts in the earlier twelfth century, he suggests that these men were "the first secular lawyers in England" and that lower courts, like the county court, were actually "more important than the king's court in the genesis of the [legal] profession" (p. 136). The finding that county court pleading was carried out by professional lawyers also aids Palmer's effort to demolish established views about the "amateurism" of this court. These lawyers, he finds, were real professionals. Hired on occasion for an individual case (pp. 93, 112), a typical local lawyer was usually retained for life by around two dozen clients, each of whom paid him an annual fee of up to 20s. (pp. 112; 94-97). These lawyers also served concurrently as bailiffs, pledges, undersheriffs, county clerks, sheriffs, members of county commissions, and attorneys in the king's court (p. 112). They were seen as "specialists, people with uncommon skills, and were paid accordingly" (p. 112). They were not sustained solely by "high professional ability"; a lawyer's "power was based on the wealth of the aristocrats he served as well as on his knowledge of the intricate world of legal technicality" (p. 89). Since English barons used the county courts and the bailiffs who represented them and their tenants there to consolidate their own feudal power,<sup>13</sup> Palmer can claim that "the county courts embodied the ties between lord and man" (p. 113). Palmer does not think, however, that the county court therefore served only as an instrument of baronial rule. In his view, these highly trained, professional clients of medieval nobles made the county court "a professional and legally respectable institution, rather than the amateur court presented by modern historians."<sup>14</sup> Moreover, the training and career patterns of these professional lawyers ensured that county court proceedings would not be shaped solely or even predominantly by local political interests or regional legal traditions. Because these men also used their craft in other courts, including the king's court, they created, albeit inadvertently, "strong bonds of common legal thought between the different courts of the country" (p. 89). Thus, legal professionalism and royal control prevented local magnates from completely dominating the county court and made this institution part of a unified legal system.

In Part II of his study, which treats county court jurisdiction, Palmer covers many new topics, but continues to sound the same themes first heard in Part I. He again shows that the county court was part of an integrated court system, and his claims about the basic fairness of medieval English law become more insistent. "One of the most basic principles . . . which informed English legal procedures," he says, "was the principle that a liti-

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12. P. 88; *cf.* p. 90.

13. *See* pp. 113-119.

14. P. 112; *cf.* pp. 89-90.

gant should receive a fair hearing and be accorded the benefits of customary process" (p. 141).<sup>15</sup> Because in certain instances, which he enumerates,<sup>16</sup> English courts might turn out to be "irremediably biased" (p. 141), considerations of fairness required that litigants be allowed to escape from a potentially biased court, or else to prosecute a court that had treated them unfairly. While conceding that this basic commitment to fairness was seldom expressed in medieval England, he still insists that it provided the underlying rationale for several processes by which lawsuits could sometimes be transferred into or out of the county court. *Tolt, pone* and the grand assize, he thinks, were all "designed to avoid injustice before it had occurred" (p. 151), and if a litigant still suffered injustice in a lower court, he could, by securing a writ of false judgment, gain access to the king's court, where impartial justice, Palmer believes, could be regularly obtained (pp. 149-50). Although Palmer cannot really prove that English court procedures were fair, he can still show that these procedures, along with several others, constituted "institutionalized bonds between the courts which exerted constant pressure towards unifying and making common the varying customs in England." Thus, procedures like *tolt* and *pone* contributed to the process by which English courts were "welded" into "a legal system" (p. 173).

Links between the county courts and the central government are also treated in chapter 7, which discusses the so-called viscontiel writs. These writs, which were addressed to the sheriff and originated cases in county courts (p. 174), became writs *de cursu* under Henry II (1154-1189). What concerns Palmer is why they were instituted at all, when county court cases could be initiated without writ, and what effects these writs had on English court structure. He finds that the institution of the viscontiel writs served to tighten the bonds between the county court and the king's court. He also claims that for reasons that he closely examines, at least some of the viscontiel writs provided litigants with "better" procedures (p. 182) than were otherwise available in the county court and made these procedures available to more litigants than the king's court could accommodate. Moreover, the fact that some of these procedures led to reviews of county court cases by the king's court meant that lower court practice was "constantly brought before the best legal minds in the county and, if unjustly aberrant, criticized and perhaps even ignored in county process" (p. 146). Indeed, Palmer claims that "[t]he viscontiel courts were . . . [a part] of the reason why the common law by 1215 was perceived to be necessary and beneficial to England as a whole and not just to the king" (p. 219).

Palmer next sets out to explain certain interesting changes that had occurred by the fourteenth century in the types of cases handled by county courts (ch. 8). By the 1330s, at least some of these courts were apparently dealing with "a narrower range of forms of litigation, fewer cases initiated by writ, and, in debt, claims for smaller sums" (p. 228). These changes suggest that the county courts were declining in importance and becoming less closely tied to the king's court. But because Palmer takes the unusual but plausible position that litigants may actually have preferred local courts

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15. P. 141; *cf.* p. 173.

16. *See, e.g.*, pp. 142-147.

to the king's court, he is unwilling to explain this change by making the conventional assumption that litigants were eagerly and sensibly by-passing the county court and flocking to Westminster.<sup>17</sup> In the end, he argues very convincingly that these changes were "the long-term results" of royal inquiries in the 1270s into the organization of local government (p. 228). Given his favorable view of the county court, he cannot claim, as he does when treating the origins of the viscontiel writs, that these changes were signs of real progress and instead views them as examples of "the untoward influence of statutory action" (p. 220). Nevertheless, he can still incorporate these developments into his general argument by treating them as examples of "the complicated and highly technical coordination of the king's court with the local courts" (p. 220).

A final expository chapter (ch. 9) treats the county court's changing relationship to other judicial bodies. Within the county itself, he finds, the county court held a position of superiority, which it did not lose after 1300, even though there were shifts in its relationship to liberties, courts of ancient demesne and lesser courts without the franchise of return of writs (pp. 286, 296). Nevertheless, the county court's relationship to the king's court altered so that the position of the former in English court structure changed as well. The establishment of the *nisi prius* system, he argues, drove a "wedge . . . between the county courts and the king's court, each functioning more and more without reference to the other" (p. 228), while the general eyre disrupted county litigation (p. 289) and did damage to county litigants (p. 291). As the county court and the king's court drifted apart in most respects, the election of the knights of the shire to sit in the court of Parliament became the county court's "most important prerogative" (p. 294). The county court could still perform this function because it still embodied "the community of the county" (p. 296). For Palmer, therefore, a court dominated by lawyers, who represented barons, and by sheriffs, who represented the king, also represented a county community, whose nature and composition Palmer leaves mysteriously undefined. In a carefully argued conclusion (ch. 10), Palmer suggests that when studying medieval judicial organization from the twelfth to the fourteenth century, it is less useful to show that a court was gaining or losing power, relative to the king's court, than it is to determine "the degree to which the various courts in England were bound together into a legal system." Historians should therefore focus on the process of "curial integration" (p. 297).

Through his own work on the county court, he has found that the history of this process falls into two distinct phases. Down to the reign of Edward I (1272-1307), English courts became bound together so as to constitute a real "legal system," but in the fourteenth and fifteenth centuries, "the bonds that unified the courts were soon broken or even served to isolate the courts from one another" (p. 302). In the process of "curial integration," he claims, the most powerful moving forces were not people, but legal procedures, like the ones set in motion by the viscontiel writs. Nevertheless, sheriffs and lawyers also played a significant, if unconscious, role in linking different courts together. Palmer also shows that the energy sustaining the process of curial integration did not all come from the king's

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17. See pp. 220-24.

court; sometimes, the impetus for this process came from the procedures or personnel of the counties (p. 301). Palmer thus suggests that conventional ways of picturing medieval legal change need to be revised so as to take account of the fact that the king's court at Westminster was not the only dynamic element in medieval legal culture.

Palmer's book is valuable and important for several reasons. It presents some novel substantive findings about medieval county courts and proposes some interesting new ways of approaching the history of medieval judicial organization. It also identifies many different forces that shaped the legal history of the county court: royal efforts to control local life; the political appetites of local magnates; the bureaucratic skills, financial interests, legal obligations and political ties of county officials; the professional skills, career patterns and political interests of lawyers; and a commitment to impartial justice. While he never really explains precisely *why* these different forces combined to produce curial integration in one segment of the middle ages and curial disintegration in another, he successfully shows *how* these forces, down to about 1270, served to make English judicial organization more unified. He is less successful, I think, in his efforts to show that these forces — rather like the ones represented in pluralist models of democratic politics — either neutralized each other or else worked harmoniously together so as to create courts that would generally render "fair" and "just" decisions.

Perhaps the clearest reason why this part of his argument is unconvincing is that he does not look seriously at contemporary statements about how unfair or unjust the English courts could be. To support his contention that the king's court was impartial, he quotes, without comment or qualification, *Glanvill's* assertion that "His Highness's court is . . . impartial" (pp. 149-50). But after quoting a biting remark from *Fleta* about how seneschals exerted undue influence on local court proceedings, Palmer claims that "[i]t is doubtful, of course, that the seneschals were all that corrupt" (p. 120). Evidently, Palmer sees no point in quoting other passages in which contemporaries questioned the fairness of English courts, or queried the honesty and good intentions of lawyers, judges or local officials.

In an elaborate passage likening the king's court (in the broad sense of the term) to hell, the late-twelfth-century satirist Walter Map had this to say about the viscontiel bureaucracy and the oaths taken by those who belonged to it:

There are sent . . . from the court those whom it styleth sheriffs, under-sheriffs, beadles, whose duty it is to pry cunningly. These men leave nothing untouched, nothing untried, and, like bees, they light on flowers to draw forth some of the honey: they punish what is innocuous, but the belly goeth clear of punishment. And yet, at the outset of their office, in the presence of the highest judge, they do swear to serve faithfully and honestly God and their master, rendering to Caesar the things that are Caesar's, to God the things that are God's; but bribes pervert them so that they tear the fleece from the lambs, leaving the foxes unharmed, inasmuch as they win favour by their money, knowing that "giving requireth ingenuity."<sup>18</sup>

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18. W. MAP, *DE NUGIS CURIALUM (COURTIERS' TRIFLES)* 7 (F. Tupper & M. Ogle trans.

Later, speaking of the royal court whose "impartiality" *Glanvill* lauds, Map observes:

Aye, the king in this court is like the husband who is the last to know the sin of his wife. The courtiers slyly [sic] send him forth to sport among birds and hounds to prevent his seeing what they do within during his absence. While they make him take his sport, they themselves are busy with serious matters; they sit upon their tribunals and bring both righteousness and unrighteousness to the same judgment. When, however, the king returneth from his hunting or his hawking, he showeth his spoils to them and giveth them a share; they do not disclose theirs to him.<sup>19</sup>

Perhaps these pointed remarks by a skilled satirist should be treated by legal historians as inadmissible evidence. But here are some remarks on local justice by the author of an early twelfth-century legal treatise that Palmer uses from time to time.<sup>20</sup> In a passage with direct bearing on the issues most central to Palmer's argument, the author of the *Leges Henrici Primi* observed of the county court in the reign of Henry I (1100-1135): "The laws of the counties themselves differ very often from shire to shire, according as the rapacity and the evil and hateful practices of lawyers have introduced into the legal system more serious ways of inflicting injury."<sup>21</sup> After continuing in this vein, the same author concluded: "The vexations of secular legal proceedings are beset by wretched anxieties of such number and magnitude, and are enveloped in so many fraudulences, that these processes and the quite unpredictable hazard of the courts seem rather things to be avoided."<sup>22</sup>

What are the legal historians to make of such "occasional but virulent protest[s]" (p. 55)? Palmer's method, it seems, is to dismiss them as summarily as earlier legal historians dismissed the medieval county court, or else to treat them as warily as a lawyer would treat a hostile or lunatic witness. In his generally successful and often brilliant effort to write a balanced, judicious and impeccably documented history of the medieval county court, he feels it necessary to dismiss manifestly unbalanced statements of some contemporary observers. The county court, he suggests, could not, "of course" (p. 120), have been as unfair and unjust as people like Walter Map, the author of *Fleta*, or the author of the *Leges* said it was. Perhaps not. But why not adopt a more straightforward and less dutifully judicious position and take more account of the fact that some medieval people (who knows how many?) thought that it was? Even those of us who take this position, however, should be grateful to Dr. Palmer for having done so much to illuminate the workings — fair or unfair — of the medieval county court.

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1924). This passage comes from the chapter "On Night Birds," which begins by discussing people at the royal court whom Map likens to "the owl, night-hawk, vulture, bubo, whose eyes the darkness love and hate the light."

19. *Id.* at 320.

20. *See* pp. 78-80, 113-29, 151.

21. *LEGES HENRICI PRIMIC.* 6, 3a, 99 (L. Downer ed. & trans. 1972).

22. *Id.*