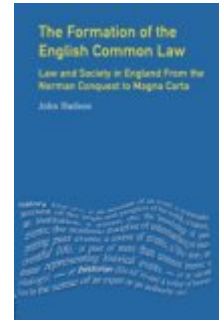


John Hudson. *The Formation of the English Common Law: Law and Society in England from the Norman Conquest to Magna Carta.* London: Longman, 1996. xvi + 271 pp.
\$18.50, paper, ISBN 978-0-582-07026-4.



Reviewed by Elisabeth Cawthon

Published on H-Law (July, 1998)

John Hudson's *The Formation of English Common Law* is a readable and well-informed discussion of the social and political effects of law on English society during a critical period in not only English legal history, but the formation of the English state. Hudson, who is Lecturer in Medieval History at the University of St. Andrews, provides a clear discussion of important scholarly disputes concerning English law in this era. His account, moreover, is accessible to scholars beyond the field of legal history. Hudson is conversant with not only key legal sources (including celebrated primary sources such as the *Leges Henrici Primi* and Pollock and Maitland's *The History of English Law*); he effectively employs anthropological and literary scholarship and sources in order to provide a fuller picture of the reach of legal institutions into everyday lives.

With this book, Hudson has weighed into an important controversy among scholars: whether and why the period between the Norman Conquest and Magna Carta was the most crucial time for the development of English law, administrative institutions, and royal authority. Although

many legal scholars currently argue that the formative period for English common law did occur between 1066 and 1215, some eminent historians have disputed that periodization. S.F.C. Milsom, for example, in his 1976 work *The Legal Framework of English Feudalism*, argues that Norman and Angevin lords in England might have used a distinctive vocabulary in enforcing rules for landholding, but that the real moral authority in lords' and royal courts came from adherence to custom which had been established prior to the Conquest. Also emphasizing the critical importance of the Anglo-Saxon period in the formation of the common law are recent scholars such as Patrick Wormald. Wormald, for example, characterizes England's criminal law prior to the Conquest as well developed in theory, rather uniform in practice, and well respected by pre-Conquest English kings. In focusing on the Anglo-Saxon era, these later twentieth century scholars have taken on a formidable challenge: they are disputing the elegant Victorian era thesis of F.W. Maitland. Maitland contended that the standardizing and enforcing of royal law at the hands of Henry II and his advisors, between 1154 and 1189, represented the

pivotal moment in the history of English common law--indeed of English governmental authority in general. Maitland's exhaustive and powerful arguments, for example concerning key changes in the criminal law in the twelfth century, have influenced the arguments of many subsequent medieval legal historians, such as R.C. van Caenegem and D.M. Stenton.

While maintaining certain overriding principles which are important arguments about English history--that English common law was in essence already formed prior to Magna Carta and that understanding the common law is critical to appreciating England's history as a nation--Hudson takes issue with both Maitland (who stresses Henry II's reign) and those scholars who locate the germination of the common law in Anglo-Saxon England. Hudson makes a case for the Anglo-Norman era (especially the years between 1066 and the end of Henry I's reign in 1135) as a crucial moment in the history of common law. Hudson emphasizes the vitality of several Anglo-Norman monarchs in legal matters. He notes the influence--if not dominance--which local (especially new, Norman) lords could exercise over persons lower than themselves in the social order. He points to the close links between the agendas of national leaders (particularly kings of England) and local affairs.

In such arguments, Hudson echoes Maitland's stress upon royal authority, and he reminds readers that the law seemed to many residents of England authoritarian, and certainly pervasive, in the years after the Conquest. On the other hand, Hudson does maintain that the Normans presided over an Anglicization of Norman law in England, rather than the formation of two sets of laws--one for the conquerors and another for the conquered. For instance, Hudson describes the accessibility of courts in the Anglo-Norman era. Norman governors in England made residents of their new territory more comfortable than ever with the idea of resorting to a formal court--such

as a royal court or a lord's court--rather than to more community-based remedies or raw violence, for justice. Thus, in Hudson's discussion, the legal "reforms" of Henry I and Henry II appear to have been made less from a desire to create order (as Maitland might have argued), than to systematize legal habits and practices to which many residents of England were very long accustomed (a conclusion more in line with Wormald's).

Hudson's work goes beyond the level of historiographical debate. He displays agility in relating Anglo-Norman leaders' actions to the consciousness of law among ordinary citizens. He is familiar with a number of lawsuits from the period (especially as compiled by van Caenegem in the Selden Society publication *English Lawsuits from William I to Richard I*), and he employs those detailed accounts in order to stress the far-reaching effects of law into everyday lives. Hudson relates, for example, a story taken from a set of "miracle tales," of a shoemaker from Banham who found himself held for trial at a royal assize at Bury St. Edmunds. The accused man, who already suffered under the nickname "Robert the Putrid," prayed to St. Edmund to remove his name from the three lists of offenders which local officials so efficiently had compiled. When those who had been imprisoned were examined against the long lists of names, Robert's name was nowhere to be found. Robert was released; thus he avoided the danger of having to undergo the ordeal of water and the public humiliation which would have followed for him, even if he had been cleared at the ordeal. Even those persons who were not punished, that is, were imbued with a healthy respect--Hudson would argue that it went as far as paranoia--for the power of the royal law.

Besides his inclusion of such colorful examples, which he discusses with subtlety, Hudson makes his book quite accessible to students because of several features at the end of the text: a pithy annotated bibliography, arranged by chapter; a crisp glossary (which first year law students

will find particularly valuable); and a note on sources which emphasizes the pitfalls and advantages of major types of primary materials often employed by Hudson and other scholars of this era. Particularly with these thoughtful additions, Hudson's book will serve a wide variety of readers: those interested in a balanced addition to important scholarly controversies; those concerned with a discussion of English law which is informed by the work of other disciplines; and those new to the study of this vital era.

Copyright (c) 1998 by H-Net, all rights reserved. This work may be copied for non-profit educational use if proper credit is given to the author and the list. For other permission, please contact H-Net@h-net.msu.edu.

If there is additional discussion of this review, you may access it through the network, at <https://networks.h-net.org/h-law>

Citation: Elisabeth Cawthon. Review of Hudson, John. *The Formation of the English Common Law: Law and Society in England from the Norman Conquest to Magna Carta*. H-Law, H-Net Reviews. July, 1998.

URL: <https://www.h-net.org/reviews/showrev.php?id=2206>



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.