

Laws, Lawyers and Texts

Studies in Medieval Legal History

in Honour of Paul Brand

Edited by

Susanne Jenks, Jonathan Rose
& Christopher Whittick

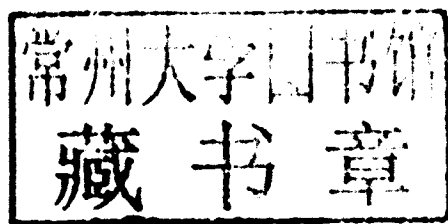


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Front: Manuscript of *Hengham Magna*, about 1330, perhaps showing its supposed author lecturing to apprentices: Oriel College, Oxford, MS. 46, fol. 169.

Back: Seal of William Herle, *gules, a fess argent between three herles (or sheldrakes) proper*, on a receipt for his salary, sealed at York on 16 May 1328: TNA:PRO, E 43/308 (2).

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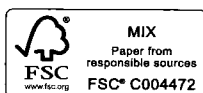
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Sit illi carus ut carus ille est nobis

PAUL BRAND: ENCOMIUM

Barbara Harvey

It is an honour for me to be invited to give the encomium on this occasion, celebrating as it does the achievements of one of the most distinguished legal historians of his generation, for I am not myself a legal historian. But I share with Paul a sense of the wide reference of legal history to the understanding of past societies and often know myself to be occupying common ground with those who practise it. In saluting his achievements, I think also of Vanessa, whom I knew before I knew Paul. I was her moral tutor—or as we would now say, personal tutor—when she read History at Somerville College, an experience from which, in this case, the tutor learnt quite as much as the pupil. I think not only of Vanessa's own remarkable career but also of her part in making Paul's achievements possible.

When, in 1967, after reading History at Magdalen College, Oxford, Paul began doctoral studies under the supervision of Derek Hall, he chose as his subject the legislation of the period of reform and rebellion in Henry III's reign and its enforcement down to 1307. In proposing to look at the fate of the legislation in the courts, and using unpublished records, he embarked on a subject that had scarcely been touched previously except by Hall himself. The emphasis of studies of this period of reform and rebellion was then on its political and social aspects, where, indeed, it may still be found in some outstanding works of the present day.

Paul's thesis was submitted in 1974, and, needless to say, successfully. By this date he was an Assistant Keeper at the Public Record Office, and in that capacity he had enjoyed for several years privileged access to the public records by day and, on occasion, when his turn to be Resident Keeper came round, by night, too. But the argument and conclusions of his thesis were not published until 2003, when they appeared 'reorganised and reconceptualised'—to use his own words—in one of the most important of all his publications, *Kings, Barons and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England*. By this date, he had published a large number of essays, all of which are significant contributions to their subject, and these have a chronological reference extending from the mid-twelfth century to the late fifteenth. Many were published in his *Collected Papers*, in 1992. Some, on the Common Law

in Ireland, serve to remind us that after resigning his post at the Public Record Office, as he did in 1976, Paul was for seven years a Lecturer in Law at University College Dublin.

For many years now, however, Paul's interests as a historian have normally focused on England in the thirteenth century: in this case, a rather long century, running from 1189, the limit of legal memory, to the death of Edward I in 1307. The great increase in the activity of the king's courts and of government more generally, and the corresponding increase in records relating to these institutions, make this century a particularly challenging one for legal historians, and, indeed, for others too. Paul has brought to his work in this field a familiarity with the legal sources, and especially with the plea rolls of the royal courts, that none has so far equalled in this period. He has demanded of himself and others a systematic use of unpublished sources as great as that given to published sources of this kind, where both exist. And, most remarkably, he has tilted the balance of his own publications decisively towards the use of unpublished works. In the bibliography of *Kings, Barons and Justices*, unpublished sources occupy considerably more space than published sources and secondary works together, and this allocation of space in the bibliography is a pointer to what we shall actually find in the book itself. Indeed, if Paul were ever to decide to publish under a pseudonym, we should need only to look at the bibliographies or footnotes of his publications to know who actually wrote the books. Another clue, would, of course, be the apparently effortless clarity of exposition which characterises all his publications, and yet another still, his boldness in controversy. What, then, has he contributed, so far, to our understanding of the thirteenth century? The following summary will inevitably omit many items that I should like to include if time and space permitted.

The Origins of the English Legal Profession (1992), one of the fruits of the ten years that Paul spent as an independent scholar, after leaving Dublin in 1983, is now the authoritative account of the development of the legal profession, operating inside and outside the king's courts but, with the extension of royal jurisdiction, increasingly inside, and it draws on a dazzling array of sources, including Law Reports that were, at the time when he wrote, unpublished. He had already argued persuasively elsewhere that, contrary to the prevailing view, a system of professional legal education was emerging by the end of the thirteenth century. Professional lawyers, the serjeants and the attorneys, could hardly exist without a professional legal system, nor the system without the lawyers. But the book also alerts us to the existence, by 1300, of lawyers with local legal practices,

and this important development we can follow in Paul's account elsewhere of the career of Hugh Tyrel of Mannington, a local lawyer active in Norfolk. Remarkably, the trail that led Paul to Tyrel's legal practice began with a single case brought by John Royes, a smallholder in Norfolk against his lord, the abbot of St Benet of Hulme, in the Common Bench in 1305. Royes was evidently well advised in legal matters, and the case immediately aroused Paul's interest.

As for the four volumes of Law Reports that Paul has edited for the Selden Society, unquestionably, they represent a pinnacle of achievement for an editor. In the course of this enterprise, it was necessary to identify a very large number of reports, mostly unpublished and undated, in a formidable number of manuscripts and, if possible identify the compilers. The texts are written in an abbreviated form of Anglo-French. Nevertheless, Paul's command of all the relevant sources has enabled him to identify many records of cases in the plea rolls, which are, of course, in Latin, with arguments in anonymous cases in the Law Reports.

Even so, and against this strong competition, I see in *Kings, Barons and Justices* Paul's most remarkable publication so far. Kings, barons and justices were important people in thirteenth-century England, but the sub-title of this book, *The Making and Enforcement of Legislation in Thirteenth-Century England*, brings us even nearer to its purpose and to its achievement. Its focus is on the so-called Provisions of Westminster, the reforms, part administrative, part legislative, first published in 1259 by the baronial government which had seized power from Henry III in the previous year, and on the later re-enactment of these in the Statute of Marlborough, in 1267, by Henry III after his recovery of power. The degree of importance we should attach to the Provisions has been debated among historians for nearly a century. But as far as I am aware, Paul is the first to construct an authoritative text of this document, taking into account everything known about the drafting process, and the first to base a judgement of its importance, and that of the Statute of Marlborough, in the longer term on a detailed study of all the relevant plea rolls surviving from these years. His conclusions are at once cautious and bold. Cautious in taking into full account the fact the plea roll evidence is imperfect; bold in concluding, with a backward glance at the different character of Magna Carta, that the Provisions and the Statute represent the first legislation in England intended by those who promoted it to bring about large-scale change, and in doing so to serve the interests of wider sections of society than that represented by the magnates. To an extent not previously realised, it provided an actual model for the legislation of Edward I's early years.

Paul's period as an independent scholar lasted for ten years, from 1983 to 1993. But independence did not, of course, mean isolation. Contacts with legal historians in the USA had always meant a great deal to him, and these continued to flourish during his years as an independent scholar. It was, I have been told, American friends of Paul and Vanessa who named their home in Kennington Road 'The Legal History Centre'. And on Saturdays, there was the Pizza Express lunch for those working in the British Library. The ten years ended, however, with his election to a Fellowship at the Institute of Historical Research, soon to be followed by a Visiting Professorship at the Columbia University Law School, and this, in due course, by similar appointments at the Arizona Center for Medieval and Renaissance Studies, and the Arizona State University. In 1997, he was elected to a Fellowship at All Souls College Oxford, and then, two years later, to that most desirable appointment for a scholar with many more books to write: a Senior Research Fellowship at All Souls College. By the latter date, moreover, he had been elected a Fellow of the British Academy, and he became Professor of English Legal History in the Faculty of Law in Oxford University in 2010. As of 2013, moreover, Paul will be William W. Cook Global Law Professor at the University of Michigan Law School.

There is time for me to make only one more point, but it is as important as any that I have already tried to make. Through all vicissitudes, from the very beginning of his career, Paul's generosity as a scholar has never failed those whom it could help. Of his friends whom I have consulted, I cannot remember one who did not mention this attribute. From help with difficult Latin, to tactfully communicated advice on rearranging the article in hand, or even rewriting it *ab initio*, whatever help has been needed has been given, however much time was involved in the giving. I cannot think of a more telling point than this to end an encomium for an always busy scholar.

EDITORS' PREFACE

The essays in this volume break new ground, but each of them relies to a greater or lesser extent on the work and inspiration of Paul Brand, on the bedrock of whose research many scholars have come to rely and will continue to stand.

But there are many others who have gained from his support and intellectual generosity. Perhaps because he has in turn experienced life as an archivist, a teacher and a private scholar, his understanding of the obstacles faced by those outside or on the borders of the academic community has engendered a kindness, patience and willingness to provide insightful encouragement from which so many have benefited.

Our involvement with this book has been a labour of love, for we are sure we speak for the wider circle of his friends in saying that Paul has inspired our affection as much as he has commanded our respect.

We would like to thank Professor John Hudson for welcoming this book into the series of which he is the general editor, and the Warden and Fellows of All Souls College for hosting the event at which it was presented; we hope they will approve of our choice of illustration for the back cover. We are grateful to the authors for their admirable timekeeping and quick responses which have greatly eased our task, to Marcella Mulder and Tessel Jonquière of Brill for their ready electronic presence and ever-prompt assistance, and to Carrie Smith for preparing the index.

Robert Petre, the archivist at Oriel College, Oxford, and David Myers of East Sussex Record Office, have been of great assistance with the illustrations.

For permission to reproduce illustrations, we are most grateful to the Provost and Fellows of Oriel College, Oxford, the Keeper of The National Archives and to Nottinghamshire Archives.

16 April 2012

LIST OF ABBREVIATIONS

AALT	Anglo-American Legal Tradition
ad. verb.	<i>ad verbum</i>
AM	Henry Richards Luard, ed., <i>Annales Monastici</i> , 5 vols, (Rolls Series) (London, 1864–69)
BnF	Paris, Bibliothèque nationale de France
BL	British Library, London
Bodl.	Oxford, Bodleian Library
<i>Bracton</i>	Henry de Bracton. <i>De Legibus et Consuetudinibus Angliae</i> , ed. George E. Woodbine, revised and trans. Samuel E. Thorne, 4 vols, (Cambridge, Mass., 1968–77)
<i>Britton</i>	Francis Morgan Nicholls, ed. and trans., <i>Britton</i> , 2 vols, (Oxford, 1865)
BRUO	Alfred B. Emden, <i>A Biographical Register of the University of Oxford to A. D. 1500</i> , 3 vols, (Oxford, 1957–59)
c.	<i>contra</i>
C. 1 q. 1 c. 1	Causa 1, quaestio 1, canon 1
CCR	<i>Calendar of Close Rolls, 1272–1485</i> , 45 vols, (London, 1892–1954)
CFR	<i>Calendar of Fine Rolls, 1272–1509</i> , 22 vols, (London, 1911–62)
CM	Matthew Paris, <i>Matthaei Parisiensis Chronica Majora</i> , ed. Henry Richards Luard, 7 vols, (Rolls Series) (London, 1872–83)
Cod. 1.1.1	<i>Codex Justiniani</i> , Liber 1, titulus 1, lex 1
CPR	<i>Calendar of Patent Rolls, 1216–1509</i> , 55 vols, (London, 1891–1916)
CR	Close Rolls
CRR	<i>Curia Regis Rolls, 1194–1250</i> , 20 vols, (London 1922–2006)
CUL	Cambridge, University Library
d.	pence
Dig. 1.1.1	<i>Digestum Justiniani</i> , Liber 1, titulus 1, lex 1
Dist. 1 c. 1	<i>Decretum Gratiani</i> , Distinctio 1, canon 1
DMLBS	<i>Dictionary of Medieval Latin from British Sources</i> (Oxford, 1975–)
EEA	<i>English Episcopal Acta</i> (Oxford, 1980–)
ER	English Reports
<i>Fleta</i>	Henry G. Richardson and George O. Sayles, eds and trans, <i>Fleta</i> , 3 vols, (Selden Society 72, 89, 99) (London, 1955–83)

FP	Fastolf Papers, Magdalen College Archives, University of Oxford
<i>Glanvill</i>	George Derek Gordon Hall, ed. and trans., <i>The treatise on the law and customs of the realm of England commonly called Glanvill</i> , 2nd ed., (Oxford, 1993)
Gl. ord.	<i>Glossa ordinaria</i> (standard medieval commentary text)
<i>Hk</i>	Holkham MS.
HL	Abraham Hume, <i>Sir Hugh of Lincoln</i> (London, 1849) (available online through Google Books)
Inst. 1.1.1	<i>Institutiones Justiniani</i> , Liber 1, titulus 1, lex 1
JRUL	John Rylands University Library, Manchester
LAN	Helena M. Chew and William Kellaway, eds, <i>London Assize of Nuisance 1301–1431—A Calendar</i> (London Record Society 10) (London, 1973)
LMA	London Metropolitan Archives
<i>MED</i>	<i>Middle English Dictionary</i>
MCA	Magdalen College Archives, University of Oxford
<i>Mirror of Justices</i>	William Joseph Whittaker, ed. and trans., <i>The Mirror of Justices</i> (Selden Society 7) (London, 1893)
NRO	Northamptonshire Record Office
<i>OED</i>	<i>Oxford English Dictionary</i>
<i>ODNB</i>	<i>Oxford Dictionary of National Biography</i> , (http://www.oxforddnb.com , subscription access only)
Pipe Roll	The great roll of the pipe (Publications of the Pipe Roll Society)
PR	Patent Rolls, C 66, The National Archives: Public Record Office, Kew, Surrey
rev.	revised
<i>RLC</i>	Thomas Duffus Hardy, ed., <i>Rotuli Litterarum Clausarum</i> , 2 vols, (Record Commission) (London, 1833–44)
<i>RLP</i>	Thomas Duffus Hardy, ed., <i>Rotuli Litterarum Patentium</i> (Record Commission) (London, 1835)
s.	shilling
s.a.	<i>sub anno</i>
s.d.	<i>sub dato</i>
s.n.	<i>sub nomine</i>
[Seipp number]	David Seipp's index: http://www.bu.edu/law/seipp/
Sext 1.1.1	<i>Liber Sextus</i> 1, titulus 1, capitulum 1

SR	<i>Statutes of the Realm</i> (Record Commission) (London, 1816–17)
<i>State Trials</i>	Thomas Bayly Howell, ed., <i>A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Present Time</i> (London, 1816)
TNA:PRO	The National Archives: Public Record Office, Kew, Surrey
TRE	In the time of King Edward, before 1066
TRW	In the time of King William, after 1066
v.	<i>versus</i>
<i>Viewers Certificates</i>	<i>London Viewers and their Certificates</i> , ed. Janet S. Loengard (London Record Society 26) (London, 1989)
IX 1.1.1	<i>Decretales Gregorii IX</i> , Liber 1, titulum 1, capitulum 1

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