

BOOK REVIEW

A CONSTITUTIONAL AND LEGAL HISTORY OF MEDIEVAL ENGLAND, by Bryce Lyon. New York: Harper & Brothers, 1960. Pp xix, 671. \$7.50.

Law under any system is more than the words of statutes and written opinions. It absorbs and reflects the mores of the people, the administrative machinery for producing and enforcing law, and the evolving levels of economic and cultural progress which nourish it. Painting such a backdrop for the period 450 to 1485 has been the task of Dr. Bryce Dale Lyon, Professor of History, University of California at Berkeley, in his 1960 book, *A Constitutional and Legal History of Medieval England*.

A companion book by Professor F. G. Marcham of Cornell University, even more recently brought out by the same publishers, carries forward from 1485 to the present time. Together they supplement the collection of materials in Stephenson & Marcham's *Sources of English History* (1935).

Dr. Lyon earned his doctorate in history under Dr. Carl Stephenson at Cornell University, and taught at Illinois and Harvard before going to California. He has published several books on the development of political institutions in the Middle Ages, including the significant *From Fief to Indenture: The Transition from Feudal to Non-Feudal Contract in Western Europe*, 1957, which is Vol. 68 in the Harvard Historical Studies; and numerous articles in legal and history magazines at home and abroad. Recently he completed two and one-half years of research in England, Belgium, The Netherlands and France under Guggenheim and Belgian foundation grants, getting into profitable source material not available to earlier historians, of which material he has made extensive use.

Dr. Lyon does not have a formal training in law, and on legal interpretation will not displace such towering figures as Maitland and Holdsworth, nor is such his aim. His emphasis as a Constitutional historian, as stated in his own words, is on "the close relation between routine government administration and the development of the law courts, parliament, and various departments of state."

While Dr. Lyon has not attempted to pioneer any new doctrines in this field but rather to put together a modern synthesis of diverse materials, he at least takes sides on one controversy that has divided past interpreters, i. e., whether parliament's roots extend from the

flowering of ideas on justice, such as the Great Charter of 1215 wrested from King John, or from the necessities of royal finance in gradually letting the reins of government and the right to levy taxes slip into the hands of the Commons in exchange for grants of money. Dr. Lyon espouses the latter theory, and recurs to it often as he traces constitutional development under succeeding dynasties.

The book progresses under a logical division of six parts for each of which there is a helpful analysis by chapters in the table of contents. The frequent use of chapter conclusions keeps the main emphasis of the author in the foreground.

Part One discusses the Anglo-Saxon period from 450 to 1066. While any known administrative or legal procedures preceding the tenth century are important only as setting the stage for the Norman Invasion, the functioning of the witenagemot in the tenth and eleventh centuries is given solid discussion. This form of advisory council as a body was aristocratic and not representative. Some of its decisions were written down but most were left unwritten, to be later found by custom and reference.

Part Two covers the period of the Norman kings, from 1066 to 1154, with emphasis on the feudalization of England and the beginnings of central administration, the kingship and the curia regis. In the last analysis the Norman kings were masters without limitation, but there began a coalescence of English and Norman custom into law and the genesis of a court structure, local and central, to enforce it.

Part Three extends the Angevin period from 1154 to the demise of King John in 1216, after Magna Carta and the defeat of absolutism. There was an evolution of the curia regis into great and small councils. The foundations of a legal system were laid with royal justice beginning its rout of inferior judicial practices; and questions of finance were increasingly pressed.

Part Four carries on to the death of Edward I in 1307. It was the age of Bracton in the common law, of the first usage of the term "parliament" as applied to any meetings of the great or small council, and of increasing awareness in those bodies that giving or withholding consent to forms of taxation might become a solid right belonging to the people as an effective check on royal prerogative.

Part Five is concerned with the reigns of the Edwards II and III, and Richard II, up to 1399. The parliamentary structure of a House of Commons and a House of Lords evolved, with the latter constituting also the High Court of Parliament. There was maneuvering to tighten its control over finances, and therefore over the monarchy; and by 1399 parliament "was so firmly entrenched that neither subsequent anarchy nor despotism could destroy it. It was England to stay."

Part Six deals with the closing century of the medieval period,

of the Lancasters and the Yorks, to the 1485 ascendancy of the Tudor line in Henry VII. The chancery developed into a court of equity. Littleton gave form to land law. The House of Commons improved its control over tax legislation. The closing chapter deals with the common law and its elaboration.

In today's world we are in an era of expanding national freedoms. Colonialism and despotism as governmental forms, except in Communist-controlled areas, are disappearing as new nations leap or are being pushed into a variety of parliamentary patterns, the chief characteristics of which are unpreparedness for the task and no available transition period in which the trial and error of experience can chart a course. If Dr. Lyon's book does nothing else it demonstrates that the concept of a free democratic nation does not arrive for implementation in full bloom; that in England's case it evolved slowly over five or six centuries as the level of education and political consciousness ascended, and particularly as the administrative machinery was adapted or invented to accomplish the objectives of theory or of expediency.

FLOYD E. THOMAS, J. D.*

* Professor Emeritus of Law, University of Arizona.