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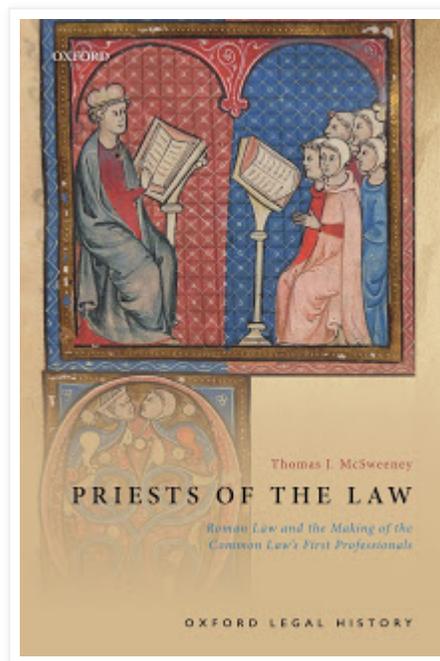
Legal History Blog

scholarship, news and new ideas in legal history

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Were Justices Lawyers?

I argue in *Priests of the Law* that the justices who wrote the *Bracton* treatise sought to build a professional identity for themselves on the model of the civilian jurist. They tried to demonstrate that the body of substantive rules they applied in the English courts was consonant with Roman law, that the types of texts they produced in the courts were similar to texts produced by civilian jurists, and that the justices of the royal courts were not simply servants of the king of an island realm, but priests of the universal law of Christendom. I suspect, however, that the authors of *Bracton* were in the minority among the justices of the royal courts. Training in Roman law was likely the exception among justices, not the rule, and there were probably many justices who viewed their work in the royal courts very differently from the way the *Bracton* authors did. One question I'd like to return to in future work is "what was the alternative?" How did the *Bracton* authors' colleagues on the judicial bench think about their work in the royal courts?



The problem with reconstructing the views of the *Bracton* authors' colleagues is that they did not produce texts like *Bracton*. There is a reason why we have surviving texts that can give us some insight into how the *Bracton* authors constructed their identity: the act of writing was itself the medium through which they constructed that identity. They made the case that they were civilian jurists by writing like civilian jurists. That is why *Bracton* exists at all. Is there any way to get at the thought of the justices for whom writing was not an important part of their identity?

I think there is enough evidence that we can make some guesses as to how a justice like Henry de la Mare, who sat on the Court of King's Bench while *Bracton* was being written, thought about his work. Unlike the justices who wrote *Bracton*, who spent the early parts of their careers as clerks in the central royal courts, Henry de la Mare was an estate steward before he was appointed a justice. He actually left the King's Bench in 1249 to serve as a steward again. The parallels between a justice's work and a steward's work probably would have been more obvious to a person in the thirteenth century than they are today. Stewards managed their lords' estates, but they also held the lord's manor courts for his tenants. Justices also had a number of duties that look more like general management or administration than specifically "legal" duties. When the king's justices in eyre visited a county, they were instructed not just to hear common pleas

and to try accused felons, but also to ask which churches are in the king's gift, what land has escheated to the king, and which "young men and maidens...are and ought to be in the king's wardship."

The work of the courts became ever more specialized and technical over the course of the thirteenth century, but I think it's possible that someone like Henry de la Mare, even as late as the 1240s, could still think of his work as a royal justice as basically being of a kind with his work as a steward; he was simply the king's steward. Where the *Bracton* authors constructed an identity that was closely bound to their work with law, someone like Henry de la Mare may have thought of himself more as steward than as lawyer.

-Tom McSweeney

Posted by Thomas J. McSweeney at 12:30 AM

