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BOOK REVIEW

THE NORMANS. BY TIMOTHY BAKER. New York: The Macmillan Company. [London: Cassell & Co.] 1966. Pp. x, 292. \$7.95 [42s.]

NORMANS FOR LAWYERS

In *The Normans* Timothy Baker recounts the impact of the Norman invasion on English life and history. As straight history his account is mainly confined to the eleventh century, that is, pre-Conquest England and the reign of William the Conqueror. For the lawyer, however, this book has the particular interest of pointing out the significant effects of the Norman invasion and occupation of England on the course of Anglo-American law. As one would expect from a book on the Normans, a people vitally concerned with statecraft, there are references to legal developments scattered throughout.

The Normans are rightly credited with formulating the rigid English feudal system which in turn produced our peculiar system of estates and tenures. But the Normans did not simply transplant a developed system from Normandy to England, for, though well organized for war, they did not then possess a fully developed feudal society. The Conquest and its aftermath gave William the opportunity of imposing *his* system on England. Prior to the Conquest, English "feudalism" had not yet reached the point that holding court was regarded as an incident of lordship; private jurisdictions did not then exist in England as a matter of right. Since the existing hierarchy of English local courts did provide a more effective means of keeping order than the Norman legal institutions, William chose to continue the English local court system. However, as one of his most substantial reforms William excised the courts' ecclesiastical jurisdiction, thus separating the authority of the church and secular courts. The existing institution of the sheriff was utilized by William to promote more efficient control, but some might doubt the author's remark that the local courts of the Anglo-Saxons were given fresh vigor by the elevation of the position of the sheriff. Considering their genius for administration, it is perhaps striking that the Norman kings did not follow the practices of some Anglo-Saxon kings in issuing general codes of law.

Just prior to the Conquest there were some differences in the English legal institutions, particularly as between the Anglo-Saxon and Danish regions. Most differences, however, between the Anglo-Saxon and Danish institutions were in nomenclature and in degree rather than in kind. One important difference was that the Danes had developed a sort of prototype of the jury of presentment which was quite foreign to the institutions of Anglo-Saxons as well as Normans.

It is to Mr. Baker's credit that he does not assume the Norman introduction of the jury into England. The Normans' own certain and unique contribution with respect to trial was a new form of ordeal, trial by battle. The author canvasses the possibility of the use of the sworn inquest

in the Curia in Normandy, but he finds no definite instances of this practice there. Though the principle of the collective verdict was already known in certain parts of England prior to the Conquest, the author credits the Conqueror for its widespread use in England thereafter. Mr. Baker goes on to point out another English practice which continued under William—the sealed writ, or short letter from the King, to the shire courts. Though not known on the continent prior to the Conquest, they later found acceptance there. In England William broadened the scope of the old English writ as his regular means of giving commands. This form was later refined for judicial purposes and became the summons for originating an action. For this and other purposes of government the Normans generally used Latin, though French was the language of the royal court and the language of pleading in the courts of law that emerged from their administrative tribunals. However, the eclipse of the use of English did not happen all at once. At the end of the Conqueror's reign an English writ was issued, and pleading in the local courts was still conducted in English during the reign of Henry I. Nevertheless, even after English became the official court language in 1362, lawyers continued to write and converse in law-French which was not finally abolished as a judicial language until 1731. In the long run the English language—legal and otherwise—gained greatly from Norman influence, but for a time English was only the poor man's language.

Perhaps the cruelest innovation of the Normans was the separate code known as the law of the forest. The royal forests themselves, however, had been set aside by the earlier English kings. The extent and oppressive effect of this code was later to result in the insertion of two clauses in the Magna Carta to satisfy some complaints with regard to the forest law. It is also noteworthy that the position of women among the Anglo-Saxons sharply declined in Norman society. This fact was most pronounced in the higher orders of society, but in time the Norman law of the rich became the law of the land. In contradistinction to the impositions of the rigorous laws of the forest and the decline of women's rights, the Conquest resulted in the abolition of the English institution of slavery, though the Norman villein was little better off than a slave. Slaves, it will be remembered, were one of the Anglo-Saxons' principal export commodities.

Although the Normans contributed much to England's institutions, they contributed less to her population. The Normans never numbered as many as fifteen per cent of the population. Some may be somewhat unsettled by Mr. Baker's remark that "there are only some half-dozen families which can prove without a doubt that their ancestors came over with the Conqueror," and others will be equally dismayed by the fact that Baker questions the very existence of William's daughters Adeliza and Matilda from whom so many claim descent.

Though Mr. Baker paints an attractive picture of pre-Conquest England, with a rather more efficient administration than most of her neighbors, the efficiency was principally at the local level, and all this was changed by

the introduction of William's system of military feudalism. The author suggests that native traditions and institutions might very well have resisted Norman influence had Robert of Normandy, William's successor in the duchy, been able to resist his younger brothers with greater success. Continental influence on England was accentuated, he thinks, by the continued involvement of the Norman kings and their successors with their continental dominions. This preoccupation was also to result in the Normans' system of "grinding taxation."

For the lawyer who is interested in history and does not already know all about the Normans in England, Mr. Baker's book should prove quite diverting. Besides the straight history, the author devotes separate treatment to feudalism, English society, government, the church, language, architecture, the minor arts and coinage. Though in no sense writing especially for lawyers, the author's attention to legal aspects of Norman culture and achievements makes it particularly interesting to the legally-trained reader. For the most part his style is clear, though occasionally his meanings are a trifle obscure—providing little linguistic puzzles for the legal reader. Mr. Baker takes great pains to be judiciously fair in presenting the tough, sometimes savage Normans as they actually were. At the same time he rehabilitates the inhabitants of pre-Conquest England, which, he says, might "claim to have been the most civilized country in Western Europe at the time of the Conquest," rather than populated by the "sluggish degenerates" pictured by Carlyle and other Victorians. These carefully balanced judgments do not, however, prevent a penetrating insight and telling expression of opinion.

Like many successful lawyers I have known, the Normans had a toughness of mind and method that made them something less than a likeable lot. These same characteristics, however, enabled them to become the masters of the late medieval England, if not "the men who made the English-speaking world" as the subtitle on the dust jacket of the American edition states. The book is well provided with tables and maps, though the standard of the latter is not always up to that of the former. It is also generously illustrated; the plates in the English edition (as well as the paper) are of somewhat better quality than those produced in this country.

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