

her own reasons for action will be better realized” if she follows an authority’s directions (p. 156). While it is valuable to underline these tensions or contradictions, however, the replacement of agency or autonomy with freedom as independence would serve to show more precisely where legal positivism founders.

There is much of interest in this book for any legal philosopher. It is good to see the various elements of Fuller’s work brought together as a larger interconnected project; and the interweaving of published and unpublished material is a useful aid to deeper appreciation and understanding. If Rundle has not succeeded in reconstructing Fuller’s work in a way that truly fulfils its ambitions, she has at least helped to reinforce its proper place at the heart of twenty-first century jurisprudence.

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Law, Governance and Justice: New Views on Medieval Constitutionalism. By RICHARD KAEUPER, PAUL DINGMAN and PETER SPOSATO (eds.) [Brill, 2013. ix, 342, and (Index) 5 pp. Hardback \$189. ISBN 978-90-04-23590-8]

THE essays in this collection are, in the main, versions of papers given at a conference on medieval law, governance and justice in 2009 at the University of Rochester. The papers work well together, though they take a variety of different perspectives on the broad theme, and cover periods from the Anglo-Saxon to the early modern. Some very large questions are posed, and detailed consideration is given to a range of different matters connected to law and the constitution.

In an introductory chapter, (“Debating law, justice and constitutionalism”), Richard Kaeuper asks some perceptive questions about historical study and the medieval constitution, law and order. His examination of what amounts to acceptable historical evidence, in particular, is something which should be borne in mind by all students of English constitutional and legal history. There is still, at times, a difference in approach to the question of evidence amongst “lawyer” legal historians on the one hand and those coming to legal topics from a history background. Kaeuper’s treatment of the issue should make both groups think about the foundation of their arguments.

James Campbell (“The Anglo-Saxon origins of English constitutionalism”) considers the pre-Conquest roots of important facets of English constitutional development (and especially of the participatory and representative aspects of that constitution), showing more agreement with Stubbs’ theories of long lines of constitutional continuity than has been popular for some considerable time. The possibility of the pre-conquest origin of manorial and village courts is rightly emphasised and the idea of the army as a “quasi-representative” body is one which should be borne in mind by all medievalists looking at the growth of “popular” influence on government.

In a sweepingly ambitious contribution, Paul Hyams (“Orality and literacy in the age of the Angevin law reforms”) considers the move from spoken to written forms in the law of the long twelfth century. With this author’s customary broad vision and aplomb, we are led to examine signs of the use of oral and written procedure in court cases of this period, and given

some suggestions as to when writing came to predominate. A case is made for the continuing importance of orality well into the Angevin period, and beyond, but for there having been a “tipping point” towards writing in the legally eventful decade 1166–76. Given the nature of sources from the Anglo-Norman and Angevin period, much must be constructed upon inference and probability, but the picture produced is a very plausible one.

Both Thomas McSweeney (“Between England and France: a cross-Channel legal culture in the late thirteenth century”) and Ada-Maria Kuskowski (“The development of written custom in England and in France: a comparative perspective”) look at thirteenth century cross-channel comparisons, and note similarities rather than the more familiar differences between legal writing in England, Normandy and France. McSweeney’s chapter emphasises similarities in treatise writing in England and Normandy even after John’s loss of Normandy – in fact suggesting that trends in treatise writing actually moved closer together after that point. His argument is founded upon comparisons between *Bracton* and contemporary *summa* style treatises in Normandy. He makes a distinction between England and Normandy on the one hand and Capetian France on the other, arguing for an important distinction between the Anglo-Norman *summae* and Capetian French *coutumiers*. A different view is seen in Kuskowski’s chapter, which looks at the development of written custom in England and France, arguing that there may be more in common between French *coutumiers* and English legal literature than has been acknowledged. She highlights the emphasis on royal participation in justice and the sources used in compilation of law texts as examples of such similarity. Whether we prefer to think of general Anglo-French links or a continuing Anglo-Norman “special relationship”, these chapters are a useful corrective to those who accentuate the exceptional in discussions of English legal history.

Scott Waugh (“Success and failure of the medieval constitution in 1341”) and W. Mark Ormrod (“Parliamentary scrutiny of royal ministers and courtiers in fourteenth-century England: the disgrace of Sir John atte Lee (1368)”) consider particular fourteenth century crises and incidents – the financial and legal tensions and acquisitive royal strategy in 1341 and the 1368 action against a resented individual, respectively – in the context of the contemporary and developing constitution. Waugh demonstrates that the 1341 crisis could be analysed as both a “success” and a “failure” in constitutional terms – since we see both unabashed royal profiteering and a response which utilises the constitutional tools available to those who were the victims of this activity. Ormrod sees the 1368 episode both in the context of the development of impeachment and also as part of a more general movement towards “state trials” of ministers at the behest of knights and burgesses who saw themselves as representing a wider constituency, and as qualified to act for the “common profit” of the realm in demanding the removal of officials.

Anthony Musson (“Centre and locality: perceptions of the assize justices in late medieval England”) examines a crucial but often hastily passed-over part of the medieval court system. The assize justices are viewed in their local and national context, but particular emphasis is placed on their regional connections rather than their centralising impact. This is a useful rebalancing of the way in which these figures should be considered, and quite likely gets us closer to the way in which they regarded themselves.

Christopher Guyol’s sophisticated analysis (“The altered perspectives of Thomas Walsingham’s *Symbol of Normandy*”) looks at the changes in a monkish chronicler’s work and its varying treatment of dissent, noting the

toning down of approval for action to reign in royal power which can be seen in his *Symbol of Normandy* (c. 1419: *Ypodigma Neustriae*) and the return to greater emphasis on limiting such power in the *Historia Anglicana* (c. 1422). Fear of heresy and economic interest both seem to have been relevant, and the author's "fearful self-censorship" should be borne in mind by those using this source as evidence of satisfaction with Henry V's rule. The idea of a common voice and theories of "voicing" and sound are the subjects of Andrew Galloway's piece ("The common voice in theory and practice in late fourteenth century England"). This chapter, with its emphasis on literary scholarship, is challenging for those from a mainstream legal-historical background, but repays the effort, raising as it does new ideas and questions about the role of different "voices", official and unofficial, in late-medieval English literature and political life.

In addition, the assumption that popular involvement in politics necessarily meant dissent and disorder and the assumption that a clear line was seen between ordinary and extraordinary political action are reconsidered by Anthony Pollard ("The people, politics and the constitution in the fifteenth century"), who argues for early roots of popular engagement in politics (even if this engagement was still confined to comparatively small numbers of individuals). And the fascinating idea of topographical understanding of British or English identity is explored by Lynn Staley, ("Landscape and the identity of the realm. topography and identity") which, ranging from Gildas to the beginnings of the enclosure movement, expands upon the medieval and early modern fear of a return to the wasteland, and its role in defining "the commonweal". Finally, G.W. Bernard summarises, from the perspective of a Tudor specialist, the papers heard at the conference, and several generations of scholarship of the early modern period. Both this chapter and the first chapter might usefully have been edited to omit unenlightening references to papers given at the conference but not actually included (nor summarised) in the volume, and one might conclude, in relation to this last contribution, that anecdotes about the author's acquaintances and his student days at Oxford were better suited to the oral context of a conference than they are to a written collection.

Such quibbles aside, there is a great deal to praise in this weighty book. There are, as advertised, several "new views" on medieval law and the medieval constitution, and the collection should find a place on the shelves (real or virtual) of all history libraries, and in the consideration of constitutional lawyers and legal historians. There is much here to stimulate debate and to provoke future research.

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The Nature of Legislative Intent. By RICHARD EKINS. [Oxford: Oxford University Press, 2012. 303 pp. Hardback. £34.99. ISBN: 978-0-19-964699-9.]

Elements of Legislation. By NEIL DUXBURY. [Cambridge: Cambridge University Press, 2013. 249 pp. Paperback. £29.99. ISBN: 978-1-107-60608-1.]

ON the happy occasion of the publication of Richard Ekins' book, *The Nature of Legislative Intent* (2012), the editors of the series in which the book appears