Book Review (reviewing Mary Elizabeth Basile, Jane Fair Bestor, Daniel R. Coquillette & Charles Donahue, Jr., eds. and transs., 'Lex mercatoria' and Legal Pluralism: A Late Thirteenth-Century Treatise and Its Afterlife (1998))

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Recommended Citation
Richard H. Helmholz, "Book Review (reviewing Mary Elizabeth Basile, Jane Fair Bestor, Daniel R. Coquillette & Charles Donahue, Jr., eds. and transs., 'Lex mercatoria' and Legal Pluralism: A Late Thirteenth-Century Treatise and Its Afterlife (1998))," 77

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reason to think that ordinary people had thoughts of their own about the meaning of peace
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counsels, their decrees and oaths, even the presence of relics of the saints are everywhere
fitted into prevailing methods of negotiating feuds and maintaining seigneurial authority.
“Real change” occurred in the ninth century, and would again in the twelfth, but nothing
Barthélemy shines a brilliant light on certain aspects of the Peace of God, revealing clearly
the ways in which it expressed or supported the goals of conservative churchmen hoping
to maintain or increase their hold on the vast lands entrusted to them. His focus does not
extend far enough, however, to convince me that the Peace had nothing to do with the
year 1000. Were all churchmen so conservative? Barthélemy paints a fine picture of monastic
reform in chapter 1 but never returns to the subject. Did the reform have nothing to
do with the millennium? And what about the expressions of heresy that appear in the
sources from that time? Barthélemy discusses the heretics of Orléans in chapter 2 but only
to say that they did not prefigure Berengar of Tours. Otherwise, heretical dissent, popular
or otherwise, plays no role in his story. He notes the massive influx of gifts to the church
around the year 1000, and the way the dispossessed fought back, but not how such things
might have expressed support of or resistance to prevailing religious ideas. He admits that
crowds of ordinary men and women were present at peace councils, accepting, for example,
Ademar of Chabannes’s account of a near riot by people suffering from ergotism that forced
a bishop to perform a ritual “clamor” against St. Martial (pp. 364–65). But he sees no
reason to think that ordinary people had thoughts of their own about the meaning of peace
councils. Focusing on politics alone is illuminating, but it can also obscure. This is evident
even in Thomas Head’s recent essay on the Peace in this journal (Speculum 74), in which
restricting the analysis to political and military events fails to account for the evidence
presented of the religious motivations of people like William IV of Aquitaine and his wife
Emma. Did feudal lords support monastic reform and seek monastic profession “ad suc-
crurrendum” for political reasons alone? Did monks offer them these things only to assure
control over their own seigneuries? Might not some, at least, have acted out of a desire to
prepare for the millennium of peace and justice, or the belief that it had arrived? Dominique
Barthélemy knows the answers to such questions, but I am not so sure.

FREDERICK S. PAXTON, Connecticut College

MARY ELIZABETH BASILE, JANE FAIR BESTOR, DANIEL R. COQUILLETTE, and CHARLES
DONAHUE, Jr., eds. and trans., “Lex mercatoria” and Legal Pluralism: A Late Thir-
PP. 213 and 118 (nos. 1–42 repeated) plus 4 black-and-white plates; tables and dia-
grams. Distributed by William S. Hein & Co., Inc., 1285 Main St., Buffalo, NY 14209-
1987.

This volume prints and translates a small manuscript, written toward the close of the
thirteenth century, called Lex mercatoria. It is found in the so-called Little Red Book of
Bristol, its home since the fourteenth century. Like an *ordo iudiciarius* in the *ius commune*,
the text takes its readers through the steps of litigation. Beginning with the plaintiff’s duty
to supply pledges to prosecute, it ends with examples of one court’s transferring its records
to another in order to establish *res judicata* and preclude further litigation. Along the way
it provides some incidental information, not confined to procedure, as, for example, the
rules concerning goods of merchants lost at sea (c. 8) or those about the liability of masters
for the acts of their apprentices (c. 7).

Unfortunately, little about this *Lex mercatoria* is straightforward, in part because it
seems to be a unique manuscript, in part because its text is obviously corrupt, in part
because it contains incomplete, confusing, and even contradictory information. The editors
think it was probably written in London (p. 116), although its present resting place, the
second largest population center in England and a home to merchants, cannot be ruled
out. Its author is unknown, although on the basis of the contents the editors believe he
must have “had training like that of the clerks and attorneys of the central royal courts”
(p. 206). The purpose for which the text was compiled is likewise uncertain. It purports to
state procedural rules to be applied in court, but the editors note that many things in it
“do not seem to fit with what we know about contemporary practice,” and they incline to
the view that some of them may actually have been “recommendations for legislation”
(p. 74).

Most significant and perplexing of the puzzles is the relationship between the law
described here and the English common law. On the one hand, the author states clearly that
the law merchant differs from the common law (c. 2); he speaks of a *curia mercatoria* as
if it were a distinct entity (c. 6); and he believes that certain people have the right to have
their claims tried by mercantile law (c. 9). On the other hand, the author also lists only
three concrete differences between them, one of which is simply an assertion that law
merchant is quicker (c. 2); he describes the common law as *mater legis mercatorie* (c. 9);
and he envisions merchants invoking their law in the ordinary courts of the realm (c. 5).
The modern reader is left in doubt about which side this treatise supports on the disputed
question of whether or not there ever was a distinct law merchant in England. Fortunately,
the editors of this volume have covered this topic at length in a learned introduction. Not
only that, they deal with the history of the larger controversy down to our own day (the
“Afterlife” of the title). They make connections with other treatises on the subject, such as
the much more complete treatise by Gerard Malynes (d. 1623). They relate the subject to
disputes to jurisdiction between common lawyers and civilians, and they bring to light its
constitutional dimensions. The editors conclude their introduction by noting ruefully that
“the expectations raised by the appearance of the treatise are undermined by its contents”
(p. 203). This reviewer agrees. But that criticism cannot justly be made of the introduction.
The technical treatment is exemplary; the description of the treatise is clear; the index is
full; and the wider discussion of the place of the law merchant in English law is illuminating.

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1153; 1 table. $175.

This is a magnificent achievement. Three generations of scholars have relied for knowledge
of William the Conqueror’s acts on the calendar done by H. W. C. Davis as the first volume
of the *Regesta regum Anglo-Normannorum* (Oxford, 1913), with addenda in the second
volume (ed. C. Johnson and H. A. Cronne, Oxford, 1956). In its day Davis’s work greatly
facilitated scholarship, but an updating of the effort is long overdue. The earlier *Regesta*