

P. Leupen, *Philip of Leyden, A Fourteenth-Century Jurist. A Study of his Life and Treatise 'De cura reipublicae et sorte principantis'* (Rechtshistorische studies, VII; Den Haag: Universitaire pers Leiden, Zwolle: W.E.J. Tjeenk Willink, 1981, xviii + 300 blz., supplement 104 blz., f 156,—, ISBN 90271 1678 4).

If industry, diligence and indefatigability were the sole criteria by which this book should be judged, the author would have merited very high praise indeed, and justifiably so. The work was originally a dissertation at the University of Amsterdam and has as its object the much neglected Dutch jurist of the mid-fourteenth century, Philip of Leyden (*ob.* 1382), an exact contemporary of the great Italian Postglossators who do not seem to have made much impact upon his jurisprudential scholarship and outlook in matters pertaining to government. Some years ago I myself drew attention to the need to analyse the work of Philip closely, as it approached jurisprudential and governmental problems from a somewhat unusual angle.

The book is divided into three parts. The first deals minutely with the personal particulars of Philip, his education, influences brought to bear upon him, studies, notably at Orleans, and their reflection in his later work, his career and other relevant details. Here the chapters on the personnel and the training of ruling personages give a welcome, even if somewhat discursive insight into the composition of the offices in the secular and ecclesiastical institutions, their duties and their responsibilities and functions, although the justification (77) why clerks who were priests should according to Philip belong to the council of the count will cause much eyebrow raising: 'They [i.e. the clerks] considered the subjects' welfare and their presence in the council was therefore justified. This reveals Philip's saturation in Roman law, for example in the civilists' definition of the *ius publicum*'. It really is difficult to make much sense of statements of this kind.

The second part concerns itself with the origin, early history, composition and the stages of production of the work which established Philip's place in historical jurisprudence, the *Cura reipublicae*. Of particular value here is the attempt — on the whole successfully executed, as far as the welter of detailed circumstances allows one to judge — to portray the impact which topicality and actuality of conditions had made upon the making of the *Cura* and how they were dealt with juristically by Philip. No manuscript of the work at any of its phases has survived. There is a great mass of purely local material, about the relevance of which an outsider not familiar with the scene cannot be expected to give a verdict. The author's competence in weaving the material into his treatise is worth mentioning, and there is a *prima facie* assumption that despite the sometimes rumbling character of the exposition, Mr Leupen has succeeded in bringing before the reader the contemporaneity and the closeness of the *Cura* to reality. He deserves special credit for showing how Philip accommodated the *Cura* to the *facta realia*. There is, nevertheless, little 'objective' history, but all the more a teleologically conceived employment of historical facts in the service of a what might well be called integrated jurisprudential thesis.

The third and final part of the book is the attempt to analyse and to assess the jurisprudential themes of the *Cura*. This part suffers from many deficiencies. In order to explain Philip's views and themes, the author all too frequently loses his way and fatigues the reader by meandering through a labyrinthine mass of all-too-well known material set forth by civilians and canonists. The relevance to Philip's themes is sometimes difficult to ascertain, and the lines of contact between the jurists of the classical period and Philip are often very tenuous. The focus is missing which is a defect aggravated by the jejune, immature and woolly treatment of the topics for which the author relies overwhelmingly

on secondary literature. Staleness prevails. His familiarity with the relevant recent literature leaves a very great deal to be desired. Also, as the notes show, the workmanship is gravely at fault.

Out of a great mass of subjects here dealt with, a few might be singled out. The adage *Rex in regno suo est imperator* is quite inadequately understood. He has not yet grasped – as has been shown – that its main attraction was the control of the clergy which the adoption of the Roman public law had for the prince: the ‘emperor’ in this adage was not a medieval emperor at all, but the *princeps* of late Roman antiquity. By adopting the Roman *ius publicum* the ruler was enabled to set aside the offensive proprietary church system (cf., e.g., 214) and was able to base himself upon a much more secure foundation, as indeed at the turn of the twelfth and thirteenth centuries Azo in his *Consilium* had pointed out. With not a little embarrassment one reads here that the *ius publicum* was binding upon the ruler, a view that can be advanced only when one has no idea of the tutorial function of the ruler and therefore of the consequential thesis of inalienability (cf. 192, 220 f.) which is applicable in the secular as well as ecclesiastical spheres. It really is pathetic to read here the passages concerning Frederick I (153 ff.). For the understanding of the prince as the *lex animata* the author could have derived great profit from the fundamental study by Steinwenter. The real significance of the Sicilian governmental set-up has escaped him (cf. Marinus de Caramanico, 156). About the regalian rights he has not understood that the fourteenth-century situation looked different from that in the twelfth century, especially in view of the development of territorial sovereignty, about which one finds here only confusion and lack of comprehension. The author ought to have realized that the creation of law is notionally different from its enforcement. The latter of necessity postulates territorial limitations.

It has not yet dawned upon the author that for the publicists, such as Marsilius, but also for Thomas Aquinas and John of Paris, the ‘State’ was still only a *Personenverband* (he might have greatly profited from the work by Pierre Michaud-Quentin on *Universitas*) and it was the jurists, notably Oldradus de Ponte (cf. 158) who by adding the Roman law inspired ‘extra territorium’ to the enforcement of law gave sharp contours to the ‘State’ henceforth resting upon the twin pillars of personal and territorial sovereignty. Of the significance of the organological thesis he is quite unaware (cf. 166), and quite especially of the *diffidatio* and of the feudal component of the ruler’s power altogether. If he had been more familiar with recent (and not so recent) literature, he would have realized what deep significance the idea of the sempiternity of public bodies, such as the Church, the kingdoms (cf. 221), had. The role of the law as the *anima* that breathes life into *corpus* (publicum) has not yet been perceived by this author. To say (178) that the Golden Bull was to reduce the influence of the papacy on the election of a Roman king, is particularly perturbing, because here he confuses election with the papal approval of the king for emperorship which is, as Innocent III long before had stressed, quite different from playing a part in the making of a king. No less perturbing it is to read that the emperor in the fourteenth century is still said to have a universal empire. Altogether his views on the medieval empire are undigested, ill-conceived and ill-informed. What I did find particularly grating is the alleged dichotomy between Church and State in the high Middle Ages. To him quite clearly the Church is equated with the *sacerdotium* and the State with the secular ruler (cf., e.g., 196). The concept of the State was as little known in the high Middle Ages as the steam engine or electricity. The deep significance of the Aristotelian impact has quite clearly bypassed the author. In many respects this book is an example of missed opportunities.

But certainly not in all respects. Despite the really serious defects which I suspect are partly due to an overzealous approach and attempt to trace Philip's juristic ancestry, there are redeeming features, and they concern the demonstration of Philip's attempts to accommodate juristic tenets to the actual contemporary situation. In this respect the book may well claim some advance, and the author deserves all the more credit for it, as he here attempts to integrate historical reality with Philip's juristic categories of thought. I am unfamiliar with the circumstantial evidence and context within which Philip worked, but it does seem to me that the author has made valiant attempts to clarify the application of jurisprudential tenets to the constitutional and legal scene in mid-fourteenth-century Holland. And for this he deserves the credit due to him, notably within the constitutional and administrative framework which, so it seems to me, he is the first to have ventured upon this involved and barren territory. But the reader would also have liked some discussion of the mature and important views held by the much lamented Wilhelm Berges (the author's strictures of him are incomprehensible, 173 n. 145), for to compare the latter's magisterial exposition of Philip's theses with the one here given, one would hardly think it is the same authority with which they deal. Both Berges and Feenstra are still indispensable for an understanding of Philip.

The book finishes without a conclusion. The bibliography is incomplete and unsatisfactory, as it omits dozens of works to which reference is made in the copious notes which are not indexed. Their bibliographical details are quite insufficient, and there are quotations of texts without any reference to their location (cf., for example, Marinus, 156; Alanus, 163 n. 70). Altogether, the workmanship is on a very low level and has a tinge of amateurishness. The bibliography has a number of entries under the heading 'Original Sources' which though testifying to the author's diligence and thoroughness in the perusal of archival and literary sources, might well have given more details about the latter, especially as the notes are not indexed (cf., for instance, Zenzelinus de Cassanis and Guilelmus de Monte Lauduno in BN Paris 16902, 154 n. 12, 160 n. 47, or Guilelmus de Cuneo's *Lectura* in Nat. Bibl. Vienna 2257, 157 n. 29, 168 n. 75). Admittedly these may be considered merely technical details but they are not without effect upon the over-all value of the book. Of the four appendices two specifically relate to Philip of Leyden – the one is his sermon on the occasion of the foundation of a new chapter at St. Pancras in Leyden (31 October 1366) and the other is a record of a benefaction. These documents seem to be carefully edited.

Walter Ullmann

J. van Roey, *Antwerpse poortersboeken 1533-1608* (3 dln.; Antwerpen: Stad Antwerpen-Stadsarchief, 1978, BF 1000,—).

Reeds in de negentiende eeuw verwierf het Antwerpse Stadsarchief een gunstige faam met zijn *Antwepesch Archievenblad*, 1e reeks, dat een groot aantal bronnen, gemeten naar de maatstaven des tijds, op voortreffelijke wijze heeft uitgegeven. De tweede reeks van dit tijdschrift werd in de crisis van de jaren dertig van onze eeuw gestaakt en sedert de tweede wereldoorlog kwam het niet meer tot publikatie van bronnen en inventarissen op brede schaal. Wel zette de archiefstaf het inventarisatiewerk intensief verder maar de inventarissen werden behoudens één uitzondering¹ niet meer gedrukt en slechts in het huis ter be-

1. D. Reyniers-Defourny, *De bevolking van Antwerpen in de Franse tijd. Bevolkingstelling van het jaar IV (1796)* (Antwerpen, 1980).