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1974

Review of Crime and Public Order in England in the Later Middle Ages

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Recommended Citation

Green, Thomas A. Review of Crime and Public Order in England in the Later Middle Ages, by J. Bellamy. *Am. J. Legal Hist.* 18 (1974): 350-5.

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in rehabilitation, drove environmentalist reformers into a contradiction: probation, the alternative to discredited incarceration, returned delinquents to the very environment which had allegedly produced their delinquency, arming them only with the protection of a "friendly" relationship with a volunteer probation officer whose main qualification was that he was a person of good moral character. Hopes for greater success from the juvenile court and probation proved vain. Yet the juvenile court and the discredited penal institutions are still with us, because we are unable to invent or unwilling to pay the price (which may not be only tax dollars) for new strategies for dealing with what has come to seem an ever more intransigent problem.

Mennel's treatment of juvenile delinquency draws together a large body of interesting material and touches on most of the issues which that material generates. In one notable exception, he makes his main legal theme the issue of parents' rights, with barely a mention of the suspension of defendants' rights in juvenile court which has aroused increasing criticism throughout the twentieth century. One wishes, however, that on more of these issues he had done more than touch—that he had come down on his material with more intellectual force and energy.

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John Bellamy, *Crime and Public Order in England in the Later Middle Ages*. Toronto, Canada. University of Toronto Press, 1973. vii, 229 pp. \$10.00.

Slowly but surely the history of English criminal law is being rewritten. Abundant monographs, articles and introductions to texts have appeared in the past couple of decades; many more are on the way. Work has gone ahead on the substantive law of crimes, on the procedures of the criminal law and its institutions and—more tentatively—on the social history of English criminal law. While medievalists have led the way, work is now being undertaken by early modern and modern historians as well.

It is still too early for a true successor to Luke Owen Pike's two volume *A History of Crime in England* (London, 1873-6). But it is not too early for a single volume summing up, at least for the medieval period, the very substantial progress that has been made since Pike, and setting forth suggestions as to where future effort ought to be placed. John Bellamy, who has contributed much to the recent writing on medieval criminal law, has undertaken such a

summary volume in *Crime and Public Order in England in the Later Middle Ages*. The effort is a brave one, but in the end it does not succeed. Bellamy's generalizations too often concern only one element of medieval society and they appear rarely to be based upon a systematic review and analysis of the extant sources now in print.* The reader comes away with a very confused view of the work in progress and with little sense as to what it is in fact possible to know about the social history of medieval crime.

Bellamy begins with an attempt to assess the amount of crime and disorder in late medieval England. At the end of a rambling and not very informative discussion he concludes that "[t]he history of crime in late medieval England is therefore a tale of fluctuation" (p. 9). Bellamy berates historians for failing to perceive that there were indeed some periods of relative order. Historians, for their part, will not be inspired by Bellamy's use of evidence for either order or disorder. We learn, for instance, that Henry Knighton, the chronicler, described "a wave of theft" in 1364, but that the rest of the reign is "devoid of comparable evidence," which "suggests that relatively good order prevailed," although, as Bellamy admits, "the first cause given for summoning of the Good Parliament in 1376 was to legislate for the good keeping of the peace" (p. 9). One reference by a chronicler, the preamble to a parliamentary summons, and an intervening lack of evidence do not, taken as a whole, give a very clear picture of the degree of public order over a 12 year period. What is more, this kind of evidence is employed for depicting the "fluctuation" of crime over a century and a half.

On the difficult matter of the reasons for disorder, Bellamy seems to favor the "absence of the king" thesis, but he deals with it far too rapidly and unsystematically. Most of the evidence would tend to show, if anything, that when the king went away the nobility misbehaved, and that upon return the king had to put the great houses in order. But Bellamy fails to show, or even to argue, that the absence of the king affected the great mass of crime at lower levels of society. One has the feeling that Bellamy is making fairly heavy use of the material he collected for his book on treason and his articles on criminal gangs; that he has not broken out of his studies (on the whole, useful ones) of the higher levels of society and of professional and "organized" crime.

Bellamy also tells us in his opening analysis that "medieval man had little curiosity about causation of crime" (p. 31); not until passage of the statute of 1390 "did the idea of secret homicide arouse sufficient concern as to be given special treatment by the

* Bellamy does provide an excellent Select Bibliography at p. 205 *et seq.*

law" (p. 31). This hardly shows that society lacked concern with motivation. Bellamy's underlying premise that legislative change accurately reflected social views is, to say the least, not very well tested. Bellamy argues that the statute distinguished "pardonable homicide from nonpardonable homicide," but he does not, at this juncture, mention that pardonable homicide had been the subject of "legislation"—in the sense of writs and pardons—for over a century and a half by the time the statute of 1390 was passed. Certainly in this area abundant attention had been paid to the problem of motivation.

Finally, at the end of the first chapter, Bellamy presents us with some statistical evidence as to types of crimes. He draws his figures from editions of J.P. rolls. Here at last is some concrete evidence. Unfortunately it is presented without much criticism; we learn nothing about the way such figures ought to be used. Which crimes were likely to be reported and which were not? Might failure to report crimes in some circumstances indicate a societal failure to perceive the acts as criminal? Did social catastrophes of various sorts in the 14th century condition the amount of reporting?

On the subject of "Misdeeds and Misdoers" Bellamy once again proceeds on the announced principle that "it is best to inspect not the vast number of assaults and larcenies, but the limited number of more renowned misdeeds about which more than the usual amount of detail happily remains" (p. 38). The result is a rather unsystematic chapter, made up of exciting stories from the leading chroniclers. While each story provides its share of local color, it is hard to draw from the collection any clear conclusion about the nature of misdeeds and misdoers. The potentially useful information is scattered about and hard to get at. Some significant propositions are asserted totally without supporting evidence. For instance, we learn (p. 42) that "unlike most other offenders, only a minority of 'notorious' criminals were acquitted by trial juries." Now I believe that it is true that notorious criminals were far more likely to be convicted than were other offenders. One might expect Bellamy to undertake to prove that this was so; it is not an immediately obvious point. After all, the notorious criminal was more likely to have associates who might return to harass the jurors. But what justifies the further assertion that most notorious criminals were convicted? Only a painstaking analysis of the trial rolls can demonstrate this point, and it does not appear that Bellamy is prepared to make such a showing. He has intentionally set aside the great mass of cases to concentrate on the ones including greatest detail. These are indeed cases involving notorious criminals, but only those cases which attained great

notoriety. What one can derive about criminal law in general from this miniscule body of evidence is very hard to say, but certainly no generalization can be produced as to the usual fate of the notorious criminal at trial.

In his chapter on accusation and trial Bellamy does attempt to come to terms with the average case. His outline of procedure is fairly traditional and straight-forward, but his treatment of the trial itself is inadequate. Most of it depends upon the important 13th century "precedent book," *Placita Corone*; while this tract may tell us a fair amount about specific kinds of pleading and about typical reactions of the bench to the pleadings, it does not tell us very much about the entire trial context. There is no clear evidence that "a judge would often turn to a confrontation between the party injured and the accused" (p. 147). As for an argument in the course of the trial between the suspect and the "man he had allegedly robbed or injured," it sounds very much as if Bellamy is drawing upon Sir Thomas Smith's description of a criminal trial in the latter half of the 16th century. The criminal trial must have changed dramatically between the mid-13th and the mid-16th centuries. By the 16th century, the trial jury had ceased to be an evidence gathering body. By that time the JP was playing the leading role in gathering evidence, taking informations and lining up witnesses for appearance at trial. Bellamy almost completely ignores this evolution of the method of prosecution of felons in the course of the 14th and 15th centuries. Yet it is difficult to imagine that the series of changes involved were somehow unrelated to the subject of crime and public order.

Bellamy's discussion of the effectiveness of the criminal process is similarly inadequate. He tells us that most suspects never came to trial, that most defendants at trial were acquitted, and that some of those convicted were convicted out of the prejudice of the jurors. These points are, of course, true and worth making. But suppose it were also true that a substantial number of those who were indicted but thereafter never brought to trial, or who were brought to trial and then acquitted, were so frightened by the possibility of facing a hostile jury and being hanged that they were in a sense rehabilitated, or that it was a long time before they committed another anti-social act? Might we not be willing to say that the relatively sophisticated machinery set in motion after each felony was reported was in a sense "effective"? Significantly, Bellamy makes no attempt to assess the problem of recidivism. At the least, it ought to be pointed out that scholars have thus far been unable to get at this problem, which lies at the very heart of the question of the effectiveness of the medieval criminal process.

Toward the end of his discussion, Bellamy sets forth some "general impressions" (p. 160). His impression that those most likely to be convicted were the more serious or obvious offenders is probably justified. His remarks about the vulnerability of strangers in the place of commission of the crime are well taken. But these points are easier to assert than to prove. Moreover, it is very unclear what the relationship is between these impressions and Bellamy's general thesis. Did men of generally good repute indulge in theft on the assumption that it was unlikely a jury would choose to hang them? Did indictment and outlawry work to develop an ever larger class of outcasts or "strangers," who soon became common thieves having to live off of the profits of their crime? That is, did the system produce over time more and more serious offenders? Bellamy cannot answer these questions, nor ought one expect him to do so. But the value of such an admittedly derivative study depends upon the orderly posing of questions raised by analysis of the evidence others have brought forward and upon some assessment of the kinds of questions on which extant sources are likely to shed light. The presentation is neither systematic nor sustained. Bellamy's speculation raises questions he appears not to have considered and contributes more often to confusion than clarity.

Bellamy's final chapter reasserts his interesting, albeit unproved and untested, view that English criminal law "was not the king's law, but the 'common,' law evolved by the whole community. It was difficult for the king to alter established common law ideas and hypotheses because he must always carry the community with him" (p. 202). This is certainly a point worth making. Bellamy sees the system of criminal justice as reflecting the tension between royal tyranny and community freedom from royal control. In this light, the frequency of acquittals may be given a political meaning and perhaps even justified. The royal use of pardons and fines, states Bellamy, "represent[s] resort to new means of punishment in the face of community defiance with respect to an overly harsh system" (p. 204). On the other hand the king also experimented with new forms of enhancing prosecution: the use of informers. In the end, one does come away with some sense of the crisis of law and order in late medieval England, the pressures brought to bear on royal attempts to create order and the effect of these attempts on the working of the original institutions. But one also comes away with the distinct sense that these heady conclusory observations have not been supported by a firm basis in fact. Bellamy's conclusion serves, more than anything else, to remind the reader how little he has learned from the preceding chapters about English crime and criminal law. More important, the presentation obscures the fact that much careful work has been, and is

being, undertaken in this area. The subject deserves, and still awaits, a lucid progress report.

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Arthur J. Slavin, Editor, *Tudor Men and Institutions: Studies in English Law and Government*. Baton Rouge, Louisiana. Louisiana State University Press, 1972. viii, 294 pp. \$11.95.

There are several themes in evidence in this collection of ten original essays dedicated to Walter Richardson, most of which touch in some direct way upon Richardson's own concerns:—administrative and legal history, legal education, the "aggrandizement of power", and Richardson's appropriately quoted admonition to regard "institutional history, however accurate in detail, . . . [as] meaningless when separated from the dominant personalities of the period who gave it life and color." Only one contribution, that of J.R. Lander, is conspicuously out of phase with the rest of the book. Lander's pre-Tudor interest is in Edward IV's French campaign of 1475 and in diminishing the opinion held of Edward as a great commander. Edward's specific and critical failure, as seen by Lander, was the inability to generate enthusiasm for the campaign either among those who were asked to fight or those who were obliged to pay.

All of the first four essays (Lander's is the fourth) focus upon personalities and attempt to alter a traditional historical judgment. Stanford Lehmborg would like to replace the greedy and servile image of Sir Thomas Audley with a more compassionate portrait of efficiency and ambition. Following in the recent train of scholarly effort to rehabilitate other Tudor notables, Lehmborg would transform Audley into something more than a grasping sycophant, and would argue that Audley was also a "man of uncommon ability, willing to work uncommonly hard."

Mortimer Levine, in a much more speculative piece, re-opens the investigation into the destruction of Edward, Duke of Buckingham. After examining the slim surviving evidence, historical and legal, Levine concludes that the charge of treason against Buckingham was probably baseless, and that Buckingham's threat to the crown was much more imagined than real. Levine thinks it probable that the king, in 1521, was acting preemptively, although mistakenly, in defense of the Tudor dynasty, and that Henry specifically feared a premature death which would have left his infant female heir susceptible of being deposed by his richest and most "regal" subject.