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Review of Kingship, Law and Society: Criminal Justice in the Reign of Henry V

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EDWARD POWELL, *Kingship, Law, and Society: Criminal Justice in the Reign of Henry V.* New York and Oxford: Clarendon Press, Oxford University Press, 1989. Pp. xi, 319. $65.

Edward Powell's splendid study of Henry V's strategy for keeping peace among magnate and gentry factions represents an important contribution to the history of criminal justice. After providing a panoramic view of the machinery of criminal justice, Powell analyzes the extent to which that machinery was effective as between the Crown, at the center, and the upper echelons of society in the provinces. His conclusion, not surprisingly, is that the regular processes of common-law criminal administration could not easily be deployed at those levels. But Powell does not let the matter drop there. *Kingship, Law, and Society* presents a lucid and persuasive demonstration that some elements of that process were combined with a program of quasi-coerced arbitrations between warring camps. Henry employed the superior eyre to make systematic inquiries regarding serious offenses, and the information thus gathered provided the basis for closely targeted and well-prepared campaigns to achieve settlements that ended or, more typically, substantially reduced strife. Moreover, Powell details many other ad hoc means by which the

Crown achieved order, including the cooptation of powerful individuals, who found preferment at the center preferable to treasonous or merely disruptive behavior. The politics of late-medieval English criminal-justice administration have seldom been better researched and described.

Powell intends his study of kingship as a contribution to the history of law and justice, and not merely to the history of politics where law and justice have failed. The arbitrations that the Crown achieved were, indeed, a part of the law. They represented an artful example of Henry's keeping the peace, which was, of course, one of the chief duties of the Crown. In the opening chapter Powell briefly sets forth the "Concepts of Law, Justice, and Kingship" that virtually all Englishmen took for granted and thus prepares the ground for his book-length argument that Henry's flexible use (and sometimes creative adaptation) of criminal-justice administration was understood by contemporaries as fulfilling the king's coronation oath.

Powell turns in the second section to the system of criminal law in its more conventionally understood sense, providing careful and extremely readable synopses of royal jurisdiction, institutions, and procedures. These chapters are well crafted, based on the most up-to-date studies, and contain many thoughtful comments on what more needs to be done. Powell emphasizes the degree to which the system of royal justice, which grew gradually but steadily more comprehensive and commanding between 1150 and 1400, continued to depend on the private initiative of victims (or their close kin) and to feature arbitration (formal or otherwise) at various points.

In the last (and longest) section of the book, Powell studies Henry's efforts at enforcement of the law. He begins with an impressive discussion of the campaign against the Lollards, employing the extant legal records to great effect; we learn in relatively few pages a great deal that is new about who the Lollards were, what their aims were (and what were the aims of those who allied with them but had other, more "secular" interests at heart), and how the Crown dealt with them. There follows the detailed, but engrossing, material that forms the heart of the study, the discussion of Henry's various and varying uses of the law in dealing with elite malefactors in Wales, Devon, and parts of the Midlands. Powell is sensitive to the limits of the Crown's capacity to enforce the law, but he sees in what others might take to be signs of weakness a substantial degree of royal authority, an authority exercised by one of the most skillful and successful medieval monarchs. Moreover, Powell views the complicated tactics that informed royal maneuvering and manipulation of powerful adversaries as a critical part of the doing of justice. This was, ultimately, God's work, as God's vicar on earth was bound to perform it. Contemporaries (we are to infer) understood the spirit in which the Crown undertook these duties; their implicit sharing with the Crown of an understanding regarding kingship, law, and justice presumably led them to see more than their own interests as reasons for acceding—where they did so—to the king's program for peace and order.

It must be said that Powell has brought forth from legal records a great deal of new material on the political and social relations of the magnates and gentry of the early fifteenth century. He has enlarged significantly upon K. B. McFarlane's pioneering studies of these groups, especially in bringing into focus their relations with the Crown. He shows us how enmeshed they were in many aspects of the very royal government they were often inclined to resist. An ideology that Powell sees as having a "constitutional" perspective informed the behavior of these classes; their cooperation, as well as their resistance, must be understood at least in part as an aspect of their views regarding the proper role and limits of central government. In this sense Powell has succeeded in contributing importantly to what he terms "a new constitutional history of late medieval England."

Moreover, Powell has shed important light on a major aspect of criminal-justice ad-

ministration. His intelligent reconstruction of Henry V's use of legal machinery well illustrates the limits of those resources and reveals much about the attitudes of magnates and gentry toward it. Gentry (and yeoman) jurors systematically acquitted their social equals or betters, when, indeed, those indicted could be taken and held for trial. The indictment process was used as a political tool in the incessant game of local politics; the growth of central government generated, ironically, many of the means by which powerful individuals carried on their petty warfare. And Powell's work on elite classes' submission to arbitration, both here and in an earlier article, is pathbreaking. Of course, the very classes whose organized criminal activity and resistance to authority helped to produce royal pardons and only modest forms of enforcement complained about this weakness. As magnates and gentry were drawn toward the center, and into official positions of authority on behalf of the Crown, the tension between the two sides of their lives became all the greater and all the more obvious. The complex relationship between their new "constitutionalism"—expressed not only in official activities but also in writings of various kinds—and their ongoing participation in lawlessness is an important subject to which Powell pays scant attention (but that others are now looking into).

Powell's enterprising study of the enforcement of criminal justice at elite levels also raises some new questions—or gives further point to some old ones—regarding the enforcement of the criminal law against the great bulk of medieval society. Powell has little to say about enforcement in this latter context. We learn little about the fate of the typical defendant in trials for felony or criminal trespass—little, that is, about conviction-acquittal rates, jury attitudes, judge-jury relations—either in Henry V's reign or in earlier or later periods. Powell does not pose many questions regarding the relationship between "enforcement" against the elites and more routine deployment of the machinery of criminal justice. This limits the range of his fine study and represents a missed opportunity to connect his work to that of other students of criminal justice. One wonders, for example, how the failure of the normal machinery of justice in enforcement against political and social elites colored the views of the bench or jurors in everyday cases. Did it make the high acquittal rates in common-run homicide or theft more acceptable? Did it discourage victims of crime from appearing at jail deliveries to provide the element of testimony that Powell believes crucial to successful prosecution even of members of the lower orders? Although acquittal rates were high even for relatively lowly defendants, a great many such persons were in fact convicted and hanged. How then did Henry's recourse to alternative "sanctions" for the gentry and their retainers among the yeomanry (including pardons and promises to keep the peace) affect the understandings of the greater part of the population regarding "law, justice, and kingship"? These and similar questions now require attention. Students of medieval criminal justice have pondered them before, but *Kingship, Law, and Society*—though it does not raise these matters explicitly—gives them clearer focus and special urgency.

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