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Review of Society and Homicide in Thirteenth-Century England

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JAMES BUCHANAN GIVEN, *Society and Homicide in Thirteenth-Century England*. Stanford, California: Stanford University Press, 1977. Pp. ix, 262. \$12.50.

JAMES GIVEN has produced the first systematic book-length treatment of the sociology of medieval English crime. His work does not pretend to be comprehensive: it deals only with homicide. Nor does it cover more than a century, the thirteenth; the author has wisely left the earlier system of criminal law, based on private compensation, to other scholars, and he says just enough about late thirteenth- and early fourteenth-century social and legal change to suggest he believes that that period, too, must await its own interpretation. Still, the social history of homicide in the thirteenth century proves itself fascinating terrain, and we shall better understand what came before and after in the light of Given's account.

Given's study is both quantitative and impressionistic. The statistics — sometimes startling, though they are not always certain to hold up if all variables could be measured — are presented in clearly arranged tables. The accompanying discussion combines somewhat cold repetition of numbers with suggestive elaboration and analysis. The latter are generally useful, at least by way of raising significant issues. Given's book is meant to be a first look at the problem of who slew whom and in what circumstances, not a definitive essay on the implications of those social and legal data. Of course, as in any first look there are imprecise outlines and some significant distortions of detail.

Given's study is based upon a quantitative analysis of twenty eyre rolls, representing the counties of Bedford, Kent, Norfolk, Oxford, and Warwick, and the cities of London and Bristol. Alongside the more obvious rural-urban comparison, Given presents a comparative study of, on the one hand, those rural societies evidencing

strong lordship, much villeinage, and impartible inheritance, and, on the other, those possessing weak lordship, much personal freedom, and partible inheritance.

The portrait Given sketches, replete with his frequent, honest, and very well taken qualifications, is about what one might expect. First, relative to its frequency in most societies we know anything about, homicide in thirteenth-century England was common. Most homicides involved attacks perpetrated by two or more people. Very frequently coslayers were related by blood or marriage; much of the killing was within the family. The poor slew more; the rich could afford to have lesser social types carry out their homicidal orders. Interclass homicide, Given concludes, seems not to have been so common as some scholars have assumed. Nevertheless, much homicide was the work of gangs, of “entrepreneurs of violence.” These groups focused their attacks on villages along highways just outside of major towns. Thus, while urban and commercial life spawned a criminal class and criminal activity, the chief victims of that activity were most frequently those who lived in rural, or semirural, areas.

Homicide was a predominantly male phenomenon; women infrequently slew or were slain. However, as suspects they experienced a relatively high rate of conviction. In urban areas, women’s involvement in slayings was somewhat more common. Women slew in the company of a relative far more frequently than did men; they less frequently acted on their own, and a substantially higher percentage of their victims came from their own village than was the case with victims of male slayers. In the countryside, neighborhood homicide was more common in areas with weak overlordship and partible inheritance: families were larger — younger siblings did not leave the village — and homicide was, after all, often perpetrated by two or more related persons in conflict with an unrelated person or among family members themselves, principally male siblings.

Finally, most suspects were acquitted, either because they had been falsely accused or because society was unwilling to condemn most slayers to death, the only sanction for felonious homicide. Either because or in spite of the fact that the means of control of violence were weak (and growing weaker), violence was, in some way, “regarded as an acceptable and often necessary facet of life.”

Given is not a legal historian, and *Society and Homicide* falls short of providing a rigorous analysis of the law of homicide. This makes some difference because it is not always clear just what it is that Given has quantified. We are told that all felonious homicide was capital, but that excusable or justifiable homicide was not felonious. Given sheds no light on what thirteenth-century jurists thought were the most important characteristics of felonious homicide. No attempt is made to define non-felonious homicide: there is nothing on the circumstances in which a sheriff or other royal official — or, for that matter, a member of the *posse comitatus* — might slay justifiably; and there is little on the definitions of excusable accidental homicide or excusable homicide in self-defense. One wonders whether much of the “accepted” violence was in fact slaying in circumstances very close to those required by the legal definition of self-defense. If so, its social acceptability must not be taken as evidence of a casual attitude regarding physical aggression. There might instead be reason to conclude that society took a lenient view of *retaliation against* physical aggression. This is a very different point, one that I believe is valid, but one that requires careful examination of the law of excusable (i.e., pardonable) homicide.

The social history of medieval English criminal law requires a far more extensive examination of criminal procedure than Given has undertaken. Much of Given’s

social analysis remains untested because he has not placed sufficient emphasis on how the system of criminal law worked, or did not work. At every point the English criminal law depended upon social cooperation and participation. The social history of the law of homicide is the history of frankpledge and surety, of hue and cry and coroners' inquests, of appeals and presentments, of special commissions and eyres, of juries, and of the mechanisms of outlawry. None of this complicated machinery could operate without the cooperation of the lay community. Moreover, the very existence of these institutions and procedures must have shaped social attitudes.

Just whom has Given quantified? Given has chosen what may well be a representative group of eyre rolls, but eyre rolls are not necessarily representative of all the available trial records. As Given admits, he has not included special commissions in his analysis, and most of those pardoned for excusable homicide in the thirteenth century were tried by special commission, received a pardon, and then failed to appear at the next eyre (as their pardon in fact required them to do). From the eyre rolls Given has taken those "accused," and this is not without risks. First, the problem of malicious prosecution is not systematically addressed. To the extent that malicious prosecution occurred, it is likely most often to have involved false accusations of neighbor against neighbor. Can one be certain, then, that the figures for slayings by a person (or persons) from the victim's village are accurate? Moreover, taking the "accused" by definition excludes cases where the slayer was unknown. Many of these unknown slayers are likely to have been strangers to the community; thus it is possible that a substantial amount of intervillage slaying is left out.

Given's analysis of verdicts is based not upon those accused but upon those tried. That is a necessary approach, but far too little is said about those accused who did not appear for trial. Many of them may have resided in a distant village, and Given's statistics for convictions of neighbors and nonneighbors must be read with this problem in mind. Since the rolls indicate that many who were tried at the eyre had given themselves up and had not been taken by force, we might suppose that persons who were not guilty, or who were guilty but knew they could count on community leniency, were greatly overrepresented. Given might usefully have included a painstaking discussion of methodology, alerting the reader to the many probable statistical distortions in his study — especially so because he tells the reader so little about the impact of procedure (e.g., how people were attached and, hence, who was likely to have been attached, to appear at the eyre). The uninitiated will not always be able to work back from Given's discussion of procedure to the statistical tables and thus to make all the necessary allowances for nonrandomness in the universe of cases quantified.

Given's focus on homicide is welcome, but his exclusion of serious physical injuries may have resulted in important distortions. Can homicidal attacks be measured solely on the basis of those that succeeded? Ought we to draw conclusions concerning the acceptability of violence from the refusal of juries to send slayers to the gallows — hardly an appropriate test — without assessing juries' treatment of defendants sued for damages for trespass against the person?

In the later chapters of his study, Given turns to a series of significant problems in social history. Perhaps most convincing is his argument that homicidal attacks were less common in the large towns of medieval England than in the surrounding countryside. He argues that this was due to the fragmentation of the family in urban areas: the family that stays together slays together, and vice versa. In the same way, Given tells us, rural areas practicing partible inheritance were more violent than

those in which the eldest son inherited all the land and from which younger siblings drifted off to find a living elsewhere. Unfortunately, we are not given conviction and acquittal rates for the different rural areas. Was there more or less "acceptance" of violence where violence was more common? These themes are extremely important. Given has not written the last word on them — indeed, his rural and urban studies are no more than quick glances at the outlines of very complex problems. But these chapters are suggestive and do point the way to a new route into the mysterious world of medieval English social organization and social attitudes.

Given has not made a significant contribution to the problem of gang violence. This should come as no surprise, for he must necessarily miss a great deal as he looks outward from the realm of homicide. From Given's vantage point, only some forms of theft can accurately be measured, i.e., those forms of theft always complicated by homicide. Of highway robbery and grain and animal thefts, of arson and rape, Given can say virtually nothing. He can tell us (roughly) what percentage of homicides were (allegedly) perpetrated by large groups of persons (is this the same as "gangs"?), but little more. Moreover, the records Given employs have little to say about gang structure, the relation of gangs to local magnates, etc. There is much more to be done before we can speak with any assurance about interclass crime. To some extent Given further obscures the subject of gang crimes by introducing the word "entrepreneur." Nowhere is the word defined: were the "entrepreneurs of violence" those who robbed and slew in gangs, those who perpetrated crimes for a living, those who stole and supplied the stolen goods to those whom we would call "fences"?

Toward the end of his study, Given observes that by the close of his period social mobility was rapidly increasing, that local social organization and "controls" were on the decline. The statistics he has presented, however, do not give us a clear view of changing patterns of homicide in a society in transition. Given is at his best when he is presenting a picture of more or less static communities. The tools he has employed are least effective in dealing with just those elements that characterized late thirteenth-century social change. There is now a need for a larger study, a social history of crime and violence firmly based upon an understanding of criminal procedure in the late thirteenth and fourteenth centuries, the period following the decline of the eyres from which Given has taken his statistics. The social history of crime and the criminal law can indeed be written. Given's stimulating introductory work suggests that such a task is very worthwhile and that it is neither easy nor impossible.

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