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Review of The King's Pardon for Homicide to A.D. 1307

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Recommended Citation

Green, Thomas A. Review of The King's Pardon for Homicide to A.D. 1307, by N. D. Hurnard. *Speculum* 47, no. 4 (1972): 774-6.

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NAOMI D. HURNARD, *The King's Pardon for Homicide before A.D. 1307*. Oxford, England: Clarendon Press; New York: Oxford University Press, 1969. Pp. xiv, 394. \$10.50.

NAOMI D. Hurnard's *The King's Pardon for Homicide before AD 1307* is significant and instructive for both legal and social historians. The author has painstakingly pieced together the available evidence from a variety of classes of mediaeval English public records to achieve a clear statement of the law of excusable homicide, i.e., non-felonious but requiring a royal pardon. She has lucidly presented the procedure which marks out the legal life story of persons deserving pardon, from the pardonable slaying to the formal proclamation of the king's peace. But

she has also accomplished much more. Through careful and generally sound use of her limited body of evidence, Miss Hurnard has described societal attitudes toward the law from the differing perspectives of the non-felonious slayer, the kin of the slain and the King. Her study of pardonable homicide proves a useful vehicle for at least a preliminary assessment of mediaeval Englishmen's knowledge of and trust in law and legal procedure. It also sheds light on their thirst for vengeance and capacity for compassion and on the royal government's concern for achieving a semblance of law and order.

It is Miss Hurnard's view that, until 1294, when the king first began to grant pardons indiscriminately to felonious slayers as well as to victims of circumstance in order to raise troops for his wars, the system of pardoning those who slew accidentally, in self defense or through mental defect or mental deficiency was on the whole both rational and efficacious. Of course, some who received pardons should not have done so; some deserving them were hanged; a few so misunderstood or mistrusted the law that they actually abjured the realm for an excusable homicide or for one which they had not committed but believed they were suspected of committing (*meticulosi*). By and large, however, juries rendered fair verdicts and the legal machinery worked reasonably rapidly to provide bail or pardon for the deserving. While the law set too narrow limits to some areas of pardonable homicide — self-defence, notably — juries gave slayers the benefit of the doubt in close cases. Henry III's piety led him to grant pardons rather too freely; but Edward I, until the 1290's, achieved a reasonable balance between the sometimes opposed objectives of deterrence and royal mercy. The last decade or so of Edward's reign was the beginning of the end. Miss Hurnard notes that the outpouring of pardons to nondeserving slayers may have been detrimental to law and order in the fourteenth century. Attempts to restrain the monarch in this policy failed despite a great public outcry. Miss Hurnard suggests that the treatment of the nondeserving may, after 1307, have altered the situation of the truly pardonable slayer. She can give no assurance that the relatively rational ordering of justice which she describes outlived the thirteenth century.

Miss Hurnard's study is based upon her definitive research in the judicial and financial roles of the twelfth and thirteenth centuries. It may be doubted that a single extant case of pardonable homicide escaped her attention. Her chapter (III) dealing with excuses for which pardons were granted and setting forth the border areas where liability was unclear and, therefore, accorded inconsistent judicial treatment is admirably clear. Miss Hurnard shows how the elements of the typical statement of self-defence emerged from the questions which judges put to jurors. The defendant was said to have acted as a last resort, when all hope of escape had been cut off — usually by a physical impasse. Jurors had to make these points very carefully. The king screened the verdicts with care and refused to grant pardons where the circumstances, as recorded, were particularly suspicious.

Accidental homicide was treated very casually. Pardons were granted regardless of the defendant's negligence, so long as he had acted without malice. Assess-

ment of malice reveals interesting societal attitudes; a defendant who struck a 'friend' could not have 'intended' to do so; inebriation might excuse the defendant, in the jury's view. The king, of course, might take a sterner view of such cases. Miss Hurnard argues that negligence was a factor in the thirteenth century. Certain classes of homicide where negligence was unlikely resulted in acquittal: "those for which the uncontrollable movements of beasts or natural forces could be blamed." The "largest group in which negligence was ruled out almost automatically consisted of riding, driving and ploughing accidents." As Miss Hurnard states, "[t]his was a very rough and ready way of discriminating between accidental slayers who needed pardon and those who did not."

The great majority of special verdicts were for self-defence and, as indicated, they tended to follow a pattern of formulistic responses. While Miss Hurnard suggests these verdicts often represented exaggerations of the truth, she argues that the degree of fact alteration was slight and occurred mainly in close cases. There was, in her view, no systematic invention of facts in order to secure pardons for those who did not deserve them under the law. This is a most important point, one on which I believe she is probably wrong (see my article in this issue, pp. 669-694 above). In my view, there was from the very inception of the system Miss Hurnard describes a widespread societal attitude toward liability for homicide, which did not accord with the rules of the law: while these rules did not recognize a distinction between homicide through stealth and "sudden," but deliberate, homicide (which did not amount to self-defence), society generally condemned the former and excused the latter by acquitting the defendant or by alleging a case of self-defence.

If so, it may be necessary to reconsider the system of pardoning. We could not, for instance, safely conclude that the flight of men who were subsequently pardoned resulted from ignorance of the law rather than from wise caution. We might alter our perception of attempts by the victims' kin to appeal 'pardonables': where there had not in fact been pardonable circumstances, the kin must have been greatly frustrated by the practical impossibility of exercising their reserved 'right' to appeal those pardoned of the king's suit. Finally, what was the precise nature of the change in the king's policy in 1294 when he began to grant pardons, for military service, to the 'nondeserving'? Did he conceive of his policy as an innovation or merely as an extension of one which trial juries had long sanctioned on their own?

The argument which I have suggested differs substantially from Miss Hurnard's thesis but it does not destroy the value of her research. Her book stands, in many respects, as an important pioneering excursion into largely unexplored regions of English mediaeval social and legal history. If my view is correct, and if Miss Hurnard has mistaken the exact dimensions of the forest, to read her book is to live for a time among the trees, to see at first hand what few historians have described before. Miss Hurnard is at her best mapping the intricate routes which men followed either to escape the arms of the law or to obtain a royal pardon. Her mosaic of case histories gives her work a three-dimensional aspect which institu-

tional and doctrinal studies too often lack; indeed, these careful reconstructions of mediaeval lives constitute an important contribution to early English history.

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