

## Rancor and Reconciliation in Medieval England

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This is a study of how individuals (at all levels of society) reacted to serious wrongs done to them in England during the period of three centuries between c.1000 and c.1300, both their immediate emotional response, and the socially and legally sanctioned vengeance they might subsequently exercise (or seek to exercise) to assuage and satisfy their anger. Its primary focus is on the evidence both for feuds and for 'feud-like behaviour' in England during this period, as well as for the peacemaking which brought feuds to an end. But it also considers the various possible alternatives to feud and to violent revenge, ranging from having simply to 'lump it' to actively seeking redress through the courts.

The book is divided into three separate, but unequal, parts. Part I ('Approaches to the study of wrong') is the shortest. It consists of two preliminary, and primarily conceptual, chapters which help to set the stage for what follows in parts II and III. The first chapter ('Understanding feud and friendship') places feud within the range of possible responses on the part of victims (or, put more broadly, those to whom wrong had been done) and their kin to the wrongs done to them, and suggests some of the external social constraints that helped to determine individual choice as between those different types of response. It is here that Hyams presents us with what amounts to a working model or ideal type (at pp. 8–9) of the kind of process we might expect to see in a fully-blown feud, culminating in the peace settlement that brought a feud to an end. He emphasises the importance within a feuding society of friendship and of the creation and maintenance of friendship networks and support groups. His argument is that kinsmen, lords and vassals were not in themselves enough; friends and supporters were also needed by a man wanting to take vengeance or to guard against his own enemies taking vengeance. Chapter 2 ('Social emotions in a culture of vengeance') is a speculative chapter looking at the social emotions which seem to lie behind these responses and at the evidence which suggests that the normal emotional response to wrongdoing in the England of this period

was anger on the part of the person wronged. This might become a lasting hatred for the wrongdoer and feed a continuing desire for vengeance against him. The evidence for this comes partly from the behaviour patterns targeted by the Church in materials for preachers and confessors; partly from the evidence of the emotions described in the secular entertainment literature written in Old French and Middle English.

Parts II and III are mainly chronological. Part II ('Undifferentiated wrong and its redress') consists of three chapters and pursues the general theme through from the late Anglo-Saxon period to the first half of the reign of Henry II. Chapter 3 ('Redress for wrong in the governance of late Anglo-Saxon England') makes a strong case against any 'maximalist' view of the capabilities of the late Anglo-Saxon state in the field of law and order. Hyams argues that royal aspirations to control violence through public courts and an active monarchy were forced to co-exist with what he describes as a 'feud culture' in late Anglo-Saxon England. He argues for the centrality of feud to late Anglo-Saxon society on the basis of both the literary evidence and the relatively small amount of direct testimony, which he admits comes only from the highest social levels and so does not conclusively demonstrate any wider social penetration of the practice of feuding. He also argues for the continued toleration and acceptance of the feud within the legal system and that II Edmund, the law-code which has been taken as prohibiting feuding, needs to be read in conjunction with the contemporary *Wergild* and as being simply intended to regulate feud and facilitate the making of peace. The latter may also have been the underlying purpose of what Hyams sees as having been the royal imposition of a common general scheme on sanctuaries. Their main role in the late Anglo-Saxon period was as privileged locations, which allowed those who had managed to reach them a temporary truce, facilitating the conduct of negotiations with their enemies to bring a feud to an end and thus make peace between former enemies. Hyams doubts that the public prosecution of crime in the courts played any significant role in late Anglo-Saxon England. The normal expectation was that if victims and their friends and kin did not take vengeance through the feud it would be those who had been wronged who would take the initiative in court proceedings against those who had wronged them. Closest in form to the kind of violent direct action and retaliation associated with the feud was the process under which the victim of a theft might set off in hot pursuit, summoning the help of his neighbours through the 'hue and cry'. If he managed to capture the thief while still in possession of what he had taken, the pursuer might lawfully execute him. 'Proceedings', though, is probably to overstate it. This was a form of justifiable extra-judicial homicide, even if it was later (by the thirteenth century) to take a more obvious 'judicial' form. Hyams suggest that something similar may also have been allowed in this period in the case of an open, public killing. Otherwise, private initiative would take the form of something resembling the later 'appeal'. The aggrieved individual would appear in court to tell the story of what had happened to him, and support his complaint by an oath as to its veracity. This was sworn, Hyams suggests, not just by the complainant but also by a group of oath-helpers. Only if such an oath had been sworn and the complainant and his oath-helpers thereby put their own lives and limbs at stake (though Hyams, as he confesses, is uncertain quite how they did this) could the accused/defendant be put to his own oath of denial and have that tested by a unilateral ordeal. The complainant's objectives, as in the feud, were still to obtain either vengeance (the execution of his opponent) or satisfaction for the wrong done him.

Chapter 4 ('Vengeance and peacemaking in the century after the Norman Conquest') suggests that the Norman Conquest brought little or no change to the prevailing societal ethos favouring vengeance for wrongs. Hyams is able to call on the indirect evidence of contemporary attitudes towards the crusade and Jews as well as monastic attitudes towards the invaders of monastic property plus the direct, albeit anecdotal, evidence of various revenge killings during this period and the apparent acceptance of such killings in the early twelfth century lawbook, *Leges Henrici Primi*. He also argues for the continuation into this period of a single form of court procedure for the redress of wrong, though now in private as well as public courts. The main post-Conquest change was that the complainant now had to offer battle (and thus more obviously put his life and limbs in jeopardy) to prove his complaint. The loser faced the prospect of mutilation or death, either during the combat or afterwards. Hyams also allows for the emergence in this period of a further possibility: of individuals informally asking lords (including the king) either orally or in writing for redress against wrong in a procedure that did not directly expose them to the kind of ultimate hazard which the older procedure (of the 'appeal') did.

Chapter 5 ('Common law and central order in Angevin England') argues that the new procedures for the public prosecution of offenders and detection of major offences introduced by Henry II and his advisers in the assizes of Clarendon and Northampton in 1166 and 1176 'almost certainly represent the most important intervention of the whole Angevin reform into English social arrangements' (p. 157), and not the land law remedies which have been the concern of most recent legal historians concerned with Henry's legal innovations. Henry and his advisers did not abolish the existing system of private prosecution by the victim or his close kin. What the system of public prosecution did was to supplement it, rather than replace it. But the principle established, that of a direct royal interest in the detection and punishment of serious offences, was of major long-term importance and created the possibility of a major enhancement of royal power and control over (and responsibility for) law and order in England. Hyams sees the initial measures against unjust disseisin dating from the same period, and which seem also initially to have taken the form of the creation of a procedure for the presentment of disseisins, as belonging to the same set of measures. Looking to the longer term, however, Hyams (here following both Tom Green and John Langbein) deplores the ultimate failure of the system Henry II and his advisers introduced to live up to its initial promise. He suggests that the system was intended to detect and punish the locally powerful but that presentment juries soon fell under local control and failed at precisely this task and so 'probably picked mostly on the defenseless and the enemies of the rich and powerful' (p. 170). He also argues that the later (post-1215) development which handed over effective decision-making power over guilt and innocence in criminal cases to the jury represented an abandonment of the necessary controls over the trial jury which should have been exercised by the king's justices.

Part III has the splendid overall title of 'An enmity culture: writs, wrongs and vengeance in the age of the common law'. It too consists of three chapters. In chapter 6 ('Wrongs and their righting in the early common law') Hyams uses the much fuller evidence of the early records of the common law courts to look at the kinds of motivation recorded by early appeals of felony for the violence they claim had been inflicted on the appellor, and not entirely surprisingly finds that property disputes, sex and concerns with honour and face lie behind significant numbers of them. The much fuller evidence that begins to survive from around 1200 onwards also allows him to describe in much more satisfactory detail the mechanics and the rituals associated with the making of peace settlements between feuding parties: the role of the king and the justiciar as well as others in facilitating such settlements and the ritual submissions and oaths of peace, the linking of formerly warring parties through the marriage of family members and the kiss of peace which form part of such settlements. Hyams has a particularly interesting section here on the (at first sight surprising) use of homage as part of the peace-making process. In the final section of this chapter Hyams also uses the much fuller evidence from this period to describe what seem to be some of the more general characteristics of 'feud-like behaviour' in this period (and which may also have been features of the less well attested 'feud-like behaviour' of earlier periods): a particular focus on attacking the home with its associations of the invasion of private space, the process of prior (and sometimes formal) consultation with 'friends' preceding the act of violent revenge, the assembling of wider groups to provide assistance to the

avenger.

In chapter 7 ('The differentiation of wrongs: trespass and the appeal') Hyams looks at the process by which the single undifferentiated action for wrongs that he thinks had existed prior to 1200 came to be separated out into two separate actions or procedures which fell on opposite sides of what he sees as a new divide between 'criminal' and 'civil': the 'criminal' appeal and the 'civil' action of trespass. This was, he argues, a gradual process and it began with the introduction of public prosecution as part of English law enforcement in 1166–76, but only reached its conclusion sometime after 1258. The process was a complex one. Hyams suggests that it was in part related to the development of the concept of a general conceptual category of 'felony' covering serious criminal offences (in general, those which were subject to presentment under the assizes), which was perhaps in part indebted to a borrowing from the 'learned laws' of the concept of 'crime'. In time, appeals (and their associated mode of proof, trial by battle between appellor and appellee) came to be restricted to appellors who could plausibly assert that the appellee against whom they were suing had committed a felony. Hyams suggests that 'trespass' came to be used as a generic term of art for wrongs for which a civil action could be brought in the king's courts because of its underlying sense of a wrong of any kind committed against the king or other superior. Trespasses were offences against the king which also harmed private individuals. A much wider range of wrongs than just felonies could be seen as wrongs committed 'against the king', partly because of the extension of the king's peace to cover all his subjects and partly because breach of that peace was in itself such an elastic category.

In chapter 8 ('Was there an enmity culture in thirteenth-century England?') Hyams notes how disappointing much litigation as recorded on the plea rolls is for revealing the underlying emotions motivating disputes (though he notes evidence suggesting that more was revealed in the court-room but not recorded in writing). Juries were sometimes aware of (and clerks sometimes recorded) the lasting enmities underlying particular violent incidents, and we can often see them being sparked off by property disputes and sex. Hyams suggests that there is enough evidence to suggest, but not to prove, that mortal enmities were a normal feature of rural life and that 'vengeance does not have to be associated with some concept of noble honour ... anger, resentment, and the fear of losing face' were 'sufficient to spur humbler men to seek revenge in appropriate circumstances' (p. 251). As for the nobility, although there were clearly enmities which found an outlet in violence, as for example between the earls of Gloucester and Hereford in the 1290s and in 1270 between John earl Warenne and Alan la Zouche, Hyams doubts that even the clearest of these quite merit the label of feud. Indeed, Hyams turns out (and perhaps with good reason) to be something of a 'maximalist' in his views of the power and effectiveness of the thirteenth-century state. He notes the relative absence of evidence of the direct flouting of the law by magnates, and notes that such 'capture' of the mechanisms of the royal courts and their personnel for private ends as did occur seems largely to have been by insiders (royal clerks and officials) rather than by magnates. He also notes that after the first decades of the thirteenth century the evidence for the kind of direct physical pursuit of enemies in the kind of ritualised form that is associated with feud seems to fade. This represents, he suggests, 'no small success for the king and his law' (p. 265). Resentment at wrong continued and the urge to seek direct, visible and physical satisfaction for shaming or harmful acts did not disappear, but for the most part men now channelled those impulses into legal channels, the appeal of felony and the civil action of trespass. English law never allowed blood vengeance as a legitimate defence to homicide.

*Rancour and Reconciliation* concludes with a forty page appendix of 'case narratives' arranged in alphabetical (by the name of one of the parties), rather than chronological, order. They aim to recreate as far as possible the main features of some 35 disputes (all with at least some 'feud-like' features) which are known from legal records or from chronicle or other evidence, and that provide evidence for the main arguments of the book. They range in date from the late tenth century through to the last decade of the thirteenth century, though with a substantial concentration on the final century of the period. Most of the disputes were played out against an English setting, though four are located in Normandy and one in Dublin (though the two principals were English merchants living in the city).

I started this review by saying that this book was concerned with reactions to 'serious wrongs'. This is my formulation, not that of the author. There are certainly passages where Hyams appears to be suggesting that

the kinds of violent direct action and his 'undifferentiated action for wrong' that put the life of both parties at stake were potentially valid responses to any kind of wrong committed by one individual against another. Yet most of the specific evidence discussed seems to relate to serious wrongs, wounding and killing, arson, the theft of property, and it seems unlikely that trespassing cattle evoked or were expected to evoke the same kinds of reaction as the unprovoked killing of a father or brother or wife. This may suggest that there had always been a dividing line between serious and less serious wrongs, and the socially and legally appropriate responses either might evoke.

Hyams's account of the beginnings of the public prosecution of crime concentrates on the two Henrician assizes, but leaves much else out or assumes it is known by the reader: the beginnings of regular enquiries into wrongdoing at a local level in the sheriff's tourn (possibly also in Henry II's reign) and the introduction of coroners and the beginnings of regular enquiries into all suspicious deaths (in 1194), the change to jury trial after the unilateral ordeal became impossible to hold after 1215, the apparent hostility of the royal justices to private appeals during most of the thirteenth century. There are also some problems in reconciling the pessimism expressed about the early capture of the system of public prosecution by local interests (in chapter 5) and the relatively optimistic view of the success of the royal justice system in enforcing law and order (in chapter 8).

These are minor qualifications and reservations. This is an important and a suggestive book that will become required reading for all social, legal and political historians of the period for it tackles broad questions imaginatively and ambitiously.

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