

PROCEDURAL ASPECTS OF EARLY CRIMINAL LAW

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The title reads "Criminal Law", but it is important to establish from the outset that we take that phrase in its modern meaning. Early law made no conceptual distinction between different branches of law, but was based on the notion of wrongs for which some form of legal redress was available. Initially there was no such thing as a court restricting itself to inherently criminal matters. As an example, although the Court of Common Pleas was established to deal primarily with private pleas, the Crown often stepped in to exact punitive fines, that is "amercement". It is from this undifferentiated notion of "wrongs" that the current distinctions between criminal and civil law have been made. The rise of the modern trial system, with its reliance on the proof of facts, has forced the creation of those precise definitions on the basis of which the distinction has been made.

Even today the dividing line between tort and crime is a nebulous one. In fact it is so nebulous that all but the bravest simply state that a crime is a wrong which is redressed by the state, acting in its capacity as the state, while tort remains in private hands. This unexplained dichotomy has been with us for some time. The opening words of the *Glanvil* treatise state that some pleas are criminal and some are civil.¹ Indeed this could have been said many years earlier. In Anglo-Saxon times, however, society was merely content to recognize that a wrong was a threat to good order. It had established virtually no appropriate institutions and could do very little to redress the wrong. All it could do was to visit the culprit with a sign of its disapproval. This was done by the process of outlawry and although it could have grave consequence for the outlaw, the risk to him was from individuals. With time society went a stage further.

It had never been able to stop murder for revenge. Indeed, this was sometimes recognized as lawful killing. All the King could do was surround vengeance with a few rules. In so doing he recognized that uncontrolled redress could be just as much a threat to good order, as the crime for which redress is sought. Hence the later Anglo-Saxons declared that, with reference to

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1. *Glanvil*, ed. by G.D.G. Hall, London, Nelson & Co., 1965.

the blood feud, the offended party should first try to obtain a money compensation.² King Alfred enacted that the "wergild" (the sum which was said to be sufficient to atone for the man's death — it varied with his stature) must be sought before beginning the blood feud. The Crown, in this case acting on behalf of society, had extended its intervention, albeit in a small way. It would be a long time before one could be sure of the Crown's motives in intervening in the enforcement of order.

Soon outlawry and blood feud, though common, were seen as secondary measures. The system of monetary compensation predominated and the offender had the opportunity to buy off his victim or his kin. These offences were said to be "emendable" as long as the offender payed the "bot" to the victim, and the "wite" to the King. How the Crown came to be recipient of money when it was not the victim has never been explained. By the time of Aethelstan (a generation after Alfred), however, the system of fines was well established. The "wite" is still going strong, although the "bot" has long since vanished as a measure of penal law. It can be seen, therefore, that at this stage the Crown was still merely setting down a few rules. It was the individual who redressed the wrong. For a small number of crimes, though, such as treason, the King would execute the offender. The crime was so grave as to be "botless"³ or without a specific victim. There was no adequate system of incarceration and execution was the sole alternative, save for mutilation which was often fatal in itself. This is the beginning of the view that some crimes were the King's business, although just which ones we cannot say, for contemporaries were not sure. Throughout the Anglo-Saxon period the list of unemendable crimes fluctuated widely from year to year and from county to county. Moreover, the blood feud was still prominent and the subject of legislation as late as Canute's reign (1020).

It was Canute who began to inject some precision into the list of botless crimes. The theoretical framework for the "pleas of the Crown", (the medieval name for criminal law, though it often involved royal civil rights), had now been laid. The source of much revenue had also been established. Canute's list of unemendable crimes included "foresteal", i.e. murderous assault from an ambush; breach of his peace; and "hamsocn", i.e. violent breaking into a house.⁴ The Normans continued with such a system largely because the Dukes of Normandy had used a similar notion. These were called "*placita spatiae*" or "*placita*

2. *This History of English Law*, Sir F. Pollock and F.W. Maitland, 2nd ed., Cambridge University Press, 1968, Vol. I, p.48.

3. *Ibid.* p.48.

4. *A Concise History of the Common Law*, T.F.T. Plucknett, London, Butterworth & Co., 1956, p.426.

gladii" (pleas of the sword). In England they expanded and refined the list. By Glanvil's time it included treason, homicide, robbery, arson, rape, counterfeiting and concealment of treasure trove. With the Normans, therefore, the Crown greatly extended its role in keeping order, although it was an enforcer of law and not a trier of offenders. Trial was left to the various ordeals, although the wite and bot stayed on as a means of avoiding trial until the end of the 12th Century. They were included in the *Leges Henrici*, although by that time they were definitely anachronistic. They remained in force for a century after the Conquest because of the Norman policy of leaving the old law in force in local jurisdictions, or merely blending the two laws. The ordeals themselves were used at least until the second decade of the 13th Century. The main question here is how did the culprit find himself brought to the ordeal? Who, to use a modern term prosecuted him?

If he were caught in the act, there was no difficulty. He was put to death. The real problem arose in connection with crimes of which the Crown had not heard. Could the prosecution be left to the victim or his kin? The answer was "yes". The absence of a police force precluded any other possibility.

The Appeal of Felony

Even in pre-Norman times, an individual could initiate the proceedings by summoning the accused and swearing as to the facts. The accused would solemnly deny the charge and the local Court would usually order that he "clear" himself by one of the ordeals. The Normans added trial by battle to that procedure. In the process they gave us the *Appeal of Felony*. The word felony has always been used in association with the worst crimes. Its Latin root refers to wickedness, but it soon assumed a wider meaning in that it referred to crimes against the Lord, i.e. crimes in breach of the feudal trust. Communal society could envisage no more wicked act. Gradually it came to be used in connection with any serious crime. It was still basically a system of private accusation and trial.

In the Appeal of Felony the accuser, or "appellor" as he was called, uttered the "*words of felony*". These could vary slightly but by Bracton's time they were almost entirely uniform. He would describe the deed, the year, the day, the time, the place, the weapons, the injuries, and the chattels stolen or robbed. In concluding, unless claiming exemption through sex, age or injury, he would offer to prove by his body or otherwise as the Court might award. All this was done after having raised the obligatory hue and cry and after having made suit to the townships and to the King's bailiff and coroner. It was recounted in the

County Court and recorded on the coroner's roll. An appearance would also have to be made before the King's justices (the delay could amount to several years) with the formal count being made. The appellee would then have to undertake a cumbersome word for word denial (at least until Bracton's day). The appellor had a right of reply. Battle would then be awarded, oaths exchanged, a day assigned and the ban cried.

All this was subject to the appellee's having the influence and the money to secure a charter of pardon from the King. The following passage is found in *Placita Corone*,⁵ (dated somewhere in the last half of the 13th Century):

"But you must know that it sometimes happens that the appellee has purchased the king's peace for the death and when this is so the justices will hold no inquest upon him because the king has pardoned him his suit for the death: provided always that the appellee should stand to law if any man should speak against him upon the matter."

There is a controversy here. Some felt that the charter abated the appeal of the present appellor but without prejudice to the rights of any other appellor on the same facts, for example, a second son of the dead father. They rely on the views of Sir Roger de Thurkelly, a lawyer of the time, and use as evidence his device for avoiding the wrath of the kin. His suggestion was to have the appellee go through all the preliminaries and wage battle, but to surrender at the first blow. This would put an end to the fighting and to the rights of the appellor as well. The customary execution was in the hands of the Crown and because of the charter, according to Thurkelly, the King would not enforce the usual results of losing the battle.

The better view, however, seems to be that few people dared to insist on enforcing claims by way of appeal after the King had signalled his views in granting a charter of pardon. This matter of prudence soon came to be reflected in the law, as *Placita Corone* reveals;⁶ "If he has purchased the king's peace . . . the justices will hold no manner of inquest because the king has pardoned him".

If the appeal were begun against an absent person, the appellor had to begin the process of outlawry. It was very lengthy and required appearances at five successive County Courts. The result would be theoretically the same. In our words, a "conviction" had been obtained. The defendant's chattels were forfeit, his lands escheat. If the County Court had failed to outlaw the appellee by the fourth Court, they ran the risk of being amerced by the justices in Eyre.

A word as to trial by battle. In what we call "civil" cases the

5. *Placita Corone*, ed. by J.M. Kaye, Selden Society Supplementary Series, Vol. IV.

6. *Ibid.* p.28 (longer version).

practice of having a tenant sworn to defend the lord's title as champion soon disappeared. A professional body of champions, travelling all over the country replaced him. Indeed some great lords retained champions on a full time basis. The courts sometimes arranged the dates of trials to fit the schedules of the professional champions. In criminal cases, however, the situation was far different. The accused and accuser had to go through with the battle themselves. Moreover, if the defeated accused were not already dead he was immediately hung.

We know that in 1166, the Assize of Clarendon made the failure at the ordeal after presentment result in mutilation. This should be contrasted with losing trial by battle, as in the latter case death resulted. It suggests that by this time at least, presentment by a jury was seen as less conclusive than the Appeal of Felony.

By this stage the Crown had taken cognizance of most serious crimes. It was soon to take the minor ones under its aegis.

How late the appeal of felony remained in vogue is difficult to ascertain. It survived beyond the Lateran Council's forbidding religious involvement in the ordeals because some could buy a jury trial for the appeal and because battle continued without the priests for a limited number of cases. Holdsworth stated that the appeal of felony was liable to abuse and that the judges disliked trial by battle.⁷ He also stated that there was a growing feeling that crime was a matter for the state and not for the injured party. He offered no evidence for these assertions however, and frankly they smack of 20th century rationalization. Kaye's thesis, as contained in her commentary on *Placita Corone*, on the other hand, is rather more appealing. In short terms it is this: Why was a treatise (*Placita Corone*) dealing almost exclusively with procedure by way of appeal being compiled at the very time that this procedure was said to be declining? She admits judicial hostility against the appeal of felony but claims it was not directed against the theory of appeals but rather against its dilatoriness. In addition, it appears unlikely that the Crown would willingly forego the revenue brought to the Exchequer by the Appeals. Meekings has hit the issue squarely. The appeal remained, but battle practically vanished.

"By the time of the earliest plea rolls trials by duel or ordeal were already uncommon, by 1249 the consistent use of the jury for some three decades and its longer intermittent use had made the appeal of felony virtually a jury action."⁸

7. *A History of English Law*. Sir W. Holdsworth. Vol. I, p.311.

8. *Crown Pleas of the Wiltshire Eyre*. C.A.F. Meekings. Wiltshire Archaeological Society. Records Branch. Vol. XVI.

Only approvers (accomplices giving evidence for the Crown and fighting other accomplices) were fighting by the end of the 13th century claims Meekings. The appeal could still be popular though, for by alleging a plea of the Crown, the weight of royal justice could be brought to bear against an adversary. The result was a goodly number of appeals alleging wounding and similar crimes purely as a matter of form (as in the *contra pacem* allegation in the trespass action).

The Presenting Jury

We can say with certainty, however, that by the end of the 12th century, another method of prosecution had become more popular. This was the "presenting jury". Around this institution a great deal of literature, often of uniform opinion, has arisen. Plucknett provides a concise statement of this view.

"The Assize of Clarendon (1166) set up machinery for discovering alleged criminals by means of the jury of inquest — the grand jury of modern times. This measure can hardly be explained save by assuming that the old procedure of private accusation had failed to give satisfaction."⁹

Just how new the jury was and what type of satisfaction the appeal failed to provide will be discussed later. For the moment we will deal with the working of the new system of prosecution. The theory was that the Crown would now be able to take cognizance of crimes not discovered because an appeal was not brought. Enforcement would be enhanced and the extra fines, forfeitures and amercements would bring added profit to the Crown. Whether we take the Assize of Clarendon as the creator of the first presenting jury or not, it is quite evident that it refined and centralized the system of inquisitions as part of the administration of criminal justice. In brief terms the Assize declared that the Justices (this was to be done in conjunction with the Articles of the Eyre) and the Sheriffs were to enquire from twelve men of the Hundred and four of every vill whether anyone was accused of, or was believed to have committed a crime. The accused person was to be put to the ordeal and made to swear that he was not a criminal. He would then be brought before the justices to make his law. Even if he did clear himself after having made his law he would have to leave the realm if he were of bad "renown".

This latter point seems to reveal the Crown's lack of respect for wager of law as a defence to a criminal charge.

Many have assumed that the Assized of Clarendon introduced a revolutionary new procedure. They realized that in Anglo-Saxon times under the laws of Ethelred, the twelve

9. A *Concise History of the Common Law*, *Ibid*, p.428.

leading thegns and the reeve from each wapentake in the Danelaw were to swear that they would not shield any guilty men — but this is explained away as a short-lived local institution. Others, such as Plucknett, are of the opinion that in the absence of clear proof of a continuous association between the Anglo-Saxon system of communal presentment and the later presenting jury, the case for an existence prior to 1166 is not proved.¹⁰ Others yet, such as Hurnard¹¹ feel that presenting juries existed continuously from Anglo-Saxon times.

We can now be fairly certain that the Assize of Clarendon was not the origin of the presenting jury. To begin with, it has been shown that the laws of Ethelred applied not only in the Danelaw but in other localities as well. Furthermore, the laws produced a system which was in fact a method of presenting criminals. Hence there was a presenting jury before 1166 which was in all likelihood of either native or Frankish origin. Theories of a Scandinavian or of a Norman and ecclesiastical origin remain unconvincing.

In addition, and this is central to the point being made, there is evidence from the Coroner's and Britton & Fleta rolls of a system of presentment in local courts. The pipe rolls (from 1130) further reveal amercements or fines imposed upon offenders accused by the Hundred through their "*juratores*". This even suggests presenting juries operated during the Eyres of Henry I. These facts could provide the link between Ethelred and Clarendon which Plucknett sought. The *Leges Henrici* reveal that the representatives of the Hundred are known to have presented at least one thing — the Englishry of a murdered man.

By the middle of the 12th century, therefore, indictment was to be the chief method of prosecution. The Crown is clearly not content to rely on local jurisdictions alone for the discovery and presentment of criminals. The problem which next arises is what is to be the method and procedure of trying those criminals indicted by the presenting jury. The irregular visits of the Eyre Justices could not handle the volume. Some other method would have to be found for taking the presentments. Local jurisdictions continued to try some crimes, although only minor ones. The Crown handled other trials and experimented with several solutions for the next three hundred years.

Trial of Guilt

As to the method of trial, the Assize of Clarendon revealed the Crown's distrust for wager. In addition, there had developed

10. *Ibid.* p.108.

11. "The Jury of Presentment and the Assize of Clarendon" N.D. Hurnard, *English Historical Review*, Vol. 56, 1941, p.374.

the rule that trial by battle applied only in the case of a private prosecution and not one by the Crown.¹² All that was left, therefore, was the ordeal and it was the chief method of trial at the beginning of the 13th century.

For freemen the usual ordeal was that of the hot iron. The ceremony was conducted at the height of the Mass and the seals were not taken off for three days. If the hands were clean, the accused was free. For unfree men the ordeal of cold water was the most common. The church had been voicing a small measure of displeasure at the ordeal for some time. It was not until the Lateran Council of 1215 that it was able to propound a definite view. At this time Pope Innocent III forbade the clergy to perform any religious ceremonies in relation to the ordeal. The moral force behind the ordeal had been removed and with it the psychological pressure to tell the truth. Predictably, the very foundation of the chief method of trial was ruined. The ordeal could not continue efficiently (although not abolished until 1819).

As a result in 1219 Henry III issued a writ to the Justices in Eyre giving temporary instructions. He was not sure what to do and the writ clearly reflects a compromise; sentences were reduced but those indicted were not to be absolved. The ordeal was temporarily abolished.¹³ Thus he instructed the justices that those accused of serious crimes were to be imprisoned. Those accused of middle level crimes could abjure the realm. Those accused of lesser crimes were to find pledges. They were told to implement the writ according to their own discretion and conscience. The result was a great variety of methods for ascertaining guilt. In the end they arrived at the "petty jury". This has been explained, (how validly neither I nor anyone can say), by saying that since a presenting jury was already in existence it was a logical extension to have a jury decide the question of guilt or innocence. The method of trial was no longer private and local in character.

There were a great number of jurors present at each Eyre. Each Hundred had twelve men there. Each township or vill was represented by the reeve and four men. They all had to make presentments in the process of answering the Articles of Eyre. The justices apparently hit upon the idea of joining the presenting jury with the juries of the four neighbouring vills and the composite body then discussed the facts. The size of the juries varied greatly and at times did not exceed the number of the original presenting jury. The juries from each vill sat separately and

12. *A Concise History of the Common Law*, *Ibid.*, p.117.

13. *A History of English Law*, Sir W. Holdsworth, Vol. I, p.311.

gave their views to the justices who then formed their own conclusions. The Eyre rolls reveal that if the vill's contradicted one another they could be amerced. The procedure was clearly inquisitional for no verdict was rendered, rather the justices examined the jurors and the prisoner as to their suspicions and then decided the verdict. Soon this process was abandoned. A single petty jury of twelve men was selected and they gave the verdict, based upon whatever evidence they thought fit. Trial by petty jury was as irrational as the ordeals.

Some of the petty jury had been members of the presenting juries but this did not always pose problems for contemporary theory. The presenters had not sworn that the accused was guilty. They had not said that *they* suspected him. All that they had sworn was that he was suspected. Failure to report illfame exposed them to amercement. But saying he is suspected did not mean swearing he was guilty and acquittals could result from petty juries composed largely of members of the presenting juries. The fact was that petty juries were supposed to have members who might speak from personal or second hand knowledge, and these could be obtained from the presenting juries. It was not until the 15th century that a totally impartial body of jurors sat down to listen to evidence.

Still the yearbooks from the reign of Edward I (Y.B. 30 and 31) reveal that petty juries who acquitted a man who had been indicted might be put into prison. The pressure was obviously to convict. The accused was helpless for he could not challenge the jurors until this was allowed by statute in 1352.¹⁴

In the initial stages of the evolution of the petty jury there had been no law against the ordeal. Rather its lack of efficacy had been recognized, and the pressure clearly aimed at promoting trial by petty jury. This raised problems when a defendant refused to put himself on the country (that is, to trial by jury), and demanded trial by ordeal. The justices used their discretion here. They often refused an election for the ordeal. When this was done, however, they sometimes assembled an impressive panel of twenty-four knights to sit as the petty jury. The Eyre rolls reveal at least two such instances¹⁵ and Pateshull did it twice in the Warwickshire Eyre of 1221.¹⁶ It might be argued that resort to a jury was a mark in the Crown's favour as this manifested the Crown's reluctance at compulsorily depriving a man of his right to trial by ordeal.

The Court did not always force the defendant to put himself

14. 1352 Edward III. st.5. c.3.

15. Selden Society, Vol. 59.

16. *Ibid.*

upon the country. Instead it might let him abjure the realm or purchase the privilege of finding sureties. Often it would put him in prison, hoping this would compel him to seek jury trial. This seems to have had some effect for the Eyre rolls of Henry III reveal many defendants putting themselves on the country.

By the reign of Edward I this system of trial must have become well established for in the Statute Westminster I¹⁷ (1275) we find the following passage which is probably indicative of the confidence with which the Crown could then demand that a defendant put himself on the country:

“. . . notorious felons who are openly of evil fame and who refuse to put themselves upon inquests of felony at the suit of the king before his justices, shall be remanded to a ‘hard and strong’ prison as befits those who refuse to abide by ‘the common law of the land’; but this is not to be understood of persons who are taken upon light suspicion.”

Later the phrase “*prison fort et dure*” became “*peine fort et dure*”, that is the compulsive pressures were being increased. Hanging in irons and lying prostrate all day helped in this matter. The one advantage of *peine fort et dure*, if one could so call it, was that death did not entail forfeiture of the victim’s estate for there had been no conviction.

The Courts

As pleas of the Crown were a matter of royal justice it was to the Justices in Eyre that the juries were to make their presentments. The long intervals precluded an efficient working of the system. In one London Eyre the jurors were asked to recall all felonies and trespasses, (those handled by the Crown were called misdemeanours in the 15th century), which had occurred in the preceding forty-four years. Something quicker was needed and the obvious solution was to let the chief royal officer in the county, the sheriff, receive the presentments. This great judicial power, once affixed to his already great administrative powers proved to be too much for some. Hence Magna Carta (c.17) forbade the sheriffs from hearing pleas of the Crown.

A more frequent issue of the new commissions, known as “oyer et terminer” and “goal delivery” was needed to replace the cumbersome and infrequent commissions of the Eyre. It was impossible to send out royal justices on every special commission. It was recognized, however, that they could do some of the receiving of presentments. They were already being sent out with commissions to hear the possessory assizes as part of the *nisi prius* system. It was a logical step to let them handle what we call “criminal” cases at the same time. To them were re-

17. 1275 Edward I, c.12.

served the more serious cases and the forerunner of our modern Criminal Assizes was born.¹⁸ But even this was not enough to meet the number of presentments.

Someone else was needed to assist in dealing with the presentments. The Crown decided on the Justices of the Peace, in preference to other local officials. Since the 13th century the Crown had appointed "keepers" of the peace in the counties to serve in a police and military capacity. In addition, from the reign of Edward II they had assisted in the Pleas of the Crown by taking indictments. It was these people, (usually composed of a large number of country gentry), who were selected to try cases. They were familiar with and better suited to the new procedure of presentment. Hence they were able to take over from the local officials, (sheriffs and coroners), who had handled the old procedures of appeal and compurgation. Soon the sheriffs were ordered by the commissions to assist the Justices of the Peace in a subordinate capacity.¹⁹

The power to try felonies and trespasses was granted to the justices of the peace in 1328²⁰ and withdrawn in 1331. Their indictments were to be sent to the justices of Assize. The order was rescinded and reintroduced several times over the next half century. The adverse legislation was the result of the distrust of the lawyers and of the King's Bench. The power of the Justices of the Peace was restored in 1389. Some feel this was due to their ability to keep order during the Peasant's Revolt, others to the need for control after the Black Plague.

In the reign of Edward III the process was streamlined by simply giving the Justices of the Peace standing commissions to try the indictments. A typical one is that of March, 1327 issued just after the first parliament of Edward III. It told them to deal with inquiry by sworn, inquest of felons, felonies, trespassers and trespasses, (and other things such as weights, measures and the Statute of Labourers). As a matter of practice the justices of the Assize dealt with the modern day felonies while the Justices of the Peace handled the indictable trespasses (misdemeanours). (Westminster Hall was not totally devoid of influence.)

Commissions might also issue to prominent lawyers or magnates to deal with special cases. They came to be known as "*justices of trailbaston*", a term which had once been more technical. Their cases were usually serious and they were given wide powers, particularly in respect of fines. There was evi-

18. *A History of English Law*, Sir W. Holdsworth, Vol. I, p.274, and *Historical Foundations of the Common Law*, S.F.C. Milsom, London, Butterworth's, 1969, p.363.

19. *A History of English Law*, Sir W. Holdsworth, Vol. I, p.287.

20. 2 Edward III, c.6.

dently much popular dislike for the institution, especially as it had often acted in an arbitrary fashion. It led a short life and by the accession of Richard II the Justices of the Peace were at the height of their authority. Their decision to administer the criminal law in a largely untechnical manner also resulted in popular goodwill, or at least prevented popular dislike.

Conclusion

This survey has encompassed 500 years of time. By the end of the 14th century the Crown both initiated prosecutions and had a role in disposing of them. The private prosecution was very rare and only minor crimes are tried by local, non-royal jurisdictions. Not a great deal has been done conceptually. This has yet to come. What has been done is that a procedural framework, still with us, has been established. The procedural framework gave us our modern conceptual notions. The latter did not exist then, and indeed could not, for matters of crime, except for treason, were not heard in Westminster Hall. Today Pleas of the Crown are reserved for serious crimes. In earlier times the Crown was more concerned with a bishop within the King's peace who had had his hat knocked off than with the homicide of a villein. Someone else looked after the latter case. The important thing, however, was that order was kept. With the exception of Cade's Rebellion, the main causes of medieval disturbance were either divine (plague) or the result of dynastic machinations.

It has been said that the Criminal Law of the period reveals a paucity of quality.²¹ Such remarks are unfair. The order was kept and this is what mattered. A refined system of penal law belongs to periods of stability and advanced social development. No such condition pertained in England until the later Tudor period. It is from this time on that criticisms as to the quality and barbarity of the criminal law are appropriate. In these conditions, it was inevitable that property law would develop more rapidly. The Justices of the Peace and the whole system of presentments had produced a basically simple criminal law. The procedure of indictment was brief and untechnical. Westminster Hall had different ideas, however, and from Tudor times until barely 100 years ago, its views prevailed. It had the opportunity of giving us a system as advanced as that which dealt with property law. Such was not to be the case, — but after all the land was theoretically the king's and feudalism brought him far more revenue than the Eyre and the other commissions ever did. What did happen was that the King's Bench

21. *Historical Foundations of the Common Law*, S.F.C. Milsom, p.353.

and the lawyers combined to give us an archaic list of felonies, and a ridiculously complicated system of pleading. It is this event which constitutes a tragedy for the development of English Criminal Law. Even today, a century after the so-called "Age of Reform" the process of deciding the fate of those accused of crime is indeed archaic. It is like two blind men groping for a particular objective while barely recognizing each other's presence. Issues are seldom defined except in black and white terms. This is the fault of our contemporaries, of the Tudors, and of those in between. It is not the fault of the Angevins and Plantagenets. Moreover, they have been criticized for giving us a tariff system in the Criminal Law. To criticize medieval administrators for this is to forget that the notion of atonement or expiation (the basis of the tariff system) was central to medieval Christianity. In the age of self-interested secularism, a tariff system is inexcusable. It has yet to be done away with.

