

Maitland and the Criminal Law in the Age of *Bracton*

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IN DISCUSSING MAITLAND'S ANALYSIS of the criminal law and the administration of justice in thirteenth-century England, it is usually easier to say where he was mistaken or misguided than it is to suggest how, in the circumstances of the years around 1900, he could have done any better. To criticize errors perceived as originating in his personal temperament or outlook, or as resulting from the *mores* of his age and class, is in effect to criticize him for not having been somebody else. Maitland did not breathe late twentieth-century air, though we treat him as if he did. His achievement is all the more remarkable when one considers the inadequacy of the textual armoury put at his disposal by the scholarship of his age. The bibliography prefacing the *History of English Law* refers to the 1569 edition of *Bracton* (though in his footnotes Maitland preferred to give manuscript citations), to *Glanvill* in an edition of 1604 and to *Fleta* in an edition of 1685. Only F. M. Nichols's edition of *Britton*, published in 1865, could be regarded as satisfactory by present-day standards, or even by Victorian ones — Sir Travers Twiss's edition of *Bracton*, published by the Rolls Series between 1878 and 1883, was so ineptly produced that Maitland ignored it.¹ As far as the unpublished resources of the Public Record Office were concerned, Maitland urged their exploitation by others and set an admirable example himself, but although his footnotes to the *History of English Law* occasionally show him using unprinted sources,² for the elucidation of criminal law in the age of *Bracton* he relied more on records in print — the publications of the Rolls Series and Record Commission, Selden Society volumes (several of them his own work), a few county record society publications, and ultimately anything he could find. As far as the first half of the thirteenth century was con-

cerned, there were no pipe rolls, no Curia Regis rolls, and no close or patent rolls after 1227 available to him in print.

For the administration of the criminal law, Maitland relied basically on *Bracton*, supplemented or corrected where possible by other sources. Well aware of the quantity of potentially relevant material which remained unknown to him, he was often guarded in his conclusions. Nevertheless, considering how handicapped he was by an insufficiency of basic sources, it is astonishing how much Maitland got right. For instance, he noticed a change in the treatment of clerics charged with felony, who were thereafter given jury trial before being handed over to the ecclesiastical courts, and correctly associated it with the year 1247.³ He saw that rape was less severely treated by the courts than the textbooks prescribed.⁴ He anticipated present-day perceptions when he wrote that lords valued possession of a view of frankpledge most of all for 'the power that was thus secured them. Twice a year the villagers, bond and free, had to report themselves and tell tales of one another. . .'.⁵

Even when caution led Maitland to qualify his arguments, subsequent research has often either confirmed them, or shown that they err only in their cautiousness. Thus he mentioned in passing the degree to which women were regarded as being under the control of their husbands, and in a footnote drew attention to the implications of this for their position under the criminal law, in that a wife could be cleared of a felony in which she had participated with her husband, on the grounds that she was obliged to act as he demanded.⁶ *Bracton* was imprecise on this issue, declaring that wives should try to keep their husbands from crime, and that, where they participated in evil-doing with their husbands, as 'partners in crime they will be partners in punishment.'⁷ In 1220 a woman was condemned to be burnt after confessing 'that she was present along with her husband at the slaying of three men and one woman at Barnet.'⁸ But attitudes seem to have been changing — *Fleta* was firmly exculpatory towards wives who stole in their husbands' company,⁹ while several cases bear out the extent to which court procedure, on this point at least, came to operate to

³ *Ibid.*, i 442 and n. 2.

⁴ *Ibid.*, ii 490-1.

⁵ *Ibid.*, i 581; cf. R. H. Hilton, *A Medieval Society: the West Midlands at the end of the thirteenth century* (London, 1966), pp. 25, 235.

⁶ Pollock and Maitland, ii 406. See also Hyams, below, pp. 228-31.

⁷ *Bracton*, f. 151b, Thorne, ii 428.

⁸ F. W. Maitland, ed., *Select Pleas of the Crown Vol. I: A.D. 1200-1225* (Selden Soc., 1, 1887), no. 191.

⁹ H. G. Richardson and G. O. Sayles, eds, *Fleta Vol. II* (Selden Soc., 72, 1953), p. 92.

the advantage of wives. When a man and his wife were charged with theft at the 1250/1 Norfolk eyre, the husband went to the gallows, but, the record continues, 'Agnes was Gilbert's wife, and did what she did on her lord's orders. It is testified by the jurors that she did no crime without an order from her lord. So let her go quit . . .'.¹⁰ At the 1257 Yorkshire eyre a woman was found to have been present at the bedside of a woman murdered by her husband when he did the deed, but 'as she was his married wife, and could not contradict her husband's wish, and the jurors testify to this on oath, she is quit.'¹¹ Even when the husband was an outlaw, his wife seems to have remained under his orders. At the 1255 Surrey eyre Alice, wife of William le Sleghe, was charged with harbouring her husband, an outlaw. It may have helped her that she could claim that since William had been outlawed in Hampshire, Alice did not know of his criminal status. But the court's judgment did not mention this, declaring only that 'since Alice was married to the said William her husband and could not refuse him, it is decided that she is quit.'¹² Nor did the responsibility of husbands for their wives stop there. Cases from Devon show one man being imprisoned when his wife's appeal failed, and another being taken into custody when his wife was convicted of assault.¹³ Women were not in frankpledge, and producing them in court was their husbands' responsibility. As Maitland observed, when Milisent, wife of Ivo de Clifford, fled after committing arson, the justices at Gloucester in 1221 were emphatic that Ivo should bring her before the eyre.¹⁴ He drew the appropriate conclusions as to the inferior status of women under the law, but, probably for lack of supporting evidence, did not develop them as far as he might have done.

At other points Maitland stopped well short of positions taken by later scholars, though he helped to clear the ground for them. It is now apparent that the process whereby homicide ceased to be regarded as an emendable offence, for which the killer could hope to make or buy his peace with the kinsfolk of his victim, and became a felony which should normally place the slayer's life and members at the disposal of the king, had begun long before the twelfth century, where Maitland placed it.¹⁵ But Maitland was nevertheless correct to indicate that older

¹⁰ PRO, JUST/1/564, m. 3.

¹¹ PRO, JUST/1/1109, m. 3.

¹² PRO, JUST/1/872, m. 33d.

¹³ H. Summerson, ed., *Crown Pleas of the Devon Eyre of 1238* (Devon and Cornwall Record Society, ns 28, 1985), no. 524 and note.

¹⁴ F. W. Maitland, ed., *Pleas of the Crown for the County of Gloucester 1221* (London, 1884), no. 244, and note on p. 147.

¹⁵ See the discussion in Pollock and Maitland, ii 483-6; also Wormald, above, pp. 13-14.

attitudes persisted, manifesting themselves in attempts at out-of-court settlements which bypassed the processes of royal justice. And in support of this observation he cited the Gloucestershire case of Robert Basset, hanged in 1221 for killing Geoffrey of Sutton, notwithstanding an out-of-court settlement which involved the marriage of his son to Geoffrey's daughter and the conveyance to the couple of a virgate of land.¹⁶ In his note on this case in his edition of the 1221 Gloucestershire crown pleas, Maitland commented that 'it is too late in the day for this sort of thing . . .'. But his examination of this issue extended only to its legal implications, and it has been left to Professor T. A. Green to show how these were circumvented by jury verdicts which took the edge of felony off homicide charges, by presenting killings committed in brawls and temporary flare-ups as done in self-defence, and so deserving a royal pardon.¹⁷ Green based his findings on extensive research on several classes of document in the Public Record Office. Maitland, working at high speed and with many other claims on his energies, had no time for the sort of detailed scrutiny of records which yielded such dividends for Green, though he would certainly have applauded it.

Similarly it may be confidently assumed that Maitland would have approved the work of C. A. F. Meekings, the scholar who in the twentieth century has done more than anyone else to elucidate the workings of the general eyre and its place in the judicial administration of thirteenth-century England.¹⁸ Employed in the Public Record Office itself, Meekings devoted most of his career to the study of medieval legal records. He acknowledged the value of Maitland's insights, for instance on the problem of juries which apparently contradicted themselves by acquitting suspects they had themselves indicted — 'Maitland, by posing the question correctly, showed that there was really no problem . . .'.¹⁹ But a comparison of Meekings's editions of Wiltshire and Surrey eyre records with Maitland's edition of the 1221 Gloucestershire crown pleas shows in the former a command of the relevant sources which neither Maitland nor anyone else could match, together with a skilful placing of the institutions recorded in them in a wider context, both of governmental activity and of the

¹⁶ *Gloucestershire Crown Pleas*, no. 101 and note on p. 143.

¹⁷ T. A. Green, *Verdict According to Conscience* (Chicago, 1985).

¹⁸ C. A. F. Meekings, ed., *Crown Pleas of the Wiltshire Eyre 1249* (Wiltshire Archaeological and Natural History Society, Records Branch, 16, 1960); *The 1235 Surrey Eyre* (Surrey Record Society, 31, 32, 1979, 1983); (with R. E. Latham) 'Verdictum of Chippenham hundred, 1281', in N. J. Williams, ed., *Collectanea* (Wiltshire Archaeological and Natural History Society, Records Branch, 12, 1956).

¹⁹ *Wiltshire Crown Pleas 1249*, pp. 95–6.

society of the counties involved, beside which Maitland's work is bound to appear lacking in focus and density. This was inevitable in the circumstances. Maitland was a pioneer of genius, but in modern parlance he had an inadequate data-base, and parts of his work — essentially those least well covered by the legal texts upon which he depended heavily — were bound to become obsolete once the available documents came to be methodically examined.

Thus he followed *Bracton* in the heavy stress he placed upon the importance of the appeal of felony as a means of prosecuting serious crime — 'The ancient and still the normal mode of bringing a criminal to justice', was how he described it in the introduction to his own edition of the Gloucestershire crown pleas of 1221.²⁰ The claim is surprising in the circumstances, since those same crown pleas do not show the appeal to have been particularly important, with only twenty-two appeals of homicide recorded, and just eight killers said to have been outlawed by appeals since the previous eyre, compared with 129 put in exigent at the eyre itself, to be outlawed at the king's suit. At the next recorded Gloucestershire eyre, that of 1248, the pattern was the same, with a mere nine outlawries to set beside 102 exigents for homicide. In other counties, too, the appeal, though in some cases more often employed and for longer than in Gloucestershire, tended to lose ground steadily, especially as a means of prosecuting suspected killers.²¹ In Essex, for instance, outlawries still outnumbered exigents in 1227, with fourteen to set against nine, but in 1248 there were only two outlawries for homicide recorded, but fifty-five exigents.²² Maitland was misled largely by the date he (in common with all other historians of his time) attributed to *Bracton*, some thirty years later than that normally ascribed to it following Professor Thorne's work. He believed it described the practice of the 1250s, and since the appeal bulks very large in *Bracton's* pages (indictment, by contrast, is briefly covered by an awkward later insertion), he assumed it did so also in the practice of the king's courts at that time.²³ His mistake proved irreparable because he had relatively little opportunity to compare what *Bracton* wrote with court records from the 1250s, which might have persuaded him to reconsider his views on the prominence of the appeal. Some of the other shortcomings we can now detect in Maitland's work on the

²⁰ *Gloucestershire Crown Pleas 1221*, p. xxxvi.

²¹ Figures from PRO, JUST/1/274.

²² Essex figures from PRO, JUST/1/227 and H. R. T. Summerson, *The Maintenance of Law and Order in England, 1227-1263*, Ph.D. thesis (Cambridge, 1976), pp. 80-1.

²³ For the appeal see particularly *Bracton*, ff. 137-43b, Thorne, ii 385-406; indictment is discussed at ff. 142b-3, ii 402-3.

pleas of the crown can be assumed to have had similar origins — his failure to take account of the plaint as a means of initiating proceedings, for instance, or his underestimation of the importance of gaol deliveries in law enforcement. But it should be acknowledged that these gaps were only filled after years of detailed research, undertaken by H. G. Richardson and G. O. Sayles, and by R. B. Pugh, respectively.²⁴

However, in considering Maitland's work on criminal law, it is also necessary to take into account aspects of his personality and background which, though necessarily inseparable from his achievement, would nevertheless appear to have had important effects upon it, effects which, a century later, do not always appear to have been entirely beneficial. In the first place, Maitland was in politics a convinced Liberal. To be a Liberal in the years round 1900 was no longer to be an advocate of a Gladstonian minimum state; on the contrary, early in 1906, the year Maitland died, a Liberal government was returned which would, with the introduction of the old age pension, lay the first foundations of a British welfare state. For the direction of affairs Maitland and those who thought like him looked for decisive action by a centralized and centralizing government — *mutatis mutandis*, one remarkably like that of Henry II and his ministers which Maitland so admired. Along with this, as he showed in his review of Gomme, Maitland exhibited a marked lack of sympathy for what he there called 'communalism', for the idea of village communities as embodiments of bucolic wisdom, autonomously conducting their affairs according to the dictates of age-old custom.²⁵ Finally, it is probably significant that Maitland's first professional training was as a lawyer, for he had something of the tendency, often observed in lawyers, to measure people and events in terms of clearcut differences — good and evil, guilt and innocence. When he wrote to P. E. Dove, advocating a volume of selected crown pleas as the first publication of the Selden Society, among the reasons he gave was that such criminal cases 'bring one at once to the great rules of right and wrong'.²⁶

The result was an attitude towards medieval law enforcement of linear directness. Law, made by kings and enforced by judges, was imposed from above. The processes whereby order was maintained and crime prevented were ones in which local communities — shires,

²⁴ H. G. Richardson and G. O. Sayles, eds, *Select Cases of Procedure without Writ under Henry III* (Selden Soc., 60, 1941); R. B. Pugh, *Imprisonment in Medieval England* (Cambridge, 1968).

²⁵ F. W. Maitland, 'The survival of archaic communities', in *Collected Papers*, ii 313–65; see also White, above.

²⁶ *Letters*, i no. 26 (p. 28).

boroughs, hundreds and vills — had parts to play, but they acted them under firm central direction, and with little freedom of movement, still less power to improvise. And the success or failure of those processes was easily gaged — in the last resort, by the number of criminals hanged. Maitland was a humane man, but he had no qualms about the gallows, at any rate for medieval felons (perhaps another consequence of his lawyer's training). Of the case of John the miller, convicted at Gloucester in 1221 of killing a fellow-servant of Petronilla of Stanway, but licensed to abjure when Petronilla offered 40s. for his life, Maitland notes that 'unfortunately his mistress, Petronilla, interferes and buys him permission to abjure the realm'.²⁷ Such a remission is clearly something to be regretted. On the hanging of eleven thieves his comment is no less blunt: 'this is the only satisfactory bit of hanging that is recorded.'²⁸ When he summed up his opinions on the standard of medieval law enforcement, his position is equally clear, recording 'our belief that crimes of violence were common and that the criminal law was exceedingly inefficient . . . even in quiet times few out of many criminals came to their appointed ends . . .'.²⁹

If the only proper end for a killer or a thief was the gallows, and if the efficiency of criminal law enforcement was measured solely in terms of the numbers hanged, Maitland's conclusions would be justified. But the circumstances of medieval English life were such as to make it unlikely that success and failure were in fact perceived in terms so straightforward. In the first place, the number of acquittals of suspects, and the way in which juries circumvented the rigidity of the law of homicide by presenting as self-defence killings committed in hot blood, not to mention the occasions on which even convicted felons might be rescued on their way to the gallows,³⁰ or their executions so bungled that they escaped death,³¹ make it clear that there were occasions on which the ostensibly law abiding simply did not want to take the lives of men and women who had committed felony. But much more important in this context is the fact that although Maitland was able to provide a most lucid account of the institutions of local government responsible for the maintenance of law and order, his over-centralized perspective, perhaps reinforced by suspicion of anything smacking of communal initiatives, led him to overlook the basic principles which directed their operation.

²⁷ *Gloucestershire Crown Pleas 1221*, no. 330 and note on p. 149.

²⁸ *Ibid.*, no. 472, and note on p. 154.

²⁹ Pollock and Maitland, ii 557.

³⁰ E.g. PRO, JUST/1/701, m. 19; JUST/1/361, m. 57d.

³¹ E.g. PRO, JUST/1/700, m. 12d.

Those principles may be defined as publicity and exclusion.³² All deeds of violence or theft, indeed all suspicious actions which led to the raising of the hue, were to be successively presented by the vills where they occurred to the three-weekly hundred court, to the six-monthly sheriff's tourn, to the monthly county court, and quite possibly to the eyre as well. Homicides would also be subjects of coroners' inquests, attended by men from the four nearest vills. The hue, raised by shouting and blowing horns, was itself a means of publicity, which could also be used to give legitimacy to actions otherwise suspicious. It was an essential component of an appeal of felony, which might otherwise appear malicious, and it gave authority to acts of summary justice — a Yorkshireman who beheaded the two killers of his brother was himself sentenced to outlawry because 'it is testified that the hue was not raised before Richard took vengeance on them'.³³ Its raising was the first step in the process of ensuring that everyone in a county knew who was suspected of law-breaking, a process continued by repeated presentments in local courts. Within vills all unfree men over the age of twelve were to be inhibited from crime by their being formed into tithings (in many parts these were groups of ten, but in some regions, especially the south-west, a whole vill might constitute a tithing), whose members were not only sworn to keep the peace themselves, but were also made responsible for the good behaviour of their fellows. Anyone coming into a vill from the outside world except for temporary purposes should be enrolled in a tithing — if he was not, a vill would be penalized. Outsiders should be excluded, not only by the suspicions of the villagers themselves, but also by the watch, an institution only regularized in 1233,³⁴ but clearly in existence before then; by 1221 there seems to have been a system of watches at Worcester, in which the tenants of the Hospitallers refused to participate,³⁵ while at the 1227 Buckinghamshire eyre a man and woman charged with homicide were said to have been questioned at their going out, and again at their return, by the watchmen of Aylesbury.³⁶ The plea rolls record many strangers as suspected of crime. Some came from far away, while others, on the evidence of their names, were outsiders in their counties of origin. What they all had in common was their being perceived as having no fixed abode, and as therefore being

³² The discussion which follows is based on H. R. T. Summerson, 'The structure of law enforcement in thirteenth-century England', in *American Journal of Legal History*, 23 (1979), 313–27.

³³ PRO, JUST/1/1043, m. 12d.

³⁴ *Close Rolls, 1231–1234*, pp. 309–10.

³⁵ *Select Pleas of the Crown I*, no. 149.

³⁶ PRO, JUST/1/54, m. 16d.

dangerous. Those with a place in rural communities were to be controlled and supervised, those with no such place were to be kept outside.

In the circumstances of thirteenth-century rural life, when most of those who had any stable habitation lived in villages and hamlets surrounded by expanses of wood, heath and other open country, arrests were always going to be hard to make, because in such conditions it was so easy for suspects both to get away and to stay out of reach of pursuers. But publicity and exclusion could then be used against them. All should know who they were and what they had done, so that they could be arrested if they attempted to return to the company of the law-abiding. And if they escaped arrest, exclusion could be given legal form by the processes of outlawry, processes which extended the business of publicizing suspicion. Either through a personal accusation — the appeal of felony — or through the public accusation embodied in the process of exigent after an eyre, a suspect's attendance would be publicly demanded at four successive sessions of the county court. If he failed to appear, he would be declared an outlaw at the next session. Maitland observed signs of change in the status of outlawry in the thirteenth century, that 'instead of being a substantive punishment, it becomes mere "criminal process", a means of compelling accused persons to stand their trial'.³⁷ But the change is not one visible in the judicial records of the age of *Bracton*, and it seems hard to see how a condition which reduced a killer or thief to the condition of hunted vermin, liable to be arrested on sight, and to be killed if he resisted arrest or fled, can be described as other than punitive.

The effectiveness of outlawry as a penalty is impossible to estimate in exact terms, but there were certainly numerous occasions when outlaws reappeared among the law-abiding and paid the penalty. At the 1257 Norfolk eyre, for instance, it was presented that one Roger le Vacher, outlawed in the county court 'a long time ago', had turned up in Happisburgh, only to be beheaded by the prior of Wymondham's bailiff.³⁸ To move from one county to another was no guarantee of safety, since officials exchanged information about criminals.³⁹ John le Mazun, outlawed in Northamptonshire, was arrested as an outlaw in Buckinghamshire, and only escaped the rope by fleeing to a church

³⁷ Pollock and Maitland, i 476.

³⁸ PRO, JUST/1/568, m. 32.

³⁹ *Surrey Eyre of 1235*, ii no. 361 and note on pp. 519–20; *Crown Pleas of the Devon Eyre of 1238*, no. 189 and note.

and abjuring the realm.⁴⁰ Such cases argue that outlawry was considerably more than a sign of weakness in the law. No doubt there were many killers and thieves whom villagers would gladly have hanged, but given the conditions which so often placed such men out of reach, the use of the courts and other processes of law to make them known, and then to exclude them from the society of the law-abiding, on pain of death if they returned, was a far from ineffective substitute for the gallows.

In the introduction to his edition of the 1221 Gloucestershire crown pleas, Maitland wrote that: 'If we were to regard an eyre merely as a mode of bringing accused persons to trial, then we should have to regard this eyre as a very wretched failure. Murders and robberies there have been in plenty; indeed this roll bears witness to an enormous mass of violent crime: but in far the greater number of cases either no one is suspected of the crime, or the suspected person has escaped, and no more can be done than to outlaw him . . .'.⁴¹ Maitland thus put failure to name a suspect on the same level as outlawry. It is argued here that this was a mistake, that a relatively low number of arrests and convictions in court was inevitable in the prevailing conditions, and that outlawry should be regarded as at least a qualified success for those responsible for law and order — a culprit had been identified with a fair measure of confidence (it was by no means unknown for those named as responsible for homicide or theft to appear in court later in an eyre and be acquitted), his identity was made public, any chattels were forfeited, and, once the process of outlawry was complete, he was liable to arrest and execution if he showed his face among the law-abiding. An abjuration should probably be seen in the same light. It represented a near miss, a killer or thief obliged under pressure of imminent arrest to take sanctuary in a church, and there either to surrender to the king's peace, or to make a formal confession of his misdeeds to a coroner, after which he swore to leave the country and never return. An abjuration was given publicity by being conducted in the presence of the men of, usually, four neighbouring vills, and it was also presented to the local courts, as well as to the next eyre. As with outlaws, some abjurors failed to complete their journeys out of the realm and returned to, or stayed in, their counties of origin, but if they were detected they suffered the same penalty as returning outlaws. One example among many is that of Adam Roules, recorded in 1248 as having abjured the realm at Ludlow, but as later making his way

⁴⁰ PRO, JUST/1/614B, m. 48d.

⁴¹ *Gloucestershire Crown Pleas 1221*, pp. xxxiii–xxxiv.

back to Shropshire; the hue was raised upon him and he was arrested and beheaded.⁴²

Maitland's criteria for judging the effectiveness of law enforcement in thirteenth-century England, effectively confined to the number of reported hangings, were too restricted. Outlawries and abjurations also need to be taken into account, and only felonies attributed solely to unknown criminals should be construed as unequivocal signs of failure. It may be instructive, therefore, to reconsider the 1221 Gloucestershire crown pleas in the light of these considerations. This means dealing almost entirely with cases of homicide — for whatever reason, thieves and robbers are only occasionally recorded. For the number of people killed Maitland provided two different figures: in 1884 he wrote that 'some 250 persons have met their deaths by what would now be called murder', while in 1895 he referred to what he called 'an appalling tale of crime which comprised some 330 acts of homicide'.⁴³ He was certainly aware in 1884 of the possibility of distinguishing between what modern parlance defines as murder and manslaughter, observing, prior to a discussion of the murder fine, that 'the word *murder* is never used to differentiate two degrees of homicidal guilt . . .',⁴⁴ but he did not qualify his statistics to suggest that he had made that distinction here, so we must suppose that he was using the word 'murder' in a loose and general — and also anachronistic — sense, for statistics which also seem to have been rather carelessly compiled. The plea roll is indeed sometimes ambiguous as to how many people died in particular cases, but the total number of deaths inflicted by violence appears to have been about 363. In describing his total of 1895 as 'appalling' Maitland was handicapped not only by a lack of figures from other eyres with which to compare it, but also by his inability to discover how long a period the Gloucestershire eyre covered. In fact the previous eyre in the county had taken place as long ago as November 1203,⁴⁵ so that of 1221 covered very nearly eighteen years, with an average homicide rate of about twenty per annum.

This was certainly a very high rate — eyres of the early and mid-1230s in Buckinghamshire, Essex and Surrey record an average rate of nine or ten homicides per annum.⁴⁶ But since the 1248 eyre recorded

⁴² PRO, JUST/1/733B, m. 3.

⁴³ *Gloucestershire Crown Pleas 1221*, p. xxxv; Pollock and Maitland, ii 557.

⁴⁴ *Gloucestershire Crown Pleas 1221*, p. xxix.

⁴⁵ D. Crook, *Records of the General Eyre* (London, 1984), p. 68.

⁴⁶ See Summerson, 'Maintenance of law and order', 71–80.

148 killings in the previous seven years,⁴⁷ an average of twenty-one per annum, it would appear that Gloucestershire was a county unusually liable to suffer from criminal activity. The civil war of 1215–17 doubtless contributed to the crime rate recorded in 1221, and is in fact referred to in a number of cases,⁴⁸ though the county was not directly involved in the war, which helps to explain the choice of Gloucester as an appropriately safe place for the coronation of the young Henry III. As a basis for Angevin power it is likely to have seen much military activity, and to have served as a haven for people fleeing from more troubled parts. But as a large and prosperous county, with a good road system to facilitate movement, with the second-largest town in England at Bristol to attract the footloose, the needy, and the ambitious, and with a good deal of woodland to afford protection to wanderers and evildoers — not least the Forest of Dean, with its population of unruly and independent miners and charcoal-burners — Gloucestershire was likely to be attractive to vagrants anyway. Felons named in 1221 included people from Warwickshire, Herefordshire, Worcestershire, Wiltshire, Bedfordshire, Wales and Ireland. How great a threat such people posed can be seen in the number of killings attributed to unknown criminals, 184 in all, almost exactly half the total. Many of these will have been the work of criminal bands, of the sort that J. B. Given, using Bedfordshire coroners' rolls of the late 1260s, has shown descending on villis and attacking several houses in succession.⁴⁹ In Gloucestershire such malefactors were responsible for the slaughter of whole households, often containing between six and eight people, including women and children. For instance, the Whitstone jurors told how criminals came by night to the house of Robert Kari, killed Robert, his wife, and the child at his wife's breast (*quendam puerum lactantem*), and then to the house of Adam son of Andrew, where they killed Adam, his wife, a little old woman and two children, 'that is, all who were in those houses'.⁵⁰

Some of these raids seem to have resulted from problems with the control of Gloucestershire's county boundaries, which were exacerbated by the existence of a substantial ring of woods which ran round

⁴⁷ Figures from PRO, JUST/1/274. The total number of homicides for 1248 would certainly have been higher, but for the previous year's grant by Henry III to Fecamp Abbey of the hundreds of Cheltenham and Slaughter, and the villis of Slaughter and Stow on the Wold, on terms which removed them from the jurisdiction of the eyre.

⁴⁸ *Gloucestershire Crown Pleas 1221*, nos. 15, 35, 147, 161, 178, 181, 200, 254, 264, 393, 419, 431, 466.

⁴⁹ J. B. Given, *Society and Homicide in Thirteenth-century England* (Stanford, California, 1977), pp. 119–21.

⁵⁰ *Gloucestershire Crown Pleas 1221*, no. 437.

much of the county's eastern and southern borders, and doubtless gave cover to such brigands.⁵¹ In the small southern hundred of Pucklechurch, for instance, twelve out of thirteen killings, in just two attacks which claimed six lives each, were attributed to unknown criminals.⁵² But whatever the reason, the fact remains that communities were found in 1221 to have been repeatedly unable to keep such marauders out, and in that respect Maitland was correct to argue that the law had been badly, or at any rate unsuccessfully, enforced in Gloucestershire. The qualificatory clause seems advisable, for not all the evidence is so negative. A total of 137 suspects had either been already outlawed or were put in exigent at the eyre, their identities known and made public, their chattels forfeited, their futures heavily circumscribed; and another twenty-five killers were recorded as having abjured the realm, by procedures which condemned them to much the same fate as that of an outlaw, and also attest at least some communal vigilance on the part of vills which detected and pursued them. Another twenty-seven killers were either hanged at the eyre or were reported to have been hanged in the years prior to it, at gaol deliveries or elsewhere. And these figures do not include the killer who confessed his crime and died in prison, two other suspects who died in prison untried, two clerics convicted and saved from the gallows by their clergy, another cleric previously handed over to his bishop and declared suspected at the eyre, and five people whose guilt or innocence could not be satisfactorily decided because they refused a jury's verdict (two other men who refused a jury were nonetheless convicted, one being hanged and the other permitted to abjure the realm).

No doubt some killings attributed to unknown criminals were the result of enmities between villagers, while the fact that eighteen named suspects were described as strangers shows that some wanderers stayed long enough for their identities to become known. These, with another twenty described as harboured outside frankpledge, show that not only had vills been unable to keep strangers away, but they had also been unable entirely to absorb outsiders who gained admission to them. It should be said that not all those labelled strangers in a plea roll were necessarily bandits in disguise. There were those whose livelihoods made them largely rootless; tinkers and pedlars, for instance, whose skills and whose wares small communities would probably have found it hard to do without, and men like Roger the shepherd, described by

⁵¹ See C. R. Young, *The Royal Forests of Medieval England* (Leicester, 1979), pp. 62-3; *VCH Gloucestershire* vol. II (1907), pp. 128, 263-4; H. C. Darby and I. B. Terrett, eds, *The Domesday Geography of Midland England* (2nd ed., Cambridge, 1971), pp. 28-9.

⁵² *Gloucestershire Crown Pleas 1221*, nos. 278-9.

Corse vill in 1221 as 'not residing in his vill but itinerant from place to place'.⁵³ Sheep-farming, especially on the Cotswold plateau, was an essential component of the rural economy of Gloucestershire, which must have contained many men like Roger, required by their work to keep moving. Bringing such people into the respectable stability represented by membership of a tithing was never going to be easy. Even so, Gloucestershire in 1221 may have been finding it hard to operate a system of frankpledge. In about forty cases the statuses of fugitive and suspected killers went unrecorded, and only fifty-six were categorically said to have belonged to tithings. Another twenty-five were recorded as having belonged to mainpasts, that is, to the households of lords, secular and ecclesiastical, who were held responsible for the good conduct of the dependents who, as the word 'mainpast' itself indicates, ate their bread. When felons were convicted, it was irrelevant, and was not recorded, whether they had belonged to tithings or mainpasts. But of the 162 outlaws, exponents and abjurors, only eighty-one, exactly half, had been within the network of collective responsibility designed to control the behaviour of the inhabitants of vill, while thirty-eight, nearly a quarter, had managed to slip through that network.

It would appear that law and order were indeed being ill-served in Gloucestershire in the years before 1221. The grounds Maitland gave for believing this to be the case were inadequate, but when inquiry is broadened to take into account the thirteenth century's own criteria for assessing the extent to which the law was being enforced, it becomes apparent that his judgment was still broadly correct. It does not follow, however, that the criminal law was always inefficient. This is one of the points on which Maitland was handicapped by a lack of source material as well as by his own preconceptions; his own edition of the Gloucestershire crown pleas was one of the few easily accessible sources of statistical evidence at his disposal, and for the *History of English Law* it, and William Page's edition of plea rolls from Northumberland in 1256 and 1279, were the only ones he used for this purpose. The Northumberland figures suggest a much lower level of criminal activity in that county than in Gloucestershire, and reasons connected with its geographical position and economic make-up have been offered for believing that the latter county was always likely to suffer from a high rate of crime. But a closer inspection of the records may still suggest that, though they show a system functioning under

⁵³ *Ibid.*, no. 86.

considerable strain, it was not a system incapable of better performance.

Further comparisons between Gloucestershire in 1221 and in 1248 may be illuminating here. Although there was no difference between the homicide rates recorded at the two eyres, in 1248 only thirty-eight out of 148 killings were attributed to unknown criminals, a ratio of one in four, compared with one in two in 1221. It was probably important that the keeping of watches had been set on a regular footing in 1233, leading to greater success in keeping brigands out of the villis. There also seems to have been a tightening up of frankpledge, doubtless at the behest of the county's officials. In 1221 some tithings had consisted of whole villis, while others had consisted of groups, each recorded under the name of the tithingman at its head. By 1248 all the recorded Gloucestershire tithings were of the latter kind. The growth of population — the thirteenth century saw much assarting in the county⁵⁴ — probably accounts for the change; the villis were coming to contain too many men, who could no longer all be expected to keep an eye on one another, and had to be divided into smaller groups. The homicide rate did not fall as a result — frictions within an expanding population may well have seen to that — but nevertheless there is one piece of negative evidence to suggest that this change did have some effect. One hundred, that of Berkeley, was said in 1248 to contain no tithings at all, of any kind.⁵⁵ With twenty-three killings, it had the highest homicide rate in the county, nearly twice that of the second most afflicted hundred. Without a reorganization of frankpledge, matters might have been even worse than they were.

Similarly with the 1221 eyre, the failures to arrest, to pursue, to present suspicious and criminous acts to local courts and officials, to ensure that those who should be were enrolled in tithings — all these numerous shortcomings should not be permitted to conceal the occasions on which villis fulfilled their obligations, sometimes in desperate circumstances. Although many more suspects were found to have evaded a place within frankpledge than should have done, it is still noteworthy that within this system were many from the very lowest levels of settled village society. Nineteen fugitives who were recorded as belonging to tithings were said to have had no chattels at all, many more to have had goods worth only a few shillings or even pence. Yet humble though they were, they had a place within the national system of law enforcement, and had been registered as such. All too often the

⁵⁴ H. E. Hallam, *Rural England 1066-1348* (London, 1981), pp. 147-50.

⁵⁵ PRO, JUST/1/274, m. 8d.

man who killed another in a brawl was able to make an immediate get-away, but not always. The justices at Gloucester heard Richard the forester, a royal bailiff, describe how John Spirewin had killed Peter son of Walter in St Briavels during a quarrel over a game of dice, and how 'he with many others followed him and arrested him fleeing with the bloody knife in his hand with the hue raised, defending himself with the same knife . . .'.⁵⁶ John was hanged at the eyre, and so was William son of Matilda, likewise seized immediately after killing a man, the stick which had struck the fatal blow still in his hand.⁵⁷ Not every pursuit ended so successfully. The Westbury jurors told how one night bandits attacked the house of Basilia, the wife of Robert the smith, when Robert was away in Worcester. The hue was raised and the neighbourhood came, but the attackers killed one villager and wounded another before making themselves scarce.⁵⁸

Answering the hue could thus be a dangerous business, and the significance of all these episodes, in the present context, lies in the fact that people were prepared to take the risks involved in the pursuit of armed and dangerous men. The hanging in an unidentified court of eleven criminals who had just killed three women in one house appears to show a willingness to tackle a whole gang.⁵⁹ There are also cases which show an impressive degree of communal vigilance and alertness. William de Fonte and his son Alexander were suspected of the death of a merchant, in the first instance because 'he stayed in William's house, and was seen to stay there, and he never left it except as a dead man', and though they denied the death, further details emerged, that Alexander and his mother Agnes had killed him, with William's connivance, and had carried his body away, after taking from it £10 and a belt.⁶⁰ When Matilda, widow of Richard le Butiller of Acton, came under suspicion of her husband's death, the jurors were able to report on the quarrels between Richard and Matilda, on the way he often beat her, alleging unfaithfulness on her part, and how she would often return to her father's house, 'and to the house of Robert Waifer who had married a friend of Matilda's', and how Robert and others had often come with Matilda to Richard's house, and had threatened Richard.⁶¹ We can surely see in such a case both the continuing operation of the system of multiple presentment, whereby represen-

⁵⁶ *Gloucestershire Crown Pleas 1221*, no. 189.

⁵⁷ *Ibid.*, no. 394.

⁵⁸ *Ibid.*, no. 336.

⁵⁹ *Ibid.*, no. 472.

⁶⁰ *Ibid.*, no. 213.

⁶¹ *Ibid.*, no. 111.

tatives of vills drew on local knowledge to inform the countryside of brawls and disturbances, and also the rumours and tale-bearing which must often have fed that system, in the rather sordid details which the Deerhurst jurors were able to supply about this case.

It was certainly a system which, if not closely scrutinized, could provide scope for malice and vindictiveness. *Bracton*, as Meekings showed, declared that the justices should be ready to probe juries' indictments to get at the truth.⁶² Maitland's vivid representation of justices presiding at an eyre is made in a different spirit — 'We are reminded of a schoolmaster before whom stands a class of boys saying their lesson. He knows when they go wrong, for he has the book.'⁶³ The justices did indeed have access to coroners' and sheriffs' records, and could use them to monitor what the jurors said. But they also used them, and all the other sources of information available to them, in efforts to get at the facts of the cases presented before them. An eyre was a dynamic affair, and the justices presided over proceedings much more like a forum than a catechism. Testimony could be given by the whole county, or by the sheriff and a range of lesser officials. Great men like the earl of Gloucester, the earl Marshal and the abbot of Cirencester might appear at the eyre to speak up on behalf of their interests.⁶⁴ At a much humbler level, after the Dudstone jurors presented details of the killing of Roger le Frankelein, Roger's widow Gunilda, who had been beaten up in the course of the attack, came into court to tell how 'there was ancient hatred between Roger and Henry le Cupere over Henry's beasts which Roger had often impounded, and so she thinks he was killed by him'. It was then found that Henry had already been arrested for theft, and when he came into court, the coroners, jurors and four nearest vills declared 'with one voice' that he was guilty of both homicide and theft.⁶⁵ When a jury made a presentment or indictment, it might be prepared to speak up again in defence of it. After John the miller had not only denied killing Henry, servant of Petronilla of Stoneway, but also said he never knew him, the Westbury jurors gave as one reason for believing him to be guilty the fact that 'he denies being in Henry's company and that he did not know him, and this they know to be false . . .'.⁶⁶

An important part was played by the representatives of vills, in the form of four men and the reeve from each community. These men may

⁶² *Wiltshire Crown Pleas* 1249, pp. 95-6.

⁶³ Pollock and Maitland, ii 646.

⁶⁴ *Gloucestershire Crown Pleas* 1221, nos. 234, 254, 268.

⁶⁵ *Ibid.*, no. 414.

⁶⁶ *Ibid.*, no. 330.

well have cooperated with juries in the presentment of offences, which often seems to have been made in geographical sequence, vill by vill, rather than in some other pre-arranged order. And they could also be questioned by the justices. Hence a case like that of Roger of Meon and his brother Ranulf Eynolk, presented by the Kiftsgate jurors as having killed William son of Henry and fled, so that they were put in exigent. But it was later testified — and the phrase *postea testatum est* often appears to indicate further inquiry — that Roger was not guilty, and that his only fault lay in his having been present at the killing. Along with this discovery went amercements imposed on Meon and Admington vills. Meon had not wanted to say anything about Roger, while Admington had not only been likewise silent, but had also falsely presented the death of William's wife Hawise, who had appealed the two fugitives of her husband's death; she was in fact still alive.⁶⁷ The jurors would appear to have believed at first that Roger was guilty, the two vills to have believed in his innocence, to the extent that they tried to protect him by concealing and misrepresenting facts. Paradoxically, it looks as it was the discovery of their efforts, perhaps by reference to the county court rolls, which should have recorded Hawise's appeal, that led to the re-examination of the case and Roger's eventual acquittal. The Deerhurst jurors presented that a thief who broke into the house of a widow called Elvina and carried off her goods had been pursued and killed by two neighbours. The two men came before the justices, and the jurors upheld their statement that they had killed the man as he fled. Finally Elvina came into court, to claim the stolen goods, 'and nothing else was testified except that he was a thief and was killed in flight' — a choice of words which suggests strongly that there had been a last cross-questioning by the justices of the jurors and others, to ensure that the thief's death, though violent, had nevertheless been lawful.⁶⁸

The records of cases from the 1221 Gloucestershire eyre are seldom very full, and generally contain less detail than those of later eyres — hence the frequent omission of information about tithings. As the plea rolls become more communicative, it is possible to see more of the same sorts of processes as those employed in Gloucestershire, and to get a clearer picture of the justices at work, and of their methods of getting at the facts behind cases. It should be said that by comparison with later gaol deliveries, where trials appear to have taken only a few minutes, eyres were relatively leisurely affairs. A rudimentary timetable

⁶⁷ *Ibid.*, no. 11.

⁶⁸ *Ibid.*, no. 89.

survives from the 1238 Devon eyre, which suggests that the justices got through about thirty cases a day,⁶⁹ and these would have included presentments of accidental deaths, royal rights, infringements of the assizes of cloth and wine, and other matters which would usually have required little examination or discussion. Where justices itinerant wanted to go into a case in detail, they are unlikely to have felt constrained by lack of time. A good example of the way they might take time and trouble is provided by the 1248 Sussex eyre, where the Eastbourne jurors presented that Remigius de Esthalle had been found dead on the seashore; he had, they said, drowned himself. But a check against his roll showed that the coroner had seen nothing to suggest suicide. The justices clearly then decided to look more deeply into this case, because further testimony was produced to show that 'the men of Eastbourne hated Remigius greatly, and hardly let him be buried in the cemetery'. Armed with this evidence for misrepresentation, they then turned to the first finder of the corpse, and he must have broken down under questioning, it being recorded that 'he vacillates in his presentment'. Finally it was admitted that Remigius died by misadventure, falling from his horse into the sea, but so determined had the men of Eastbourne been to ruin him posthumously that they had presented this case falsely to the county court as well as to the eyre. Only the determination of the king's justices to uncover it had brought the truth about his death to light.⁷⁰

Nor was it only the first finder of a corpse who might be required to testify in court. Other witnesses, or presumed witnesses, might also give evidence, and be examined. At the 1235 Essex eyre the Lexden jurors presented details of the killing of Adam le Franceys of Tolle-shunt, who had stayed in the house of Stephen le Macecre on the night before his death. Before the sheriff and coroners Stephen had told how Adam arrived and left in daylight, and had departed carrying 6s.4d. of Stephen's to pay to a Tolleshunt man, money subsequently found tied in his shirt. And he produced two witnesses to corroborate his testimony. But at the eyre not only did Stephen tell a different story, but his witnesses also let him down. At first one of them denied ever setting eyes on the dead man, and then they both denied seeing anything, presumably under questioning in court. Stephen was hanged.⁷¹ Jurors might themselves be questioned. At the 1262 Buckinghamshire eyre the Bunstey jury gave particulars of the death of an unknown woman, arrested at Beachampton on suspicion of theft

⁶⁹ *Crown Pleas of the Devon Eyre of 1238*, pp. xii-xiii.

⁷⁰ PRO, JUST/1/909A, m. 28d.

⁷¹ PRO, JUST/1/230, m. 2d.

by two men who went on to beat her up so brutally that she died. Her body was then buried in the church cemetery without a coroner's view, and the justices clearly suspected that this was not the limit of attempts at concealment, because they questioned five members of other juries singly, both about the circumstances of the woman's death and about the efforts to conceal it. No more suspects came to light, but two local worthies made fine for twenty marks each, and several other men paid smaller sums.⁷²

Maitland could hardly have known about such cases without a much more extensive scrutiny of unpublished records than he ever had time for. He saw how the financial penalties imposed by eyres served to impress on communities and individuals their responsibilities in the work of keeping the king's peace — 'a just and regular infliction of pecuniary penalties was the only means of bringing the unprofessional policeman (and every man ought to be a policeman) to a sense of his duties...'.⁷³ But although he showed by this comment that he was perfectly aware that law enforcement was a process which went on between eyres, he gave remarkably little attention to those agents who above all others represented continuity in that process, namely the sheriff and all the other officials who proliferated in thirteenth-century England. He described the sheriff's tourn, bringing out its resemblances to the eyre, in the use of written articles to which jurors must give answers,⁷⁴ but of officialdom as a whole he declared that 'we need say but little since constitutional history has taken them under her protection'.⁷⁵ The attention which officials received from constitutional history was one which placed them in the background to important developments like the issue of Magna Carta, the struggles between Henry III and Simon de Montfort, and the beginnings of parliament, and not for another thirty-five years were they spotlighted as playing a significant part in the day-by-day administration of the country. 1995 was also the sixty-fifth anniversary of the publication of Helen Cam's *The Hundred and the Hundred Rolls*, a book which has arguably still not received its due — a consequence perhaps of its first appearing in a series not usually regarded as part of the academic publishing mainstream, and possibly also of a graceful and often humorous style which softened the impact of Cam's message.

For where Maitland and his successors looked down at medieval administration from the perspective of a royal government which

⁷² PRO, JUST/1/58, mm. 26, 27.

⁷³ *Gloucestershire Crown Pleas 1221*, pp. xxxiii–xxxiv.

⁷⁴ Pollock and Maitland, i 558–60.

⁷⁵ *Ibid.*, i 533.

enacted legislation and gave orders in the expectation that they would be obeyed, Cam observed it from a very different perspective, that of those who distributed those orders locally and of those who finally received them. Far from giving rise to grateful reflections upon the 'tremendous empire of kingly majesty',⁷⁶ Cam, using the *Rotuli Hundredorum* of the early years of Edward I's reign, portrayed a society in the grip of whole regiments of petty tyrants, uncertainly and distantly presided over by a king whose intervention, even when well-intentioned, was liable to seem capricious, and was more likely to appear either expensive or extortionate, and quite possibly both. Maitland made use of the *Rotuli Hundredorum*, but primarily for information about units of local government — the distribution of suits to courts, the places where courts met, the shortcomings and transgressions of village communities, and the like — and his terms of reference prevented his examining the activities of sheriffs and their underlings, and of their equivalents in private jurisdictions, for the light these might shed upon the enforcement of the criminal law. Of course, many of the allegations recorded in the *Rotuli* will have been exaggerations, if not pure fiction, but even so, they, and similar accusations made at eyres, show something of the range of activities undertaken by the men so accused.

In Gloucestershire, for instance, officials are shown holding courts, sometimes more often than they should have done — the undersheriff of the county was holding four tourns a year, instead of the two prescribed by custom. They received indictments, and arrested those indicted, though they might then take bribes for releasing them again. The earl of Warwick's steward arrested Robert le Holdere, described as 'a faithful man', imprisoned him, and then made him abjure Wickwan vill, without a coroner or royal bailiff being present. They might hold inquests into deaths, or at least give orders that inquests be held. When a woman's body was found in the Severn, the bailiff of Henbury hundred sent the tithingman of Aust and others to inquire, and when they could not identify her, threatened to accuse one of the men who made the inquest. They might come to terms with one another to ensure that suspects were, in their own eyes, duly punished. A thief arrested at Sodbury fled to Bristol; the bailiffs of Sodbury followed him there, and paid John de Mucegros's bailiff one mark to allow him to flee thence, but the flight was a stage-managed one, for as soon as the thief was outside Bristol he found his pursuers waiting for him, and they arrested him, took him back to Sodbury, and hanged

⁷⁶ Ibid., i 107.

him there.⁷⁷ The exact particulars of these allegations are not at issue here; the officials involved may have been maligned, or they may have been genuinely brutal and corrupt. What is significant in this context is that in these presentments they can be seen holding courts and inquests, making arrests, even taking steps to have a suspect hanged — all processes without which the criminal law could not be enforced.

Similar activities, often associated with abuses of power, but also demonstrating how power was exercised, are recorded in many crown plea rolls from eyres. Like justices itinerant, officials reviewed the workings of local courts and other instruments of law enforcement. Thus in 1255 the bailiffs of Faversham hundred in Kent were reported as having taken money from vills and individuals for not attending inquests into homicides and the raising of the hue, for raising the hue but not following it, and for acting as host to unknown criminals.⁷⁸ Officials are frequently recorded as arresting suspects, and as taking bribes for releasing those arrested, and they also exploited their control of prisons, several times being said to have refused to accept prisoners from their captors. The Buckinghamshire vill of Edlesborough sent three times to the sheriff asking that he receive Adam Spregy, arrested in the act of burglary, into the county gaol, and each time the sheriff refused, so that in the end Adam escaped.⁷⁹ In such a case the sheriff was probably holding out for a bribe, or at any rate some informal *douceur* for the trouble he would be put to in sending men to take Adam to prison, though it is possible that officials sometimes refused to accept prisoners because they doubted their guilt.

Sheriffs and bailiffs certainly needed to be alert and well-informed, and to keep their ears to the ground for reports of ill-doing and dubious behaviour. When Algar of Charton departed on pilgrimage, the bailiff of the Devon hundred of Axminster came and took Algar's chattels precisely because he had been away for a long time; he had not been indicted, but his prolonged absence clearly seemed suspicious.⁸⁰ They could also hear petitions for redress, as when Henry de la Gare complained to the sheriff of Kent that Adam son of Hugh had maimed him; since at the 1241 Kent eyre it was found that there was no record of an appeal, this must have been an essentially informal representation, though it led to Adam being arrested.⁸¹ To the same end officials

⁷⁷ Cases from W. Illingworth, ed., *Rotuli Hundredorum* i (Record Commission, 1812), pp. 166–83.

⁷⁸ PRO, JUST/1/361, m. 50d.

⁷⁹ PRO, JUST/1/58, m. 25.

⁸⁰ PRO, JUST/1/176, m. 28.

⁸¹ PRO, JUST/1/359, m. 31d.

seem to have held numerous inquests, whose findings they might direct; when Nicholas de Wauncy, sheriff of Surrey, held an inquest into the killing of Robert le Bost, he 'threatened to penalize the vills concerned' if they did not indict Ralph of Anjou, as they then did, though Ralph was acquitted at the 1241 eyre.⁸² But on other occasions they might hold inquests and then allow themselves to be bribed to ignore their findings. In 1262 the Kinton jurors told how William Mansel, then sheriff of Warwickshire, had held an inquest on Alcester bridge 'into criminals in those parts', at which the gentleman-gangster Robert de Castello and several of his followers were indicted, but for a bribe of 100s. he agreed to leave them alone, thereby enabling them to commit many more crimes.⁸³ Mansel was sheriff of Warwickshire and Leicester-shire for three and a half years in the 1250s, having previously been undersheriff to Philip Marmion. A local man, he may have had tenurial links with Robert de Castello. His record illustrates the danger that officials would become over-sensitive to local interests, and unmindful of the king's. The risk was increased by the very long terms that some of them served in the mid-thirteenth century, for instance the twelve years of William Heron in Northumberland (1246-58) and the fifteen years of Walter of Bath in Devon (1236-51). In 1258 the baronial reformers called for sheriffs to be replaced annually,⁸⁴ but neither then nor later did this prove practicable. Lesser officials, who might have bought their offices, could prove equally long-lasting, their local knowledge making them well-nigh indispensable even when they proved incorrigibly corrupt.⁸⁵ As far as law enforcement was concerned, there were obvious advantages in having an official who knew his 'patch', including its shadier inhabitants.

It sometimes happened that an official would use his position to bestow respectability on a man who did not deserve it. At the 1250/1 Norfolk eyre the Freebridge jurors presented that Peter of Pinchbeck, outlawed in Lincolnshire, had paid one mark to the sheriff of Norfolk 'for allowing him to stay and announcing that he was faithful'.⁸⁶ In fact the sheriff quite possibly did not know of Peter's outlawry, and the significance of this case lies as much in the fact that the truth of his status had nevertheless been revealed, as in the light it sheds on the

⁸² PRO, JUST/1/869, m. 2.

⁸³ PRO, JUST/1/954, m. 48; see also Summerson, 'The maintenance of law and order', 169-71.

⁸⁴ R. F. Treharne and I. J. Saunders, eds, *Documents of the Baronial Movement of Reform and Rebellion, 1258-1267* (Oxford, 1973), pp. 108-9.

⁸⁵ Discussed by H. M. Cam, *The Hundred and the Hundred Rolls* (London 1930), pp. 145-53; see also R. C. Palmer, *The County Courts of Medieval England, 1150-1350* (Princeton, New Jersey, 1982), pp. 28-55.

⁸⁶ PRO, JUST/1/564, m. 25.

power which his office gave the sheriff to confer acceptability on a dubious character. How the facts about Peter's outlawry became known is not recorded, and it is clear that there were many ways for such disclosures to be made, not all of them overtly formal. The whole structure of thirteenth-century law enforcement, with its elaborate system of continuous presentments at inquests and courts, was itself the product of a rural society in which everybody was expected to be perpetually alert and suspicious, their ears and eyes open for evidence of violent or dishonest behaviour, ready to raise or follow the hue, to pick up and to circulate rumour, both to one another and to officials. An Essex woman who found a cowl belonging to the prior of Blackmore informed the parish priest, who in his turn told her to report her find to the bailiff of Writtle.⁸⁷ A presentment of treasure trove at the 1232 Warwickshire eyre was specifically said to have originated in women's gossip — 'ex confabulationibus mulierum'.⁸⁸ At the same eyre a presentment concerning a man who died in St John's hospital in Coventry was found to have originated with the woman who had laid out his corpse.⁸⁹ Petty thieves were often punished by the loss of an ear, and to be detected with such a mutilation was to risk instant arrest. Hence enrolments on the patent rolls like that which proclaimed that 'Walter son of Roger de Sumery lost his left ear by some evildoers in the forest of Clarendon and not on account of any felony'.⁹⁰ Otherwise Walter stood in danger of the fate of the woman with only one ear, and the man with a thumb cut off, who were arrested on suspicion in Berkshire.⁹¹ Vagrants could expect to be stopped for questioning, like the Buckinghamshire man who claimed to be a servant of Gilbert of Seagrave but 'varied in what he said, and was therefore arrested and imprisoned at Aylesbury', though in the end no charge was brought against him.⁹²

Not surprisingly, the use of written instruments, attesting the honesty and good repute of those who carried them, began to proliferate. William of Badgeworth, accused of theft in Sussex, returned home to Gloucestershire, where the Badgeworth manor court provided him with 'litteras testimoniales de fidelitate' under the seals of the bailiff and suitors, which he then carried back to Bramber.⁹³ Equally unsurprisingly, in such conditions malevolent rumour also circulated freely.

⁸⁷ PRO, JUST/1/1189, m. 6d.

⁸⁸ PRO, JUST/1/951A, m. 4.

⁸⁹ *Ibid.*, m. 7d.

⁹⁰ *Calendar of Patent Rolls, 1247-1258*, p. 167.

⁹¹ PRO, JUST/1/36, m. 5d.

⁹² PRO, JUST/1/62, m. 4.

⁹³ PRO, JUST/1/911, m. 8.

At the 1262/3 Kent eyre Hamo Petch complained that, following the discovery of a stranger's corpse in Ash wood, Isobel, widow of Nicholas Denne, and her son Richard had put it about that the body was that of Isobel's son John, and that Hamo had killed him, 'with the result that Hamo was held in such suspicion for the death that he barely escaped hanging', a complaint which the Hildenborough jury confirmed 'in every detail'.⁹⁴ The fact that so much information was so regularly called for from communities increased the chances that dishonesty, malice or straightforward error would eventually be winnowed out and the truth emerge. In the case of Hamo Petch that is indeed what happened, though apparently not until the eyre. The eyre was the apex of the whole system, but it remained a part of that system. Much of what was said and done at an eyre derived from what had already been presented to inferior courts, and it was by drawing on these earlier proceedings, and on the communicative capacity of rural society as a whole, that eyre juries were sometimes able to testify with an impressive precision and weight of detail.

At the Hertfordshire eyre of the late spring of 1248 John of Standon and Alice, daughter of Hugh le Seler, suspected of the death of Alexander the mason, paid one mark for a special verdict. In due course the jurors of three hundreds came into court, and stated that:

On the Wednesday before Michaelmas in the twenty-ninth year [27 September 1245] Alexander ate at the home of Henry of Buckland in Buckland, and immediately after dinner Alexander set out from there in good health, saying he would go to Royston. And while on the journey to Royston he spoke to Lawrence of Therfield. From there he went on towards Royston and crossed onto Ermine street, and there Alice saw him, wearing a blue gown and black surcoat, and from there he crossed to Royston and entered the house of Hugh le Seler, dressed in a blue gown and blue surcoat, and Alexander Nictegale saw him in that house. And from there he went to the house of Mabbe Veiri in Royston, where there were John of Standon and a certain Leonard who was later arrested, but he was never afterwards seen alive in that house, and they say that a quarrel arose between Alexander and John of Standon, so that Alexander suddenly struck him, and John was much threatened. And next day he was found dead in Read field.⁹⁵

How this case ended is unknown, and it looks possible that John of Standon, at least, was convicted. But even if the charge against John was not made to stick, the system which could produce so much circumstantial information about an event of over two and a half years earlier should hardly be dismissed as 'exceedingly inefficient'.

It was, however, a system highly exacting for everybody involved

⁹⁴ PRO, JUST/1/1582, m. 5d.

⁹⁵ PRO, JUST/1/318, m. 20.

in its operation, in terms of the labour involved, and also in that its workings took precedence over all the claims of family or neighbourhood. Every suspect had to be arrested or pursued, every suspicion reported, regardless of who might be involved. The Gloucestershire man reported in 1221 to have driven away his own son after he came under suspicion of theft was doing what every law-abiding man and woman should do,⁹⁶ but it is not surprising that there were many who did not imitate him, in spite of the danger of financial penalties or even of a charge of harbouring or abetting a felon, which was itself a felony.⁹⁷ Every possible pressure had to be exerted in order to instil a proper sense of the heinousness of crime and the need to remain vigilant against those who perpetrated it — the communal pressure embodied in frankpledge, the supervisory pressure represented by courts and officials, and the moral pressure embodied above all in the sanctions of the church. This last was an aspect of medieval life with which Maitland, described by his daughter as 'a very Protestant agnostic',⁹⁸ did not show a great deal of sympathy. He appreciated the importance of church courts, and devoted a good deal of space to their workings, but does not seem to have concerned himself much with the social effects of religious doctrine. Yet felonies like homicide, theft, rape and arson were not just breaches of the king's peace, they were also offences against God, and homicide, in particular, was a mortal sin, which Bishop Richard Poore of Salisbury, in his early thirteenth-century synodal statutes, decreed could only be absolved by the pope or the pope's legate. Poore reissued his statutes when he became bishop of Durham; they included a clause directing confessors not to absolve and enjoin penance to thieves until they had restored what they had stolen.⁹⁹ Since it was presented at the 1242/3 Durham eyre that one Robert son of John of Sleekburn, suspected of stealing cattle, had given satisfaction to his victims on the recommendation of the chaplain to whom he had made confession, it would appear that such injunctions could be effective.¹⁰⁰ One of the canons of the council which the papal legate Otto held in 1237 was directed 'against the scourge of thieves, in whom the realm of England abounds to excess', and forbade anyone to harbour or protect them, on pain of excommunication.¹⁰¹ The effects

⁹⁶ *Gloucestershire Crown Pleas 1221*, no. 228.

⁹⁷ E.g. *Crown Pleas of the Devon Eyre of 1238* no. 267.

⁹⁸ Fifoot, *Life*, p. 180.

⁹⁹ F. M. Powicke and C. R. Cheney, eds, *Councils and Synods 1204-1313*, vol ii part i (Oxford, 1964), pp. 73-4.

¹⁰⁰ K. E. Bayley, ed., 'Two thirteenth-century assize rolls for the County of Durham', in *Miscellanea Vol. II* (Surtees Society, 127, 1916), no. 357.

¹⁰¹ *Councils and Synods*, ii part i, p. 253.

of such an order cannot be known, but that it was given at all may serve to draw attention to the fact that there was a spiritual dimension to medieval law enforcement, which should not be overlooked.

Between his edition of the *Pleas of the Crown for the County of Gloucester, 1221*, in 1884, and the *History of English Law* in 1895, Maitland published in 1888 a volume of *Select Pleas of the Crown 1200–1225* for the Selden Society. On the workings of the criminal law his opinion in the last was much the same as in the other two — it was 'extremely ineffectual; the punishment of a criminal was a rare event . . .'. In making his selection of pleas, he stated his aim to be 'the thorough illustration of the normal course of criminal justice'.¹⁰² His choice of cases certainly conveys a distinct impression of ineffectiveness on the part of the criminal law. This must in part be attributable to the fact that many appeals, in particular, had no recorded conclusion, and that the fate of most of those defendants who went to the ordeal was likewise unreported. But the editor's decision to illustrate the workings of the criminal law by way of numerous illustrations of its failings and shortcomings is also in part responsible. The reader who encounters misrepresentations by juries, failures to hold inquests or make presentments to local courts, extortionate or dishonest officials, failures to arrest, appeals found to be malicious, or simply quashed on every possible ground, and such individual cases as a wager of a duel annulled when it was found that the proper processes of arrest had not been gone through, a man tonsured while awaiting proceedings in court, a killer removed from the church where he had taken sanctuary in order to become a monk, and the obstruction offered to those attempting to follow the trail of stolen cattle through the streets of Bridgnorth, can hardly fail to regard the entire system as characterized by confusion and futility.¹⁰³

Yet the cases which Maitland chose are not entirely without evidence for a better state of affairs. Not only do they record a fair number of hangings, but there are also occasions when criminals are pursued and arrested, returning abjurors are caught, a thief is killed in flight by the hue, a suspect is arrested by a hundred serjeant's men, and a man imprisoned in another man's house sends to the sheriff for help, which is forthcoming in the form of one of the sheriff's serjeants and others. There are also several glimpses of local courts going about their business. And when some of the cases which Maitland did *not* include are taken into consideration, here too are indications that

¹⁰² *Select Pleas of the Crown*, p. xxiv.

¹⁰³ These last three examples are *ibid.*, nos. 43, 135, 173.

not all was chaos and incompetence. Maitland selected twenty cases from the 1201 Cornwall eyre.¹⁰⁴ They include five homicides, three burglaries, an appeal of rape, seven appeals alleging robbery, wounding and assault in various combinations, a charge of harbouring an outlaw, and a silly presentment by the jury. Nobody was hanged, though an entire vill was outlawed for one killing. Two suspects succeeded at the ordeal. The rape was settled by marriage. Some appeals got as far as ordeals, others were quashed; one proved to have originated in a quarrel over a villein, another to have been made by a harlot whose cloak two boys had pawned for two gallons of wine. Yet these unimpressive proceedings also record an inquest held on the sheriff's orders, the tracing of goods stolen in a burglary to the suspect's house, and an investigation of the circumstances of a killing which disclosed, of the suspect and his victim, that 'the day before he had threatened her body and goods'. And cases which Maitland omitted show a wood where malefactors were known to lurk being searched by men of the neighbourhood, led by the hundred serjeant, with the result that two criminals were killed, and a man coming under suspicion because his tunic was found and recognized in a burgled house.¹⁰⁵

In these last two cases arrests were made. But equally significant are cases where nobody was captured, but in which the processes of law enforcement can be seen as having been so mobilized as to minimize, as far as possible, the consequences of material conditions which were bound to make arrests very hard to effect. For instance, the Eastwivelshire jurors presented the death of a hospitaller named Hugh. Two men were suspected, both of them being identified. One had fled. He had been a member of a tithing, and he had left chattels worth 10s., which had been valued in advance of the eyre — brother Robert of the hospital was to answer for them. The other suspect came to the eyre, and as he was a clerk, he was handed over to Court Christian. Four men and a woman were suspected of harbouring the suspects. The woman had been arrested and imprisoned, though she was apparently released to pledges through the agency of the bishop of Exeter. Two of the other suspects were cleared, but still had to find pledges for their good behaviour, while the other two were taken into custody as suspected. Nobody was hanged, but it is difficult to see what else could have been done by way of either precaution or punishment. The fugitive suspect, who had been placed under as much restraint as possible through his belonging to a tithing, had been identified, his

¹⁰⁴ *Ibid.*, nos. 1–20.

¹⁰⁵ Additional cases from the 1201 Cornwall eyre discussed here are printed as *PKJ*, ii nos. 312, 322, 332.

chattels forfeited, his status would doubtless be advertized by his being outlawed, which would itself reduce him to the condition of a wild beast. Other suspects had been produced in court. In thirteenth-century terms such an outcome could hardly be termed a complete failure.

Maitland was aware of the problems involved in making a selection of case material, and although in his letter to Dove, quoted above, he observed that 'many of these criminal cases are very interesting and even entertaining...', he guarded against producing an anthology made up of lurid and picturesque incidents and anecdotes, by including 'many entries which may fairly be styled "common form entries"'. But given that Maitland regarded the characteristics of medieval criminal law as including a basic ineffectiveness, it may still be surmised that he omitted a case like that of Hugh the hospitaller because he saw medieval law enforcement in a perspective which, though not without its own validity, was nevertheless flawed by its incompleteness. His strong centralizing viewpoint was one which could yield notable rewards, as it did with his work on parliament, but was inadequate for the processes of law enforcement, which only intermittently came within the purviews of the king's government. There was a world elsewhere. What Maitland saw and analysed, he often described with admirable lucidity and thoroughness, but too often he failed to appreciate the extent to which it had a life of its own, and operated according to principles which were only partly imposed from above. Above all, he missed the way in which local courts and other processes of law enforcement functioned together as a *system*, one able to interlock with the agencies of central government, and above all with the eyre, but also able, and indeed required, to operate in their absence. Whereas the strongest impression one takes away from Maitland's accounts of all the various courts is of their separateness, they were in fact intended to work together, and to ends which were only incidentally identical with those of Victorian criminal law. It amounts to rather more than a cavil to argue that Maitland's view of medieval law enforcement was fundamentally flawed. Yet even if the arguments proposed here be accepted, much of abiding value remains. In the last resort, it hardly seems to matter whether, in the perspective of a century's additional scholarship, Maitland was right or wrong. Even where he has come to be perceived as mistaken, Maitland's writings will continue to be worth reading, for the pleasures and benefits to be gained from following a great historian as he engages with issues of continuing interest and importance.

Abbreviations

- ANS — *Proceedings of the Battle Conference on Anglo-Norman Studies*.
 ASC — *Anglo-Saxon Chronicle*.
 ASE — *Anglo-Saxon England*.
 (BI)HR — (*Bulletin of the Institute of Historical Research*).
 BL — British Library
 BN — Bibliothèque Nationale.
 Bracton, Thorne — *Bracton De Legibus et Consuetudinibus Angliae*, ed. & trans S. E. Thorne (4 vols, Cambridge, Mass., 1968–77).
 BNB — *Bracton's Note Book*, ed. F. W. Maitland (3 vols, London, 1887).
 CLJ — *Cambridge Law Journal*
 CMA — *Chronicon Monasterii de Abingdon*, ed. J. Stevenson (2 vols, London, 1858).
 Collected Papers — H. A. L. Fisher, ed., *The Collected Papers of Frederic William Maitland* (3 vols, Cambridge, 1911).
 CRR — *Curia Regis Rolls* (HMSO, 1922–).
 DB — *Domesday Book seu Liber Censualis Wilhelmi Primi Regis Angliae*, ed. A. Farley and H. Ellis (4 vols, London, 1783, 1816).
 Dialogus — Richard FitzNigel, *Dialogus de Scaccario*, ed. & trans C. Johnson, rev. F. E. L. Carter & D. E. Greenway (Oxford, 1983).
 Domesday Book and Beyond — F. W. Maitland, *Domesday Book and Beyond* (repr. with Foreword by J. C. Holt, Cambridge, 1987).
 EHR — *English Historical Review*
 Elton, Maitland — G. R. Elton, *F. W. Maitland* (London, 1985)
 English Lawsuits — *English Lawsuits from William I to Richard I*, ed. R. C. van Caenegem (2 vols, Selden Soc., 106, 107, 1990–1).
 EYC — *Early Yorkshire Charters*, vols. I–III, ed. W. Farrer (Edinburgh, 1914–16); index to vols. I–III, ed. C. T. & E. M. Clay; vols. IV–XII, ed. C. T. Clay (Yorks. Arch. Soc. Rec. Ser. Extra Ser., 1935–65).
 Fauroux, Recueil — *Recueil des actes des ducs de Normandie*, ed. M. Fauroux (Mémoires de la société des antiquaires de Normandie, 26, Caen, 1961).
 Fifoot, Life — C. H. S. Fifoot, *Frederic William Maitland: a Life* (Cambridge, Mass., 1971).
 Garnett and Hudson, Law and Government — G. S. Garnett and J. G. H. Hudson, eds, *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt* (Cambridge, 1994).
 Gervase — Gervase of Canterbury, *The Historical Works of Gervase of Canterbury*, ed. W. Stubbs (2 vols, London, 1879–80).
 Gesetze — *Die Gesetze der Angelsachsen*, ed. F. Liebermann, (3 vols, Halle, 1903–16).

- Gierke — F. W. Maitland, trans, *Political Theories of the Middle Age*, by Otto Gierke (Cambridge, 1900).
- Glanvill, Hall — *Tractatus de Legibus et Consuetudinibus Regni Anglie qui Glanvilla vocatur*, ed. and trans G. D. G. Hall (Edinburgh, 1965).
- Holt, *Magna Carta* — J. C. Holt, *Magna Carta* (2nd edn, Cambridge, 1992).
- JMH — *Journal of Medieval History*.
- Letters, i — C. H. S. Fifoot, ed., *The Letters of Frederic William Maitland*, vol. i (Selden Soc., Supplementary Ser., 1, 1965).
- Letters, ii — P. N. R. Zutshi, ed., *The Letters of Frederic William Maitland*, vol. ii (Selden Soc., Supplementary Ser., 11, 1995).
- Letters to George Neilson — F. W. Maitland. *Letters to George Neilson*, ed. E. L. G. Stones (Glasgow, 1976).
- LHP, Downer — *Leges Henrici Primi*, ed. & trans L. J. Downer (Oxford, 1972).
- LQR — *Law Quarterly Review*
- Maitland, *Constitutional History* — F. W. Maitland, *The Constitutional History of England* (Cambridge, 1908).
- MGH — *Monumenta Germaniae Historica*.
- Milsom, *Legal Framework* — S. F. C. Milsom, *The Legal Framework of English Feudalism* (Cambridge, 1976).
- ns — New Series
- PBA — *Proceedings of the British Academy*.
- PKJ — *Pleas before the King or his Justices, 1198–1202*, ed. D. M. Stenton (4 vols, Selden Soc., 67, 68, 83, 84, 1952–67).
- Pollock and Maitland — Sir Frederick Pollock and F. W. Maitland, *The History of English Law before the Time of Edward I* (2 vols, 2nd edn reissued with a new introduction and select bibliography by S. F. C. Milsom, Cambridge, 1968).
- PP — *Past and Present*.
- PR — *Pipe Rolls*
- PRO — Public Record Office
- PRS — Pipe Roll Society
- RCR — *Rotuli Curiae Regis. Rolls and Records of the Court held before the King's Justiciars or Justices*, ed. F. Palgrave (2 vols, Record Commission, 1835).
- Reading Cartularies — *Reading Abbey Cartularies*, ed. B. R. Kemp, (2 vols, Camden Soc., 4th Ser. 31, 33, 1986, 1987).
- Reg. Ant. Linc. — *The Registrum Antiquissimum of the Cathedral Church of Lincoln*, ed. C. W. Foster and K. Major (10 vols, Lincoln Rec. Soc., 1931–73).
- RRAN — *Regesta Regum Anglo-Normannorum, 1066–1154*, ed. H. W. C. Davis *et al.* (4 vols, Oxford, 1913–69).
- S — P. H. Sawyer, *Anglo-Saxon Charters: an Annotated List and Bibliography* (London, 1968).
- Stenton, *English Feudalism* — F. M. Stenton, *The First Century of English Feudalism 1066–1166* (2nd edn, Oxford, 1961).
- Stubbs, *Charters* — *Select Charters and other Illustrations of English Constitutional History*, ed. W. Stubbs (9th edn, Oxford, 1913).
- TRHS — *Transactions of the Royal Historical Society*
- VCH — *Victoria County History*