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# REVIEWS

Chris Wickham. *Courts and Conflict in Twelfth-Century Tuscany*. Oxford: Oxford University Press, 2003. 353p.

AMEER SOHRAWARDY  
RUTGERS UNIVERSITY

Chris Wickham's fascinating study of dispute settlement in 12th-century Tuscany illuminates our understanding of how communal customs influenced both medieval legal theory and its everyday applications. Wickham examines patterns of dispute resolution through local records and ritual practices, rather than through the legal precedents that are found in historical archives. His "processual analysis" begins with the acknowledgement that it is impossible to definitively judge how medieval Tuscans settled all of their local and ecclesiastical disputes, because of lacunae and inconsistencies in historical records. Nor is it always possible to explain why 12th-century Italians settled disputes in the unique ways that they did, even when their legal records are available to us. Wickham points out that these records were often based on implicit, communal assumptions about rites and rituals that 21st-century readers cannot presume to know. If this weren't enough, evidence shows that legal documents that we can examine were often dismissed by medieval litigants as inapplicable to actual legal cases.

Instead of using these impasses to fall back on a discussion of Roman law as a lens for understanding legal disputes in other parts of Italy, Wickham turns to several anthropological models to focus on how specific communal rituals and relationships, in Lucca, Pisa, and Florence, respectively, formed a developing narrative that might help us understand legal strategy prior to "the full institutionalization of [city] governing structures" (13).

*Courts and Conflict* devotes individual chapters to each aforementioned city, as well as separate chapters on ecclesiastical disputing, and rituals in medieval Tuscan disputing. Wickham justifies his attentiveness to communal disputes by positing that the Italian state was in crisis in the early 12th century. "Given the involution of political structures at the national level," he writes, "local relationships were the only ones left" (18). Wickham astutely observes that in 12th-century Tuscany, private settlements were not made under the modern assumption that courts are always available "as a strong and coercive last resort" (37). Disputants did not take legal matters before a third-party arbitrator unless they thought that they could gain a surer victory by going to court than by settling privately. Courts had to fight the

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image of seeming too inaccessible, expensive, unpredictable, or arcane to deliver just verdicts for litigants. When the decision was made to take matters to court, there were often ulterior motives involved. Medieval court cases often served as occasions for using individual court actions as part of a wider disputing strategy that was either ultimately accepted or rejected by the community of the disputants.

According to Wickham, it is this communal outlook and the presumptions about what ritual represented that unified all Tuscans. The coercive power of both papal courts and rural arbitrations depended on litigants' consent through an appeal to communal ritual. Each system managed to create a framework in which consent to losing was made possible. "The effectiveness of the dramatic patterns of dispute resolution suggests that the process of settlement in each of the different judicial systems of the region worked to quieten people down; to get them to accept defeat or compromise" (302). Wickham interprets this goal as a more significant indicator of court efficacy than whether or not "justice" was mediated through third-party intervention.

Quotidian practice was more important than legal theory. "If one looks at the way cases were actually argued in court, it becomes rapidly clear that the construction of proofs was not so much normative as cumulative; it involved the creation of a framework for interpreting evidence in a way that could appeal to commonsense logic, or a plausible storyline that listeners could follow—including, evidently, the judges" (91). Wickham goes on to provide an astute analysis of the ways in which witnessing played a key role in public behavior. Disputes became very public dramas, in which both disputants and judges acted in very formal ways that were meant to be closely interpreted by observers. The verdict that was eventually handed down was meant to be publicly heard and remembered.

The strategy of discussing public trials in terms of theatrical role-playing strengthens the book's arguments about the sociological influences and impacts of disputing strategies. Wickham tells us that men who were recognized as appropriate arbiters usually held pre-existing public positions: a valuable quality to litigants. Spectators at one trial might be called in as witnesses in a future trial. Wickham's discussion of the stories that were told on the legal stage as "improvisational, provisional, and designed to be tested" corresponds perceptively to the nature of ritual itself as a kind of drama. Listening to the voices of the disputants, Wickham suggests, is one way to recognize that 12th-century Italians were all actors in the social processes that they helped to shape.

The author shows an awareness that the normative expressions found in medieval Tuscan disputes were often inconsistent. However, his very argument rests on the thesis that norms were unstable in 12th-century Tuscany: that the settlement

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of disputes was not undertaken by the application of social norms, but that social norms served as a “framework for bargaining” (303).

The risk that Wickham takes in hypothesizing how communal ritual might have become legal precedent occasionally leads to his making unsupportable and reductive assumptions. He likens the process of dispute resolution to a “social institution” (219), which can serve as a “signpost for comparison” (220) between societies. Occasionally, Wickham succumbs to the very fallacies that he critiques. For example, in discussing the development of the *curia nova* court in the 13th century, he takes the liberty to “generalize from one [court] to another without difficulty” (44). This conceptual leap ignores the changing roles of magistrates from region to region, and from the beginning of the 13th century to its midpoint. This presumption also ignores geographical differences between regions where the *curia nova* courts appeared, an odd exclusion given that Wickham discusses local boundaries disputes as being one of the most common cases being brought into arbitration. However, these deficiencies are very few in number, and do not take away from the overall persuasiveness of the book’s project.

In its organization and layout, *Courts and Conflict* competently introduces its subject to lay readers. At the outset, Wickham defines the three anthropological concepts that he uses to underpin his analysis: Max Gluckman’s “extended-case” method; Victor Turner’s “social drama” concept; and Pierre Bourdieu’s “habitus” concept. The author’s allusions to local geographical referents are also nicely supplemented by maps of Tuscany that detail the locations of monasteries and dioceses, as well as province and diocese boundaries.

By explaining how Tuscan differences in communal customs influenced the ways in which local rites and obligations metamorphosed into legal writ, Wickham provocatively suggests turning to anthropology to redirect the focus of legal history away from its written archives to its roots in interpersonal, dispute resolution. Wickham deftly avoids the legal historian’s logocentric obligations to the archive, even while relying on these same legal documents to hypothesize sociological and psychological reasons for how and why community members might or might not have felt the need to settle thorny legal disputes through legal intercession. Wickham’s de-emphasis of the factual authority of legal scripture in favor of examining *imprimis* grassroots-level prejudices, alliances, and negotiations that explain possible reasons for the need for legal scripture allow him to re-read medieval legal practice in its transition from oral disputes to written, legal precept. \*