

THE COMMON PEACE: PARTICIPATION AND THE CRIMINAL LAW IN SEVENTEENTH-CENTURY ENGLAND. By CYNTHIA B. HERRUP. [Cambridge University Press. 1987. xvii + 232 pp. Hardcover: £27.50]

THIS volume is part of a series of monographs published by Cambridge University Press, entitled “Cambridge Studies in Early Modern British History” which is edited by Anthony Fletcher, John Guy and John Merrill.¹ This series specialises on the history of the British Isles between the late fifteenth and early eighteenth century. Cynthia Herrup is Assistant Professor of History at Duke University in North Carolina and in this study, she traces the attitudes behind the enforcement of the criminal law in medieval England.

The author is an historian rather than a lawyer by training and her approach to the subject reflects this. Her study concentrates on the period between the late 1500s and the mid 1600s. Utilising a diverse variety of sources, including court records, biographical information, state papers, legal commentaries and other

¹ Other titles in the series includes Ann Hughes, *Politics, Society and Civil War in Warwickshire*, Tim Harris, *London Crowds in the Reign of Charles II: Propaganda and Politics from the Restoration to the Exclusion Crisis*, Kevin Sharpe, *Criticism and Compliment: The Politics of Literature in the Reign of Charles I*, and Andrew Coleby, *Central Government and the Localities: Hampshire 1649-1689*.

popular literature, Dr. Herrup traces the manner in which social conditions impacted on the legal process and law enforcement. In addition to the abovementioned sources, much of her material is also gleaned from a close study of court records in eastern Sussex.

The book comprises 8 chapters but can broadly be divided into 3 main sections. Two chapters constitute the first section which is introductory, setting out the physical and social context within which the research is carried out. The first chapter, entitled "The Criminal Law in Early Modern England" sets out the perimeters of the study and summarises the key points raised in the rest of the book. The second chapter is entitled "The Setting" and it describes the Sussex region. This rather longish chapter is full of maps, graphs and tables which illustrate the geographical and social situation of Sussex in the 15th and 16th centuries.

The second part of the book opens with the chapter "Judicial Power and Cooperation in Eastern Sussex" which details the role played by judges, magistrates and laymen in the administration of justice in Eastern Sussex. The next five chapters, From Crime to Criminal Accusation, From Accusation to Indictment, From Indictment to Conviction and "Becoming a Criminal" focus on the five stages in the prosecution process and forms the main bulk of the book. Herrup concludes by summing up her thoughts in Chapter 8, which bears the same main title as the book itself.

From the perspective of one who is only interested in legal history, this book may prove a little too daunting. Herrup's research capabilities are awesome and the detail contained in this slim volume speaks volumes of her scholarship and dedication to the subject. I am not suggesting for one moment that a heavily-researched volume is necessarily a good one. The writing of history consists of two main tasks: gathering facts and interpreting them. Therefore, if the first part is well done, half the battle is won. In this respect, Herrup shines in the second task as well. Her style is simple and lucid and her findings and conclusions are very persuasive. The only problem with the book is Chapter 2, which contains far too much demographic and geographic detail to be read easily. The reader is, for example, told that "iron had been mined in the forests of Sussex since the days of the Romans", and that "furnaces and forges were especially dominant in eastern Sussex." We are also told that the roads in eastern Sussex were bad and "[s]ince the bad roads could promise trouble for a thief who needed to disappear quickly with large amounts of property, geography may partly explain the relative freedom of eastern Sussex from aggravated thefts".

Each of the other chapters is packed full with details of how criminals were detected, how they were brought for trial and how they were either convicted or released. The reader will quickly grasp the nature of society, crime and morality in the 16th century. For instance, Herrup says:

The enforcement of the criminal law reflected local property holders' perceptions of morality. The participation of a variety of private persons in criminal prosecutions ensured that the legal process remained not only authoritative and flexible, but also responsive to the concerns of the properties population.²

² See p. 196.

The next striking thing is the massive participation of the commoner in the criminal process. There was no organised uniformed police force during that time and many criminals were apprehended as a result of concerted public action. Once the accused was apprehended, the criminal process is set in motion, and once again, one is struck by the high rate of participation of the social elite in the trial of the criminal. The propertied class had certain notions about the kind of values society and man should aspire to. For instance, Herrup surmises:

The choices made throughout prosecution reinforced the common conviction of the propertied community: idleness, wanderlust, greed and insolence were the signposts on a road to anarchy and damnation. Crimes bred of these qualities were very different from those born from need, confusion or intimidation. The first were committed by true criminals; the perpetrators of the second were errant brethren who might still be redeemed.³

Herrup's conclusion is that a great deal of discretion was crucial in the operation of this system of justice. This discretion was born of a common understanding, a "Common Peace" so to speak, that reflected the values honoured by the propertied classes. These individuals "considered life to be a test that most individuals must fail" and discretion provided the necessary link between law, justice and morality.

Overall, this is an outstanding book. It is clearly not intended for the general public but for those interested in the administration of criminal justice in medieval England. On that score, I would recommend it highly. Herrup's style is lucid, if a little erudite, and the pace is quite compelling. Clearly not for bed-time reading, but an outstanding book nonetheless.

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³ See p. 200.