Book Reviews

Sara M. Butler, *Pain, Penance, and Protest: Peine Forte et Dure in Medieval England*. Cambridge: Cambridge University Press, 2022. Pp. xiv, 474. $135.00 hardcover (ISBN 9781316512388).
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Peine forte et dure, the medieval English practice of using a starvation diet and heavy weights to force a change of mind upon suspected criminals who refused to plead when brought into court, has received little attention from legal historians. That it should now be the subject of a book of nearly 500 pages points to the breadth and ambition of Professor Butler's undertaking. In seven lengthy chapters, sandwiched between extended introduction and conclusion, she sets out to correct misconceptions as to the "barbarism" conventionally perceived in the *peine* and to its uniquely English development, to place it in the context of a juridical ideology that was as much ecclesiastical as secular, and to present it as, potentially, a form of resistance to overweening monarchic power rather than an imposition of judicial authority upon people caught up in the workings of the legal system. Concentrating mostly on the fourteenth century, her book is based on gaol delivery records in The National Archives, London and a wide range of printed sources, as well as on secondary studies.

Historians have hitherto considered the *peine* in essentially pragmatic terms. They regard it as a practice that evolved as a means of ensuring the smooth workings of the courts when faced with suspected criminals who could not be tried unless they agreed to accept a jury's verdict. Those subjected to it were mostly poor men and women desperate to avoid trials likely to end in their conviction and execution. Butler discusses and accepts these considerations as *elements* in the *peine's* development, but argues for different origins, in the penalty known as *murus strictus* ("severe imprisonment") imposed by church courts on serious offenders. From this she goes on to propose that *peine,* although potentially punitive as well as coercive, was primarily intended as much to save prisoners' souls, by bringing them through penance to repentance and so to reconciliation with God and neighbors, as to bring their bodies into court. Latin records use three words to define the *peine*; that *penitentia* was one of them, the author argues, is a meaningful pointer to this aspect of its employment. Moreover, religion provided an equally

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significant motivation for people who stood mute and accepted *peine* at trial. Silence was an imitation of Christ, who had stood mute before King Herod. But it was more than that, for although kings were Christ's vicars, opting for *peine* could constitute a deliberate rejection of their and their courts' authority, presented in this book as having become inordinately intrusive. Those who took this step were both martyrs and rebels.

This brief summary can do only partial justice to the range of Butler's book, which is arguably its most notable feature. It contains detailed scrutiny of the reasons for which suspects chose *peine* rather than pleading, and interesting discussions of such issues as the impact of the disappearance of traditional forms of proof in the years near 1200: the right to stand silent in treason trials, the treatment of women who refused to plead, and the concern of the justices that defendants should receive a fair trial. It breaks new ground in its arguments that there were gradations of severity in the imposition of *peine*, and in its use of the terms of indictment as a guide to the likely outcome of trials. But its principal novelty lies in its claims for the penitential aspect of the English judicial system and its intentions, which cannot be understood without an awareness of their development in a society in which crimes were also sins. Religion underlay *peine forte et dure* at every level, among those who imposed it and those who chose to undergo it.

Not everyone will be convinced by Butler's arguments, which are, indeed, often asserted rather than proved, and can seem unwarrantedly bold. There were undoubtedly similarities between *murus strictus* and *peine* (50–58), but no evidence is offered that the one developed from the other. The claim that acquittals "represented contrite defendants prepared to reconcile themselves to God and the community" (247) is similarly unsupported. Butler asks (329) how we can *know* that defendants who stood silent did so in conscious imitation of Christ, but signally fails to answer her own question. The argument that suspects who refused to plead were defying the king in the same spirit in which "peasants" acted together to resist their lords (380–86) is vitiated by an apparent assumption that peasants, presumably meaning the settled inhabitants of rural communities, constituted a monolithic sector of medieval society, separated by no differences of wealth and status, and overlooks the existence of large numbers of men and women who either lived on the fringes of village society or had no place within it. Many of the suspects remanded to the *peine* must have been just such people.

Butler's arguments are at least capable of discussion. What goes well beyond tolerance is the number of mistakes and errors of fact, transcription, and translation, especially where documents in The National Archives are cited or referenced. Many do not affect the author's arguments but some appear at significant points. To give a few examples, Adam le Walker (30–31) was not "outlawed to the penance" but released from it. In the case of John of Greete (132) the justices did not order three consecutive inquests to discover if he

could speak, John himself refused the inquests and made it clear he would accept none. John the Carpenter (215) was not "arrested on manifest suspicion of sins (*peccarum*) and because of this he was returned to prison where he remained in penance"; he had been arrested with "pieces" (*peciarum*) of a stolen chalice, which remained in the keeping (*penes*) of the sheriff. Neither sins nor penance are mentioned. The inaccuracies extend to printed sources. We are told (44) that *The Mirror of Justices* "states specifically that it is an abuse of power to load a prisoner with more than twelve pounds in weight . . ." The page reference is wrong, and the text, once found, says that "the fetters must not weigh more than twelve *ounces*," a significant difference (W.J. Whittaker, ed., *The Mirror of Justices*, Selden Society 7 [1893], 52). Carelessness can also lead to contradictions. The insistence that "most approvers lived out their days in prison," is followed a few lines later with "Most approvers ended up hanging from the gallows." Either of these statements may be true, but they cannot both be (282).

Finally, the index, largely a mixture of subjects and names (the latter largely those of authorities, medieval and modern), is wholly inadequate. In a long book, finding the names of the suspected and convicted criminals who are its principal subjects becomes a wearisome business. Overall, a revised edition seems called for.

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Tom Johnson, *Law in Common: Legal Cultures in Late-Medieval England.* Oxford: Oxford University Press, 2020. Pp. xii, 324. $105.00 hardcover (ISBN 9780198785613).
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Law in Common is a fascinating study of "legal engagement" in medieval England, exploring "local legal cultures" and "common legalities" (6–7). Embracing theories of legal pluralism and legal culture as well as legal geography, Johnson examines the diverse experiences of people in an array of jurisdictions (some peculiar to their geographical locations) using pertinent examples drawn from myriad local court records. Not surprisingly, the book focuses on 1381 as "a watershed in political culture" (9), with resonances and ramifications for the long fifteenth century. The main theme, however, is how legal practices (one could add legal ways of thinking) had