



Peter King. *Crime and Law in England, 1750-1840: Remaking Justice from the Margins.* Cambridge: Cambridge University Press, 2006. xvi + 248 pp. \$99.00 (cloth), ISBN 978-0-521-78199-2.



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Published on H-Law (July, 2007)

Reform from Below

In *Crime and Law in England, 1750-1840*, Peter King draws on both old work and new to make the important argument that in seeking to identify and explain reform of the criminal law in the late eighteenth and early nineteenth centuries historians have concentrated too heavily on formal legislative change and the initiative of central governments and neglected local initiatives and actors, in particular decisions taken and policies followed by the courts and magistrates. King attempts to redress this imbalance through detailed analysis of four particular subjects: juvenile crime, gender and crime, non-lethal violence, and the attack on customary rights. None of these areas attracted sustained attention from Parliament in the years under study, yet in each he found “systematically pursued policies” (p. 1) and evidence of reform from below, or what he terms “the margins.” Between the 1750s and 1840, he argues, informal decisions made by the courts played an important role in the transformation of criminal justice. This informal innovation came to an end in the second quarter of the nineteenth century, when parliamentary initiative was extended beyond policing and prison reform to encompass a broad range of justice issues; moreover, it was increasingly be-

lieved that Parliament was the sole legitimate source of legal change. Yet in the previous century “localism, discretion and magisterial initiative” had effected significant reform in a number of areas so that “the operation of justice was remade as much from the bottom up as from the centre down” (p. 60). If we concentrate solely on issues debated in Parliament or initiated by the central government, King warns, we are in serious danger of distorting “the chronology, origins and nature of reform” (p. 60).

The relative neglect of “reform from below” is not surprising, as sources for the informal changes worked by judges and JPs are far more elusive than the parliamentary record. Reforms that were neither initiated by central government nor debated in Parliament did not leave the same sort of paper trail. Reports of quarter sessions proceedings are few and far between, petty sessions records are not particularly revealing about the decision-making process, and magistrates’ discussions of their judicial practice is virtually non-existent. Public printed debate on change instigated by local petty courts is also conspicuous by its absence. It is thus especially to King’s credit that he has been able to tease out the development

of informal change in the law's treatment of juveniles, women, and the rural poor as well as those charged with non-lethal violence.

In the section focusing on the treatment of juveniles (part 1, chapters 2-4), King produces evidence of significant shifts in practice on the ground: the gradual erosion of technical legal immunities formerly available to young offenders and the invention of a reformatory sentencing option. Both initiatives came from the courts rather than Parliament. His enquiry into gender, crime, and justice (part 2, chapters 5 and 6), while revealing continuity with respect both to recorded levels of female criminality and the comparatively lenient treatment offered by the courts to female offenders, highlights an important change in "the almost complete abandonment of the public punishment of women" (p. 6) decades before such a change was legislated by Parliament. A decidedly gendered policy with respect to public punishment had been developed by the courts, rather than by the central government. In the third section of the book (chapters 7 and 8), King turns his attention to assault, and through careful analysis of the quarter sessions records of Essex, Cornwall, London, and Surrey reveals a shift in practice whereby the traditional, essentially civil process for indictments of assault, which typically ended in a fine on conviction, had been abandoned by the 1820s in favor of criminal process and a sentence of imprisonment. In the fourth and final section of the book (chapters 9 and 10), King considers the tensions evident between center and locality through an examination of the response of local magistrates to a Common Pleas decision of 1788 which criminalized the customary right of the poor to glean corn left after harvesting (many simply ignored it).

Each of the book's four subject divisions can usefully stand alone and will be cited repeatedly in future studies of their respective subjects. Of special interest, however, is chapter 1, which ties their content together, considers the relationship and connections between local and central law making, and expands in particular on the role of magistrates and what King calls "the summary courts" in "remaking justice from the margins" (the book's subtitle). The phrase 'summary courts', to my mind, suggests too great a degree of formality and uniformity for the types of hearings in question. The JPs who presided over them would have varied, as King describes at some length, in both attitudes and practices according to "context, geography and individual personality" (p. 36). Summary proceedings might involve a single rural magistrate dispensing justice from his parlor or the more formal open courts which developed in London. But an appearance before

a magistrate or magistrates was indeed likely to have constituted the most common form—and in many cases, the sole form—of contact with the criminal justice system for most English men and women in the eighteenth century, and King has uncovered deviation in summary practice from the strict letter of the law on issues ranging from the apprehension, detention, and examination of suspects to the treatment of evidence, the law of bastardy, and administration of the poor law. The "confused state" of statute law, the combination of civil and criminal jurisdiction in summary proceedings, the extensive powers exercised by JPs over the "disorderly laboring poor," and a lack of supervision enabled magistrates to enjoy a marked degree of autonomy and to shape justice on the ground into the 1820s and 1830s (p. 22).

Few would take issue with King's argument that a full understanding of the transformation of criminal justice must incorporate practice in England's various courts as well as statutory initiatives, and grapple with their complex relationship and interactions (a complexity increased by our limited knowledge of the legislative process and the fact that case law itself was inconsistent). In both penal policy (specifically, the establishment of a range of secondary punishments and the rise of the prison) and the reconstitution of the felony trial (as a contest between paid advocates) initiative alternated or was shared between the courts and Parliament. This interaction, as King notes, has not entirely been disregarded; it is evident in John Beattie's work on transportation and in John Langbein's study of the development of the criminal trial.^[1] But King has equally demonstrated that it can and should be investigated elsewhere, and that any such investigation must take into account practice in the lowest courts as well as at the higher levels.

Crime and Law in England is the product of years of painstaking research. While five of its ten chapters have previously been published, their reproduction here is a boon to anyone teaching criminal justice history. More importantly, in the links made between the book's discrete subjects in the lengthy opening chapter, King has advanced a thought-provoking argument with respect to the way in which we approach the history of English criminal justice as a whole. This book is not the last word on a subject, but a clarion call for a "new set of agendas" (p. 2), one which highlights local and decentralized initiatives, and which is certain to occupy criminal justice historians for many years to come.

Note

- [1]. J. M. Beattie, *Crime and the Courts in England*,

1660-1800 (Princeton: Princeton University Press, 1986); *Trial* (Oxford: Oxford University Press, 2003).
and John H. Langbein, *The Origins of Adversary Criminal*

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Citation: Allyson May. Review of King, Peter, *Crime and Law in England, 1750-1840: Remaking Justice from the Margins*. H-Law, H-Net Reviews. July, 2007.

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