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Orna Alyagon Darr. *Marks of an Absolute Witch.* Farnham: Ashgate Publishing Company, 2011. viii + 326 pp. $124.95 (cloth), ISBN 978-0-7546-6987-6.

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Evidentiary Dilemmas in Early Modern English Witch Trials

Using the crime of witchcraft as her entry point into an analysis of the development of English criminal law, Orna Alyagon Darr, previously a public defender and now lecturer at Carmel Academic Center in Israel, points to the evidential dilemmas inherent in this "serious but hard-to-prove crime" as pivotal in generating debate on marks of evidence (p. 4). This study thus focuses not on the history of witchcraft persecutions, or even witchcraft beliefs more generally, but rather on the discourse on evidence in witchcraft cases in England. In contrast to the prevailing legal theory which regards the rules of evidence as a rational and objective truth-finding tool, Darr suggests that "evidentiary techniques are socially constructed through a symbolic struggle between various social and cultural groups" and that "common law rules of evidence do not necessarily possess real objective value and do not develop exclusively by virtue of their inner judicial logic" (p. 6). In particular, Darr focuses on how the social and cultural position of participants, that is their social class, central or peripheral locale, and professional affiliation, influenced their evidentiary dispositions. Based on an analysis of 157 pamphlets, tracts, and legal manuals written and published between 1561 and 1756–trial manuscripts are, unfortunately, not examined–Darr's volume is structured around four main sections: pretrial and trial criminal procedure, including nonofficial and illegal procedures; circumstantial evidence; supernatural signs; and the evaluation of truthfulness of narratives.

Following on from Barbara Shapiro's suggestion that witchcraft may have contributed to the development of English criminal law "not because witch trials were common, but because the doctrinal writings on witchcraft contained detailed discussion of circumstantial evidence,"[1] Darr contends that "the dilemma of the serious but hard-to-prove crime, especially in the context of the debate concerning witchcraft, contributed to sharper definitions and classifications of circumstantial evidence and the creation of an intellectual and epistemological foundation for its admission" (p. 81). William Perkins, for instance, upheld the difference drawn between full proofs and lower-ranking proofs on the Continent, types of classification that were to be repeated in subsequent publications by clergymen such as Richard Bernard and John Gaule. All three writers had in common a three-level classification of evidence according to its value for proving the crime. These are surely interesting observations, but much of the groundwork for this is laid out in Malcolm Gaskill's 2008 article on witchcraft and evidence in early modern England. Moreover, whereas Gaskill firmly sets his discussion in the historical developments of the Civil War, and indeed suggests that after 1660, the demonstration of witchcraft at law "became an increasingly taxing exercise in persuasion and proof," Darr's study gives this monumental episode scant mention.[2] Thus, one of the weaknesses of Darr's study is its lack of temporal contextualization and attention to change over time.

In chapters 4-9, Darr turns her attention to the kinds of evidence used in witchcraft cases, namely ritual acts and artifacts of witchcraft, the devil's mark, imps, the swimming test, scratching, and finally, supernatural evidentiary techniques as experiments. Of these, the devil's mark receives the lengthiest treatment. Darr suggests that the professional affiliations of the participants in this debate shaped their dispositions on this mark of evidence. Unsurprisingly, professional witch hunters, witch searchers, or witch prickers based their professional identity on the solid probative value of the devil's mark. Bodily searches for the devil's mark could also be carried out by a "jury of matrons," women who were not necessarily midwives but could include any respected and mature women.

Darr uses this juncture to briefly discuss the role of

women in witch trials. Apart from their "distinctively powerful" role in the jury of matrons, women were excluded from positions of authority in most criminal trials. Their central role, as we would expect, was as the accused witch. She concludes that ultimately, "the search for the devil's mark reflected and reasserted the assymetrical power structure, where the men orchestrated and ordered the searches and the women complied with their orders, either in the vulnerable position of suspects or in the more empowered role of female searchers" (p. 138). This is a tempting problematization of the gendering of witchcraft, but it would have been helpful for Darr to explore the role of men in this schema further: What role then did men have as accused witches, "victims" of witchcraft and accusers? Moreover, how did marks of evidence interact with the gender of the witch and other categories such as age, reputation, and social and economic status?

Given the lack of unequivocal direct physical evidence to prove witchcraft, contemporaries had to rely on evidential methods. Darr identifies these as supernatural signs, circumstantial evidence, and testimonies. In some instances, Darr is in danger of overemphasizing the exceptionality of the crime of witchcraft in opening up questions of proof. For example, Darr suggests that "in cases of witchcraft, unlike other crimes, supernatural signs of guilt were still widely sought," and gives the example of the inability of the witch to shed tears (p. 158). The inability to shed tears, however, was also read as a sign of guilt in other criminal cases–on the Continent at least–such as infanticide. Nonetheless, supernatural signs certainly gained ascendancy in English witch trials. Despite the fact that ordeals had become illegal in England in 1215, the seventeenth century witnessed a resurgence of the swimming test only in witchcraft cases. Darr suggests that this was due to the molding of the supernatural ordeal-type rationale into a template of an empiricist experiment. In one swimming case overseen by John Stearne, for example, an innocent man was ducked in the water prior to the accused witch as a control; this demonstrated the construction of the test as an experiment, rather than an ordeal calling for a sign from God (p. 167).

Indeed, this empirical underpinning can also be seen in another form of popular, yet illegal, practice, which involved scratching the suspect in order that the bewitched victim could enjoy temporary relief of symptoms; it also offered confirmation of the suspect's guilt if the victim felt relief. Crucially, and in a highly convincing section, Darr demonstrates how swimming and scratching differed from the ordeals: where the ordeals were a means of ultimate judgment, early modern swimming and scratching were measures of pretrial investigation. Moreover, the underlying epistemology was different: "one prevalent feature of the ordeal, a complete trust in divine guidance, was lacking in the early modern procedures. Because the result was no longer blindly trusted, ordeal-type procedures had to be reconstructed as experiments in accordance with the rising empiricist worldview" (p. 183). In the extraordinary case of the so-called Witches of Warboys, for instance, the Samuels family had been suspected by the gentry family the Throckmortons of bewitching their five daughters. The experiments to prove Agnes Samuel's guilt included elements of repetition, a control group, modification directed to eliminate alternative explanations, verification of the result, and the open-minded cooperation of the judge (p. 191).

The next section of the book deals with the evaluation of the truthfulness of narratives (chapters 10-12). Early modern England saw significant developments of evidentiary rules pertaining to witnesses, in which the focus shifted from competency to credibility, two legal measures aimed at obtaining truthful testimony. Beginning in the seventeenth century, "the texts no longer implied that the testimony should be accepted solely by virtue of the oath, and the manner and content of testimony began to be scrutinized" (p. 229). It is here that Darr is most convincing and precise in her elucidation of chronologies of change.

In her study, then, Darr aims to offer a "strikingly different picture" to those studies which suggest that the rules of evidence apparatus is inherently objective or rational. An underlying thesis of Darr's work is that for the trajectory of evidentiary law to be understood, the sociocultural context must be explored. Darr is most convincing in her argument of the epistemological reconstruction of supernatural proof techniques, which, rather than being viewed as a divine sign, "became techniques in the rational and methodological quest for justice" (p. 264). Social class and professional context further determined the choice and interpretation of legal proof techniques. Darr suggests that physicians, generally, were most successful in positioning themselves as experts in witch trials and, moreover, in using the difficulty of proving witchcraft as a resource to bolster their professional status, while clergymen, in contrast, "ended up losing much of their indispensability in witch trials" (p. 270). While this contention may be true, given the debates *within* various professional and social groups, it is somewhat confusing that Darr homogenizes these affiliations in order to come to such broad conclusions.

This is an interesting and often elucidating book, although it is not without its limitations. Nonetheless, this study successfully ties together both the intellectual and legal foundations for proving witchcraft, with the social and cultural dynamics that helped to shape them. This book should thus be valuable reading for anyone interested in the criminal procedure of witchcraft in England and the larger questions prompted by the study of this crime.

Notes

[1]. Barbara J. Shapiro, *Beyond Reasonable Doubt and Probable Cause: Historical Pespectives on the Anglo-American Law of Evidence* (Berkeley: University of California Press, 1991).

[2]. See Malcolm Gaskill, "Witchcraft and Evidence in Early Modern England," *Past and Present*, no. 198 (February 2008): 33-70; 37.

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