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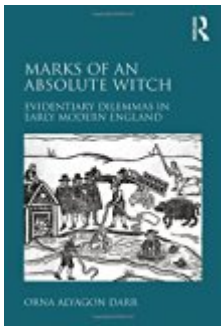

Orna Alyagon Darr. *Marks of an Absolute Witch.* Farnham: Ashgate Publishing Company, 2011. viii + 326 pp. $124.95, cloth, ISBN 978-0-7546-6987-6.

Reviewed by Peter Morton

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Commissioned by Jeffrey R. Wigelsworth (Red Deer College)

This study by Orna Alyagon Darr, lecturer at Carmel Academic Center, Israel, is a fascinating book on the selection and interpretation of evidence in English witchcraft trials. Darr offers a novel perspective on the trials. Since the work of Keith Thomas and others in the 1970s, the historical literature has been flooded with monographs and articles examining the origins, conduct, and intellectual underpinnings of the European witch trials between 1450 and 1750. Yet in her introduction Darr does not place her work in the immediate context of that literature. Rather she offers her study in the first instance as a contribution to the history of legal theory and practice. There are two facts on which Darr bases this contribution. First, the period of the witch trials coincided with major transformations in English law during which many of the modern rules of common law were established. Second, prosecution for witchcraft presented difficult, and therefore formative, challenges to the practice of criminal law. The crime was seen as a serious criminal offence, combining harm to neighbors and community with diabolical associations, while its secretive and supernatural nature made it difficult to present compelling evidence for its prosecution. Witchcraft prosecution is, therefore, an ideal subject for the study of serious yet hard-to-prove cases. The latter factor was especially important in England because English law forbade the use of torture to extract confessions. Darr's book studies English witchcraft trials as reported in pamphlet literature, together with learned treatises and legal manuals, with an eye to developments in the ways in which evidence was collected and interpreted to make prosecution for the offence possible.

The literature against which Darr presents her study is the work of legal historians like John Henry Wigmore, who sees the development of evidentiary practice as motivated by the pursuit of truth, and Alex Stein, who presents it as accommodating practical social ends. Against such views, Darr's principle thesis is that the rules of common law are "social constructions," by which she means that the choice and interpretation of evidence and proof were not aimed entirely at

truth but were heavily influenced by social interests of class and profession and hence did not "necessarily possess a universal or 'real' objective value, and they were not guided by reason alone" (pp. 261-262). To this end, Darr devotes a good deal of her study to the sometimes accommodating and sometimes conflicting attitudes and interests of three professional groups closely involved in the theory and practice of witchcraft trials: clergy and theologians; medical professionals, especially physicians; and lawyers, judges, and legal writers. According to Darr, the manner in which the principles of common law developed was to a large extent determined by the ways in which these groups advanced their social and professional ends.

The first three chapters provide a review of the procedures in English common law of the period, and of the practices the English courts followed regarding the assessment of circumstantial evidence. The nature of English criminal trials is important to Darr's study because of the effects of the assize courts. Pretrial indictment was directed by a local justice of the peace and determined by a grand jury, allowing influence on the proceedings by local interests. At the same time, pretrial records had no evidentiary status in the trials, which were directed by central, itinerant, assize court judges with a verdict pronounced by a petty jury. Until the mid-eighteenth century, petty juries were under considerable constraints from the assize judges. The emergence of rules for the assessment of evidence occurred as the courts adjusted concepts of proof to function in the assize court system. Another factor in English common law that played an important role derived from the absence of torture. This fact meant that, in difficult-to-prove cases like witchcraft, English courts had to rely on circumstantial evidence. Since direct evidence was impossible, indications of witchcraft had to depend on the use of presumptions to link the evidence to the crime. An example of this reasoning was the common inference connecting an unpleasant encounter with a subsequent injury. While continental courts assigned witchcraft the status of a ***crimen exceptum*** to avoid the necessity of full proof, English common law had always allowed circumstantial evidence as a consequence of the jury system. By the eighteenth century, English jurists had established a system of three levels of presumption (violent, probable, and light) that was widely adopted.

The second major portion of the book, chapters 4 through 9, surveys the range of evidence that was commonly offered in witchcraft trials. Darr's main assertion across these chapters is that the evidence itself, whether in the form of physical traces of witchcraft and diabolical activity, or in supernatural tests such as swimming or scratching the suspect, was not directly incriminating but required a number of interpretive assumptions that could be challenged in court and in the literature. Evidence of witchcraft rituals in the form of physical traces--bowls, pins, feathers, and clay figures--in the absence of a compelling story of their origin and use, were simply household objects with no criminal significance. A particularly interesting and common piece of evidence was the witches' mark, which ingeniously combined English folk belief in suckling familiars with learned belief in the mark as a sign of the devil's pact. In this case, Darr records unexpected alignments and disagreements between and among divines, legal scholars, and physicians on the evidentiary value of the witches' mark. Similarly, interpretations of the results of supernatural tests, such as swimming the suspects and scratching (drawing blood from the suspect to see whether the victim experienced relief), were open to challenges from a number of angles, most especially the possibility of natural causes. Some divines viewed such practices as superstitions, akin even to witchcraft itself, and physicians frequently offered alternative natural explanations of the outcomes. Yet there was considerable pressure, especially at the local level, to accept these tests as definite signs of diabolical witchcraft.

In chapter 9, "Supernatural Evidentiary Techniques as Experiments," Darr draws on the material of the previous two chapters to examine what she sees as important changes in criminal practice emerging from the witchcraft trials. It is here that this reviewer finds the most interesting and controversial thesis of the book. The techniques Darr refers to are those that involve subjecting the accused to tests, especially swimming and scratching but others as well, that depend for their efficacy on supernatural causes. At first glance these tests appear as throwbacks to medieval ordeals, which relied on divine intervention as proof of guilt or innocence. Yet Darr argues convincingly that this was not the case. Legal practice had moved from what Darr calls an "epistemology of belief" to "an epistemology of knowledge." By this she means that determination of a verdict shifted from divine signs not amenable to human reason to providing rational proof. Given this shift, supernatural tests were reformed in a manner similar to scientific experiments. As devices intended to convince a jury, the tests were subjected to three important constraints: standardization, by which the same results could be expected from the same circumstances; repetition, where the tests were repeated to avoid the possibility of unexpected circumstances; and the use of experimental controls, particularly the application of the same tests to people innocent of suspicion. As Darr argues, these factors are common features of modern scientific experimentation. Moreover, following Barbara Shapiro, Darr points out that these factors originated in law ***before*** they came into common use in the sciences.

While the general assertions in Darr's comparison of trial procedures and experimentation are revealing and interesting, there are important questions in the specifics. Given acceptance of the validity of a test, an "experiment" could be used to determine the guilt of the suspect. In places Darr also indicates that the experiments could be used to determine the validity of the test. But it would seem to be impossible to do both together, which Darr suggests in one place (p. 186), since a negative outcome would not reveal which hypothesis failed. Yet one can reply to this point that all scientific hypothesis testing faces the same problem.[1] Another question concerns the application of Darr's principle thesis--the social construction of evidentiary rules--to the experimental nature of supernatural tests. She notes that experiments were often modified in order to provide clearer proof. Here she points out that judges were sometimes responsive to local intervention and even to objections from the trial audience. This supports her claim that what she calls "experimental technique" was a search for rational forms of proof, and it fits with her assertion that the primary change in English legal practice in the early modern period was a shift from divine intervention to human reason. Yet she also notes that frequently the modifications were directed toward establishing a guilty verdict. Rather than indicating open-mindedness toward the outcomes of experiments, this suggests that the tests were not always experiments in the sense of trials used to objectively determine the facts, but were often intended to provide proof of a predetermined conclusion. Again, it can be replied that this situation is not peculiar to witch trials and that "facts" are themselves "socially constructed" artifices, although Darr herself seems not to take this option (p. 264).

Chapters 11 and 12 review the rules that developed concerning the reliability of verbal evidence, from witnesses and from suspects' confessions. With regard to the former, Darr distinguishes between competency rules, which determine whether a witness can or cannot give reliable testimony, and credibility rules, which assign degrees of reliability both to the witness and to the content of the testimony. Early trials relied on competency rules, primarily to eliminate liars; for this end, oath taking was accepted as sufficient grounds. In the late sixteenth century, doubts about the reliability of oath taking emerged, and by the early seventeenth century a system of rules emerged to measure credibility. Over time, these

rules came to include assessments of the coherence of testimony, of the motives and interests of the witnesses, and of their impartiality. Regarding confessions, many claimed that, whether explicit or implicit, confessions offered the best possible evidence. Against this, Reginald Scott argued that confessions to impossible, supernatural acts or from the mentally ill were of no value. Others accepted the reliability of confessions in principle yet insisted on caution, arguing for example that confessions be "free and voluntary" and be supported by independently corroborating evidence. Here Darr argues that professional affiliations were significant: divines and jurists generally supported confessions as strong evidence, although for different professional reasons, while physicians were skeptical that any confession could be considered free and voluntary.

Overall, this book should be essential reading for anyone interested in the criminal aspects of the witchcraft trials and in the history of common law. This reviewer finds the intersections between these two subjects important and rarely examined in as much detail. Darr's use of primary sources is detailed and comprehensive, and she presents bold and important theses. The larger questions the book raises about the role of "social construction" in legal theory, and the relations between proof and experimentation in law and science, will provide valuable material for ongoing discussions.

Note

[1]. This point is most often attributed to Pierre Duhem and Willard Van Orman Quine. See Willard Van Orman Quine, "Two Dogmas of Empiricism," in *From a Logical Point of View* (Cambridge: Harvard University Press, 1953), 20; and Roger Ariew, "The Duhem Thesis," *British Journal for the Philosophy of Science* 35 (1984): 320.

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