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Lindsay Farmer

Killing Thoughts

Questi, in estrema sintesi, gli argomenti dei saggi che sottraggono il diritto di resistenza alla sua catalogazione di particolarità della storia

tedesca, della scienza tedesca e del diritto statale tedesco.

Angela De Benedictis

Killing Thoughts*

Treason is in many respects a unique crime under British law. To this day it remains the only crime to which the death penalty attaches. For much of its history it has been tried under special procedures – something that was in turn justified by the special character of the crime. Yet the crime has rarely been resorted to by the Crown, especially in the modern period, as the authorities have been wary of their ability to control the meaning of the political trial. The charge of treason is perceived as a blunt weapon with which to deal with political dissent, as the trial would give a platform to just those views that they had been anxious to suppress. One of the last periods in which the crime was used to suppress dissent in this way was the 1790s as the British government responded to the external threat of French republicanism, and the internal threat of French-inspired radicalism. It is the use of the crime of treason in this period, and the struggle over the seemingly well-settled meaning of the crime, that John Barrell traces in this fascinating book.

The definition of the British law of treason is ancient, dating from a statute of 1351, declaring that it is treason if a man ›compasses or imagines‹ the death of the king. Barrell argues that in the 1790s the meaning of this phrase shifted from that of intending to kill the king, to include a wider (or looser) sense that did not necessarily entail any designs on his actual body, but the

idea of picturing it in the mind or having designs on the constitution (40). This potentially covered a wide range of activities, and was used by Pitt's government to prosecute instances of ›figurative‹ treason involving the speech or publication of treasonous words. However, a consequence of this broader notion of treason was that it became harder to prove what was actually compassed or imagined, with many claiming that the feared consequences were in the mind of the accuser rather than the accused. This new concept of treason is explored in detail in the second part of the book, analysing the treason trials of the 1790s, which makes a distinctive contribution to the legal history of this crime. Barrell, however, takes the argument much further, evoking two further contexts in which the language of the trials must be understood. The first is that of political debate of the 1790s in which liberal reformers and defenders of the unreformed constitution accused each other of abuse of the imagination. In both cases it was asserted that the faculty of the imagination misled and distorted political judgment. For Burke and his followers imagination was opposed to reason or experience, and was politically dangerous and ungoverned, while for his critics Burke imagined both the constitution (through his brilliant rhetoric), and the threat that was posed by the reformers and radicals. Imagination in politics was thus not a politically neutral activity.

* JOHN BARRELL, *Imagining the King's Death. Figurative Treason, Fantasies of Regicide 1793–1796*, Oxford: Oxford University Press 2000, 756 p., ISBN 0-19-811292-0

The second, broader still, is the ›crisis of the history of the imagination‹ at the end of the eighteenth century. Here Barrell argues that the pejorative sense of imagination, that was at play in political trials and debate constrained the figurative imagination, linking imagination, intent and action: To fantasise the death of the king was to desire the death of the king, was to intend to kill him. The poet or author who addressed such themes ran the risk that their work would be interpreted in this way. The crisis was only resolved in Coleridge's defence of the poetic imagination, in which he asserted that figurative language was not only distinct from intent or desire, but also a means of disassociating poetic and political language. This defence,

Barrell argues in a short epilogue, was written in direct response to the trials of the 1790s.

While the book might appear from its title to be focused on a rather narrow theme in a narrow period – causing me to wonder initially how it could possibly be so long – it is substantial in every sense. It makes distinctive contributions to legal, political and cultural history, and is based on extraordinarily detailed research. Most important of all, the argument draws out the connections between the fields to draw the links between law and culture that are frequently missing from more narrowly focused legal histories.

Lindsay Farmer

Fälle ohne Fäden*

Die Forschungen zur höchsten Gerichtsbarkeit im Alten Reich kreisten jahrelang um das Reichskammergericht (RKG). Dass sich das nun zu ändern beginnt, ist aus zwei Gründen ein Verdienst Eva Ortliebs. Zum einen verzeichnet sie in Wien die Akten des zweiten höchsten Reichsgerichts, des Reichshofrats (RHR), zum anderen beleuchtet sie in ihrer Dissertation einen zentralen Tätigkeitsbereich des RHR im 17. Jahrhundert, nämlich das Kommissionswesen. Aus der RKG-Forschung wusste man, dass Kommissionen im Rahmen von Beweiserhebungen eine wichtige Aufgabe im gemeinrechtlichen Zivilprozess erfüllten. In den RHR-Verfahren zeigen sich nun erhebliche Abweichungen vom vertrauten Bild. Die kaiserlichen Kommissionen führten nicht nur Beweisaufnahmen durch, sondern wurden auch mit dem Ziel eingesetzt, vor

Ort Streitigkeiten zu schlichten und Vergleiche zu schließen. Derartige Kommissionen betrieben ihre Verfahren weitgehend eigenständig. Lediglich durch die Kommissionseinsetzung waren sie mit dem kaiserlichen Hof und dem RHR verbunden. Zugleich leiteten sie ihre Autorität aber vom Kaiser ab und verkörperten damit die kaiserliche Justizhoheit über das Reich in einem Maße, wie es dem ständisch geprägten und örtlich gebundenen RKG nicht möglich war.

Ortliebs Buch ist übersichtlich in fünf Abschnitte gegliedert: Auf die Einleitung folgen die normativen Grundlagen der Kommissionstätigkeit, an die sich eine Quantifizierung anschließt. Das Schwergewicht bildet der vierte Abschnitt, der drei exemplarische RHR-Kommissionen in Einzelanalysen minutiös aufbereitet. Im Schlussabschnitt führt die Autorin ihre Ergebnisse mit

* EVA ORTLIEB, Im Auftrag des Kaisers. Die kaiserlichen Kommissionen des Reichshofrats und die Regelung von Konflikten im Alten Reich (1637–1657) (Quellen und Forschungen zur höchsten Gerichtsbarkeit im Alten Reich 38), Köln, Weimar, Wien: Böhlau 2001, VII, 426 S., ISBN 3-412-12400-1