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Justine Keli Collins*

To be or not to be a True Born Englishmen

* Max Planck Institute for European Legal History, Frankfurt am Main, collins@rg.mpg.de

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To be or not to be a True Born Englishmen*

Britain and its former colonies, which made up its illustrious Empire, are constant sources of academic discussions and debates, especially within the context of legal history. Most studies tend to focus on specific regions and nuanced areas of law, which is where Rabin differs and what sets her work apart. *Britain and its Internal Others* adds to work done by Hay, Craven, McLaren and Thompson on detailed legal Empire research. Rabin, Assistant Professor of History at the University of Illinois at Urbana-Champaign, focuses on six different legal paradigms of the British Empire. The pivotal thread of each paradigm is the link between the centre and periphery, that is, the metropole and its colonies. However, what stands out herein is that since the metropole in itself is crucial to the colonies, Rabin looks to it to explore the problems, which arise there, to be central to the colonial ones. She looks at the metropole not as distinct from its empire but as innate to the precarious and irregular nature of English law. Therefore, law in the metropole responds to persons therein based on this precedence.

The emphasis of each focal area illustrated resides in what Rabin terms the »shifting boundaries« between »internal others« – persons of different cultures and origins and those who consider themselves true born Englishmen. The shifting boundaries concept examines the perceptions of who holds themselves to be »other« – within the context of the former empire. It then turns to the question of how this otherness is reconciled with notions of »Englishness« and the potential ramifications of these reconciliations. The case law explored within the book depicts that the rule of law is the primary mechanism through which the internal others reconcile their positions within Britain. Therefore, their pursuit of rights and equality within the metropole allowed them to rely on the rule of law whilst simultaneously propelling and defining their identity and litigious presence.

Rabin employs case law to trace how a legal event, its antecedents and fall out served to shape, challenge and remake law in Britain. Furthermore, cases tended to confront and arbitrate issues of difference such as African slaves, being black in colonial Britain, Jews and Gypsies, Catholics, the working class, and Irish men and women. The disparities of these groups of internal others emanated definitions of what was »whiteness«. In addition, the categorisation of whiteness denoted how the law was utilised to augment and endorse hierarchy and bureaucracy masked as mediation to channel power in terms of differentiating between who was an internal other and who was truly English – by birth or otherwise. The cases therefore show how the law developed to conceal rights and liberties of others within the metropole itself.

Themes of race, gender and equality before the law are also analysed by Rabin. Whilst the rights of Englishmen and laws applicable to them is commonplace to discussions on English legal history, the rights of Englishwomen is not as pervasive. In fact, the rights of white Englishwomen were wholly dependent on factors such as class and family wealth and mostly arose in relation to their husbands. The relationship of women to law, generally speaking, was one of silence and repression. Exceptions to this rule were single women or women representing an internal other, who were portrayed as suspicious, sexualised and/or problematic. Rabin's analysis of race showed that although the Empire was expanding with an array of religious sects, cultural, ethnic and racial variations, the law failed to protect those groups and instead chose to uphold whiteness as a privileged category. The way Britain classified foreign colonial subjects as lawless or as savages was conducive to the bias embedded in the legal system when pertaining to internal others. Rabin stressed that while on the periphery Britain appeared to respect local laws and traditions of its colonies, along with establishing English courts and law-making bodies

* DANA Y. RABIN, *Britain and its Internal Others, 1750–1800. Under the rule of law*, Manchester: Manchester University Press 2017, vii + 266 p., ISBN 978-1-5261-2040-3

therein, they had no issues with disregarding local laws when convenient for them.

Rabin concludes by quoting Granville Sharpe, a civil servant and abolitionist who fought hard to gain freedom for blacks in England and to end colonial slavery. Sharpe's words highlight the paradox in Britain's ideology of promoting the rule of law as a right available to all regardless of origin, all the while not doing so in practice. As the case law shows, internal others failed to benefit from equality before the law in the same way as Englishmen did. Notably, ascendance to the rights of Englishmen, however, was not closed to certain groups (such as Scots); it remained that membership rested on definitions of whiteness, the gatekeepers of which were within the legal and political arenas.

Britain and its Internal Others creates and stirs a much needed debate on the history of equality before the law by those who were perceived as other due to colonialism. Bringing together six

distinct legal events with similar themes is no easy feat, and Rabin does so with ease coupled with detailed scrutiny and explanations. However, the very reason for the book's high praise is, at the same time, its main shortcoming. The grouping of the several categories of legal events, and in essence groups of persons, gives the impression that they were in similar positions or started off on more or less the same footing. Since degrees of whiteness, as it related to what it means to be English, are the foundations of the conversation based on the rule of law, one cannot equate a slave-treated and legalised as property to the status of a Jew, Irishman or Catholic in Britain. It is clear that all involved were subjected to forms of discrimination and injustice; however, where most groups were able to eventually ascend to the status of Englishmen, this courtesy was never extended to blacks in colonial England.

Heinz Mohnhaupt

»Am Ende stritt man um Akten«*

Die Dissertation (Universität Eichstätt-Ingolstadt) beginnt mit dem Satz »Am Ende stritt man um Akten« und endet auf Seite 483 mit eben dem gleichen Satz. Zwischen Anfang und Ende dieser akribisch gearbeiteten Publikation, die Denzler bescheiden eine »Studie« nennt, werden die massenweise in den Archiven vorhandenen Akten, die während der letzten Visitation des Reichskammergerichts von 1767–1776 produziert wurden, nach ihrer Entstehung und Funktion untersucht. Als Leitbild der Untersuchung dient der »Reformhorizont« der Aufklärung, vor dessen Hintergrund das Visitationsgeschehen in Gestalt seiner Hand- und Druckschriften analysiert wird. »Reform«-zeiten, -räume, -akteure, -verfahren sowie -inhalte geben dem engagiert geschriebenen Buch eine

klare Gliederung für die Untersuchung aller Schriftgattungen von den Protokollen, Schreiben, Diktaten, Abschriften, Diarien, Korrespondenzen, Instruktionen, Berichten bis zu Gutachten und Notizen, die alle das Visitationsgeschehen in und als »Akten« repräsentieren: 562 Aktenbündel; von 1 056 Sitzungen sind 13 Bände Beratungsprotokolle überliefert, die 15 732 Folioseiten umfassen; 50 Visitationsbeschlüsse liegen vor; die schriftlichen Befragungen von 92 Gerichtsmitgliedern ergaben 25 000 Antworten (355, 478); hinzu kommen noch die Produktion aus der visitationseigenen Druckerei sowie 200 Einzelpublikationen zur Visitation und eine visitationseigene Zeitschrift als schriftliches Untersuchungsmaterial. Daraus entsteht ein höchst umfassendes und anschauliches Bild

* ALEXANDER DENZLER, Über den Schriftalltag im 18. Jahrhundert. Die Visitation des Reichskammergerichts von 1767 bis 1776 (Norm und Struk-

tur. Studien zum sozialen Wandel in Mittelalter und Früher Neuzeit 45), Köln/Weimar/Wien: Böhlau 2016, 612 S., ISBN 978-3-412-22533-9