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German-speaking countries of this time. In the eyes of the police, this specific dangerous class included vast parts of the non-resident and/or vagrant population. *Zigeuner* served as convenient, ready-made label for identifying these categories as a danger to the new nation-state. Leo Lucassen demonstrates convincingly how the police used the notion of *Zigeuner* to distinguish between good people and bad people in the world around them.

From the point of view of the police, the bad people became increasingly dangerous as the the German nation-state defined the boundaries between its members and its non-members after 1870/71, the date of its foundation. As a data base supporting his arguments, Leo Lucassen uses nineteenth-century police-handbooks and collections of arrest warrants deriving from the entire nineteenth century. The late nineteenth- and early twentieth-century police perceptions of *Zigeuner* are dealt with more summarily, which is slightly disappointing because it leaves the reader without the details provided in the first two parts. Nevertheless, the book remains recommendable reading for those interested in labeling and stereotyping practices as part of police development.

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Among the sights to behold as the British Empire gave way to the Commonwealth there were few quite as incongruous as legal officials of the new nation states sweltering beneath the wigs and robes of the English legal profession. The incongruity is even greater when it is remembered that these wigs and robes were already archaic in English society when the greater part of the empire was being established. Yet the wigs and robes somehow seemed a necessary part of the law, and for generations of empire builders, imperial administrators, and students of the now largely defunct subject «British Constitution» the white man's law was a key element of the civilising process brought to native peoples. Yet, how far was it possible to export English law to different cultures? How far was compromise necessary? And how far was the export of law less concerned with bringing an enlightened, rational legal system to peoples perceived as less fortunate and primitive, and more with enabling the imposition of sovereignty? Both Lindsay Farmer's *Criminal Law, Tradition and Legal Order* and Radhika Singha's *A Despotism of Law* touch on these issues, though approaching them in very different contexts as well as from different disciplines – Farmer teaches law, Singha teaches history.

Perhaps only the most extreme nationalist would consider Scotland a colonised territory, but it probably remains fair to say that it emerged from the Union of 1707 as a junior partner in «Britain». However, even though united under the English /British Crown, Scotland maintained a separate legal system. This, Farmer persua-

sively argues, contributed to the development of a conservative, romantic and essentially safe nationalism; and, rather than exploring the massive changes which overtook Scots law during the nineteenth century in much the same way that they overtook English law, Scottish legal history has always been backward looking, glorifying a mythical past in which Scots law is said to have originated and established its defining characteristics. Farmer's challenges this comfortable history, and sets out to explore the changes wrought since the early nineteenth century with the intention of developing «a reading of the modern criminal law as a system of criminal justice» (p. 19). Rather than seeing Scots Law (and arguably any other penal code) as based on a rational core model, Farmer suggests that what has developed since the early nineteenth century is a complicated administrative system «geared towards dealing with large numbers of people in a summary manner and controlling behaviour through small penalties for minor offences» (p. 182).

Farmer's starting point is the Abolition of Heritable Jurisdiction Act of 1747, a usual starting point for Scottish legal historians intent on describing the transition from a pre-modern to a modern criminal justice system. The act, passed in the wake of the rebellion of 1745-6, was an assertion of the Crown's right to control and administer Scotland; it abolished some courts and offices, and reduced or defined more clearly the jurisdiction of others. Yet the act, Lindsay forcibly argues, was not as big a break with the past as is commonly maintained. In some respects it was the fulfilment of a long-standing project; in other respects, however, it revealed an intention to establish a broad similarity with the administration of justice in England, and those feudal jurisdictions which were abolished or limited were only the ones which appeared to threaten the Crown's claim to a universal jurisdiction. Overall, Lindsay maintains, the act streamlined a system developed in the late seventeenth century rather than establishing anything new.

The traditional historiography has it that, in the half century following the 1747 act, Scots law matured, becoming liberal and flexible and acquiring its modern «genius». In 1797 this maturity was celebrated in Baron David Hume's *Commentaries on the Laws of Scotland Respecting Crimes*, a volume which went through many editions and which continues to be revered by Scots lawyers and legal historians of the old school. But if, as Lindsay argues, the 1747 act did not make a significant break with the past, then, while Hume's influence cannot be doubted, the notion of the maturity of a new and modern system of law developing in the late eighteenth century appears wrong-headed. Moreover, Lindsay cogently presents the case that there were far more significant changes, involving a much greater process of modernising, during the nineteenth century than in the half century before the first appearance of Hume's *Commentaries*. It was during the nineteenth century that the law acquired an increasing pre-occupation with enforcing order, both public and social, and in so doing it extended the boundaries of the criminal law. New forms of liability, defined in criminal law, were established between employers and employees. The new police, rather than the accused's neighbours, became the persons who proved aggravating circumstances. These were major changes, and of great significance for the ways in which the law and the courts were employed; yet jurists have rarely, and then only cursorily addressed them.

It is generally accepted by criminologists and students of the law that homicide is an exceptional crime. At the same time the history of the criminal law generally puts considerable emphasis on the ideology of the Enlightenment with its conception of the individual, and his (or her) rights and his (or her) free will. The criminal

codes of the nineteenth and twentieth centuries were, in such a perspective, written and re-written with liberal, humanitarian intent and with the aim of relating the infliction of punishment at least in part to the intent of the offender. The law relating to homicide is only a small part of the picture and fits into the general pattern. Yet in Lindsay's analysis, «the definitions of responsibility, causation, excuse, justification and so on» in Scots criminal law are derived almost exclusively from the developing law of homicide (p. 143). By implication a similar case might be argued for England. Overall Lindsay has produced a combative and stimulating study which will be of interest and value to students of criminal and legal history whose research and expertise has never led them to consider an appreciation of Scots law. The Scots may have been junior partners in Britain, but ostensibly they kept their own law, even if it does appear to have developed increasingly along lines similar to that in England.

Individual Scots figure in important roles – as explorers, merchants, missionaries, soldiers – in the story of the building of the British Empire. Native peoples incorporated into this empire during the eighteenth and nineteenth centuries seem to have found much greater developments in their experience of law as a result of colonisation. The aim of Radhika Singha's *A Despotism of Power* is to explore these developments in the north of India under the rule of the East India Company from the last third of the eighteenth century to, roughly, Macaulay's draft penal code of 1837.

It was not the British Crown but the East India Company which constituted the colonising power in late eighteenth- and early nineteenth-century India. In those areas where it held dominion the Company sought to take note of the native systems of caste, patriarchy and rank, and to deploy its own form of law in conjunction with Islamic criminal law. Yet increasingly the Company began to claim for itself the sole prerogative of legitimate violence, and to assert new notions of sovereign right. Singha follows the development of these claims, seeking to explain the reasons for change, and the impact of the changes on the indigenous people.

In the tradition of the Enlightenment, Company officials, and the imperial administrators who followed them, considered that they were bringing rational legal authority where only arbitrariness had existed before. They believed that they needed to recast Bengal in an English image, since that image was progressive and rational, and they considered that there was a universal standard by which things such as intention could be measured. Yet their assumptions about criminal intention, premeditation, and about due process did not always sit easily with some of the social groups with whom they had to work to maintain their position. Indian men of credit and reputation, for example, resented having to swear oaths on the Koran or on Ganges water; not only did this appear to them as coercion, but it also put them on the same social level, and the same relation to Company authority as everyone else. The white man's insistence on punishment at the expense of the restitutive claims of victims was probably unpopular across a wider social spectrum, and it also changed the expectations of a prisoner when he made a confession. There were other problems for the Company in assessing how far it could tolerate traditions such as *sati* (when a widow committed suicide on her husband's funeral pyre) or *dharna* (fasting, even unto death, before an adversary to demand redress or payment of a debt), without suggesting that it approved of them. And then if and when it decided that such behaviour had to be condemned as a «crime», how could it convince the subject people of the superiority of its own codes, and wrench these «primitive» and

«superstitious» practices from the meanings which they possessed in Indian culture? Such meanings, after all, could challenge the authority of the Company's law.

One of the most dramatic and romantic stories of the way that the British brought «law and order» to India is that concerning the suppression of Thuggee. The thugs, according to the men who suppressed them as well as to subsequent novelists and movie makers, were criminal communities whose trade was the robbery and murder of ordinary travellers. Reality is invariably and, perhaps, inevitably more mundane than romance, and Singha presents a convincing challenge to the traditional view. There were, she notes, few complaints about the inadequacy of existing laws for dealing with robbery on the roads before the Thuggee Act of 1836; parties containing Europeans were not attacked, while the incidence of attacks does not appear to have reached serious proportions. Rather the campaign against the thugs, in Singha's estimation, stemmed principally from a desire to elaborate the paramountcy of the British. As the paramount power in India they were thus taking it upon themselves to rid the entire territory, and not just the Company's lands, of the evil; moreover such action could be portrayed in the broadest sense as reformist, rather than simply authoritarian. «It was far easier to prosecute a prisoner on a charge of belonging to some ill-defined criminal collectivity than to establish individual responsibility for a specific criminal offence» (p. 170), and it is relevant to note that the Thuggee Act made «Thuggee» and being a member of «a gang of thugs» an offence without ever defining either.

Both Farmer and Lindsay take the readers far from the comfortable notion of the law as some kind of abstract entity to which everyone within a society is subject, and which is disinterestedly interpreted by judges. Arguably the current historical research into crime and the law in Europe and America has been consistently pressing such a case in recent years, yet Singha's Indian vantage point provides a valuable new dimension, and Farmer's penetrating insights are particularly significant coming as they do from a critical legal perspective. Suggestions that law was often a compromise between one set of cultural values and another, that it can be related to assertions of paramountcy, that it is essentially a system of administration within society rather than a representation of community interests and morality, may smack of the post modern and may not win the plaudits of many senior legal practitioners, but as deployed in these two books they make good sense and stimulate.

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Heather Shore, *Artful Dodgers: Youth and Crime in Early Nineteenth-Century London*, Woodbridge, The Royal Historical Society/The Boydell Press, 1999, XII + 193 p. ISBN 0 86193 242 0

In the contemporary popular imagination the juvenile offender can be placed anywhere on a spectrum ranging from a loveable cockney rascal, such as 'the Artful Dodger' of Lionel Bart's 1960s musical *Oliver!* (as opposed to Charles Dickens' original), to the two ten-year-old 'monsters' who murdered two-year-old Jamie Bulger in Liverpool in February 1993. More often than not attitudes veer towards the latter