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Book Review (reviewing Paul W. Bamford, Fighting Ships and Prisons: The Mediterranean Galleys of France in the Age of Louis XIV (1973))

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BOOK REVIEWS

Paul W. Bamford, *Fighting Ships and Prisons: The Mediterranean Galleys of France in the Age of Louis XIV*. Minneapolis, Minnesota. The University of Minnesota Press, 1973. x, 380 pp. $16.50

Throughout the Middle Ages in all the secular legal systems the blood sanctions—death and maiming—were the exclusive punishments for serious crime. There was some use of short-term imprisonment for petty crime, but for serious crime the jails were meant to detain until trial, not to punish.[1]

Over the course of the sixteenth and seventeenth centuries the foundations were laid at opposite ends of Europe for a new penal system for serious crime. The Mediterranean states introduced the galley sentence, and the countries of the North founded the workhouse. Both institutions arose to serve social purposes remote from the ordinary criminal law. Nevertheless, they converged under the ancien régime to form the prison system that ultimately displaced the blood sanctions from European law.[2]

"The galley sentence arose not from the needs of criminal justice, rather its origin is most closely connected with the development of the medieval fleets of the naval powers of southern Europe."[3] Although the sailing ship was coming into use by the end of the Middle Ages, galleys rowed by oarsmen continued to be important military vessels in the Mediterranean into the eighteenth century. Because galleys were highly manéuverable, they were more suitable for Mediterranean coastal waters than were the oceangoing ships of the Atlantic. Unlike wind powered craft, they could not be becalmed. Not until the eighteenth century did the superior size, speed and firepower of the sailing ships fully overcome the military advantages of the galley and render it obsolete.[4]

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1. For medieval practice see 1 G. Bohne, *Die Freiheitsstrafe in den italienischen Stadtrechten des 12.-16. Jahrhunderts* 54-67, 80-90, 98ff (1922, 1925); Porteau-Bitker, "L'emprisonnement dans le droit laique du Moyen Age," 46 *Revue historique de droit français et étranger* 389, 395ff (1968); R. Pugh, *Imprisonment in Medieval England* 17, 26ff (1968); E. Schmidt, *Einführung in die Geschichte der deutschen Strafrechtspflege* 64-65, 193-194 (3d ed. 1965).

2. I have dealt with this subject in an article, "The Historical Origins of the Sanction of Imprisonment for Serious Crime," forthcoming in the January 1976 issue of the *Journal of Legal Studies*. That article is based on Chapter 2 of a forthcoming book, *The Law of Torture in the Ancien Régime* (1977).

3. P. Frauenstädt, "Zur Geschichte der Galeerenstrafe in Deutschland," 16 *Zeitschrift für die gesamte Strafrechtswissenschaft* 518, 519 (1896).

4. Bamford believes that the military advantages of the galleys (pp. 12-22) did not justify the size of Louis XIV's fleet (pp. 24, 31ff, esp. 46-47) and that pressure from

Galleys required several hundred oarsmen rowing in unison. The work was strenuous, dangerous and severely disciplined. Because volunteer oarsmen were never in sufficient supply, the fleets supplemented hirelings with galley slaves, usually Turks and North Africans either captured in war or bought for the purpose (pp. 138ff). When these sources became inadequate to staff the growing fleets of the fifteenth and sixteenth centuries, the idea dawned of forcing condemned criminals to serve as oarsmen. Convicts whom the state had been eliminating through capital punishment were now regarded as a potential resource. From Spain, "mother"[5] of the galley sentence, the practice spread to Italy[6] and the North. It is reported in France[7] and the Netherlands[8] in the 1520s, in Belgium[9] and Austria[10] in the 1550s.

The galley fleet of France reached its acme during the wars of Louis XIV. In this remarkable and fascinating book, the product of two decades of research in the French archives, Professor Bamford supplies the first detailed account of how the galley system became the prison system.

Condemned criminals were at first obtained for the galleys by exercise of executive commutation power, much like the conditional pardon system devised in seventeenth-century England for the transportation of capital convicts for terms of indentured servitude in the New World.[11] In periods when the galley fleet's need for oarsmen was intense, the authorities cast a very wide net for convicts. Capital felons were sentenced to the galleys for life, lesser offenders for terms of years.[12] In France and the other states which made relatively sustained use of the galley sentence, it entered the catalog of criminal sanctions imposed by the ordinary courts.

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the aristocratic officers of the Galley Corps (pp. 24-25, 95ff) and Louis' desire to display seeming wealth and naval might induced the regime to build an overlarge galley fleet (pp. 24, 47-51). Bamford is less persuasive—indeed, he seems to reverse cause and effect—in suggesting (pp. 25-27) that the prison function of the galleys helps explain the expansion of the fleet under Louis XIV. The central authorities had no incentive to displace the blood sanctions with an expensive "royal, central prison for the whole realm" (p. 25).

5. 2 G. Bohne, *supra* note 1, at 317.

6. 2 *Id.* at 302, 320ff.

7. Schnapper, "La répression pénale au XVIe siècle: L'exemple du Parlement de Bordeaux (1510-1565)," 8 *Recueil de mémoires de travaux publié par la société d'histoire du droit et des institutions des anciens pays de droit écrit* 1, 33 (1971).

8. T. Sellin, *Pioneering in Penology: The Amsterdam Houses of Correction in the Sixteenth and Seventeenth Centuries* 9 (1944).

9. J. Damhouder, *Practique judiciaire es causes criminelles*, ch. 151, at 203v (Antwerp, 1564 ed.)

10. Frauenstädt, *supra* note 3, at 522.

11. A. Smith, *Colonists in Bondage: White Servitude and Convict Labor in America: 1607-1776*, at 95-98 (1947).

12. But Bamford discovered that in actual practice an offender sentenced to a determinate term was kept in galley service for as long as he was able-bodied or until he could buy his way out (pp. 250-253).

"Men destined for the galleys were chained together in groups of fifty to several hundred at a time and marched to Marseilles in the charge of a conductor, assisted by guards" (p. 191). The conductors were entrepreneurs working for profit on a contract basis, like the English merchants who operated the transportation system. Under Louis XIV there were "approximate itineraries for the principal chains, and branch routes to assure the gathering of scattered convicts from prisons situated off the principal arteries" (p. 191).

The critical factor that accounts for the tendency of the galley system to acquire most of the characteristics later associated with the prison workhouse was the seasonal constraint upon the galleys' naval operations. "French galleys normally went to sea only during the spring or summer of the year, for a campaign of two or three months at most; during the remainder of the year they were tied up in port (except for irregular forays near Marseilles to exercise or train their oarsmen) . . ." (p. 27). The galley system created a captive labor force whose primary duty left them idle most of the year. Hence, the authorities deliberately supplied the galley convicts with an inadequate daily ration of food to encourage them "to employ their extra time and energy earning money for supplementary food" (p. 203). A variety of employment was found for the convicts. Some worked in "tiny shops . . . along the wharves adjacent to the galley anchorage; others labored daily . . . on the galley itself at some trade or handiwork. Some worked at widely scattered places around Marseilles. Others left the galley daily at dawn with [guards] accompanying them for regular or occasional work in the metropolis. Another group left the galleys to work in the naval arsenal itself" (pp. 225-226). In the eighteenth century as the galley fleet declined, the convicts were used largely on construction work in the port cities or in manufacturies (*bagnes*) indistinguishable from the prison workhouses of the North.[13]

Bamford has rested his work uncompromisingly upon archive research for the reign of Louis XIV, and this is the source not only of its great originality and interest, but also of some curious limitations. Bamford makes little effort to compare the galley system of Louis XIV to the practice of the other galley powers, and more surprisingly, there is scarcely a mention of the century of prior French practice. Consequently, it is impossible for a reader to sense how much of what the book describes was novel to the period. Further, Bamford seldom discusses the records on which his account rests. His footnotes are typically one-line citations to archive class marks. Whatever problems of inference and interpretation the sources may have presented Bamford has generally resolved without disclosure; the reader is not given the chance to test the author's conclusions against the evidence. For example, citing only to a class mark in the marine archives, Bamford reports that "some unfortunates [were] sent off to the oar when

13. Compare Bamford at 234-245, 276-277, 282, with Sellin, *supra* note 8, at 54-56.

merely 'suspected' or 'accused' of some crime. Examples in the registers demonstrate that vague suspicions and unproved charges could send men to the oar" (p. 180). If we had been told a little more about those "examples in the registers," we could be surer in voicing our own suspicion—that Bamford has been misled on this point by one of the oddities of contemporary French criminal procedure. When the evidence against an accused was persuasive but short of the two eyewitnesses or confession which constituted Roman-canon full proof, the practice developed of sentencing the accused "on account of the suspicions" against him. This was not punishment for mere suspicion, but for evidence so persuasive that the court felt justified in imposing a sanction even though the high standards of the Roman-canon law of proof had not been met.[14]

Such quibbles must not obscure that Bamford has produced the classic account of the French galley system in the period of its greatest importance. In the process, he has made a major contribution to the literature on the development of the sanction of imprisonment.

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Grant Gilmore, *The Death of Contract.* Columbus, Ohio. Ohio State University Press, 1974. x, 151 pp. $8.00.

The *Death of Contract* is one of those few books that deserve our most careful thought and attention. It is a small volume, based upon lectures that Professor Gilmore gave at Ohio State University Law School, supplemented by the textual notes written after the lectures were delivered. Despite its modest proportions, the book represents the distillation of Gilmore's thought on most of the important questions that bear on the history and theory of contract law. It is impossible within the compass of a short review to analyze Gilmore's positions—always elegant, always provocative—on the vast number of issues with which he deals. He is simply marvelous when he demonstrates the shift in attitude toward consideration that took place between the First and Second Restatement (pp. 55-72). Who else could tell us how the Restatement became "Corbinized" (p. 70)? And, his account of the emergence of the doctrine of frustration of purpose from the narrower doctrine of impossibility is delightfully written and persuasively argued (pp. 77-82).

As fits the role of a reviewer, however, I wish to speak to my disagreements with Gilmore, in particular to those that concern his startling thesis that there was no law of Contract (the capital 'C' is his) until Langdell invented it in 1870 as the subject for the first casebook to be used in Harvard's new law school curriculum (pp. 5-6, 98). It is not his position that there was no law to govern the problems of enforcing agreements, but only

14. See 2 D. Jousse, *Traité de la justice criminelle de France* 603-604 (Paris 1771).