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Reg en Onreg: Kaapse Regspraak in die Agtiende Eeu

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Over the past two decades a renewed interest in the history and nature of early Cape society has emerged in South African historiography. Unlike the earlier "traditional" works the more recent studies do not focus primarily on the white settlers, but are concerned with society-at-large paying particular attention to the San, Khoikhoi and slave communities. In view of the paucity of research material on these sectors of Cape society, the publications that have appeared - and that are still appearing - have had to mainly make use of travellers' accounts, census records ("opgaafrolle") and court cases. It is the latter type of source on which Heese has focused this recent research publication, and in so doing provided a valuable access medium to archival material, as well as an useful overview of eighteenth century crime.

The Cape criminal and civil court case record is very extensive including draft minutes, minutes, claims of the prosecutor, cross examinations of the accused and witnesses, affidavits and court sentences. In view of this, Heese has confined this study to criminal cases and more specifically the archive group *Sentencien* (p. vi). This series records court sentences and provides summaries of the circumstances that led to the crime, sometimes commentary about the reason for a particular punishment or explanations justifying the passing of a heavier sentence (p. vii). To illustrate the nature of the source on which the study is based, Addendum I presents a complete transcript of a typical document from the *Sentencien* in its original language.

However, as Heese points out, criminal records have limitations as a research source, dealing only with a small percentage of the population and portraying a relatively negative image. Moreover, the records do not even present a complete picture of crime at the Cape as all transgressors were not apprehended (p. vii). Yet given these restrictions the records are indispensable in any study of early Cape society as unlike other official documents they include a fair amount of detail about individuals who would not otherwise feature in documentation, such as certain members of San, Khoikhoi and slave society.

As a research publication, this book is however far more than a mere selection of transcribed and translated (Dutch to Afrikaans) extracts from court sentences, and even though the author claims to have adopted a descriptive rather than an analytical approach (pp. iii, viii), the various types of crimes are usefully diagnosed, categorise and contextualised. An attempt has also been made to relate these various categories to ethnic or social and economic positions in society, while at the same time presenting explanatory background information and creating a sense of the "zeitgeist" (p. vi and 108). In this regard the publications

benefits from Heese's extensive research into the history of eighteenth-century Cape society.

The first brief chapter outlines the origins and procedure of the Cape legal system and is followed in chapter two by a discussion of culture, criminality and ethnic stereotyping as regards the Khoikhoi, slaves and Europeans. The different types of crimes committed form the theme of the next three chapters which deal with freeburghers, burghers, free blacks and other privileged peoples; soldiers and sailors; and slaves respectively. Throughout these sections there are detailed footnotes to both primary and secondary sources, which are supplemented by alphabetically organised addenda listing the convicted persons referred to. Another index also lists place names which feature in the court cases cited. As a research publication this format does indeed aid and encourage further research.

Besides presenting a vivid exposition of eighteenth century crime Heese also sets out to test certain ideas and allegations in existing literature - the "justice and injustice" component of the book - and for this reason has included as many court cases as possible to show that verdicts were given strictly in accordance with the prevailing traditional Dutch penal code (p. viii). While touching on both the material (Robert Ross) and cultural (Wayne Dolling) explanations for apparent discriminations in the Cape system in the final chapter, Heese is more concerned with highlighting the misrepresentations that have been made about the judicial system by the likes of Anna Bøeseken and Robert Ross (pp. vi, viii, 111-112). He concludes that the injustice was not sanctioned by the law; injustice was rather founded in the prejudice and treatment of individuals and groups (p. 112). Moreover, he maintains that unlike what the traditional and radical historians have proclaimed, the sentences and convictions in which non-burghers at the Cape were involved were no more violent than those in Europe or any other colony.

It is hoped that the Institute for Historical Research at the University of the Western Cape will continue to sponsor the publication of similar studies which make both history and research material so much more accessible. Heese must be congratulated on this volume which form the very nature of the topic and the way it has been presented, should appeal to a wide audience including historians, teachers, genealogists, researchers in the legal professions and the casual reader.

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