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## A Protestant Purgatory: Theological Origins of the Penitentiary Act, 1779

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Greg Smith

25 years ago, in a provocative reconsideration of English political and social history, *English Society 1688?1832*, J. C. D. Clark advanced the then contentious claim that until the end of the long 18th century England remained what he styled a 'confessional state'.<sup>(1)</sup> Missing from the wave of prior work by social and political historians of 18th-century England, Clark argued, was a close attention to the role of religion and the dominance within the political and intellectual world of conservative, Anglican theology. This was a contentious claim and it sparked robust reaction from scholars who objected to Clark's conservative point of view, and his dismissal of a generation of scholarship.

Laurie Throness's study of 18th-century prison reform seems to be the first extended study in the flourishing criminal justice history sub-field to take the Clark position as an explicit launching point for a re-examination of the impact of theology on penology. Throness's intent is to locate 'the religious basis of penality' (p. 3) in 18th-century England. The 1779 Penitentiary Act is the focus of his interests because, he argues, it has escaped detailed attention from most of the first wave of criminal justice history and its drafting and passage embodies the dominant religious tenor of the day. Throness' focus in this book is less the legislature and the legislators, however, than the liturgy. The Penitentiary Act was an ambitious piece of legislation, designed to impose a national scheme for the punishment of offenders that could serve as an

acceptable substitute for the temporary suspension of transportation occasioned by the American revolutionary war. With transportation on hiatus until the war ended, both temporary and more permanent expedients were tried and discussed by parliament and other legislators (including senior judges like Sir William Blackstone) as possible additions to the penal repertoire of 18th-century England. Throness's contention is that criminal justice historians to date have ignored the proliferate, potentially rich, and theologically coherent English protestant views of the prison and punishment at this time and the important impact those ideas had on shaping penal ideas among government leaders, particularly those responsible for the Act.

To achieve his end Throness has trawled through a remarkably wide range of theological texts, ballads, broadsides, sermons and religious tracts. Throness spends a good deal of ink in attempting to prove the ubiquity of religious belief and Protestant-informed discourse in many aspects of official and legal intercourse. His methodology offers a case study of the power of modern research tools like EEBO (Early English Books Online) and ECCO (Eighteenth Century Collections Online) to pinpoint instances of desired words, phrases or concepts in a vast range of printed works in the service of a particular thesis. The volume of materials he has been able to draw from is impressive and fully documented in the book's nearly 65-page bibliography. Although Throness has an eye for the sorts of ideas he seeks to foreground, at times, the analysis or contextualization of the original sources is thin or all too often absent, and the result is that the reader is presented with a selection of quotes that don't always speak for themselves. In other instances the selected primary material he reiterates seems banal, or at best unsurprising. That 18th-century England was a more religious than secular society is not a novel claim – even many of the Marxists and other ‘revisionists’ he dispatches so summarily and uncritically in the Introduction would agree. And finding in a massive heap of protestant pamphlets on punishment a raft of comments on hell, purgatory, prison or imprisonment is rather like finding hay in a haystack. The argument that Throness seeks to construct by way of this method is, in the end, only one of abstract proximity. That Protestant writers saw in their bible a rhetoric of reform and redemption in spiritual or ethereal prisons does not necessarily mean that the preeminent legislators of the day, even if they too were devout Christians, saw an opportunity to work their particular faith claims into the latest legislation.

After a potted historiographical review in the introduction which runs roughshod over the theoretically sophisticated and nuanced arguments advanced in the field of criminal justice history over the past 30-odd years, Throness gets to his chief claim: that the religious motivations for penal reform have been under appreciated by previous scholarship. The next third of the book is dedicated to constructing an analogy between scriptural representations of imprisonment and imprisonment on Earth. Throness dives into dozens of pamphlets, sermons and other writings by protestant divines and others whose words pass his test in search of the barest mention of prison, imprisonment, Hell or justice. It is hardly surprising that there should be lots to draw from – Throness is right to see 18th-century English society as one where the role of religion was more obvious, more apt to be articulated, and where religious interpretations of political or social policy debates were expressed with facility, and particularly by the category of authors he cites. As well, given that theologians were highly literate and had access to publishers, both the survival rate and the sophistication of their tracts was bound to be high.

The overall claim that this part of the books is supposed to support is that the Church of England was able to drive a broadly uniform, theological position on imprisonment and that that theology was the cultural and ideological underpinnings of the Penitentiary Act.

This claim seems hardly novel while also revealing the author's own bias in the spirit of Professor Clark's book mentioned above. There is no space given to a critical examination of the counter narrative or to alternative explanations for the penal policy developments he seeks to explain. The practical imperatives of a rather sudden suspension of transportation brought on by the American revolt, along with the significant shift in government policy that saw the direction of progressively larger resources and legislation toward tackling the crime problem in England, especially in London since the 1670s, as the work of John Beattie and others has shown, are rather alarmingly undervalued in this interpretation. Though one of the obvious virtues of incarceration to those who had advocated its expansion had always been the opportunity to reform

the offender from within, this was not a creation of 18th-century theology. Throness himself makes frequent reference to the Bridewell as the most significant early model for the penal, carceral institution that was to be expanded under the Penitentiary Act. But if the Bridewell's origins were, as its recent historian claims, also 'soaked with religious rhetoric and reasoning' a century-and-a-half before the Penitentiary Act, then the theological origins that Throness claims to find in the 18th century are part of a much longer tradition.<sup>(2)</sup>

Throness seems to hit his stride in the first half of chapter three which draws upon a careful reading of manuscript sources and particularly correspondence between the key drafters of the legislation he is keen to examine to provide a blow-by-blow history of the backroom negotiations that produce legislation. Still, it is not clear how this chapter revises or expands the story of the Penitentiary Act's creation found in Simon Devereaux's 1999 article in *Historical Journal*.<sup>(3)</sup> True, Devereaux was less concerned with the theological underpinnings of the act, but the main point about the reformative potential for imprisonment at hard labour is covered. More significant for Throness is the emphasis on reform that prison could provide, and he tries here to make the case that it was the theological milieu that influenced the Act's drafters to model their proposed institution along those lines. However, Throness provides little support for this claim from the sources generated by the principal actors themselves. There are no explicit, signal statements of the potential reformative role for the prison espoused by the key drafters. Religious or better redemptive themes are mentioned in the most auxiliary ways, not quite as afterthoughts, but as addendums to the practical advantages of corralling and controlling a population of convicts who would have been sent away. Now that they had to stay within the country, there was a real question of what of utility could be done with them. What does emerge as the more interesting theme in this discussion is the role of hard labour and various opinions about what convict labour should be used for and what connections might be drawn between hard labour as good works.

The claim that this is a uniquely 'Protestant' image of the prison as a reformative or redemptive space seems a little at odds with conceptions of punishment to be found in continental, Catholic contexts. But I appreciate that his point is to explain how Anglican divines, in the absence of a belief in purgatory, wanted to support an earthy space where the sins of the offender could be cleansed and the soul repaired while still on earth.

There are other issues which creep into the text which suggest misreading of the secondary scholarship or a lack of familiarity with the most recent studies. For example, in discussing transportation the reader is told in a footnote that the practice 'involved selling convicts as slaves to private landowners' (p. 120 n. 49). There is more than a fine distinction to be made here between the indentured servant and the slave, a point that has important legal implications and should not be lost on anyone who has thoroughly researched the legal and procedural history of transportation. There are a number of other jarring historiographical references as well, where some very stale authorities are cited in support of his claims without any mention of the more recent work on the topic. The now discounted view of the pre-Peel police is trotted out to support an argument about the persistence of patriarchal authority with no reference to recent work (p. 41<sup>2</sup>). At other times, Throness's desire to twist the evidence to fit his argument reaches rather too far.<sup>(4)</sup>

Social and legal historians, as well as criminologists and theologians – the four groups of readers identified on the book's jacket blurb as having a 'special interest' in this book – will likely find much to mull over and many points to quibble with in this work. Some in the fourth group will hail this work as an important and sound contribution to the intellectual history of 18th-century penology, while I suspect that many in the first three categories will not.

## Notes

1. J. C. D. Clark, *English Society 1688?1832: Ideology, Social Structure and Political Practice During the Ancien Regime* (Cambridge, 1985).[Back to \(1\)](#)
2. Paul Griffiths, *Lost Londons: Change, Crime and Control in the Capital City 1550?1660* (Cambridge, 2008), p. 14.[Back to \(2\)](#)
3. Simon Devereaux, 'The making of the Penitentiary Act, 1775?1779?', *Historical Journal* 42, 2 (1999),

405?33.[Back to \(3\)](#)

4. When Margaret DeLacy states that Evangelicals in Lancashire were 'completely absent' from prison reform, Throness has little cause to counter that 'this does not mean that evangelicalism had no influence?' (p. 154).[Back to \(4\)](#)

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