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The London Hanged: Crime and Civil Society in the Eighteenth Century, Peter Linebaugh, Allen Lane, The Penguin Press, London, 1991, Pp. xxvii, 484 with index, £25.00, ISBN 0-713-990-457.

Hanging in Judgment: Religion and the Death Penalty in England, Harry Potter, The Continuum Publishing Company, New York, 1993, Pp. viii, 292 with index, \$24.95, ISBN 0-8264-0626-2.

Dublin Hanged: Crime, Law Enforcement and Punishment in Late Eighteenth-Century Dublin, Brian Henry, Irish Academic Press, Blackrock, Co. Dublin, 1994, Pp. 222 with index, £--.--, ISBN 0-7165-2512-7.

The Hanging Tree: Execution and the English People, 1770-1868, V. A. C. Gatrell, Oxford University Press, New York, 1994, Pp. xx, 634 with index, \$30.00, ISBN 0-19-820413-2.

Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain, Brian P. Block and John Hostettler, Waterside Press, Winchester, Hampshire, 1997, Pp. x, 288 with index, £--.--, ISBN Paper 1-872-870-47-3.

The Death Penalty in British History

The ways in which we punish criminals have changed substantially over the past three centuries. In early-modern Britain, punishment was public and physical: whipping, pillorying, branding, and hanging were carried out before large, ghoulis crowds. Such penal practices remained commonplace in the eighteenth century. Yet fifty years later, the pillory had vanished, and the scaffold had retreated behind locked doors, replaced by transportation, imprisonment and fines. For the few crimes still considered heinous enough to justify the death penalty, there was, as Albert Camus charged, "a furtive assassination committed at night in a prison courtyard," the news of it "dressed up in soothing phrases": "at five a.m. justice was done" (Reflexions sur la peine capitale, 1957). This major change in penal practice and sensibility took place remarkably quickly. By contrast, the campaign to rid the land entirely of the gallows was a protracted and contentious one, succeeding only when the penalty was de facto defunct.

The subject of capital punishment has attracted considerable historical attention in recent decades. It shaped the first three volumes of Sir Leon Radzinowicz's account of the capital code and its enforcement (A History of English Criminal Law and its Administration from 1750, 1948-56). It inspired the essays on eighteenth-century crime and class society in Albion's Fatal Tree (Douglas Hay et al, 1975). And it has brought forth the five books under review, two of them sober and pedestrian accounts of the abolition of capital punishment; the other three riveting, and in two cases highly passionate, accounts of the "never-green tree" and its blasted fruit.

The ancestry of Peter Linebaugh's The London Hanged is clearly evident. "One may even see these years," said E.P. Thompson, speaking of the eighteenth century, "as ones in which the class war is fought out in terms of Tyburn, the hulks and the Bridewells on the one hand; and crime, riot, and mob action

on the other." The enclosure movement, and the commercial and industrial revolutions, Thompson continued, "all took place within the shadow of the gallows" (*The Making of the English Working Class*, 1963). Of all Thompson's pupils, Linebaugh is the one who has most zealously imitated his teacher. It became his mission to prove that the executions at Tyburn gallows, near what is now Marble Arch, "were the central event in the urban contention between the classes" (p. xvii); that much of the property crime, for which the death penalty was mainly inflicted, was a result of capitalist innovation, and a challenge to that innovation. Such defiance of the law, at least in London, he also argues, was less a feature of a criminal sub-culture, and more an aspect of popular anti-culture. As the essayists argued in *Albion's Fatal Tree* (to which Linebaugh contributed an important essay on the contest around the surgeons' post mortem dissection of the corpses of certain egregious offenders), and as Linebaugh again confirms, the hanged were of the labouring poor, not of some "hermetically sealed underworld of crime" (p. 72).

Linebaugh luxuriates in the striking neologism. Two of the most important are "thanatocracy," to evoke "a government that ruled by the frequent exercise of the death penalty" (p. 50); and "Tyburnography," to describe the prosopography of the 1,150 men and 92 women hanged between 1703 and 1772, which forms the sociological bedrock of the study. For the latter, he drew upon 237 different issues of the Ordinary of Newgate's, or prison chaplain's, Account of the Behaviour, Confession, and Dying Words of the Malefactors who were Executed at Tyburn, tracts published in the wake of executions, containing short biographies of, and confessions dictated by, the condemned. He also employs the archives of the criminal jurisdictions of London and the printed Proceedings of the Old Bailey, though never in a way to give readers a secure sense of the statistical patterns of metropolitan crime. Early on, Linebaugh remarks that "the social history of Tyburn must also be an economic history of the trades and working conditions of its victims" (p. 111), and this economic history structures the entire book. By examining each of the trades most heavily represented in his Tyburnography, plus the circumstances that forced this largely journeyman class into crime, he underlines how close London's labouring poor lived to the margins of crime, and, more significantly, how the gallows were used to enforce an absolute notion of private property. In Rabelaisian detail, he documents the perquisites obtained from materials worked upon or cargoes unloaded--the tailor's "cabbage", the shipwright's "chips"--and the criminalization of the perks, customs and property rights of the poor. It is such gleanings of urban-industrial life, and the employers' determination to replace them with a monetary wage that, says Linebaugh, highlights the role of the gallows, the need for the first organized police force, and the vital connexions between the criminal law and the slow unfolding of transatlantic capitalism.

The London Hanged appeared in 1991 to mixed reviews. Linebaugh tirelessly replied to every critical statement. The split vote is understandable; the book has considerable merits, and some fundamental flaws. It is at its best as a work of labour history. Linebaugh is a secure and sensitive guide to the largely riparian workforce of London. He has much to offer on the making of this urban proletariat. Moreover, while rarely engaging with other historical accounts, occasionally he advances an intriguing alternative. Against Michel Foucault's notion of "the great confinement" in factory, workhouse or ship, Linebaugh counterpoints "excarceration . . . played out in escapes, flights, desertions, migrations and refusals," which he illustrates with the case of Jack Sheppard, celebrated house-breaker and gaol-breaker, and with the liberation of prisoners from Newgate in June 1780, during

the Gordon Riots.

The book is at its weakest as a study of eighteenth-century crime, punishment and the class struggle. For a start, it is unclear how typical the cases in the Ordinary's Account are of the London hanged. Linebaugh's 1977 essay (in J.S. Cockburn, ed., Crime in England 1550-1800) argued that external verification of the life histories of the condemned justified using the Account as a credible historical document. This essay hardly exempts him from critical evaluation of the book's essential source. How much self-fashioning did the condemned indulge in when they recounted their life stories? Since only half the annual hanging days were grist to the chaplains' mill, were they randomly selected, or were they chosen because the cases on those days exemplified some larger moral lesson?

Secondly, it is unclear how typical those hanged at Tyburn are of London criminals, and thus how valid it is to see the condemned as indistinguishable from the London poor. The hanged were the harvest of a legal winnowing, involving indictment, trial and sentence. If Professor Green has it right,¹ juries exercised considerable discretion in their verdicts, and likewise judges in their sentencing, a discretion guided by the offender's age, character and prior record, such as to reserve the death penalty for a narrow range of crimes and criminals. This is not to claim that no first-time thief ever suffered execution; it is to submit that many of the condemned, to judge from the Ordinary's Account, were hardened criminals, none too discriminating in their choice of victim, and exhibiting some pathological propensities. Linebaugh is too polemically driven, alas, to unscramble the different groups of offenders, or to consider material that counts against his thesis.

Thirdly, a study of Tyburn as a supreme example of the theatre of class control required a fuller decoding of the Tyburn processional and execution. Linebaugh underlines "the scorn evinced in word and deed by the Tyburn crowd against law and authority" (p. xvii). Are we not in danger, however, of exaggerating the success as theatre of executions? Even if we resist Laqueur's conclusion that executions were, for the audience, a species of light entertainment,² it is hard to deny that executions could fail as solemn demonstrations of state power. Would this failure have been countenanced if Tyburn really had been a central amphitheatre of the class war? It might also be asked if popular notions of justice and retribution were invariably at odds with this public spectacle, and if many of the condemned were not pariahs in both popular and official circles?

Finally, the argument that the gallows acted to enforce new definitions of property and to discipline labour in the capitalist cause, is open to several objections. How strong was the link between workplace theft (as a protest against wage discipline) and the London hanged? Was any hatter, for example,

¹ T. A. Green, Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800 (Chicago, 1988), ch. 7.

² Thomas W. Laqueur, "Crowds, carnival and the state in English executions, 1604-1868," in A. L. Beier et al (eds.), The First Modern Society (Cambridge, 1989), pp. 305-355.

actually hanged for "bugging," or stealing beaver? Since the criminalization that Linebaugh excoriates rarely sanctioned the death penalty, would it not be more accurate to argue that capitalism's advance coincided less with a sustained resort to capital punishment, and more with the increasing use of such secondary penalties as transportation and imprisonment?

On a more positive note, Linebaugh goes against the grain of criminal history, which in the past twenty years has concentrated on the administration of justice.³ He laudably seeks to examine the link between crime, on one hand, and the mentalities and material cultures of the labouring poor, on the other; and he perseveres with the large questions concerning the relationship between crime and capitalism. He interrogates the evidence on the London poor "with an eye for Brechtian values--the fatalism, the irony in the face of Establishment homilies, the tenacity of self-preservation" (Thompson, 1963); and he focuses on the implantation of capitalist values and practices, a process, he insists, that was aided both by the criminal law, and resisted by those wedded to alternative values. Yet the question remains how this self-indulgent, discursive, and undisciplined text ever got past E. P. Thompson's fierce editorial scrutiny?

The London Hanged and Dublin Hanged are as different as chalk and cheese. Linebaugh amplified his dissertation for over twenty years; Brian Henry barely altered his, and it shows. Drawing upon reports in the Hibernian Journal, Henry examines the 242 executions in the city and county of Dublin between 1780 and 1795, followed by a sketch of crime and policing in the same period. It is a tediously descriptive account, though much of the evidence is intriguing enough. The execution figures suggest a sharp increase between 1783 and 1785 (in line with London figures), which the author ascribes to demobilization following the American War of Independence. Another valuable feature of the book is its examination of the secondary penalty of transportation. Between 1718 and 1789, Ireland transported over 14,000 convicts to the Americas, which puts the number hanged at Stephen's Green or outside Newgate prison into its proper penal context. The conclusion to Dublin Hanged is that Ireland punished crime more harshly in times past than today, which is unsurprising, since Ireland last used the death penalty in 1954, and legally relinquished it in 1990.

V. A. C. Gatrell's The Hanging Tree brings back the passion and the polemic, with a study of the last gasp of ancien regime justice. Between 1770 and 1830, some 35,000 men, women and children were condemned to death. While most were pardoned and sent to the prison hulks or Botany Bay, around 7,000 were sent to kingdom come. No other European country matched the frequency of English executions.⁴ The gallows tree was never heavier with fruit than on the eve, paradoxically, of the tree

³ See Joanna Innes and John Styles, "The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century England," Journal of British Studies, vol. 25, 1986, pp. 380-435.

⁴ Cf. Richard J. Evans, Rituals of Retribution: Capital Punishment in Germany, 1600-1987 (Oxford, 1996).

being put to the axe. In the 1820s and 1830s, however, with minimal political disruption, the bloody scaffolding was dismantled. Despite the fine work of Randall McGowen,⁵ the change in sensibility that is thought to underlie the conviction that the death penalty did more harm than good, remains a puzzle. Gatrell offers another solution: that penal change cannot be explained as the product of a humane movement in public sensibility.

Drawing on street ballads, woodcut illustrations, and the petitions for mercy compiled by the condemned, Gatrell explores the symbolic centrality of the scaffold (including its "commodification" in the shape of execution broadsheets, death masks, and Punch and Judy shows); the varied "emotional repertoires" that hanging aroused among the execution crowd; the marginal influence of humanitarian sensibilities on the reform of the capital code; and the mentalities (notably Archdeacon Paley's apologia) informing the resistance to penal change. The scaffold crowd, he argues, wore many faces: "festive, reverential, defensive, defiant, or cowed" (p. 89), according to the crime and criminal, the political climate, and the hangman's competence. No single view of the execution--whether a dramaturgy of state power, a carnivalesque event, or a numinous demonstration of God's power--satisfies Gatrell. The execution spectacle did not invariably induce popular consent in the law's might, but neither did the scaffold crowd have "authorial" control over executions. The crowd had a choice of response, Gatrell concludes, but a choice severely circumscribed by the trappings of state power.

Easy generalizations are also avoided when it comes to the "polite" responses to hanging, and to the restriction of the capital code. Above all, Gatrell contests the notion that humanitarian sensibility was the primary reason for the reduction in penal violence. Polite observers, even reformers, were prey to the more primitive emotions aroused by hanging. The contribution of pious humanitarians also had its limits. Not even Quakers like Elizabeth Fry challenged the rectitude of death for crimes of property. The bloody code did not collapse under the force of humanitarian sentiment, but, Gatrell contends, under the weight of numbers. The fear of crime, and the payment of prosecution expenses, led, in the wake of the Napoleonic wars, to an increasing number of felony convictions. To hang all the condemned would have required gibbets in every field and men hung up like scarecrows (to paraphrase Lord Byron's 1812 attack upon the Frame Work Bill, which would punish the Nottingham Luddites with death⁶). Only by pardoning over ninety per cent of those sentenced to death could a blood bath be avoided, but that only underlined the fate of those who drew the short straw in this judicial lottery. Nor was the abolition of public hanging in 1868 a triumph of civilization. Gatrell links hanging's privatization to middle-class

⁵ See R. McGowen, "The image of justice and reform of the criminal law in early nineteenth-century England," *Buffalo Law Review*, vol. 32, 1983, pp. 89-125; "A Powerful Sympathy: Terror, the Prison and Humanitarian Reform in Early Nineteenth-Century Britain," *Journal of British Studies*, vol. 25, 1986, pp. 312-34.

⁶ *Parliamentary Debates* (House of Lords), vol. XXI, Feb. 27, 1812, cols. 966-72.

aversion to the execution crowd's ghoulishness.⁷ By taking hanging inside the prisons, forcing felons to face death shorn of the crowd's support, the terror of execution was restored, and capital punishment survived for another century. In all of this, Gatrell echoes Michel Foucault's rejection of the "progressive" view of criminal justice.

The Hanging Tree is at its most polemical when it turns to the resistance of the old order. If the scaffold's victims are the heroes of this text, the judiciary and Sir Robert Peel (Home Secretary from 1822-27 and 1828-30) are the Princes of Darkness. In an intemperate chapter, Peel is flayed for hanging more people than previous Home Secretaries (a fact disputed by Canadian historian, Simon Devereaux), and for "ticking off those who would live or die with . . . sleazy insouciance . . ." (p. 201), when King and council met to consider the condemned. Both Boyd Hilton and Devereaux⁸ provide more balanced appraisals of Peel's contribution to penal change, but the question remains. Should the palm for dismantling the bloody code go to the Whigs (and notably Lord John Russell, Home Secretary from 1835 to 1839), or to Peel: a politician who was both retributivist and Benthamite, and because a known retributivist (reluctant to reprieve those whom the judges had sentenced to hang), better able to make justice systematic, non-discretionary, and less dependent on capital punishment?

Of all the three books on executions, it is The Hanging Tree which leaves the most indelible imprint. In the lucid and learned style we have come to associate with Vic Gatrell, he decodes the responses to executions of the crowds who watched, the "polite" who witnessed, and the judges, Home Secretaries and kings who deliberated (more carefully than Gatrell maintains). He has authored a powerful, engaged, and impressive book.

The final two books deal essentially with the abolitionist story of the late nineteenth and twentieth centuries. Harry Potter, a former prison chaplain, documents the influential and ignoble role of the Church of England in the perpetuation of the gallows. Few clerics emerge unscathed from Potter's unvarnished account. The acme of Christian perfidy was the Archbishop of Canterbury, Geoffrey Fisher's evidence to the Royal Commission on Capital Punishment, 1949-53. His "hang 'em high" testimony provoked the irrepressible abolitionist, Mrs. Van der Elst, to yell: "Do you think that Christ would have said what you have said today?" Honourable exceptions to this lengthy indictment were the Archbishop of York, William Temple, who impressed upon the Select Committee on Capital Punishment,

⁷ See also R. McGowen, "Civilizing Punishment: The End of the Public Execution in England," Journal of British Studies, vol. 33, 1994, pp. 257-82.

⁸ Boyd Hilton, "The Gallows and Mr Peel," in T. C. W. Blanning and David Cannadine (eds.), History and Biography. Essays in Honour of Derek Beales (Cambridge, 1996), pp. 88-112; Simon Devereaux, "Robert Peel and the Conduct of Capital Punishment." Professor Devereaux kindly let me see a version of the paper he presented to the North American Conference on British Studies, Colorado Springs, Oct. 1998.

1930, that capital punishment devalued rather than defended human life; and the socialist Bishop of Southwark, Mervyn Stockwood.

Block and Hostettler's Hanging in the Balance covers much the same ground as Potter's Hanging in Judgment, but its emphasis is on the parliamentary history of the subject, and on the period between 1945 and 1969, when Parliament finally abolished the death penalty. It is a familiar story of a few dedicated abolitionists (Roy Calvert, Sydney Silverman), of several controversial executions (Bentley, Ellis and Evans: the latter case flying in the face of those who continued to insist that no mistaken execution had ever been carried out), and of the hereditary Lords fighting tooth and nail to retain capital punishment. Based almost entirely on Hansard and The Times, the book is a blow-by-blow account of the roundabout parliamentary path to abolition. The detail is often excessive, occasionally faulty (Newsome for Sir Frank Newsam, for example), and too rarely relieved by the telling judgment. In no respect does it supersede James Christoph's Capital Punishment and British Politics (1962). In one regard, however, the book is worth consulting. The authors present a compelling account of the 1957 Homicide Act, the Conservative government's desperate gambit to override the will of the Commons, and forestall outright abolition. In its forlorn attempt to distinguish between capital and non-capital murder, the Act caused such confusion that even senior judges withdrew their backing. With the arrival of a new Labour government in 1964, abolition was assured. Soon the shadow of the gallows no longer fell across the land.

The death penalty will doubtless continue to attract historical attention. Like no other artefact, the gallows reveal, for many historians, the majesty, power and authority of the law and the state. Future historians might well ponder, however, whether more could be done to relate capital punishment to other penal forms. As John Beattie has revealed,⁹ a striking feature of the early modern state (as indeed of the modern state) was what Innes and Styles have termed its "penal pluralism." A decided shift away from the widespread use of capital punishment began in the seventeenth century. The main reason for this shift seems to have been the availability of transportation, which was in turn perhaps a response to the labour needs of the American colonial economy.¹⁰ One consequence was to make acceptable the discretionary use of the growing number of capital statutes. During the eighteenth century, some 50,000 convicts were transported, including over two-thirds of all felons convicted at the

⁹ J. M. Beattie, Crime and the Courts in England, 1660-1800 (Oxford, 1986).

¹⁰ See Philip Jenkins, "From Gallows to Prison? The Execution Rate in Early Modern England," Criminal Justice History, vol. VII, 1986, pp. 51-71. And cf. Georg Rusche and Otto Kirchheimer, Punishment and Social Structure (New York, 1939), ch. IV.

Old Bailey; transportation was far and away the commonest fate visited on those convicted of felony.¹¹ The severest crisis in eighteenth-century criminal justice, moreover, came with the curtailment of transportation at the outbreak of the American war. One effect was a greater resort to the death penalty, with fewer of the condemned receiving clemency in the 1780s. In subsequent centuries, the death penalty survived in dynamic tension with the new penalty of imprisonment. An essential argument of twentieth-century retentionists, for example, was that the alternative of life imprisonment was both too lenient and too damaging. The point, in short, is that the death penalty would surely benefit from some engagement with the complex history of the other sanctions that composed the penal tariff.

All five studies, but particularly Gatrell's The Hanging Tree, deserve a wide readership in Britain and America. The execution may have passed into British history, but it is an enduring if infrequent spectacle in the United States. The parallels between the British past and the American present are striking. Many are condemned to death in America, but few are put to death. Petitions of mercy are standard practice, ensuring that cases are considered and reconsidered for years if not decades. Even the ghoulis execution crowd is in evidence, at least in Texas. In America, too, the gallows may collapse under the weight of the condemned, as Death Row turns into Death Town. But that would be to underestimate the role the death penalty continues to play in the political forum.

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¹¹ A. Roger Ekirch, Bound For America. The Transportation of British Convicts to the Colonies, 1718-1775 (Oxford, 1987).

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