Studies in Modern History

General Editor: **J. C. D. Clark**, Joyce and Elizabeth Hall Distinguished Professor of British History, University of Kansas

Titles include:

Bernard Cottret (*editor*)

BOLINGBROKE'S POLITICAL WRITINGS

The Conservative Enlightenment

Richard R. Follett

EVANGELICALISM, PENAL THEORY AND THE POLITICS OF CRIMINAL LAW REFORM IN ENGLAND, 1808–30

Philip Hicks

NEOCLASSICAL HISTORY AND ENGLISH CULTURE

From Clarendon to Hume

William M. Kuhn

DEMOCRATIC ROYALISM

The Transformation of the British Monarchy, 1861–1914

Kim Lawes

PATERNALISM AND POLITICS

The Revival of Paternalism in Early Nineteenth-Century Britain

Nancy D. LoPatin

POLITICAL UNIONS, POPULAR POLITICS AND THE GREAT REFORM ACT OF 1832

Marjorie Morgan

NATIONAL IDENTITIES AND TRAVEL IN VICTORIAN BRITAIN

James Muldoon

EMPIRE AND ORDER

The Concept of Empire, 800–1800

W. D. Rubinstein and Hilary Rubinstein

PHILOSEMITISM

Admiration and Support for Jews in the English-Speaking World, 1840–1939

Lynne Taylor

BETWEEN RESISTANCE AND COLLABORATION

Popular Protest in Northern France, 1940–45

Studies in Modern History

Series Standing Order ISBN 978-0-333-79328-2

(outside North America only)

You can receive future titles in this series as they are published by placing a standing order. Please contact your bookseller or, in case of difficulty, write to us at the address below with your name and address, the title of the series and the ISBN quoted above.

Customer Services Department, Macmillan Distribution Ltd, Houndmills, Basingstoke, Hampshire RG21 6XS, England

Evangelicalism, Penal Theory and the Politics of Criminal Law Reform in England, 1808–30

Richard R. Follett

palgrave

© Richard R. Follett 2001

Softcover reprint of the hardcover 1st edition 2001 978-0-333-80388-2

All rights reserved. No reproduction, copy or transmission of this publication may be made without written permission.

No paragraph of this publication may be reproduced, copied or transmitted save with written permission or in accordance with the provisions of the Copyright, Designs and Patents Act 1988, or under the terms of any licence permitting limited copying issued by the Copyright Licensing Agency, 90 Tottenham Court Road, London W1P 0LP.

Any person who does any unauthorised act in relation to this publication may be liable to criminal prosecution and civil claims for damages.

The author has asserted his right to be identified as the author of this work in accordance with the Copyright, Designs and Patents Act 1988.

First published 2001 by

PALGRAVE

Houndmills, Basingstoke, Hampshire RG21 6XS and

175 Fifth Avenue, New York, N. Y. 10010

Companies and representatives throughout the world

PALGRAVE is the new global academic imprint of St. Martin's Press LLC Scholarly and Reference Division and Palgrave Publishers Ltd (formerly Macmillan Press Ltd).

ISBN 978-1-349-42216-6

ISBN 978-1-4039-3276-1 (eBook)

DOI 10.1057/9781403932761

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources.

A catalogue record for this book is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Follett, Richard R., 1963–

Evangelicalism, penal theory, and the politics of criminal law reform in England, 1808–30 / Richard R. Follett.

p. cm. — (Studies in modern history)

Includes bibliographical references and index.

ISBN 978-1-349-42216-6

1. Criminal justice, Administration of—England—History—19th century. 2. Criminal law—England—History—19th century. 3. Great Britain—Politics and government—1800–1837. 4. Social reformers—England—History—19th century. 5. Evangelicalism—England—History—19th century. I. Title. II. Studies in modern history (St. Martin's Press)

HV9960.G72 E544 2000

364.942'09'034—dc21

00-059151

10 9 8 7 6 5 4 3 2 1
10 09 08 07 06 05 04 03 02 01

Contents

<i>List of Abbreviations</i>	vii
<i>Preface and Acknowledgements</i>	viii
1 Mitigating the ‘Bloody Code’: an Introduction	1
Of the myth of Bentham and the language of Blackstone	4
Of crime, criminal justice and the claims of humanitarian reform	10
Of Evangelicals and their impact	14
2 Raising the Hue and Cry, 1808–10	21
Getting started	23
Lines are drawn	32
The meaning of the debates in 1808 and 1810	44
3 Romilly, Bentham, and Utility	46
Romilly’s background and early writings	46
Romilly and Bentham: independent minds in a common cause	57
4 Evangelicalism and Penal Law Reform	67
Evangelical theology and public life	68
Evangelicals and penal theory: the demands of justice and mercy	80
5 The Evangelical Approach to Criminal Law Reform	90
Wilberforce: moral reform to criminal law reform	91
Buxton: the growth of commitment	99
Criminal law reform and the middle class reform complex	105
6 The Conservative Resistance	109
William Paley and the conservative defense of the law	110

The certainty and the flexibility of the established law	112
The fear of innovation	117
A closer look at Eldon and Ellenborough	120
Conclusion	123
7 Mobilizing Opinion, 1811–18	125
Parliamentary moves, 1811–18	126
The campaign beyond Westminster	133
The promises of 1818	145
8 The Partnership: Mackintosh and Buxton, 1819–22	147
Tragedy and new leadership	147
Petitions for change	150
The flow of politics	154
The Report of the 1819 Committee	160
The politics of implementation	165
9 Consolidation, Mitigation and Conclusions	171
Peel takes charge	171
Peel's limits and the demand to go beyond	174
Evangelicalism and the politics of criminal law reform	183
<i>Notes</i>	188
<i>Bibliography</i>	215
<i>Index</i>	226

List of Abbreviations

CPS	The Capital Punishment Society (The Society for Diffusing Information on the Subject of the Punishment of Death)
LSF	Library of the Society of Friends
PDS	Prison Discipline Society

Preface and Acknowledgements

On a dreary January day in 1817, Thomas Fowell Buxton went to visit Newgate Prison with two fellow members of the Prison Discipline Society. The jail was a little less filthy than it had been when he had first gone there in 1816, when the Society had begun its efforts to improve England's prisons and reach out to the juvenile offenders that often crowded their cells. He saw 44 'little wretches collected together', some under sentence of death, but, he wrote his wife, 'the certainty that none of them will be executed, rather took off the awfulness of their situation'.¹ Their plight, that is their destitution and questionable future, and their seemingly wilful obliviousness to it, distressed Buxton; but the condition of four other young men, whose sentence of death was to be carried out the following week, moved him even more deeply. He could not get near enough to speak to them, but the sight was sadness 'sufficient for that day'. Recalling the scene, he wrote that it made him desire to do something, that his 'life may not pass quite uselessly – but that in some shape or other I may assist in checking and diminishing crime and its consequent misery'. If all had an obligation to do some good, then surely he had a responsibility to use his talents to do as much as he could. He had come to a crossroads, where he must choose a direction. He could go on in his private business, 'not absolutely forgetful of futurity, nor absolutely devoted to it – I may get riches & repute & gratify my ambition & do some good . . . and at length I shall find all my time on earth expended – & in retracing my life I shall see little but occasions lost and capacities misapplied'. The other path promised more labour, and less self indulgence: 'I may become a real soldier of Christ, I may feel that I have no business on earth but to do his will & to walk in his ways – & I may direct every energy I have to the service of others.' He believed he knew which of these paths he would most gladly choose, but, he wrote on, "'what I would that I do not, but what I hate, that do I'", – in short the cares & the pleasures, & the business of this world check the good seed – & we are perpetually deceived, we would sow to the Spirit, & we sow to the flesh – we desire heaven, & we are chained to the earth'.

¹ Letter to Hannah Buxton, 5 January 1817, Buxton Papers, Rhodes House, MSS Brit. Emp. s. 444, v. 1, ff. 195–8.

Encountering this letter for the first time, I was struck by its tone of struggle, hope, and self-criticism. It spoke of an intent many shades brighter than the dim picture of penal reform in such works as Michel Foucault's *Discipline and Punish*, Michael Ignatieff's *A Just Measure of Pain* or V. A. C. Gatrell's *Hanging Tree*. As I dug into the materials on criminal law and prison reform, I found a very human mix of motives and intentions, some as personal and promising as Buxton's, some calculating, rational and enlightened, and a few that were harsher, more vengeful, perhaps even sinister. What I could not find was a dominant mode or argument that in any way spoke for the whole movement of reform in the early nineteenth century. Given the dominance Jeremy Bentham has had in the histories of penal law reform, this surprised me; perhaps he was not the shaker and mover he had been portrayed to be? I was also initially puzzled at the marked presence of Evangelical politicians and social leaders, who interacted with the 'utilitarian' reformers as if nothing separated them but a vague word or two. As it became clear that the support of the famous 'Saints' around Wilberforce helped make criminal law reform a parliamentary issue, I realized I needed both to understand how they fitted into the picture in a way previous histories had not accounted for, and also to come to grips with how penal reform fitted with their Evangelical outlook on politics and society.

This study is the result of these queries, and it is intended to be a mild revision, or perhaps a rerevision. For though one can never again write the history of criminal law with the untroubled optimism and faith in the ultimate triumph of humanitarian principles as Leon Radzinowicz did, one must also face the fact that what we value as civilized and humane at the beginning of the twenty-first century, was very much shaped by the debates and reforms of the early nineteenth. I do not intend to describe a simple picture, nor one held together by one strong theoretical perspective; I simply could not fit the story into any particular mold.² What follows is instead a complex and sometimes 'thick' description of the actors and acts, and the texts and contexts that surrounded and created the criminal law reforms of early-nineteenth-century England. I doubt it will be the last word on the matter; I only hope it will be a good and solid one.

² Though I do find an affinity with some of the assertions of George M. Thomas, *Revivalism and Cultural Change: Christianity, Nation Building, and the Market in the Nineteenth-Century United States* (Chicago: University of Chicago Press, 1989), particularly his view that religious movements, as carriers of a particular world-view or ontology, attempt 'to construct a new social order... in their specific claims and demands', p. 14.

One person's name appears as the author of this study, but its completion was dependent on the support and efforts of many others. I am first grateful to my graduate advisor, Professor Richard W. Davis, for having steered me through the historiography on British politics and Evangelicalism; in a similar way I am thankful for the instruction in Anglo-American legal history provided by Professor David Konig. Professor Gregory Claeys, now of the Royal Holloway College, University of London, provided me both aid in formulating the ideas for the dissertation which led to this book, and practical assistance during my stay in Britain. The fellowship grant and year-long support provided by the British Fulbright Commission and staff allowed me to move about from one British archive to another while gathering the 'raw' material needed for this work. I am indebted to both the staff and my fellow guests at William Goodenough and London Houses in Mecklenburgh Square, for their high standards and warm camaraderie during my stay there. I must also thank the librarians and staff of the British Library, of the Western Manuscripts Room of the Bodleian Library, of the Rhodes House Library at Oxford University, and of the Cambridge University Library. The Library of the Society of Friends, Friends House, London, provided invaluable service and resources on the Quakers and their involvement in British politics in the early nineteenth century. The staff of the Public Records Office, both at Kew and at the old Chancery Lane facility, were very helpful in tracing down obscure references. A special thanks is due to Lincoln's Inn and its Librarian for allowing me to examine the Sir Samuel Romilly Manuscript in their very comfortable reading room. I am also grateful for the advice and support given by several historians in Britain, including David Bebbington, V. A. C. Gatrell, Boyd Hilton, and Ian Rennie, who was visiting Cambridge while I was there. Back in the USA, I would have floundered without the aid of the Washington University librarians who provided ideas on where to find things along the way. I owe a special thanks to R. K. Webb, who read over an early chapter of this study and gave me timely guidance and encouragement, and to Victor Bailey, whose sage advice helped me edit the manuscript sensibly. Tim Baldwin, a friend and teacher, provided well-formed criticism that has made this work far more readable. Finally, I thank J. C. D. Clark for his initial interest in this study, which motivated me to make something of it, Aruna Vasudevan for her guidance through the publishing process, and Alison Black for her gentle editing of the manuscript. These have all helped to make this work better; whatever errors remain are my own.

Several others provided good cheer and encouragement in the process of completing this study, especially my friends and colleagues Padraic

Kennedy, Derek Blakeley, and Catherine Forslund. Beyond the walls of the academy I am especially grateful to Bill and Christy Keating for their help and support, that I might 'pursue my calling'. I feel a singular appreciation to Gene Allen and the employees of Missouri Petroleum Products Company, who have put up with me these past few years while I finished this work.

Of all those who have made my research possible, I am most thankful for my wife, Altha, and my daughters, Kate and Molly, who have suffered much neglect in the process of my completing this book. It is dedicated to them for their perseverance and love toward one whose mind has often been miles and centuries away from home.