1

Mitigating the ‘Bloody Code’: an Introduction

Between 1808 and 1830, the British parliament debated the amelioration of England’s ‘Bloody Code’ of criminal statutes. Before 1808, the few attempts to challenge England’s expanding list of capital statutes had generated little sustained discussion. After 1830, the matter gained enough public attention to warrant professional and royal commission investigations. ‘Amelioration’ initially meant simply the repeal or amendment of statutes which made crimes as minor as pick-pocketing and shoplifting punishable by death. In the late 1760s William Blackstone counted 160 crimes that might lead a convict to the scaffold, and by 1819 Thomas Fowell Buxton could specify 223. In practice, relatively few offenders were hanged, but to reformers that fact, combined with the apparently random selection of those who were, proved that the existing laws were inappropriate. The repeal of capital statutes goes hand-in-hand with the reform and expansion of the prison system in Britain. But unlike the question of prisons, amendment of the Bloody Code raised cries of ‘innovation’ in the structure of the English law and constitution. The members of Parliament who led the reform effort were of eminently respectable backgrounds and social position, eschewing radical causes and rhetoric which might have inflamed the democratic elements in the population. Yet one could not deny that the assault upon the vast number of laws dealing with property challenged assumptions about the limits of government authority as well as the nature of criminal jurisprudence. A shift was occurring in these assumptions which found expression in the politics surrounding the amendment of the criminal statutes.

This change in perspective makes the debates and public discourse on penal reform fertile ground for examining the interrelated concerns and pressures at work in early nineteenth-century Britain. Religious revival,
enlightenment humanitarianism, legal utilitarianism, and the optimism of commercial expansion all fed into the image of a civil society in which the death penalty would be reserved for only the most heinous of crimes against the person. But what does it mean to say that the Evangelical revival affected the age, and how did humanitarianism influence political perspectives? Such terms have been used so often and with such ambiguity that they demand fresh definition and clear illustration if they are to signify at all, especially when one turns to their impact on the changes in England’s law of sanctions.

The early view of this era of reform portrayed it as a time of hopeful progress, when the foundations of the modern welfare state were being laid down. Conditions in the last third of the twentieth century have caused historians to question this optimistic view, and some have characterized penal reform as simply a shift in the mechanisms of social control. Others, more subtly, have argued that it was all a change in the language and conception of punishment, perhaps made necessary by the expanded population, which nonetheless helped preserve the existing power structures and political elite. By examining the politics of criminal law reform between 1808 and 1830, this study clarifies the components of political discourse and the processes which made reform possible. That social control was always a concern for reformers and conservatives alike is not in dispute, but a balance must be struck between this obvious concern for public order and the protection of persons and property, and the real desire on the part of reformers for a less bloody, fairer and more transparent administration of law and punishment. Readjusting the balance suggests that the shift in assumptions about punishment and government authority was neither a simplistic march of progress, nor a sinister play of language to retain social control and power. Those involved in reform sought substantive changes that would bring existing institutions more into line with their basic conceptions of justice, mercy, and how legal practice should reflect the most deeply held beliefs of a people. Some of those beliefs were indeed about order; others were about religious truth and expedient government. And while not perfectly successful in their own day, politicians like Romilly, Mackintosh, and Buxton significantly furthered the dialog that made the content of a society’s law of sanctions a measure of its civilization — a criterion of judgment alive today in both international discussions of human rights and domestic debates on social policy. For better, or for worse, we are the heirs of these early nineteenth-century debates.

A particular focus in this book is to ascertain and illustrate the role played by Evangelicals, in and out of Parliament, in promoting and