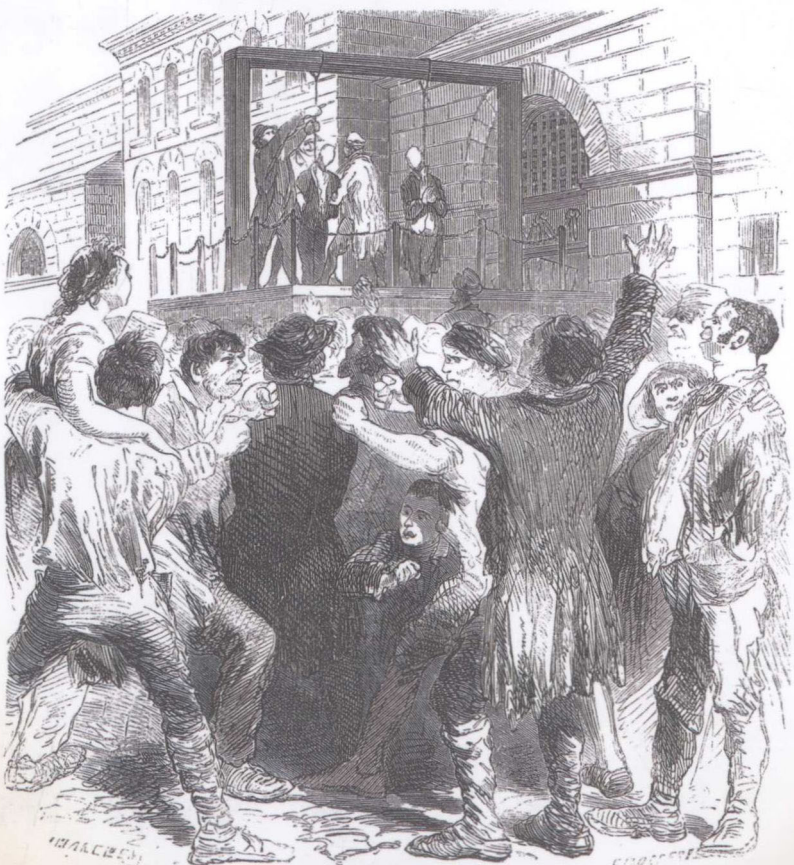


VICTORIANS AGAINST THE GALLOWS

CAPITAL PUNISHMENT AND THE
ABOLITIONIST MOVEMENT IN
NINETEENTH CENTURY BRITAIN

JAMES GREGORY



I.B. TAURIS

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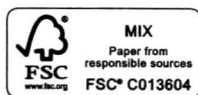
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James Gregory is Lecturer in Modern British History at the University of Bradford. A Fellow of the Royal Historical Society, he was educated at the Universities of Oxford, Cambridge and Southampton and has taught at the Universities of Southampton and Durham. He is the author of *Reformers, Patrons and Philanthropists. The Cowper-Temples and High Politics in Victorian England* (I.B.Tauris, 2010) and *Of Victorians and Vegetarians: The Vegetarian Movement in Nineteenth-century Britain* (I.B.Tauris, 2007). He has also published essays on ‘eccentricity’ in British culture c.1760–1901.

For my father

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ABBREVIATIONS AND ENDNOTE CONVENTIONS

Report of the Capital Punishment Commission; together with the minutes of evidence and appendix. Session 1866, vol.XXI.I.	<i>C.P.C.</i>
Society for the Abolition of Capital Punishment	<i>S.A.C.P.</i>
Religious Society of Friends Library, London	<i>S.F.L.</i>
<i>Oxford Dictionary of National Biography</i>	<i>ODNB</i>
Parliamentary Papers	<i>Parl. Papers</i>
Parliamentary Debates	<i>Parl. Debates.</i>
National Archives, Kew	<i>N.A.</i>

The 'peculiar' dating observed in the journals of the Society of Friends has been modernized, thus '4th mo. 1848' becomes April 1848.

There is an abbreviated bibliography since a full documentation of primary and secondary sources used in this research would be excessive. A complete description of a source is provided in the first citation in the Notes; this is subsequently abbreviated to author and shortened title. A full bibliography may be accessed from the book's page on the I.B.Tauris website.

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The research on which this book is based would have been impossible without the support of my parents. It began in M.Phil. research at Cambridge in 1996–1997, and although the direction of research then took me into the associated world of the vegetarians, and from there, to the lives of the aristocratic social reformers, the Cowper-Temples, I hoped to revisit and develop this work. *Victorians Against the Gallows* has been shaped by my response to the rich historiography appearing in the intervening period, on aspects such as infanticide, the law in an imperial context, and literary responses to the gallows, as well as the wider literature on radical and reform movements.

When I began to uncover the press response to abolitionist propaganda and activities, I had to follow leads picked up in abolitionist tracts, and search through microfilm and crumbling original newspapers in Colindale and Cambridge. Fifteen years ago, there was a limited amount of primary material which I could discover through CD-ROM collections; the digitization of the nineteenth-century archive (such as the massive archive accessible online via Google Books or a more specialist collection such as *19th Century British Library Newspapers*) has greatly assisted my work.

In researching the movement against capital punishment, I wish to thank Dr Jonathan Parry, my supervisor at Cambridge, and my colleagues at the University of Bradford, Professor Munro Price, Dr Gábor Bátonyi and Dr Fiona McCulloch. I am indebted to Bob Muscutt for sharing his expertise on capital punishment in Coventry in 1849. My editors at I.B. Tauris, Jenna Steventon and Joanna Godfrey, have been supportive throughout the lengthy process of producing the book. I am grateful, for the advice and corrections they offered, to Dr Simon Devereaux and Dr Carolyn Strange, who acted as readers for I.B.Tauris. As ever, my copy editor, Audrey Daly, provided a meticulous service – any mistakes which remain being entirely my own.

I acknowledge the permission of Duke University, Rare Book, Manuscript and Special Collections Library; the Modern Records Centre at the University of Warwick, the Howard League for Penal Reform, the Religious Society of Friends' Library, Friends House, and Herefordshire Record Office, to use and make quotations from material in their archives or as copyright holders. In addition, I wish to thank the staff in the following libraries and collections: the Brotherton Library at the University of Leeds, Dundee Local Studies Collection, the Mitchell Library in Glasgow, and the National Library of Scotland, for their aid in the course of my research.

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This book is for my father.

James Gregory

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INTRODUCTION

'One by one the jewels of his hempen coronal have been plucked away, and himself driven into a corner with the murderer and the traitor,' an early Victorian wrote, in an essay arguing for the retirement of the hangman, 'there he is in that corner, so intrenched and fortified by the laws of men, and by strained interpretations of the law of God, that it will take a vigorous effort to dislodge him.'¹ This is a study of that effort against capital punishment during the Victorian era, which was at its height in the period from the late 1840s until 1868 when the public infliction of capital punishment was ended by the Capital Punishment within Prisons Act. By the late 1840s, capital punishment, which had been the penalty liable for several hundred offences by statute at the beginning of the century, was effectively only inflicted for murder: the cause of abolition had been brought 'within a narrow compass'.² A focal point for this study is the organization created in April 1846 specifically for promoting the *total* abolition of the death penalty, the Society for the Abolition of Capital Punishment (hereafter S.A.C.P.). This is the first treatment of the British nineteenth-century capital punishment question to examine in detail the abolitionist movement in its heyday and to study closely the wider manifestations of abolitionism in Victorian culture both in the 'home country' and in the British empire. A 'movement' perspective, in analysing the S.A.C.P.'s leadership, personnel, organization and activities, is combined with an interest in such matters as the representation of the gallows question in novels and short stories, and the response of Christian defenders of capital punishment.

The first chapter outlines the earlier nineteenth-century efforts to ameliorate the criminal code, sketches the fortunes of the abolitionist society and relates its growth and decline to the larger political context of Britain between the triumph of the Anti-Corn Law League and the agitation surrounding the Second Reform Act (i.e., c.1846–1868).

'Few questions of law and public policy have remained so long in the region of debate as the question of capital punishment. Not in England alone, but in every country in the world able to lay claim to any degree of civilization,' wrote one commentator, at the time of the Royal Commission on capital punishment established in 1864.³ The region of debate is extended in the second chapter by locating British abolitionist effort in a wider colonial or imperial context. The problem of the death penalty's relationship to Irish political and rural violence provided one set of 'imperial' challenges for the British.⁴ The question of abolition could be brought to a practical test, one English newspaper declared in 1848, by asking 'whether any one would propose to begin the experiment in Ireland. It is there, according to the arguments of the abolitionists, the strongest case for doing away with the capital penalty exists. Murder is averred to be caused by the punishment; well, it is in Ireland that there is most murder.'⁵ The question of what would happen to the antipodean penal colonies was also raised.⁶ As chapter 2 reveals, capital punishment debates, abolitionist efforts, and even organizations, appeared in British colonies. Many of the arguments echoed those to be found in the metropole, but whether in India, British North America or the Australian states, there were aspects to the 'gallows question' which expressed local peculiarities.

The British abolitionists were more advanced in the level of their organization than their colonial brethren but the movement should be understood to include not only members of the S.A.C.P., but also those who, in parliament or through the press, or as audience and on the platform of metropolitan and provincial meetings, endorsed abolition.⁷ Abolitionists were eager to stress the growth of support for their cause; they grew out of and modelled themselves on larger 'pressure from without' efforts at reform in the 1840s. Their own cause belonged with a cluster of political and philanthropic concerns shared by many *soi-disant* reformers, in the early and mid-Victorian era, such as anti-slavery and peace, temperance and vegetarianism. This is exemplified by the biography of Charles Gilpin, described as the 'Cobden of the movement', contained in chapter 3. This chapter also examines the occupational and social background of abolitionism and the geography of support. Chapter 4 studies the participation by women in the abolitionist movement and the gendered and 'class' aspects to the question. The public face of the movement (whether its officers at a national or local level, or activists who secured the attention of the press) were predominantly male but the roles that women played in the capital punishment question were important. Most of the S.A.C.P.'s leaders were middle-class but there were significant working-class agitators for abolition and 'class' played an important part in radical attacks on the

capital penalty and in agitations surrounding reprieve in specific capital cases.

The society's strategies for achieving its goal are studied in chapter 5. Financial weakness stemming from its small size hampered activities but the S.A.C.P. deployed traditional tools of 'pressure from without' which are studied here: public meetings, petitions to parliament, propagandist literature and provincial branches. The relationship between capital punishment and the press is then considered. The capital punishment question as it was debated in national and provincial newspapers and periodicals involved a sustained critique of public execution which might or might not be associated with support for total abolition. The abolitionists' press strategy included the effort to present the gallows problem as an international one. But obviously this engine for shaping and expressing public opinion could be hostile to abolitionists, and *The Times*, the most prominent and influential of Victorian newspapers, consistently used its 'ferocious eloquence' to oppose abolition.⁸ Throughout the study, reference is made to the opinions of the pro-capital punishment newspapers and journals, whether in editorials and extended articles, or through the medium of correspondence in which the succinctly itemized arguments or sentimental and pathetic accounts of the abolitionists evoked similarly varied rebuttals. The capital punishment question was expressed in a mass of pamphlets by advocates and opponents of hanging, and the reliance of the S.A.C.P. on sophisticated texts such as statistical essays and pamphlets is apparent; these texts, and the instances of a more demotic form of propaganda, and pictorial approaches, are discussed.

The analysis of the movement as a pressure group culminates (in chapter 6) with a treatment of abolitionism and parliament, since meetings, branch societies and anti-gallows tracts were directed towards the parliamentary arena. The abolitionist society relied on the intervention of 'correspondents' sending letters and tracts to MPs, and although it was sometimes emboldened to suggest electoral pressure, the desultory record of abolitionism in parliament partly expressed the political priorities of those who endorsed abolition in parliament. Parliamentary attention towards capital punishment was expressed in such endeavours as the efforts to consolidate and codify the law. The two most significant parliamentary interventions in the debate on the continuation or venue for capital punishment in this period, a select committee of the House of Lords in 1856 and the Royal Commission on capital punishment (1864–1866) are examined in relation to the abolitionists.

The next chapter provides a study of the mentalités or ideologies associated with responses to the gallows, on the part of opponents and supporters of its use in Victorian Britain. In a religious age, one privileged

mode of discourse for examining capital punishment mobilized or interpreted scripture. Chapter 7 studies the religious imperative behind abolition, and considers its association with unorthodox religious ideas, embodied, for instance, in the most prominent abolitionists, Quakers and Unitarians. The broad denominational characteristics of abolitionism are outlined, and abolitionism is partly explained by the emergence of a theology of Christocentrism and antipathy to a forensic atonement or retribution meted out by a stern God. Abolitionists were motivated by a variety of non-religious beliefs so that theological perspectives might combine with (for instance) utilitarianism, or with interpretations of the psychology of crime and punishment derived from phrenology, or with understandings of the genesis of crime derived from temperance and sanitary reform. Whatever the intellectual source of an abolitionist position, it generally expressed a self-consciously 'rational' interpretation of crime and punishment, and a faith in the possibility of redemption. It was necessary to present abolition as a progressive cause for strategic reasons (as in other reform agitations) but this stance also reflected the abolitionist mentality concerning human nature and the role of the state in civilization. This chapter ends with an examination of the critique of sentimentalism produced by retentionist opponents.⁹

In recreating abolitionist mentalités, one needs to consider where and in what forms people encountered abolitionist (and retentionist) arguments in this period. The printed discourse on abolition was diverse in form, and, since the use of capital punishment was one of the controversies of the age, extensive: commentary appearing in such works as penny encyclopaedias of the *Society for Diffusing Useful Knowledge*, the *Oxford and Cambridge Review*, *Odd Fellows' Magazine* and the *British Medical Journal*.¹⁰ Foreign writers also discussed the British State's infliction of the death penalty.¹¹ Thoughtful Victorians, of all sorts, pondered the institution of the gallows – and comments on capital punishment are found in such diverse biographical sources as the memorials of Frederick W. Robertson, the famous preacher of Trinity Chapel, Brighton, and the memoirs of the literary man Richard Robert Madden, long opposed to the death penalty when, in his seventies, he sent a solemn declaration against the efficacy of capital punishment to the Earl of Derby, when the Fenian General Thomas F. Burke was condemned to be executed for high treason, following the insurrection in March 1867, in Dublin.¹²

Experts in Victorian literature have studied the shadow of the scaffold before, in the context of particular authors such as William Makepeace Thackeray or Charles Dickens, the latter perhaps the most prominent literary figure associated with the question.¹³ But more work needs to be done on other literary responses to capital punishment, encompassing

novels and short stories in periodicals, poetry, and drama. Chapter 8 examines a range of texts in which the punishment of death, abolitionism, or abolitionists, were presented. Fiction, offering cautionary lessons or dangerous enticement to the reader, was an important medium in debates about crime and punishment.¹⁴

Chapter 9 addresses a number of related themes as part of an appraisal of the S.A.C.P.'s impact, notwithstanding the failure to achieve total abolition. It examines the S.A.C.P.'s involvement with capital cases in the period before capital punishment was inflicted within the prison, studying its activities in reprieve efforts in relation to the Home Office's exercise of the royal prerogative of mercy.¹⁵ The gallows question was divisible into abstract and practical sides but individual campaigns for reprieve served to place 'the law on its trial' and thus highlight the injustices of a criminal code centred on death. It was an opportunistic strategy of improving the disaster shared by other pressure groups.¹⁶ The 'maudlin anti-gibbetarians' (as one newspaper called them) of the S.A.C.P. often adopted an anti-sentimental pose in appeals to the Home Office.¹⁷ The chapter concludes with an examination of the response of the government (or State) to abolitionism, partly in the context of the 1860s when inquiry by Royal Commission and various gallows scandals represented a renewed level of controversy. The final chapter charts the continued efforts at abolition through parliament, and in national and provincial organizations, and outlines some of the late-Victorian literary expressions of opposition to the gallows.

The British abolition effort in this period has not had the attention that it deserves. Without such a study our understanding of the institution of capital punishment is incomplete. But, in what one scholar has described as 'almost a small cottage-industry' on capital punishment, there have appeared studies of the mentality surrounding the gallows spectacle, the exercise of the royal prerogative, and the response of literary figures to hanging.¹⁸ The debt to such work, here, is obvious. What follows is a survey of the historiography, identifying the relevance or value of particular works for the purpose of understanding the movement.

Previous treatment of abolitionism has tended to see it largely in terms of a parliamentary debate, rather than as a sentiment and activity beyond Westminster. Yet even at the parliamentary level detailed treatment of the personnel is absent. Munford's biography of the leading abolitionist MP in the period 1840–1868, William Ewart, offers no discussion of his relationship with the S.A.C.P.¹⁹ Ewart, who had many other reform interests, is not given centre stage in this study because his activity was concerned with the parliamentary arena rather than the movement outside, and the parliamentary aspect to abolition is perhaps the one which has been

the most researched. Whilst Ewart was prominent in Westminster, there were other abolitionist leaders who have been neglected.

A focus on the effort at a parliamentary level is found in the criminologist Leon Radzinowicz's magisterial history of the criminal law. This provides an excellent chronological framework and overview of the legislative developments but assumes an equation between parliamentary and 'public' opinion.²⁰ Radzinowicz studied abolitionist texts and discussed the difficulties for abolitionist polemicists and the ambiguity of statistics on serious crime for both sides of the debate. He emphasized the connection of capital punishment to other penal and criminal law matters which developed their own autonomy: criminal law consolidation and the problems of penal administration. Radzinowicz's *The Emergence of Penal Policy in Victorian and Edwardian England* (with Roger Hood) includes a useful treatment of the parliamentary attempts to create 'degrees' of murder and is the most satisfactory treatment of abolitionism after 1868.²¹

Elizabeth Tuttle's *The Crusade against Capital Punishment in Great Britain* outlined nineteenth-century abolitionism without reference to the S.A.C.P. or the question of popular attitudes to capital punishment. Gordon Rose's study of the Howard League for Penal Reform and its predecessors considered the work of William Tallack, a secretary of the S.A.C.P. who was the Howard Association's secretary from 1866 to 1901.²² More substantial engagement with the abolitionists appeared in David D. Cooper's studies, though he treated them as a vocal minority manufacturing 'public opinion' and limping on through a sense of righteousness, and put more stress on the efforts to conceal rather than abolish, the gallows.²³ The patronizing or vilification of abolitionists which he thought prevalent by the 1860s had actually existed for decades. For Cooper, *The Times* represented more accurately the voice 'of a retrenched, stable and prosperous England as it entered the decade of the fifties', an interpretation which can be more easily tested with the digitization of the Victorian British press. Certainly there was no absence, as he implies, of discussion about the death penalty and public executions in 'respectable middle class magazines'.²⁴ Cooper's treatment of opposition to public execution emphasizes that dilemma for abolitionism reiterated by others: the misbehaviour of the scaffold crowd did not necessarily condemn the gallows.²⁵

Harry Potter's *Hanging in Judgement*, covering the period from the eighteenth century to mid-twentieth century, is indispensable for the religious and theological dimensions to capital punishment. However, he focused on Quaker abolitionism rather than detail the contribution of other denominations; this present study aims to address this gap in our understanding, in particular it emphasizes the Unitarian contribution which has often been ignored.²⁶ A more recent contribution is Richard Follett's