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BOOK REVIEW

Margaret McGlynn, *The King's Felons: Church, State and Criminal Confinement in Early Tudor England*

Oxford: Oxford University Press, 2023. Pp. xx, 371. $145.00 hardcover (ISBN 978-0-19-288768-9). doi:10.1093/oso/9780192887689.001.0001

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It used to be assumed that the advent of a regime as centralizing, modernizing, and authoritarian as the Tudor one necessarily spelled the end for benefit of clergy and sanctuary. It is now clear that the crown's desire to control the levers of justice did not entail reflexive hostility to these ecclesiastical privileges. Revision of the traditional picture has, however, made the drift of policy harder to perceive. Rising to the challenge, Margaret McGlynn advances a compelling new interpretation. She discerns a far-sighted attempt to make imprisonment the punishment for felons who did not deserve execution. Since imprisonment is now the standard punishment for serious offences, the importance of this thesis to historians of criminal justice hardly needs stating. Nevertheless, as Professor McGlynn observes, "There is no direct line from the ecclesiastical confinement of the early Tudor period to the secular imprisonment of the eighteenth century" (350). Rather than build new gaols, policymakers instead co-opted episcopal prisons and sanctuaries as sites of detention, correction, and (potentially) rehabilitation.

The story that *The King's Felons* tells is thus not one of campaigning MPs and movements for penal reform; it is not even one in which parliament takes center stage. Instead, the drivers of change are common lawyers, principally the justices, pre-eminent among them John Fyneux (CJKB 1495–1525). In 1490, a statute had acknowledged that most of those who claimed clergy were literate laymen. Its restriction of laymen to a single claim spurred the justices into obtaining the records of convictions at the assizes. The justices interested themselves in the running of episcopal prisons, where convicts were detained. The prosecution of bishops for escapes increased. The genius of this system was to have outsourced the onerous and risky responsibility of confining felons. The Church was made to pay handsomely for its insistence upon jurisdiction

over criminous clergy. Initially, scrutiny of sanctuary concentrated on enforcing abjuration of the realm. Chartered sanctuaries too came to be seen as a custodial resource, for from 1531 abjurers were sent to these sites instead. The dissolution of the monasteries swept away these sanctuaries, and their secular successors flopped. Reforms to benefit of clergy continued. From 1540, clergymen had no greater access than laymen. Relief came in the form of general pardons, which became available to convicted and attainted clerks. This system lasted until the middle of Elizabeth I's reign.

The nature of the sources is fundamental to this account. McGlynn is upfront about the fact that there exists no blueprint for the scheme that she discerns. Law reports and readings at the inns of court do not supply it. Instead, it is deduced chiefly from analysis of the ancient indictments and plea rolls of King's Bench. These classes include cases from gaol deliveries and abjurations taken by coroners. Entries in bishops' registers detail the purgation of convicted clerks; revealingly, these could rarely be matched to records in King's Bench. The registers of Beverley and Durham add many names of sanctuary seekers. Overall, McGlynn identifies about 2,300 people who claimed one or other privilege during the reigns of Henry VII and Henry VIII. Although this figure must be a minimum, it is large enough to sustain an analysis of trends over the period. A standout finding is that the social status of men obtaining clergy declined. The amount of work that has gone into exploring every aspect of this dataset is impressive, even if one reserves judgment about some explanations. Whereas the justices remain largely in the shadows, claimants emerge vividly from these sources. The canny moves by players who knew the system only too well and the desperate fumbling of the less savvy make fascinating and chilling reading.

McGlynn's argument depends on drawing inferences about motivation. Her presuppositions seem rational and secular. They appear most clearly in the account of purgation. McGlynn infers that convicted clerks served a custodial sentence determined by the seriousness of their offence and that purgation marked the completion of their term of imprisonment. This is a bold cutting of the Gordian knot. But it could also be a rationalization too far, requiring an unlikely (and undocumented) degree of co-ordination between secular and ecclesiastical authorities. Possibly, it stretches past breaking point the cognitive dissonance that benefit of clergy already entailed. Perhaps a practical consideration—the burden of detaining clerks—shapes overmuch the characterization of ecclesiastical attitudes. Maybe the Church had interests beyond protecting clergymen. At the Coventry assizes in 1562, the deputy ordinary, when the court contradicted him over a reading test, retorted that "he had never read in holy scripture that theft should be punished by death" (Selden Society 110, p. 436). The justices were not the only people with views or with agency. Industrious, insightful, and incisive, *The King's Felons* provides much food for thought.

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