SLAVE CODES AND PENAL LAWS IN EIGHTEENTH-CENTURY JAMAICA AND IRELAND: A COMPARATIVE AND HISTORIOGRAPHICAL SURVEY

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ABSTRACT

This article offers a comparative and historiographical examination of the penal laws in eighteenth-century Ireland and the slave codes of Jamaica and the British West Indies. Although these systems differed fundamentally in their treatment of Catholic Irish and enslaved Black populations, both developed as mechanisms of social control employed by relatively small Protestant elites facing perceived threats to their political and social authority. Drawing on the parallel development of scholarship on Ireland and the West Indies, the article identifies four areas in which direct comparison is particularly illuminating: the experiences and agency of subaltern populations; the identities, insecurities, and practices of ruling elites; the role of liminal and intermediary groups; and the institutional structures through which these systems were enforced. It argues that neither

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the penal laws nor the slave codes operated as consistently or comprehensively as their formal provisions suggest. Uneven enforcement created opportunities for economic, social, and cultural autonomy, while elite divisions, intermediary groups, and limitations within state structures further constrained their effectiveness. The comparison also demonstrates how both historiographies have moved from nationalist and teleological interpretations towards more nuanced social and cultural histories. Bringing these previously separate literatures together therefore reveals distinctive parallels in British systems of social control while identifying productive directions for further comparative research.

During the long eighteenth century, a period stretching roughly between 1660 and 1840, the British elites of both Ireland and Jamaica faced very similar problems of social control. Both were small and embattled minorities within a society made up mainly of Catholic Irish in the one place and black slaves in the other, who were in general overwhelmingly hostile to elites and unwilling to accept their subordinate status. In Ireland between about 1695 and 1719, the Protestant Ascendancy in the Irish Parliament created a body of laws known as the 'Penal Laws' intended to regulate the behaviour of the Catholic Irish population, and to destroy its religious, political, social, and economic power. In Jamaica and the West Indies, the planters used colonial assemblies to construct a body of laws known as the slave code, which defined the nature of slavery, the position of slaves, and the power of their masters. Both were comprehensive systems of social control that lasted largely unchanged until they were swept away between 1772 and 1795 in Ireland, and between about 1823 and 1838 in Jamaica and the West Indies. Both have also been the subject of intense reassessment over the past five decades, but neither the codes themselves nor these processes of reassessment have been compared with each other, though the slave codes have been fruitfully compared to similar codes in French, Dutch, Spanish, and

Portuguese territories, while Declan Downey's recent comparison of penal laws in Ireland and the Dutch Republic in this period has identified several interesting areas of overlap. This article argues that there is some value to the direct comparison, as the twin processes of reassessment, themselves arising from very similar or even parallel historiographical trends, suggest that the slave codes and penal laws were distinctively British forms of social control, and that insights from one region can illuminate and inform our understanding of the other.

Consequently, this article represents a different approach to the relationship between Ireland and the West Indies, which has usually been studied through overlaps and interpenetration rather than direct structural comparison.[1] For example, Nini Rodgers, Natalie Zacek, Sarah Barber, Jenny Shaw, and Kristen Block have produced detailed studies of Irish men and women in the West Indies, as indentured labourers, planters, and merchants, with Donald Akenson examining Montserrat as an 'Irish' island at the turn of the seventeenth century.[2] These have fed into wider studies of white identity, noted below, but a direct comparison has been lacking. Rodgers and Christine Kinealy have also examined the rise of pro- and anti-slavery discourses in Ireland itself, especially as Catholic nationalists such as Daniel O'Connell adopted abolitionist rhetorics in the early nineteenth century as a proxy for Irish autonomy.[3] Other points of contact have included work by Jack Greene and Trevor Burnard on the ideologies of slavery and dependence employed by white Protestant elites in Ireland, the West Indies, and North America to protest against imperial policy, reflecting wider historiographical interest since the 1980s in political culture and rhetoric.[4] Norma Myers, W. A. Hart and others have discussed the presence of black people, both

[1] For surveys of the current state of this historiography, see Rodgers, 'Ireland, Slavery', 489–504; Sweeny, 'Common Ground', 505–20.

[2] Rodgers, *Ireland, Slavery and Anti-Slavery*, 7–158; Zacek, *Settler Society*, 66–120; Barber, *Disputatious Caribbean*, 83–192; Block and Shaw, 'Subjects Without an Empire', 33–60; Akenson, *If the Irish Ran the World*.

[3] Rodgers, *Ireland, Slavery and Anti-Slavery*, 159–96, 230–89; Kinealy, *Daniel O'Connell*. See also, Donnell, McGarrity, and O'Callaghan, eds., *Caribbean Irish Connections*.

[4] Greene, 'Jamaica Privilege Controversy', 16–53; Burnard, 'Ireland, Jamaica', 15–33.

slave and free, in Britain and Ireland during this period.[5] However, the only sustained and direct comparison between systems of control in Ireland and the West Indies has come from Theodore Allen's *The Invention of the White Race* in 1994, which argues that race is culturally defined and that both the penal laws and the slave codes employed very similar methods to define Irish Catholics and black slaves as racial 'Others' who were subject to control and exploitation.[6] This has been received with some caution by historians, not least because it deals haphazardly with historical evidence, particularly in Ireland. Nicholas Canny, the doyen of early modern Irish historians, argued that it was 'hardly a work of history,' and that the information on Ireland was 'drawn from such a ragbag of secondary sources that nothing he says can be taken on trust.'[7] As a result it has perhaps discouraged closer and more informed examination of this topic.

This article therefore seeks to present a more nuanced consideration of the similarities and differences between the British systems of social control in Ireland and the West Indies during this period, noting in particular four areas where close comparison can illuminate and inform our understanding of their respective historical situations. In the first place, a common historiographical interest has encouraged deeper and thicker description of the experiences of social control among black slaves and the Catholic Irish, drawing in particular on the methodologies of social and cultural history. Both have emphasised how the uneven enforcement of British rule created various spaces for agency and even resistance, but also the dangers of anachronistically approaching rebellions and revolts as the forerunners of movements of national liberation rather than more limited complaints against specific grievances. Secondly, closer work on the English ruling elites has helped to identify common patterns of rule, and work on the Protestant Ascendancy in particular suggests fruitful directions for further work in the West Indies. Thirdly, a developing focus on the liminal groups

[5] Myers, *Reconstructing the Black Past*; Hart, 'Africans in Eighteenth-Century Ireland', 19–32.
[6] Allen, *Invention of the White Race*.
[7] Canny, Review of *Invention of the White Race*, 575–6.

created by these codes and laws serves to confirm their importance within systems of social control as political and social intermediaries, with their potential to stabilise or destabilise the balance of political power within the regime. Finally, recent work on the structure and powers of the state in Ireland in particular not only confirms parallel studies of colonial states in the West Indies but also suggests useful directions for work in the future. Comparing systems of social control in Ireland and the West Indies therefore serves to strengthen or confirm conclusions reached provisionally in one or other of these historiographies, helping to provide the basis for ongoing research.

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Although differing in many details, the primary purpose of both the penal laws and slave codes was social control. In Ireland the laws were enacted in the wake of the war between (Protestant) supporters of William of Orange and (Catholic) supporters of James II between 1689 and 1691. Despite the terms received by the Jacobites in the Treaty of Limerick, the Anglo-Protestant elites in Ireland passed a series of laws that banned the organised practice of Roman Catholic worship, with particularly strict laws against the clerical hierarchy.[8] Catholic elites were to be neutered by denying them political participation as members of parliament, public officials, and electors, and their estates were to be dismantled by banning the sale of land to Catholics and enforcing partible inheritance rather than primogeniture, completing the wholesale confiscation of Catholic land achieved in several rounds during the seventeenth century. Catholics were also banned from the universities, the professions, and the army and navy, and suffered a host of other minor restrictions, such as the limitation on owning firearms, swords, or horses suitable for military service. Protestant Nonconformists outside the Church of Ireland faced less severe restrictions, relating mainly to political participation and religious

[8] Connolly, *Divided Kingdom*, 198–203.

recognition. The avowed intention of the penal laws was therefore to eliminate Irish Catholics as a political and military threat to the Protestant Ascendancy, and hopefully to drive both Catholics and Dissenters into the arms of the Church of Ireland.

In the West Indies each island had its own set of slave codes but they tended to share the same features. The central element was, of course, the recognition and control of slavery. Slaves could be bought and sold and were the chattels of their masters, who possessed almost unlimited power over how they might be used and treated. They had no rights whatsoever and their movements were closely regulated. Whites were permitted, even required, to report and recapture runaways and to punish rebellion, either directly or through slave courts. Their behaviour, movement, social and economic activities were closely regulated to remove opportunities for sedition, theft, and anything that threatened the integrity of the slave society and the plantation system. Free people of colour had their independence but were banned from political participation and had severely truncated civil and legal rights, and also faced further restrictions that were intended to circumscribe their economic and social status. In her pioneering study of these codes, Elsa Goveia concluded that 'their primary function was to maintain the slave system by guaranteeing the economic, social and racial subordination of the Negroes ... by denying the slaves the means of escaping their degraded status as the property of others, by restricting the free coloured to their uneasy middle status as freemen, and by protecting the whites in their pre-eminent status as a ruling class'.[9] These overlapped with a more attenuated set of penal laws that discriminated against Catholics, Jews, and Protestant Nonconformists to various degrees, but not to the same extent as in Ireland.[10]

Until the twentieth century the operation of these codes in both regions was generally examined from the outside, by historians such as W. E. H. Lecky for Ireland, through the analytical lens provided by 'Whig'

[9] Goveia, *Slave Society*, 320–1.
[10] Zacek, *Settler Society*, 121–68; Turner, *Slaves and Missionaries*.

history.[11] Written largely by English historians trained in the English tradition, this dealt with matters of constitutional change and high politics, and tracked the slow political evolution of England, then Scotland, then Ireland, and other colonies, towards the liberal values of the late-nineteenth century. Both the penal laws and slave codes were examined as bodies of law whose operation could be taken for granted, and which had to be swept away before the political and constitutional elevation of these territories could begin.[12] The parallel but largely unrelated rise of nationalist movements in both Ireland and the West Indies in the early twentieth century merely adopted these narratives and inverted them to justify resistance to British rule. R. E. Burns and James Kelly have shown, for example, that from the late nineteenth century Catholic nationalists in Ireland usually presented the penal laws as a uniquely severe body of legislation aimed wholly and consistently at the brutal extirpation of Catholicism from Ireland.[13] Evidence to the contrary was dismissed as special pleading by Protestant historians. Nationalist movements in the British West Indies were likewise predisposed towards stark and uncompromising views of the slave codes, both due to the continuing legacy of racial discrimination and political subordination and also because the social and economic dimensions of these interpretations fit comfortably into the strongly Marxist (or Marxian) frameworks which many activists adopted. For Eric Williams and others, the unrelieved brutality of the slave codes therefore reflected a dual and integrated process of racial and economic subordination by white planter elites.[14] A common process of nationalist historiography in Ireland and the West Indies led to similar

[11] For 'Whig history' in England and its political and intellectual context, see Bentley, *Modernizing England's Past*.

[12] What follows is based primarily on Goveia, *Historiography*; Green, 'Caribbean Historiography'. For Ireland, see Kelly, 'Historiography'.

[13] Kelly, 'Historiography', 27–54; Burns, 'Irish Penal Code', 276–99; Burns, 'Irish Popery Laws', 485–508.

[14] Due to the limited hold of Marxism within Irish historiography, the penal laws were not generally analysed in Marxist terms, though their social and economic effects were widely discussed.

interpretations of the systems of social control developed to maintain the status of English elites.

The turn that both historiographies have taken since the mid-twentieth century, which reflects the emergence in both Ireland and the West Indies of a critical mass of trained and professional historians using tools from social and cultural history to recover the experience of these subaltern populations, has demonstrated what now appears to be the inherent or systemic weakness of these systems of social control.[15] For example, Orlando Patterson and Elsa Goveia broke new ground in the 1950s and 1960s when they examined the slave codes as part of a social history of law, analysing how legal codes were used to entrench social and racial hierarchy in the West Indies, but at the same time acknowledging that enforcement was uneven.[16] Developed in studies of post-emancipation Jamaica by Douglas Hall and Philip Curtin, major works in the 1970s by Edward Kamau Brathwaite, Richard Dunn, and Richard Sheridan assessed these societies from the ground up and highlighted similar levels of diversity.[17] By comparing this with the scholarship on the penal laws in Ireland and with particular reference to the four areas mentioned above, it immediately becomes clear that these hitherto separate historiographies have since the 1970s identified important common elements in the operation, effects, and experience of these systems of social control.

Firstly, the continued focus on the experiences of the subaltern populations, rooted at first in economic and social history but also now increasingly cultural and intellectual history, has shown that neither the penal laws nor the slave codes were consistently, coherently, or comprehensively enforced. Louis Cullen, Kevin Whelan, Tom Bartlett and others have led renewed work on the Catholic Irish community

[15] For the West Indies, see the essays in Knight, ed, *General History of the Caribbean*, vol. 6; Petley, 'New Perspectives', 855–80. For Ireland, see Kelly, 'Historiography', 27–54, and, more broadly, Hill, 'Historiographical Review', 1039–63.

[16] Goveia, *Slave Society*, esp. 152–202; Patterson, *Sociology of Slavery*. For the origins of the term 'slave society', see Higman 'Invention of Slave Society', 57–75.

[17] Curtin, *Two Jamaicas*; Hall, *Five of the Leewards*; Brathwaite, *Creole Society*; Dunn, *Sugar and Slaves*; Sheridan, *Sugar and Slavery*.

which notes the broad impact of the penal laws – Catholics were excluded from politics and forced to practice their religion in private for most of this period – but also the heterogeneity of this community and thus the differing impact of the laws.[18] The experience of elite Catholics as landowners, merchants, and professionals was different to that of artisans and rural smallholders, who had less political leverage and were more vulnerable to the fears and prejudices of the local Protestant elites, in whose hands the enforcement of the penal laws ultimately rested. The intensity of persecution also changed over time, reaching its highest pitch between 1692 and 1728 but then tapering off. Irish Catholics also found creative ways to escape certain elements, such as by selling off land to Protestant proxies or trustees, or investing in commerce with Catholic Europe.

Building on Daniel Corkery's study in 1924 of a 'hidden Ireland' of popular Gaelic literature and culture, Cullen and many others such as Breandán Ó Buachalla have jettisoned its more nationalist elements while highlighting the various ways in which Irish Catholics were able to maintain their cultural autonomy despite the nominal efforts of the penal laws to suppress Gaelic culture and to promote anglicisation.[19]

Work on the West Indies in the tradition of Goveia, Patterson, and Brathwaite, and enriched by the anthropological studies of Sidney Mintz, Richard Price, and others, has confirmed that the impact of the slave codes within a community that was even more heterogeneous than Ireland was equally diverse.[20] While the policy of chattel slavery itself did not alter and supported a system predicated on brutal inhumanity, a point confirmed by work such as Trevor Burnard's detailed study of the actions and mindset of the Jamaican planter Thomas Thistlewood, Burnard, Gaspar, Higman, Turner and others have also shown that the slave codes were inconsistently applied across the West Indies and left

[18] Cullen, 'Catholics Under the Penal Laws', 23–36; Bartlett, *Fall and Rise*; and the essays in Power and Whelan, eds., *Endurance and Emergence*. This built on the work of Maureen Wall in the 1960s.
[19] Corkery, *The Hidden Ireland*; Cullen, 'The Hidden Ireland', 7–47; Buachalla, *Aisling Ghéar Na Stíobhartaigh*; Walsh, 'The Hidden Ireland and Revisionism', 27–44; Morley, 'Penal Laws'.
[20] Mintz and Price, *Afro-American Past*.

slaves with room for various forms of autonomy.[21] Verene Shepherd, Michael Craton, and Robert Jarvis, for example, have shown that slaves might also work in stock pens, shipping, and other areas which offered more freedom than the plantation, while work on the practice of 'internal marketing' identified in 1960 by Sidney Mintz and Douglas Hall has demonstrated that slaves were permitted – indeed, increasingly encouraged – to cultivate their own crops, which they might sell privately at Sunday markets to support a degree of economic and social independence.[22] Burnard's study of Thistlewood is particularly useful in demonstrating how the slave codes were applied very selectively and did not stop complex relationships of mutual dependence forming between planters and slaves, whereby laws such as the ban on firearms or free movement were relaxed. As with Ireland, the slave codes were also unable to remake the cultural and spiritual worlds of slave communities, and Vincent Brown, Diana Paton, and Kathleen Wilson, among others, have drawn on cultural history to show how both free and enslaved persons of colour were able to preserve some African spiritual and cultural practices.[23] Recent studies of the social experience of the slave codes and penal laws have thus shown that they were not consistently applied, and that this was not exceptional to either society.

This focus on the social experience of the subaltern populations in Ireland and the West Indies has been particularly important for our understandings of rebellions and revolutions there, which were of particular interest to nationalist movements in both places as evidence of popular agency and resistance that foreshadowed their own struggles in the twentieth century against British imperial rule. Nationalist historians in Ireland, for example, drew direct links between the rebellions against Protestant English elites in the seventeenth century, the widespread agricultural unrest of the later eighteenth century, the

[21] Burnard, *Master, Tyranny, and Desire*; Turner, *Slaves and Missionaries*; Gaspar, *Bondmen & Rebels*; Higman, *Slave Population and Economy*.
[22] Shepherd, *Livestock, Sugar and Slavery*; Craton and Saunders, *Islands in the Stream*, vol. 1; Jarvis, *In the Eye of All Trade*. For the internal marketing system, see Mintz and Hall, 'Origins', 1–26; Simmonds, 'Afro-Jamaican', 274–90.
[23] Brown, *Reaper's Garden*; Paton, *Cultural Politics of Obeah*.

failed revolution of 1798, and Catholic resistance in the nineteenth century. Since the 1970s this has been contentiously reassessed, with J. S. Donnelly and Thomas Bartlett identifying rural protestors such as the Whiteboys and Rightboys of the 1760s and 1780s with non-confessional agricultural grievances and the decline of the 'moral economy' described by E. P. Thompson in 1971.[24] Even the revolutionary politics of the 1790s has been reassessed, with Bartlett, McBride, and others demonstrating that there were multiple revolutionary ideologies in play, as is noted below, and that the rebellion of 1798 was not the uncomplicated Catholic Irish uprising of nationalist historiography.[25] Not surprisingly, this interpretation has met with considerable resistance. Yet a similar story emerges from work since the 1980s on revolts against the slave codes in the West Indies. Stimulated by, but not indebted to, Eugene Genovese's Marxist study of slave resistance in North America, work by Michael Craton, Hilary Beckles, Emilia Viotti da Costa, Christer Petley, and several others has likewise suggested the limited ambitions of earlier revolts in the British West Indies, which were often concerned more with escaping from slavery than with bringing down the slave system.[26] Only by the 1790s, with the rise of abolitionism and the French Revolution did revolts become more ideological, but here too they were frequently composed of multiple interest groups with competing priorities, and cannot be fitted comfortably into an uncomplicated story of national resistance. By comparing Ireland and the West Indies it becomes clear that this is a common pattern of subaltern resistance, helping to confirm the validity of these respective studies.

Secondly, renewed work on the society, culture, and identity of the white or English elites who controlled the West Indies and Ireland

[24] Donnelly, 'Rightboy Movement', 120–202; Donnelly, 'Irish Agrarian Rebellion', 293–331; Bartlett, 'End to Moral Economy', 41–64; Powell, 'Ireland's Urban Houghers', 231–54.
[25] See the essays in Bartlett et al, eds., *1798*; Philpin, *Nationalism and Popular Protest*; Whelan, *Tree of Liberty*; McBride, *Scripture Politics*.
[26] Craton, *Testing the Chains*; Beckles, 'Slave-Drivers' War', 85–110; Da Costa, *Crowns of Glory*; Petley, *Slaveholders in Jamaica*, 103–16. Compare with the description of the revolt in Antigua of 1737 in Gaspar, *Bondmen & Rebels*.

respectively has identified similar features that help to explain how and why these systems of social control came into existence and why their enforcement was nevertheless so inconsistent. For elites in the British West Indies the historiographical impetus was undoubtedly Brathwaite's study of Jamaica between 1770 and 1820, which argued that both black and white populations within the island mingled their African and European cultural traditions and created a 'creole' society unique to Jamaica, and maintained by accommodation and negotiation between these different groups as well as coercion and dominance.[27] This has been developed by Trevor Burnard, Christer Petley, Natalie Zacek, David Lambert, and others to describe a planter elite across the British West Indies at once secure and insecure, and poised uneasily between their metropolitan identities and their need for accommodation and adaption to colonial realities.[28] Together with Andrew O'Shaughnessy, Perry Gauci, and others, they have shown that the planters were therefore steadily alienated from the metropole in the late eighteenth century with the adoption of abolitionist ideology incompatible with the colonial economy and society.[29] The parallel reassessment of the culture and society of the Protestant Ascendancy in Ireland by Toby Barnard, Sean Connolly, David Fleming, and others has suggested a very similar process, as elites worked to maintain English identities while accommodating the reality of life in Ireland, a process which then broke down towards the late eighteenth century as British society moved away from the virulent anti-Catholicism of the seventeenth and early eighteenth centuries.[30] Nicholas Bourke has described this process, with reference to the Protestants of northern Ireland, as 'Ulsterization', and Trevor Burnard has suggested that the experience of planters in the

[27] Brathwaite, *Creole Society*.
[28] Burnard, *Master, Tyranny and Desire*; Lambert, *White Creole Culture*; Petley, *Slaveholders in Jamaica*; Zacek, *Settler Society*.
[29] O'Shaughnessy, *An Empire Divided*; Hall, *Civilising Subjects*; Gauci, *William Beckford*; Burnard, 'Ireland, Jamaica', 15–33.
[30] See in particular Connolly, *Religion, Law, and Power*; Barnard, *New Anatomy of Ireland*; Fleming, *Politics and Provincial People*. For a useful comparison of these two elites, see Burnard, 'Ireland, Jamaica', 15–33.

British West Indies can be understood in similar terms.[31] Though obviously a complex process, in which opposition to Catholic Relief or abolition was not *ipso facto* a marker of alienation, this occurred often enough to have a meaningful effect.

This mixture of security and insecurity, common to elites in both regions and based largely on their position between a hostile subaltern population and a remote metropole, helps to explain on the one hand the strictness and severity of the penal laws and the slave codes. Fuelled by the paranoia of elites and raised to an even higher pitch by moments of open resistance and rebellion, the studies described above help to show how the systems of social control they created reflected these fears and insecurities. The British state worked to limit their most egregious aspects, such as the bill passed by the Irish parliament in 1719 with a clause – possibly tacked on deliberately as a wrecking amendment – legislating for the castration of unregistered priests, but the penal laws and slave codes nevertheless embodied this hysteria.[32] Yet this recent work demonstrates that English magnates and planters did not live in a permanent state of fear, and that consequently, at times when they did not feel under threat, they were prepared to relax certain aspects of the laws. In Ireland, for instance, it is now clear from recent work that the enforcement of these laws was largely in the hands of the Protestant elite, who controlled the network of quarter sessions, county assizes, urban tribunals, and central courts through which the laws were made active, and did not bother to apply the laws at times when they felt secure in their control of the Irish Catholic population.[33] Among the valuable insights provided by Burnard's study of Thomas Thistlewood has been the finding that he was prepared to grant considerable latitude and autonomy to trusted slaves, such as his mistress Phibbah or his servant Lincoln, albeit still within a society that recognised chattel slavery and the undoubted rights of masters to enact brutal and inhumane

[31] Bourke, 'Pocock and the presuppositions', 747–70; Burnard, 'Ireland, Jamaica', 15–33.
[32] Kelly, 'Confessional State', 55–77. For the specific instance of the 1719 bill, see Kelly, 'Confessional State', 57, 68.
[33] Connolly, *Divided Kingdom*, 250–9; Kelly, 'Confessional State', 44–77.

punishment to maintain authority. A closer look at the historiography of the slave codes and penal laws therefore suggests that their harsh provisions and intermittent application were two sides of the same coin, reflecting a common set of attitudes and identities among the governing elite.

Some of this work also serves a useful purpose of identifying gaps in the coverage given to one region or the other, and suggests what these corresponding findings might be. For example, due in part to a shortage of accessible sources the focus of these studies has generally been the upper and middling strata of the white or the English population, at the expense of the eighty or ninety percent who made their respective ways as smallholders, retailers, artificers, artisans, and even labourers.[34] These groups posed problems of social control that resembled the issues faced by elites in England, but in the West Indies the need to uphold strict racial divisions generated further measures that have been the subject of more detailed examination. For example, Jill Sheppard has shown that the 'Redlegs' or poor white settlers of Barbados – many of Catholic Irish origin – were an embarrassment and consistent object of concern to elites due to their close social and economic relations with the free and enslaved black population, and elites therefore made repeatedly enacted measures intended to prevent this subversive mixing.[35] Cecily Jones has written an important study of how social welfare was exploited by elites in the same island as another means of control, by denying support to white women who did not conform strictly to their social or racial roles.[36] This type of social history, resembling very closely in its approach and broader conclusions the work by Steve Hindle and others on the 'micropolitics' of poor relief in early modern England, indicates an important new direction for studies of Protestant classes in Ireland under the penal laws, and strongly suggests that these studies will find similar efforts by elites to control and

[34] Barnard, *New Anatomy*, 279–327; Brathwaite, *Creole Society*, 135–50.
[35] Sheppard, *"Redlegs" of Barbados*; Beckles, *White Servitude and Black Slavery*; Watson, *Civilised Island*.
[36] Jones, *Engendering Whiteness*, 13–43.

restrict social relationships between Protestants and Catholics, at least while they remained convinced that Irish Catholics posed a threat to their rule.

By the same token, recent work on the nature of elite and local politics in this period suggests that the character of colonial politics in the West Indies would repay further study. David Hayton, Eoin Magennis, Sean Connolly, and others have emphasised the partisan character of politics during the age of party between 1692 and 1714 and the highly ideological nature of 'Patriot' opposition to Britain and the imperial party in the Irish Parliament between 1752 and 1783.[37] The climactic moments of revolution from the 1790s onwards generated very strong political ideologies throughout Irish society, including the Loyalism or Orangism of Presbyterian communities in Ulster described by McBride and Allan Blackstock.[38] The Protestant Ascendancy was thus internally divided over many issues, not least the threat posed by Irish Catholics, with obvious implications for the selective enactment and enforcement of the penal laws during this period. Less attention has been paid to the political ideologies of planters living in the British West Indies during this period, though Burnard, O'Shaughnessy, and Jack Greene have highlighted the persistence of 'country Whig' attitudes among planters up to 1783, as in North America.[39] There is now growing interest in the pro-slavery political movements which emerged in Britain and the West Indies from the 1790s in reaction to abolitionism[40], and Karl Watson and Christer Petley have shown how the political factions which grew up in Barbados and Jamaica in the 1820s and 1830s respectively were informed by this ideology, but the work on Ireland suggests that there is more work to be done to understand the ideological divisions

[37] Hayton, *Ruling Ireland*; Magennis, *Irish Political System*; McNally, *Parties, Patriots and Undertakers*.
[38] McBride, *Scripture Politics*; Blackstock, *Loyalism in Ireland*.
[39] See above, notes 24 and 25.
[40] For a representative sample of recent work, see Dumas, *Proslavery Britain*; Higman, *Proslavery Priest*; Petley, 'Devoted Islands', 393–415; Lambert, 'Glasgow King of Billingsgate', 389–413.

within the white populations of the West Indies and their impact on the slave codes.[41]

Thirdly, the growing focus on the social and cultural components of Irish and West Indian societies has focused attention on the liminal or intermediary social groups who fell into the interstices created by the slave codes and penal law. Presbyterians, Quakers, and other Protestant Nonconformists in Ireland lived outside the (Anglican) Church of Ireland but constituted one half of the Protestant population, and the elites were divided about where their loyalties lay. Reacting against liberal and nationalist historiographies that minimised their importance, Ian McBride and others have shown that these groups faced their own dilemmas and were divided in their responses to the penal laws, with some seeking to sweep them away entirely, some merely to adjust their own position within them, and others accepting them as the necessary price of suppressing Catholic political ambitions.[42] Other work on the groupings created by the slave codes in the West Indies has identified similar tensions within these groups, and the Irish example suggests that further research would repay the effort. Jewish communities were a major component of the white population in many islands, for example, but there are only scattered studies of their experience in the British West Indies.[43] Catholics living in these colonies also faced various forms of discrimination, and studies by Kit Candlin, James Epstein, and others have begun to unpick some of the problems they posed to these regimes, as well as the dilemmas these communities faced.[44] Both of these groups had uncertain religious, political, and national loyalties which the planters attempted to control with legislation, but there is still too little scholarship on how these communities responded, although the

[41] Watson, 'Salmagundis vs Pumpkins', 17–31; Petley, *Slaveholders in Jamaica*, 117–50.
[42] Kilroy, *Protestant Dissent*; McBride, *Scripture Politics*; Connolly, *Divided Kingdom*, 267–85, 432–84.
[43] Fortune, *Merchants and Jews*; Snyder, 'Rules, Rights and Redemption', 147–70; Zahedieh, 'Defying Mercantilism', 77–102. Though see Mirvis, 'Between Assembly and Crown', 196–219.
[44] Candlin, *Last Caribbean Frontier*; Epstein, *Scandal of Colonial Rule*.

example of Ireland suggests that these were generally unsuccessful and that these communities were themselves divided.

Most of the work on the West Indies has focused however on the intermediate groups created by the slave codes and systems of racial discrimination, and some important structural parallels with Ireland appear on closer comparison. A series of studies, for example, by Patterson, Craton, Campbell, Fabel, and others have examined the various autonomous communities of native peoples and runaway slaves in Jamaica, Grenada, St Vincent, and elsewhere, demonstrating how they secured a degree of independence for themselves either by resisting planters or by collaborating with them.[45] Much of the attention though has focused on the 'free coloureds' or free people of colour who became an increasing presence in the West Indies as the period advanced. Early work by Hall and Campbell largely took it for granted that these groups opposed slavery and welcomed abolition and emancipation, but a large number of studies beginning with Gad Heuman, Edward Cox, Jerome Handler, and Arnold Sio, and brought up to date recently by Melanie Newton, Natasha Lightfoot, Kit Candlin, and others shows that these groups faced many of the same dilemmas as their counterparts in Ireland.[46] Some wholly opposed the slave codes and the racial discrimination they faced, but others owned plantations and slaves and merely wished the restrictions they faced as free people of colour to be relaxed, while some accepted these restrictions as the cost of operating within a plantation economy. Their response to abolitionism was thus complex and multifaceted, with important consequences for the maintenance of the slave codes. In Jamaica and Barbados the dilemma nearly split the community, until it became clear that white planters would never make any concessions to free people of colour, which drove them into the arms of the abolitionists and helped

[45] Patterson, 'Slavery and Slave Revolts', 289–325; Kopytoff, 'Jamaican Maroon Societies', 287–307; Craton, *Testing the Chains*; Campbell, *Maroons of Jamaica*; Fabel, *Colonial Challenges*.

[46] Handler, *Unappropriated People*; Sio, 'Race, Colour and Miscegenation', 5–21; Heuman, *Between Black and White*; Cox, *Free Coloreds*; Newton, *Children of Africa*; Lightfoot, *Troubling Freedom*.

to increase the pressure on planters to abandon the institution. Comparing the separate histories of Ireland and the West Indies therefore reinforces the crucial importance of liminal groups, who exercised an importance out of all proportion to their size, since they challenged the sharp dichotomies that elites were attempting to enforce through the penal laws and slave codes respectively, and exposed their underlying dilemmas.

The comparison also serves to identify other types of liminal groups in both regions which would benefit from closer attention. Driven in large part by the immense attention which has recently been directed to women and slavery in North America, there is now a growing body of work on women and slavery in the West Indies.[47] This highlights their marginal position even with slave communities and the aspects of the slave codes intended specifically to control female sexuality and fertility, but also illuminates how women could exploit this position for their own ends, and how some even ended up as landowners and slaveowners in their own right.[48] Though there is also an increasing number of studies of women in Ireland during the same period by Catriona Kennedy, Mary O'Dowd, and others, the examples from the West Indies suggest that there is more to be said about how women from these differing communities exploited gaps within the penal laws to exercise agency, such as the sponsorship of religious, charitable, and cultural works that supported the religious priorities of their respective communities.[49] On the other hand, a series of detailed and nuanced studies by David Dickson, Jacqueline Hill, Eamon Flaherty, and others have focused on Irish towns such as Dublin and Cork and highlighted their crucial importance as liminal *spaces*, where the nature of the urban society and economy made it difficult to enforce the penal laws.[50] In particular,

[47] See the survey in Brereton, 'Women and Gender', 1–18.

[48] For examples, see Jones, *Engendering Whiteness*, 13–43, 80–118, 155–83; Candlin and Pybus, *Enterprising Women*; Zacek, *Settler Society*, 169–205; Vasconcellos, *Slavery, Childhood and Abolition*.

[49] O'Dowd, *Women in Ireland*; Kennedy, 'Women and Gender', 361–81.

[50] Hill, *From Patriots to Unionists*; Dickson, *Old World Colony*; Dickson, *Dublin*. For an example of such an approach, see O'Flaherty, 'Urban Community', 197–226.

urban politics and the internal divisions of the Protestant elite created gaps and loopholes that many Irish Catholics could exploit in order to achieve a degree of independence. Some of the towns in the West Indies, for instance Spanish Town in Jamaica and Bridgetown in Barbados, have been examined by Burnard, Higman, James Robertson, and Pedro Welch in the same way, who have exposed similar difficulties enforcing the slave codes there, but the politics, society, and economy of other towns, including major urban areas such as Kingston in Jamaica, are still poorly understood.[51] Closer attention to the society and economy, and even the municipal politics, of the many varied urban areas that emerged in the West Indies during this period would, the example of Ireland suggests, demonstrate the many other ways that both free and enslaved people of colour found ways to create agency for themselves.

Fourthly, and finally, a growing body of work on the state and society in Britain in the long eighteenth century suggests that there is a need to reassess the institutional components of the slave codes and penal law, and to assimilate them into this updated historiography. Studies by Patrick O'Brien and John Brewer in the 1980s argued that Britain created in this period a large and bureaucratic 'fiscal-military state' that enabled it to project power overseas, while other work by Paul Langford, David Eastwood, Julian Hoppit, and others since then has shown how parliament was to address local issues such as social welfare and economic improvement.[52] This shift has been adopted with increasing vigour by historians of Ireland and serves to contextualise the structures used by elites to apply and enforce the penal laws during this period. For example, Ivar McGrath and Patrick Walsh have shown that large amounts of revenue were raised by an increasingly sophisticated Irish fiscal-military state, to support a large garrison of twelve thousand troops for the internal and external defence of the island, while Allan Blackstock, Neal Garnham, and Padhraig Higgins have focused on the

[51] Higman, 'Jamaican Port Towns', 117–48; Welch, *Slave Society in the City*; Robertson, *Gone is the Ancient Glory*; Burnard, 'Kingston, Jamaica', 122–44. See also Hart, *Building Charleston*.
[52] O'Brien, 'British Taxation', 1–32; Brewer, *Sinews of Power*; Langford, *Public Life*; Eastwood, *Governing Rural England*; Hoppit, 'Patterns of Parliamentary Legislation', 109–31; Innes, *Inferior Politics*.

militia, yeomanry, and volunteers as military institutions and the repositories of ideological sentiment.[53] The renewed interest in the history of crime and law in Britain has been echoed by Neal Garnham, whose work on policing and prosecution in Ireland has demonstrated that the selective application of the penal laws was in fact typical of the criminal law as a whole, since the structures of enforcement likewise lay in the hands of local Protestant elites.[54] The completion of the Irish Legislative Database in 2007 has allowed David Hayton, James Kelly, John Bergin, and others to demonstrate that the impetus for the penal laws, as with other bodies of social, religious, and economic legislation, mainly arose at the colonial rather than the imperial level and largely at the initiative of Protestant elites rather than imperial authorities, accounting for its strict and severe nature noted above and thus the difficulties of fully enforcing it.[55] The broader conclusions to emerge from this work are that the Irish state was very powerful in certain areas, but also lacked the state structures to meet reliably the impractical demands made on them by the heightened paranoia of the penal laws.

Comparing this historiography with the more limited work on the colonial states of the British West Indies demonstrates both the amount of research left to do and the benefits that would arise from a better understanding of state structures. Historians have tended to focus on imperial state structures at the expense of the colonial ones operated and run by the planters themselves.[56] Only in recent years has this shifted. Norman Buckley, Andrew O'Shaughnessy, and myself have highlighted the crucial importance of garrisons in Jamaica and other islands in providing security for the planters against internal resistance,

[53] McGrath, *Ireland and Empire*; Walsh, 'Fiscal State in Ireland', 629–56. For the militia, see Blackstock, *An Ascendancy Army*; Nelson, *Irish Militia*; Higgins, *Nation of Politicians*; Garnham, *Militia in Eighteenth-Century Ireland.*

[54] Garnham, *Courts, Crime and the Criminal Law.* For a useful survey of the British background, see Smith, 'Criminal Justice Administration', 593–634. For earlier examples, see Broeker, *Rural Disorder*; Palmer, *Police and Protest.*

[55] Hayton, 'Long Apprenticeship', 1–26.

[56] See for example Young, *Colonial Office*; Murray, *West Indies*; Manning, *British Colonial Government.* Though for a study of colonial government up to 1783, see also Spurdle, *Early West Indian Government.*

enabling them to relax their enforcement of the slave codes by addressing the root of their insecurity.[57] Even more impressive has been Diana Paton's study in 2004 on the system of prisons and workhouses created between 1770 and 1870 to control the black population and reform their conduct.[58] Studies by Rana Hogarth and Leonard Smith of the hospitals and lunatic asylums created by these colonial states has produced the same conclusions, echoing Cecily Jones' studies of poor relief in Barbados noted above.[59] Work by Jonathan Dalby shows that the criminal courts of Jamaica could be as selective and inconsistent as those of Ireland, suggesting that the varied enforcement of the slave codes was a product of the same forces behind the penal laws.[60] Finally, my own research has demonstrated a very active legislative culture in Jamaica in this period, where laws such as the slave code were generated as much by the planters as by the directions and orders of the imperial authorities.[61] A synthesis that would serve to pull all this work together and examine its implications for the enforcement of the slave codes within Jamaica and the other islands is missing, but the comparison with Ireland suggests that it would likewise demonstrate that state structures in the West Indies were unequal to the unrealistic demands made by the slave codes, explaining in part why their enforcement generally proved so inconsistent and uneven.

However, where work on state structures in the West Indies exists it often suggests useful or important areas for further work in Ireland, since these studies often arise out of broader social studies. The importance of imperial garrisons to beleaguered elites both places is widely acknowledged in the existing literature, but comparing Ireland with the West Indies indicates the need to examine more closely how far the Irish Catholics cooperated in maintaining of imperial and colonial military power, and thus the military deterrent that underwrote their

[57] Buckley, *British Army*, 173–202; O'Shaughnessy, *An Empire Divided*, 160–82; Graham, 'Colonial Sinews of Imperial Power', 188–209.
[58] Paton, *No Bond but the Law*.
[59] Hogarth, 'Charity and Terror', 1–18; Smith, *Insanity, Race and Colonialism*.
[60] Dalby, *Crime and Punishment in Jamaica*.
[61] Graham, 'Jamaican Legislation', 327–55. See also Gaspar, 'Rigid and Inclement', 78–97.

respective systems of social control. Mary Campbell, Barbara Kopytoff, and others have shown that the colonial state used Maroons and both free and enslaved people of colour to capture runaway slaves and to serve as military auxiliaries when the situation demanded.[62] Others served widely with imperial troops as labourers, pioneers, and guides.[63] Though the literature on the Irish fiscal-military state has examined closely the experiences of Irish Catholics who enlisted in the British army for service abroad[64], a comparison with the West Indies suggests that there is more to be written about the other forms of military service that were offered by those who remained in Ireland, whether in the militia or in the more informal groups that emerged at various points.[65] Others served the state indirectly by cultivating the beef, butter, and other supplies that sustained imperial forces overseas or supported the barracks that were established across Ireland to house the garrisons. Closer attention to these networks of cooperation and collaboration in both Ireland and the West Indies would serve to explain both the strength of the colonial state in these places and the opportunities for enrichment, advancement, and agency that it afforded even to selected subaltern populations, with obvious effects on the religious or racial solidarity that they could mobilise against the discriminatory laws that they faced. Comparison between these two historiographies suggests the importance of further work in both in order to provide an even firmer context for the operation and enforcement of the slave codes and penal laws within these societies.

* * *

This article has therefore argued that the scholarship on the penal laws in Ireland and the slave codes in the British West Indies has advanced

[62] Campbell, *Maroons*; Craton, *Testing the Chains*, esp., 61–6; Wilson, 'Performance of Freedom'; Kopytoff, 'Jamaican Maroon Societies', 287–307.
[63] Craton, *Testing the Chains*, passim; Buckley, *Slaves in Red Coats*; Buckley, *British Army*, 128–69.
[64] See, for example, McKillop's study of Scotland: McKillop, 'Subsidy State', 179–99.
[65] Though, see above, note 57.

parallel but also, so far, almost entirely in isolation from each other. Yet a comparison of this scholarship not only demonstrates a common historiographical dynamic, arising initially from the colonial and post-colonial nationalist context but now incorporating many wider intellectual approaches, but also common conclusions about how these systems of social control operated during the long eighteenth century. Subaltern populations in both regions were able to find areas of economic, social, and cultural autonomy for themselves in this period, reflecting the uneven and inconsistent application of the laws. The white Protestant elites ruling Ireland and the West Indies oscillated for much of the time between security and insecurity, and used their powers to pass laws that reflected, in moments of paranoia, their fears. As a result the laws were difficult to enforce at all consistently, since they placed unrealistic demands on state structures staffed by the same elites, who did not always remain in this position of fear and were prepared to relax the application of these laws once this paranoia had passed. In both places the intermediary or liminal groups created by religious and racial discrimination found themselves grappling with difficult dilemmas about which groups to support, and whether they could carve out advantages for themselves while maintaining the basic shape of the slave codes and penal laws. This made for a complex and fluid political and social system that likewise militated against the consistent enforcement of the slave codes and penal laws. The process of comparison is therefore a useful exercise that serves to illuminate key areas of similarity, to indicate productive areas for further research, and to begin to suggest the factors underlying systems of social control.

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