GOTHIC BLACKSTONE: TENDERNESS, TERROR AND TORTURE IN THE COMMENTARIES ON THE LAWS OF ENGLAND (1765-1769)

What do the tender emotions of the heart have to do with the English law of ritualistic torture?

Although the English famously did not indulge in judicial torture, the practice of ‘pressing’ resistant defendants to death (peine forte et dure) persisted well into the eighteenth century. And English law, it turns out, was never so ‘tender’ as when it considered the question of whether or not to torture a defendant who refused the court’s jurisdiction. William Blackstone’s Commentaries on the Laws of England not only foregrounds these emotions in its discussion of peine forte et dure, it ‘Gothicises’ them, relying on gothic conventions and gothic emotions both to legitimise the practice and to distance it from ‘modern’ Enlightenment English law. Examining this historical generic/emotional nexus sheds new light on contemporary defences for torture: modern torture is at least as concerned with bolstering the law’s authority as it is with attaining information.