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[Title Page]

Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre
and on the Periphery

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July 2014

[Abstract and Thanks]

During the long eighteenth century the capital code, and more specifically the so-called 'Bloody Code' which subjected a vast and increasing range of property crimes to the death penalty, was the centre of much popular attention and of extensive debate. The impact of the Bloody Code has also attracted much attention from historians, some of whom have argued that it played a vital role both within the criminal law and in eighteenth-century social relations more generally. However, the geography of the Bloody Code and the possibility that there were major regional differences both in the use of hanging, and in attitudes to it, has been largely ignored by historians. By systematically exploring the spatial dimensions of capital punishment in eighteenth-century Britain, this article demonstrates the refusal of many areas on the periphery to implement the Bloody Code. The reluctance in the far western and northern periphery of Britain to execute property offenders, it is argued, requires us to rethink some of our core assumptions about the key role historians have given to the Bloody Code in maintaining the hegemony of the elite, about the process by which the capital code came to be reformed, and about the reach of the state in the long eighteenth century.

* We are very grateful to the Wellcome Trust for their extremely generous support of the *Harnessing the Power of the Criminal Corpse* project (grant number 095904/Z/11/Z), out of which this article was researched and written. We would also like to thank our colleagues on the project for their helpful comments on previous drafts of the work – namely, Rachel Bennett, Owen Davies, Zoe Dyndor, Elizabeth Hurren, Francesca Matteoni, Shane McCorristine, Sarah Tarlow and Floris Tomasini.

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Peter King and Richard Ward

During the long eighteenth century the capital code, and more specifically the so-called ‘Bloody Code’ which subjected a vast and increasing range of property crimes to the death penalty, was the centre of much popular attention and of extensive debate.¹ Hangings attracted huge, ambivalent and often unruly crowds.² Newspapers reported hangings and capital trials in detail, and a growing volume of contemporary pamphlets and parliamentary

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¹ Not all of the rapidly expanding sheaf of capital statutes passed by parliament in the seventeenth and eighteenth centuries involved property offences, but the vast majority were designed to protect property, and to prevent its appropriation — see Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London, 1991), 54.

² V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770–1868* (Oxford, 1994), 56–7. Thomas Lacquer, ‘Crowds, Carnival and the State in English Executions, 1604–1868’, in A. L. Beier, David Cannadine and James Rosenheim (eds.), *The First Modern Society: Essays in English History in Honour of Lawrence Stone* (Cambridge, 1989).

debates centred on the need to reform the capital statutes.³ The impact of the Bloody Code has also attracted much attention from historians, some of whom have argued that it played a vital role both within the criminal law and in eighteenth-century social relations more generally. V. A. C. Gatrell, for example, has suggested that ‘the sanction of the gallows and the rhetoric of the death sentence were central to all relations of authority in Georgian England.’⁴ However, the geography of Bloody Code and the possibility that there were major regional differences both in the use of hanging, and in attitudes to it, has been largely ignored by historians. By systematically exploring the spatial dimensions of capital punishment in eighteenth-century Britain, this article will highlight an important aspect of criminal justice history — the widespread reluctance of many areas on the periphery to implement the Bloody Code — which both contemporary advocates of reform and later historians almost completely ignored.

³ Peter King, ‘Making Crime News: Newspapers, Violent Crime and the Selective Reporting of Old Bailey Trials in the Late Eighteenth Century’, *Crime, Histoire et Societes/Crime, History and Societies*, xiii (2009), 110–11; Randall McGowen, ‘The Problem of Punishment in Eighteenth-Century England’, in Simon Devereaux and Paul Griffiths (eds.), *Penal Practice and Culture 1500-1900: Punishing the English* (Basingstoke, 2004); Randall McGowen, ‘The Body and Punishment in Eighteenth-Century England’, *Journal of Modern History*, lix (1987); Randall McGowen, ‘A Powerful Sympathy: Terror, the Prison, and Humanitarian Reform in Early Nineteenth-Century Britain’, *Journal of British Studies*, xxv (1986); Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, 5 vols. (London, 1948–86), i, pp. 231–566.

⁴ Gatrell, *The Hanging Tree*, 32.

Historians working on criminal justice in particular regions have occasionally made reference to the possibility that the geography of execution was uneven. Gwenda Morgan and Peter Rushton, for example, noted briefly that the North-East had ‘long periods without a hanging,’ while the limited writing available on Scotland has just started to explore whether Scottish justice was less ‘exacting’ than the English Bloody Code.⁵ John Minkes’s work on the Brecon Circuit in the 1750s and D. J. V. Jones’s brief article on ‘Life and Death in Eighteenth-Century Wales’ have tentatively suggested that Welsh capital convicts received ‘more favourable punishment’, but this work has been largely ignored by those working on capital punishment in eighteenth-century England.⁶ While J. S. Cockburn and others have shown an awareness that ‘executions were disproportionately concentrated in London’, very few historians have gone beyond a simple and largely unexplored dichotomy between the

⁵ Gwenda Morgan and Peter Rushton, *Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England 1718–1800* (London, 1998), 141; Jim Smyth and Alan McKinlay, ‘Whigs, Tories and Scottish Legal Reform c.1785–1832’, *Crime, Histoire et Societes/Crime, History and Societies*, xv (2011), 111–32; M. Anne Crowther, ‘Crime, Prosecution and Mercy: English Influence and Scottish Practice in the Early Nineteenth Century’, in S. J. Connolly (ed.), *Kingdoms United? Great Britain and Ireland Since 1500: Integration and Diversity* (Dublin, 1999), 21; Anne-Marie Kilday, ‘Contemplating the Evil Within: Examining Attitudes to Criminality in Scotland, 1700–1840’, in David Lemmings (ed.), *Crime, Courtrooms and the Public Sphere in Britain 1700–1850* (Farnham, 2012), 152.

⁶ D. J. V. Jones, ‘Life and Death in Eighteenth-Century Wales’, *Welsh Historical Review*, x, (1980–1), 539; John Minkes, ‘Wales and the “Bloody Code”: The Brecon Circuit of the Court of Great Sessions in the 1750s’, *Welsh Historical Review*, xxii, (2006), 673–704; D. J. V. Jones, *Crime in Nineteenth-Century Wales* (Cardiff, 1992).

metropolis and the provinces.⁷ Although Gatrell mentioned that there were parts of the country where hangings were rare, he did not analyse hanging rates in different areas and, following Leon Radzinowicz's earlier analysis of the execution data found in the 1819 Report on the Criminal Laws, the only eighteenth-century statistics Gatrell quoted related to the South-East of England.⁸ Detailed studies of Surrey, Essex and Staffordshire have since been published, and Douglas Hay has recently produced some nationwide graphs of post-1760 pardoning rates, but we still have no county or regional-level analyses of execution rates per head of population, which are the key to making effective geographical comparisons about the impact of the Bloody Code.⁹ Using a hitherto largely neglected set of sources, this article

⁷ J. S. Cockburn, 'Punishment and Brutalization in the English Enlightenment', *Law and History Review*, xii, (1994), 159.

⁸ Gatrell, *The Hanging Tree*, 58, 202, 421, 616; Radzinowicz, *A History*, i, pp. 139–64; Douglas Hay, 'Property, Authority and the Criminal Law', in Douglas Hay *et al.* (eds.), *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1975), 23, also uses these two areas only. The 1819 Report does contain some eighteenth-century data on circuits outside the South-East including Durham from 1755, the Western Circuit from 1770, and the Brecon circuit from 1753. However, it does not include any information on Scotland or many other areas such as the Northern Circuit for the eighteenth century. See *Parliamentary Papers* (hereafter *Parl. Papers*), 'Report from the Select Committee on the Criminal Laws', viii (585), (1819).

⁹ Peter King, *Crime, Justice and Discretion in England 1740–1820* (Oxford, 2000); J. M. Beattie, *Crime and the Courts in England 1660–1800* (Oxford, 1986); Douglas Hay, 'Hanging and the English Judges: The Judicial Politics of Retention and Abolition', in David

will show that execution rates varied systematically across Britain and that the Bloody Code was widely used at the centre of the British state but often ignored on the periphery — in the far West, the North, and the North-West of England, as well in almost all of Scotland and Wales.

It will then conclude by briefly exploring a number of broader issues that this research raises — about the key role historians have given to the Bloody Code in maintaining the hegemony of the eighteenth-century elite, about the process by which the capital code came to be reformed, and about the nature of social policy implementation in the eighteenth-century British state. As Joanna Innes has pointed out, English historians have rarely set studies of crime or poverty within a wider British frame. By exploring the uneven implementation of the capital code in England, Wales and Scotland, this article aims to remedy this for at least one important aspect of the criminal justice system. More importantly it will explore the extent to which James C. Scott's broader theories about the relative autonomy experienced by regions on the periphery are applicable to eighteenth-century Britain.¹⁰ Although Scott's important book, *The Art of Not Being Governed*, is based on south-east Asia, some of his key concepts have much relevance here. His ideas about the difficulties the state experienced in governing the inhabitants of relatively distant and inaccessible regions (and particularly areas characterised by their upland/mountainous terrain, pastoral agriculture, low population density and inadequate transport links) are clearly

Garland, Randall McGowen and Michael Meranze (eds.), *America's Death Penalty: Between Past and Present* (New York, 2011), 134–5.

¹⁰ Joanna Innes, 'What would a "Four Nations" Approach to the Study of Eighteenth-Century British Social Policy Entail?', in Connolly (ed.), *Kingdoms United?*, 183; James C. Scott, *The Art of Not Being Governed* (New Haven, 2009).

applicable to eighteenth-century Britain, where most of Scotland and Wales, and substantial tracts of western and north-western England, exhibited precisely these features. Did (as Scott terms it) ‘the friction of terrain’ set substantial limits on the reach of the state and make these areas of Britain less governable, turning many regions on the periphery into ‘zones of relative autonomy’?¹¹ Research on taxation, smuggling, relief systems and the building of certain types of institutions has begun to suggest that, to a limited extent at least, this might have been the case — a theme we will return to in the conclusion. In this article we will test the relevance of Scott’s ideas from a different angle by examining whether the inhabitants of the periphery were also able to exhibit a large measure of autonomy in another key arena — in their use of the state’s ultimate sanction, the gallows.

I

Although this study also briefly analyses both non-property crime and the period after 1775, it focusses primarily on the treatment of the main group targeted by the Bloody Code — property offenders — and on the third quarter of the eighteenth century, which is the first period for which systematic records are available. It is only after 1750 that a unique and under-exploited source — the Sheriffs’ Cravings and their associated Sheriffs’ Assize Calendars — enable us to gather reliable data about almost every English county.¹² These records were created because each county’s sheriff could, and did, claim back from the Treasury the costs incurred in hanging or otherwise punishing all assize convicts. When submitting their expense claims (or ‘cravings’), the sheriffs included the assize calendars as

¹¹ Scott, *The Art*, pp. ix, 2.

¹² The National Archives, London, (hereafter TNA), Sheriffs’ Cravings, T 64/262, T 90/148–166, and Sheriffs’ Assize Calendars, E 389/242–248.

supporting evidence of the punishments meted out, and these calendars therefore constituted, as William Blackstone noted, ‘the only warrant that the sheriff has, for so material an act as taking the life away of another.’¹³ The cravings and associated calendars, when combined with the records of the Welsh Great Sessions, the Cheshire and Lancashire Palatinate jurisdictions, the Durham data in the 1819 Report, and the London data kindly made available by Simon Devereaux, enable us to count the number of hangings that occurred in each county of England and Wales between 1751 and 1775, and to calculate county-based execution rates both for property crimes under the ‘Bloody Code’ and for other offences — primarily murder.¹⁴ Since Rachel Bennett, who is currently conducting a Ph.D. on Scottish execution

¹³ William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford, 1765–9), iv, p. 369. The cravings — lists of all the yearly costs claimed by the sheriff — were also accompanied by receipts for gaoler’s bills, maintenance work and other punishment-related outlays. See, for example, TNA, E 389/245/1–24.

¹⁴ National Library of Wales (hereafter NLW), Great Sessions 4 (county Gaol Files), included within the *Crime and Punishment in Wales* online database (hereafter *Crime and Punishment in Wales*), http://www.llgc.org.uk/sesiwn_fawr/index_s.htm (accessed 7 Nov. 2013); TNA, PL 28/2–3, CHES 21/7, DURH 16/1–2; *Parl. Papers*, ‘Criminal Laws’, viii (585), (1819), 236–50. We are very grateful to Simon Devereaux for providing us with his database of London capital convictions. E. A. Wrigley, ‘English County Populations in the Later Eighteenth Century’, *Economic History Review*, lx, (2007), 54–5, has supplied the population data needed. The only gap in the cravings-based data is the nineteen towns and cities which could pass death sentences outside of the county assize, since the executions in these places were not included within the cravings. These jurisdictions have therefore been excluded from

and post-execution practices 1740–1832 has kindly let us quote the execution figures she has already gathered from the Justiciary court records between 1750 and 1770, we are also able to present some preliminary findings from north of the border.¹⁵

Focussing on the period 1750–75 is also useful for other reasons. It was a period of relative stability for the capital code. The use of hanging altered fundamentally between the late sixteenth and the early eighteenth centuries. According to Philip Jenkins' estimates, national hanging rates peaked at between 25 and 30 per 100,000 population per year in the crisis period around 1600.¹⁶ However, they then rapidly declined to about 10 per 100,000 in the 1630s, to under 5 by 1700, and to 1.3 by 1750, after which they remained very stable until the late 1770s.¹⁷ By 1750 capital punishment was playing a completely different role to the

the county population estimates against which county-by-county execution rates were calculated.

¹⁵ Our thanks to Rachel Bennett. Her Wellcome Trust-funded Ph.D. thesis is on 'Death, Execution and the Criminal Corpse: Understanding Post-Mortem Punishment in Scotland 1745–1832' (forthcoming, Univ. of Leicester). Also useful but incomplete is Alex F. Young, *The Encyclopaedia of Scottish Executions 1750–1963* (Orpington, 1998).

¹⁶ Philip Jenkins, 'From Gallows to Prison? The Execution Rate in Early Modern England', *Criminal Justice History*, vii, (1986), 52, 56; J. A. Sharpe, *Judicial Punishment in England* (London, 1990), 27–36.

¹⁷ Jenkins, 'From Gallows', 61 — since these national estimates were based mainly on areas which this article identifies as having higher than average hanging rates they may overestimate absolute levels but probably remain a good guide to change over time. Sharpe's work on Cheshire which (like Jenkins' figures) does not differentiate between executions for property crime and executions for non-property crime broadly confirms Jenkins' estimates.

one it had performed in 1600. As David Garland has pointed out, the English state was rapidly moving on from its ‘early modern stage’, in which the state frequently used rituals of execution to assert its claims to authority and to impress the populace.¹⁸ By 1750 it had embraced instead a range of penal policy options within which the death penalty was no longer ‘an unquestionable expression of sovereign power but a policy tool like any other.’¹⁹ Following its introduction as a formal sentencing option in 1718, transportation had quickly come to dominate the courts’ sentencing practices and for the first time those who felt hanging was too severe a punishment for property crime had access to a tough secondary punishment which could act as an effective alternative.²⁰ Since attitudes temporarily grew harsher in the early 1780s following the transportation crisis created by the American War and the panic about rising crime rates that followed demobilisation in 1782, the period of

Cheshire execution rates were 4 to 5 times greater in 1580–1640 than in 1690–1709 (1.5 per 100,000 per year). See J. A. Sharpe, *Crime in Early Modern England 1550–1750*, 2nd edn. (London, 1999), 90–2. Between 1750 and 1775 the Cheshire figure (0.54) for all types of offender was less than half the national average. Our 1750–75 data suggests an overall figure of 1.2 for all types of offenders and 0.9 for property crime alone.

¹⁸ David Garland, ‘Modes of Capital Punishment: The Death Penalty in Historical Perspective’, in Garland, McGowen and Meranze (eds.), *America’s Death Penalty*.

¹⁹ *Ibid.*, 51. Hanging was still a useful selective instrument of penal policy (Hay, ‘Property, Authority’; King, *Crime, Justice*) but, as Fielding pointed out, the gallows rituals no longer worked very well as a ceremonial celebration of state power — see Henry Fielding, ‘An Enquiry into the Causes of the Late Increase in Robbers’, in W. Henley (ed.), *The Complete Works of Henry Fielding* (New York, 1902), pp. xiii, 122–5.

²⁰ Beattie, *Crime and the Courts*, 620; King, *Crime, Justice*, 264;

remarkable stability in hanging rates between 1750 and the late 1770s is the best period to test underlying attitudes to capital punishment for property offenders, and ideas about its correct place within the broader range of eighteenth-century penal options.

II

The systematic county-based data on England and Wales 1750–75, seen in Map 1, indicates that there were clear and stark regional contrasts in the use of capital punishment for property offenders. If historians had analysed the scattered data on areas outside south-eastern England available in the 1819 Report they would have seen several important clues about this. For example, between 1753 and 1782 the report records that only one property offender was hanged on the Brecon Circuit (Glamorgan, Radnor and Brecon), while ninety-nine went to the gallows in Essex, despite the fact that Essex's population was less than twice as large.²¹ Map 1 makes it clear that this immense contrast is in no way untypical. In London around

²¹ *Parl. Papers*, 'Criminal Laws', viii (585), (1819), 254–5. Two others were recorded as guilty of 'Felony' but no punishment is listed. Essex numbers based on assize records as listed in King, *Crime, Justice*, 133. For another contrast — Beattie, *Crime and the Courts*, 536–7 states that Surrey hanged 101 property offenders in the years 1749–75, while in Durham (according to *Parl. Papers*, 'Criminal Laws', viii, (585), (1819), 242–4) there were only two hangings for property crimes between 1755 and 1775. Contemporaries usually argued that the parliamentary returns would slightly overestimate the number of hangings because 'the King's pardon may have been sent without the knowledge of the clerk of assize'. See *Parl. Papers*, 'Criminal Laws', viii (585), (1819), 101. However, the actual Durham number may have been three: TNA, DURH 16/1–2 and Maureen Anderson, *Durham Executions from 1700 to 1900* (Barnsley, 2007), 22–5.

590 property offenders went to the gallows 1750–75. In Merioneth, Glamorgan and Anglesey, no property offenders were hanged in that period. In operational terms the Bloody Code in these places was a dead letter. In the counties of Monmouthshire, Montgomeryshire, Westmorland, Breconshire, Pembrokeshire and Denbighshire only one person went to the gallows for property crime in these twenty-six years. Nor can these differences be put down merely to different population sizes. Execution rates per head of population were hugely different. Executions per 100,000 population per year in London, the area with the highest rate, were over fifty times higher (at 3.85) than the average rate (0.07) for the ten counties with the lowest rates, namely Cornwall, Westmorland, Durham, Montgomeryshire, Pembrokeshire, Denbighshire, Northumberland, Anglesey, Glamorganshire and Merionethshire. The inhabitants of almost all these ten counties could expect, at most, to see one hanging for property crime in their county during their adult lifetime. In several counties they would never see one. Nor was this absence of visible examples compensated for by the gibbeting of the few property offenders who did reach the gallows. Between 1750 and 1775 no property offenders were gibbeted in Wales, Cornwall or Cumberland.²²

[INSERT MAP 1, with the following title and footnote: Map 1. County Execution Rates for all Property Offences, England and Wales, 1750–75²³]

²² TNA, Sheriffs' Cravings, T 64/262, T 90/148–166, and Sheriffs' Assize Calendars, E 389/242–248; *Crime and Punishment in Wales* (accessed 7 Nov. 2013).

²³ See the sources cited in note 14. We are extremely grateful to Dr Ben Wheeler of the European Centre for Environment and Human Health, University of Exeter Medical School, for generating the map (using ArcGIS 10.1 — ESRI, Redlands, CA).

The geography of the Bloody Code in the third quarter of the eighteenth century exhibited a truly stark centre/periphery divide. These were different worlds. In London (3.85 per 100,000 population) and in three counties nearest to it — Surrey (1.98), Hertfordshire (1.58) and Essex (1.51) — the gallows were extremely regularly used against property offenders. Here the Bloody Code was a major plank of penal policy. In many counties on the western periphery, i.e. the far West and North-West of England and most of central and western Wales, it was virtually unused. However, behind this incredibly sharp contrast between the metropolis and the sparsely populated rural and mainly pastoral West and North-West lay a more subtle general pattern. The impact of the Bloody Code was like the ripples caused by a stone thrown into a pond. At the centre the water was greatly disturbed, but while the impact was still significant in the immediate regions around the capital — especially in the southern counties, and in the East Midlands — the resistance of distance (as Scott has termed it) meant that it rapidly fell away as one moved into northern England, into the South-West (Devon excepted), or into Wales. London's annual rate of executions for property crime was around twenty times greater than that found both in Lancashire and in the Midlands counties of Nottinghamshire, Derbyshire and Leicestershire. In the far North (Northumberland, Cumberland, Westmorland and Durham) it was over thirty times. Journeying west from London produced a smaller initial drop, but by the time we reach the far western county of Cornwall the figure was thirty-two times greater.²⁴ Journeying into

²⁴ London's rates were four times higher than those in Gloucestershire, Wiltshire, Oxfordshire and Hampshire. A similar pattern is found to the east. London's annual rate of executions for property crime was between two and three times that of Surrey and Essex, but it was more than eleven times greater than in the rest of East Anglia — Suffolk, Norfolk, Cambridgeshire and Huntingdonshire.

Wales produced an even greater fall. The London rate was thirty-five times greater than it was in the five counties on the western seaboard of Wales — Anglesey, Caernarvonshire, Merionethshire, Cardiganshire and Pembrokeshire.²⁵ In three Welsh counties there were no executions at all and Wales's reputation as 'the land of the white gloves' was clearly well deserved.²⁶ This ripple effect was not uniform. Counties like Devon and Radnorshire stand out as exceptions with less drastic differences in relation to London. Overall, however, there can be no doubt that historians have greatly underestimated the significance of the regional dimension of the capital code in this period.

The Scottish data is more provisional but if we begin in 1755 instead of 1750 in order to avoid the immediate aftermath of the 1745 Jacobite Rebellion, which temporarily increased the willingness of the Highland authorities to hang property offenders, it is clear that the Scots were even less willing to use the capital sanction than the Welsh (Table 1).²⁷ The annual rate of executions for property offences in England 1755–75 was 0.81. In Wales it was five times lower at 0.16, and in Scotland it was nine times lower at 0.09 (1755–70).²⁸

²⁵ The ratio was equally great in relation to central and southern Wales.

²⁶ White gloves were traditionally given to the assize judge if the assizes had been a 'Maiden' one with no capital convictions: see Jones, *Crime in Nineteenth-Century Wales*, 1. It was custom for the sheriff to pay 5s. 'Glove Money' at the conclusion of a Maiden assizes. This was frequently charged by sheriffs in the cravings, but never allowed by the Treasury — TNA, T 90/168.

²⁷ Rachel Bennett's data on hangings recorded in the Justiciary records in the period 1755–70 is used here.

²⁸ Gatrell noted in passing that 'Scotland had few hangings anyway,' — *The Hanging Tree*, p. ix.

Anne Crowther's observation that in the early nineteenth century the Scottish courts were reluctant 'to employ capital punishment on anything like the scale of England' is clearly even more applicable to the third quarter of the eighteenth century, while Anne-Marie Kilday's suggestion that Scottish justice 'was more ... exacting' than 'the infamous Bloody Code', gets no support from this data.²⁹ Even though the absolute numbers involved are very low there were also significant regional differences in execution rates for property crime within Scotland. Once the Jacobite Rebellion was a decade away, the Northern and Western Circuits both had incredibly low rates of 0.05, but the Scottish Home Circuit (which included the capital Edinburgh) had an overall rate more than four times greater at 0.21 — a differential pattern that was still in place in 1805 when parliamentary returns first offer data on Scotland.³⁰ Thus, within Scotland the centre and the more highly cultivated lowlands once again had higher rates than the western and northern periphery. The contrast between southern, metropolitan England and the Scottish Highlands was truly enormous, the overall Highlands rate being seventy-five times lower than that in London.³¹ The Scottish data therefore reinforces our picture of the marginal role played by the Bloody Code on the

²⁹ Crowther, 'Crime, Prosecution', 21; Kilday, 'Contemplating the Evil', 152.

³⁰ In the years 1805–14 there were no executions in the Northern Division of Scotland and the North-Western and North-Eastern divisions averaged 0.08, the Glasgow area 0.28 and the South-Eastern division (encompassing Edinburgh) 0.46: see *Parl. Papers*, 'A Return of Persons ... to the Several Gaols in Scotland', x (45), (1812–13), 217–32, and *Parl. Papers*, 'A Return of Persons ... to the Several Gaols in Scotland', xi (163), (1814–15), 293–312.

³¹ Using population estimates for 1760 based on J. Kyd (ed.), *Scottish Population Statistics including Webster's Analysis of Population 1755* (Edinburgh, 1952), 82 and the Scottish Justiciary records.

northern and western periphery of Britain in the third quarter of the eighteenth century.

However, the geography of executions for non-property crime — primarily murder — was very different. When it came to responding to homicide, spatial differences were much less important and attitudes were more uniform.

[INSERT TABLE 1]

The western and northern counties of England and Wales showed little reluctance to send murderers to the gallows, and as a result hangings for murder played a larger role in executions on the periphery than they did at the centre. In Glamorgan between 1750 and 1775 all of the five executions were for murder. In Monmouthshire the figure was 80 per cent; in Westmorland, Montgomeryshire and Caernarvonshire 50 per cent; in Cornwall 42 per cent. The contrast with counties near to London was stark. In Essex only 9 per cent of hangings were for murder, in London only 12 per cent. In England and Wales as a whole, 19 per cent of hangings were for homicide. On the Home Circuit the figure was 17 per cent; on the Western Circuit 25; on the Northern Circuit 35; in Wales 41; in Scotland 53.³² At the centre hangings were clearly about preserving property, but as we move away from London the gallows ceased to be dominated by those executed for property crimes and became increasingly an eye for an eye matter.³³ If you killed someone and were then found guilty of

³² Scottish figure based on the years 1755–70.

³³ Hanging rates per 100,000 population per year for murderers also reflected this.

Unsurprisingly, given what we know about the urban dominance of homicide indictment rates, Middlesex had the highest rate of executions for murder (0.57). However, areas like

murder rather than manslaughter you would almost certainly hang in later eighteenth-century Britain. The extreme reluctance to hang property offenders found in many regions on the periphery was not therefore a product of a general refusal to use the gallows under any circumstances. Nor was there a reluctance to make the execution of murderers more visible by hanging them in chains. Fifteen of the 134 murderers gibbeted in England and Wales between 1752 and 1834 were from areas on the periphery.³⁴

III

The lack of systematic pre-1750 sources makes it almost impossible to determine whether this highly polarised centre/periphery pattern in relation to the hanging of property offenders had been in existence for some time.³⁵ What is much clearer, however, is that during the

Monmouthshire (0.54), Radnorshire (0.40) and Glamorganshire (0.33) were all in the top ten counties and while the ripple effect was hardly noticeable at all.

³⁴ In other words, between the introduction of the Murder Act in 1752 (which directed that executed murderers should be subjected to the further punishment of either dissection or hanging in chains) and the abolition of hanging in chains as a punishment in 1834 — see TNA, Sheriffs' Cravings, T 64/262, T 90/148–166, and Sheriffs' Assize Calendars, E 389/242–248; *Crime and Punishment in Wales* (accessed 7 Nov. 2013).

³⁵ If Howard's research on rural Denbighshire 1660–1730 is any guide, differences may have existed earlier. Her work suggests a minimum execution rate for property offenders of 0.42 per 100,000 while the 1819 returns indicate the Home Counties rate 1689–1718 was 2.90 — Sharon Howard, *Law and Disorder in Early Modern Wales: Crime and Authority in the Denbighshire Courts c.1660–1730* (Cardiff, 2008), 133–5; *Parl. Papers*, 'Criminal Laws',

crisis of the 1780s, when large-scale demobilisation was accompanied by rapidly rising crime rates and increasingly severe punishment policies, the Bloody Code not only claimed many more lives in south-eastern England but also made some limited inroads into penal policy on the margins.³⁶ The combination of poor harvests and post-war demobilisation in 1782–3 brought rapidly increasing indictment rates for capital property crimes in London, and on the Home and Norfolk Circuits.³⁷ This would have led to rising execution rates for property crime even if punishment policies had not grown harsher, but this period also witnessed a considerable rise in the proportion of capital convicts left for execution.³⁸ This partly reflected changing government policy. In 1782 the administration announced its determination to offer ‘no pardon’ to those found guilty of robbery and other capital offences.³⁹ In 1785 the Home Circuit judges — partly in response to Martin Madan’s pamphlet demanding that no capital offenders be pardoned — announced that they would be

viii (585), (1819), 164–7. Population estimates taken from P. Deane and W. Cole, *British Economic Growth 1688–1959*, 2nd edn. (Cambridge, 1967), 103.

³⁶ The 1819 returns contain good data for an increasing number of areas by the final quarter of the eighteenth century, and Figures 1 and 2 use this data, along with pre-1780 information from the sheriffs’ expense records.

³⁷ Well discussed in Douglas Hay, ‘War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts’, *Past and Present*, xc (1982).

³⁸ On the Home Circuit it rose by a third. On the Norfolk Circuit it increased by 50 per cent: see King, *Crime, Justice*, 275, and Hay, ‘Hanging’, 134.

³⁹ *Ipswich Journal*, 14 Aug. and 23 Nov. 1782; Simon Devereaux, ‘In Place of Death: Transportation, Penal Practices and the English State 1770–1830’, in Carolyn Strange (ed.), *Qualities of Mercy: Justice, Punishment and Discretion* (Vancouver, 1996), 57.

following precisely that policy and then hanged all those they had sentenced to death at the Essex, Kent and Sussex assizes.⁴⁰

[INSERT FIGURE 1]

This policy of extreme severity was immediately attacked in the press and was soon modified, but its effect, along with the rise in capital indictments, was to create the large rise in execution rates for property crime seen in Figure 1.⁴¹ In London and on the Home and Norfolk Circuits they more than doubled, peaking in the five years centring on 1785 at around 9 and 4 and 2 per 100,000 per annum.⁴² The fourth and lowest line on Figure 1 which

⁴⁰ King, *Crime, Justice*, 276–7; *Chelmsford Chronicle*, 1 and 8 July 1785 announced these two judges' imminent arrival but then noted that Mansfield was retained on business in London. Mansfield joined Eyre at the next assizes in Kent. TNA, ASSI 31/14 and *Chelmsford Chronicle*, 15 July 1785. They then hanged fourteen of the seventeen sentenced to death at the last assizes on the circuit in Surrey. The Home Secretary clearly backed Lord Mansfield's view that 'the judges ought not to interpose discretionary mercy, but leave the law to take its course' — *Chelmsford Chronicle*, 29 July 1785 and TNA, HO 13/3/167–8, 172–3; HO 47/2/222.

⁴¹ *The Times*, 20 Sept. and 20 Oct. 1785, 9 Jan. 1786. In London, 1785 saw a doubling of the number hanged and 1787 witnessed a similar number before a return to the levels found in the late 1770s: see Simon Devereaux, 'Imposing the Royal Pardon: Execution, Transportation and Convict Resistance in London, 1789', *Law and History Review*, xxv (2007), 122.

⁴² To iron out large year-on-year differences a five-year moving average has been used in Figures 1 and 2.

represents the pattern in the five counties on the periphery with the best data — Cornwall, Westmorland and the three Brecon Circuit counties — had rarely crept above 0.1 in the twenty years before 1782 and had been 0.0 for over half a decade up to that point. However, although the levels reached were still extremely small compared to the other circuits in Figure 1, and although the change came somewhat later, this pattern was eroded in the later 1780s as overall execution rates for property crime in these five peripheral counties rose to a peak of 0.66 around 1789. Figure 2, which magnifies the scale and allows us to look at the Cornwall and Brecon Circuit patterns individually, indicates that these two areas followed a very similar path. Rising indictment rates probably played a role in generating these patterns, but once again the policies of certain judges also had an influence. In the mid-1780s a Montgomeryshire judge announced that ‘hanging was again a necessary expedient’ and the Brecon Circuit judge, George Hardinge gave repeated warnings of his ‘determination to execute.’⁴³ In 1789, having described his disgust at the ‘dangerous lenity’ inherent in the fact that ‘no capital punishment had been inflicted’ for sheep stealing ‘these twenty or thirty years,’ Hardinge promptly broke this pattern by leaving two sheep stealers to hang.⁴⁴ There

⁴³ Jones, ‘Life and Death’, 542.

⁴⁴ TNA, HO 47/8/15. Hardinge was correct — *Parl. Papers*, ‘Criminal Laws’, viii (585), (1819), 254–7, indicates that none of the twenty sheep stealers sentenced to hang on the Brecon Circuit in the years 1753–88 were executed. In England in the years 1740–80 less than 10 per cent were executed (King, *Crime, Justice*, 274) but in the mid-1780s this rose to 20 per cent and continued at this level into the 1790s (Hay, ‘Hanging’, 135).

were clearly good reasons why Byron made Hardinge the model for ‘Judge Jefferies Hardiman’ in his poem *Don Juan*.⁴⁵

[INSERT FIGURE 2]

By 1790 execution rates everywhere had fallen back to pre-crisis levels (Figure 1), but the period 1800–1 witnessed a brief resurgence of provincial execution rates. On the Brecon Circuit, where no property offenders were executed between 1792 and 1796, rates briefly peaked at over 0.6, while in Cornwall and on the Home Circuit they more than doubled, in part because of a similar (if less drastic) change of policy to that seen in the early 1780s. Faced by severe dearth, food riots and rising crime rates, Lord Kenyon announced a ‘rigorous execution of the laws,’ and in Wales Judge Hardinge was again prominent in pursuing stricter policies.⁴⁶ In 1801 he hanged two Merthyr food rioters for robbery, because he believed that ‘it would be dangerous to intimate that, where a hope to reduce the market price is the sole object, a rioter will be deemed innocent who pursues that object by force.’⁴⁷ However, in

⁴⁵ G. Byron, *Don Juan* (1819–24), xiii, stanza 88. Two years later Hardinge used the absence of indictments since he executed these two sheep stealers to claim this had worked as a deterrent. However, it seems unlikely that the hill farmers of Wales suddenly gave up their regular habit of stealing one another’s sheep (Jones, ‘Life and Death’, 540) and more likely that Welsh victims, finding execution repugnant, were dissuaded from prosecuting.

⁴⁶ King, *Crime, Justice*, 277.

⁴⁷ Hardinge referred to his duty to guard ‘the properties of men against that worst of all tyrants — a rabble unlawfully assembled’, and made it clear that this was not about punishing property crime or about the character of the accused but about social control in a period of

1802, as food prices returned to normal and the rioting ceased, this stricter policy disappeared and hanging rates settled down at new lower levels.

In the period that followed, execution levels remained significant in London and on the Home Circuit, averaging between 0.8 and 1.3 between 1805 and 1815.⁴⁸ On the periphery, by contrast, execution rates returned to the negligible levels of the period 1750–75. When contemporary newspapers reported in 1785 that ‘there had not been an execution in the county of Anglesey for upwards of thirty years’ and in 1822 that ‘an execution had not occurred at Presteign for the last seventeen years’ they were not pedalling a convenient myth but reflecting ground-level experience.⁴⁹ Overall therefore, between the mid-eighteenth century and the late 1820s (with the exception of brief periods in the 1780s and 1800–1) the hanging of property offenders followed a very different pattern on the periphery to that observed at the centre. On the western and northern periphery of England, in most of Wales and in Scotland outside the south-central belt the Bloody Code was very rarely activated in relation to property offenders.

widespread riots and incendiarism. ‘Mr Justice Hardinge’s Address to the Convicts ... Cardiff Sessions 8 April 1801’, in G. Parry, *Launched to Eternity: Crime and Punishment 1700–1900* (Aberystwyth, 2001), 26. Hardinge reduced the court to tears — see *The Diaries of John Bird 1790–1803*, ed. Hilary M. Thomas (Cardiff, 1987), 130.

⁴⁸ A change described by Devereaux as ‘a retreat in the scale of execution that constituted a kind of dress rehearsal for the *real* changes of the 1820s and 1830s’ — Simon Devereaux, ‘Recasting the Theatre of Execution: The Abolition of the Tyburn Ritual’, *Past and Present*, ccii (2009), 174.

⁴⁹ *The Times*, 4 Oct. 1785; *The Cambrian*, 4 May 1822. See also a thirty-year Brecon claim in *A Circumstantial Account of ... the Trial of Lewis Lewis* (Brecon, 1789).

IV

Explaining these huge differences in the use of the Bloody Code between the centre and the periphery involves peeling away a succession of layers within the deeply discretionary process that was the eighteenth-century criminal law, and addressing a range of questions. Were fewer crimes committed on the periphery, or were the inhabitants of those areas less inclined to prosecute property offenders? If they did decide to prosecute, were they less willing to choose a capital charge? Were the local magistracy more inclined to divert potential felony accusations at the committal stage? At the assizes were the grand jurors more willing to dismiss the accusation as ‘not found’, and if the indictment was sent on to the petty jurors were they less willing to convict, and/or more willing to use partial verdicts to reduce the conviction to a non-capital one? Finally, once capitally convicted, were property offenders in these regions more likely to be pardoned? Some of these stages cannot be analysed quantitatively. For example, victim’s decisions about whether or not to prosecute were very rarely recorded and magistrates’ preliminary decisions are equally hard to reconstruct.⁵⁰ However, jurors’ decisions can be analysed for a sample of counties, and the pardoning process can be fairly systematically surveyed through the sheriffs’ cravings, while one other potentially useful index — the parliamentary figures on county indictment rates — is also worth consideration.⁵¹

Unfortunately this indictment rate data only begins in 1805 and offers only one figure per county, which covers all felonies — including non-capital thefts, murder and other non-

⁵⁰ King, *Crime, Justice*, 18.

⁵¹ *Parl. Papers*, ‘Criminal Laws’, viii (585), (1819), 133.

property offences.⁵² Overall, however, these figures confirm what we would expect from the work of J. M. Beattie and others on individual counties.⁵³ Indictment rates per 100,000 population between 1805 and 1811 were much higher in the predominantly urban counties and often lowest in the rural and pastoral ones of Wales and of the North and West of England.⁵⁴ However, these differences in recorded crime rates in no way account for the huge differences in execution rates. In the counties of Kent, Surrey and Essex, for example, indictment rates 1805–11 were three times higher (at around 60 indictments per 100,000 population per year) than those on the Brecon Circuit (which averaged 20 per 100,000). Execution rates 1750–75, by contrast, were twenty-one times higher in the former. Cornwall's indictment rate (18 per 100,000) was eight times lower than London's (142), yet its execution rate was thirty-two times lower.⁵⁵ In the absence of comprehensive indictment

⁵² Non-property crimes were a small proportion of the overall figures but the county totals also included all minor theft tried at the quarter/borough sessions and the many non-capital ones heard at the assizes.

⁵³ Beattie, *Crime and the Courts*, 158–61; King, *Crime, Justice*, 138–45.

⁵⁴ Population estimates for each county for the middle year 1808 were calculated using figures for the year 1801 provided by Wrigley, 'English County Populations', and David Williams, 'A Note on the Population of Wales, 1536–1801', *Bulletin of the Board of Celtic Studies*, viii (1937), 359–63, combined with the figures for 1811 in the Census of that year, which can be found at *Histpop*, *The Online Historical Population Reports Website* (hereafter *Histpop*), <http://www.histpop.org/ohpr/servlet/> (accessed 7 Nov. 2013).

⁵⁵ To give a further example, the average indictment rate in the northern counties of Cumberland, Westmorland, Durham and Northumberland was seven times lower than London's, yet its execution rate was thirty-one times lower.

data for 1750–75 conclusions must be very tentative, but while indictment rates almost certainly played a substantial role in creating differences in execution rates between the centre and the periphery in the third quarter of the eighteenth century, it is clear that this was only part of the explanation. Although the lower indictment rates found on the periphery may have been partly a response to the longer journeys usually necessary to find a magistrate in upland areas, they were also evidence of different underlying attitudes. A number of historians have argued that various areas on the periphery dealt with a higher proportion of potentially serious crimes informally, using informal compensation or community-based punishments — such as *ceffyl pren* — to avoid taking offenders to the formal courts, and these informal approaches in their turn may well have been founded on a deep opposition towards the capital code in relation to property offenders and a consequent commitment to avoid indictment whenever possible.⁵⁶

The data on jury decision-making at the centre and on the periphery seen in Tables 2a and 2b, which is based on four contrasting areas — London and Essex at the centre, and Cornwall and Wales on the periphery — indicates that both grand and petty jurors played a vital role in the creation of the highly polarised execution rates seen in Map 1.⁵⁷

⁵⁶ On the strong Welsh traditions of informal punishment, compounding, etc. see Sharon Howard, ‘Investigating Responses to Theft in Early Modern Wales: Communities, Thieves and Courts’, *Continuity and Change*, xix (2004), 413–15; Jones, *Crime in Nineteenth-Century Wales*, 2–13.

⁵⁷ Using selected raids into the labyrinthine records of different assize circuits — TNA, ASSI 23/6–7, ASSI 31/2–11, ASSI 94/782–900; along with the *Old Bailey Proceedings Online*, ‘Statistics Search’, tabulating verdict category where offence category is burglary, housebreaking and theft from a specified place, between 1750 and 1775, and counting by

Unfortunately not found indictments were often thrown away and only two of these four areas — Wales and Essex — can be used to look at grand jury decisions. The results are, however, extremely thought-provoking. On the Brecon Circuit 1750–60, 34.2 per cent of assizes indictments were ‘not found’ by the grand jury.⁵⁸ In the same period at the Essex assizes only 11.9 per cent of offenders avoided punishment in this way — a similar figure to that found by Beattie in Surrey over the period 1660–1800.⁵⁹ Overall, therefore, Welsh defendants were three times more likely to escape a public trial because of the leniency of the local grand juries.⁶⁰

The petty jurors had more options. If they did not want to put the offender at risk of being hanged, they frequently resorted to the use of a partial verdict, reducing the offence in order to avoid a capital sentence. Some capital offences, most notably horse and sheep

verdict; and *Crime and Punishment in Wales*, searching the database for the offence categories of burglary, housebreaking and theft from a dwelling house, 1750–75.

⁵⁸ Minkes, ‘Wales’, 693 lists a further fifty-six cases in which the result was not recorded. These have been excluded from the calculation.

⁵⁹ TNA, ASSI 35/189–215; 11.5 per cent of Surrey capital property crimes indictments were dismissed by the grand jury 1660–1800: see Beattie, *Crime and the Courts*, 404. The figure for all property crime indictments was higher at 15.2 per cent. It is conceivable that some Essex not found indictments were not kept.

⁶⁰ This difference may have had a long history. 28 per cent of known verdicts in Denbighshire 1670–1730 were not found: see Howard, *Law and Disorder*, 134. In Essex 1620–80 the figure could be as low as 9 and 17 per cent: see J. A. Sharpe, *Crime in Seventeenth-Century England: A County Study* (Cambridge, 1983), 96, 108.

stealing, were very difficult to redefine.⁶¹ The same was true of robbery. It was widely believed in this period that ‘robbery could not be reduced to simple theft’ and partial verdicts were very rare.⁶² By contrast, in housebreaking and burglary cases juries frequently brought in verdicts such as ‘guilty of stealing only, not guilty of breaking and entering,’ and the same was true of stealing in the dwelling house without breaking in, which was only a capital offence if the goods stolen were worth at least 40s.⁶³ Since these four offences — robbery, burglary, housebreaking and stealing from a dwelling house — were also the main forms of property crime that created large numbers of capital convictions in both rural and urban areas this analysis focusses mainly on them.⁶⁴

⁶¹ Occasionally juries tried to redefine the nature of the stolen beast (e.g. describing a horse as a mule) but these offences very rarely resulted in partial verdicts: see Beattie, *Crime and the Courts*, 428–9. Over 200 cases of horse and sheep theft in Surrey 1660–1800 produced no partial verdicts. In Essex partial verdict rates 1740–1805 were 1.5 per cent for horse theft, 2.7 per cent for sheep theft, but 33.7 per cent for housebreaking and burglary together: see King, *Crime, Justice*, 232.

⁶² Beattie, *Crime and the Courts*, 429. In Essex 1.4 per cent of robbery cases 1740–1805 ended in a partial verdict: see King, *Crime, Justice*, 232.

⁶³ Juries often brought in verdicts of ‘guilty of stealing goods to the value of 39s.’ even when the evidence clearly indicated the goods were worth much more: Beattie, *Crime and the Courts*, 424.

⁶⁴ Shoplifting and pickpocketing also had to involve goods above a minimum value to be capital and were therefore targets for partial verdicts but these charges were very rare in rural England: Beattie, *Crime and the Courts*, 168; King, *Crime, Justice*, 139.

When the data for both grand and petty jury decisions is put together a quite startling difference emerges for the offence that was the greatest source of candidates for the gallows — robbery. As Table 2a indicates, the Welsh jurors, both petty and grand, made huge efforts to prevent offenders being found guilty of robbery. The Welsh grand jurors rejected an astounding 66 per cent of the robbery indictments as ‘not found’, whereas their Essex equivalents only allowed 11.2 per cent of the accused to escape in this way. Welsh petty jurors were equally generous. Over two-thirds of those they tried were found not guilty compared to 34 per cent in Essex. Overall these two sets of decisions meant that only 11 per cent of Welsh robbers were found fully guilty and therefore at risk of being hanged. The Essex figure was over five times higher at 58 per cent.⁶⁵

[INSERT TABLES 2a and b]

Essex and Wales may have been exceptional, but for petty jury decision-making alone all four sample counties can be used and a very similar pattern emerges. Table 2b compares Cornish, Welsh, London and Essex partial verdicts, acquittals and full convictions for the three most important types of capital case in which a partial verdict was a viable option — burglary, housebreaking and stealing from the dwelling house — and although sample sizes are inevitably smaller in Cornwall and Wales the pattern is clear. In Cornwall over 56 per cent of these offenders were given partial verdicts, compared to less than a third in London. Welsh jurors mainly used a different method — they were much more willing to fully acquit

⁶⁵ This pattern can also be seen in cases involving burglary, the offence that produced more capital convictions in Essex than any other apart from robbery. Here the overall figures were 25 per cent in Wales and 50 per cent in Essex.

these types of offenders. While only 20 per cent of Essex offenders were fully acquitted, in Wales the figure was nearly 40 per cent. As a result of these different decisions, overall less than a fifth of Cornish offenders and only a quarter of Welsh ones suffered a full capital conviction for these offences, compared to 38 and 41 per cent in London and Essex (Table 2b).

‘The independence of juries should not be overestimated,’ Gatrell has argued, but in areas such as Wales and Cornwall historians may well have underestimated it.⁶⁶ Grand and petty juries on the periphery deliberately ensured that a very much smaller proportion of indictments for capital property crimes resulted in a hanging. ‘The jury’ Edward Thompson pointed out, ‘attends in judgement, not only on the accused, but also upon the justice and humanity of the Law.’⁶⁷ The jurors of the periphery clearly found the Law wanting in both respects. Moreover, since prosecutors were drawn from much the same social groups as jurors, historians have suggested that they would have resembled jurors in their outlook.⁶⁸ If this was the case prosecutors on the periphery would almost certainly have been more reluctant to prosecute, and more reluctant to use capital charges, which may help to explain why indictment rates for capital property crimes were much lower.⁶⁹ It is therefore likely that the pattern of differential erosion in conviction rates for capital property offences, which we

⁶⁶ Gatrell, *The Hanging Tree*, 523.

⁶⁷ E. P. Thompson, *Writing by Candlelight* (London, 1980), 108.

⁶⁸ Hay, ‘War, Dearth’, 154.

⁶⁹ Prosecutors may also have been more willing to create an acquittal by inadequately presenting the evidence at the assizes.

can definitely trace across jury decision-making, may well have begun much earlier in the prosecution process.⁷⁰

This pattern was also mirrored after the trial in the geography of pardoning. Between 1760 and 1775 the proportion of capitally convicted property offenders that were actually hanged was much higher at the centre than on the periphery.⁷¹ The figure was lowest in London where only 52 per cent received a pardon. This may be partly due to the different ways that the pardoning process worked in the metropolis. In the provinces the key decisions were usually made by the assizes judge, but in London the Recorder reported to a committee which included key members of the government and the King himself.⁷² The attitudes and policy imperatives that leading political figures brought to these discussions, and the more diffuse nature of patronage networks in the metropolis, may well have been part of the reason

⁷⁰Occasional remarks indicate potential links. ‘Hanging is at such a discount now’ one Scottish observer remarked, ‘that the prosecutor would have got no conviction unless he had restricted’ — Crowther, ‘Crime, Prosecution’, 27.

⁷¹ Pardons and executions have been identified using the following sources: TNA, Sheriffs’ Cravings, T 64/262, T 90/148–166, Sheriffs’ Assize Calendars, E 389/242–248; *Calendar of the Home Office Papers of the Reign of George III, 1766–1769*, ed. Joseph Reddington (London, 1879); NLW, Great Sessions 4 (county Gaol Files), included within the *Crime and Punishment in Wales* website. Thanks again to Simon Devereaux for providing us with his database of London capital convictions.

⁷² J. M. Beattie, *Policing and Punishment in London 1660–1750* (Oxford, 2001), 346–7, and on the role of the Recorder, 450–2; Simon Devereaux, ‘Peel, Pardon and Punishment: The Recorder’s Report Revisited’ in Devereaux and Griffiths (eds.), *Penal Practice*, 258–84.

why pardons were more difficult to obtain.⁷³ However, this cannot explain the systematic variations in pardoning rates outside London, where counties nearer to the capital also had much lower pardoning rates than those on the periphery. In the Home Circuit counties of Essex, Surrey and Hertfordshire, for example, the average was 70 per cent. By contrast in thirteen counties — all of which were on the periphery — over 85 per cent were pardoned. Denbighshire, Northumberland, Montgomeryshire, Cornwall and Monmouthshire had rates of 85 to 97 per cent, while in Glamorganshire, Anglesey, Merionethshire, Breconshire, Caernarvonshire, Pembrokeshire, Cumberland and Westmorland it was 100 per cent. These figures on overall pardoning rates need to be treated with care. Not all forms of property crime produced the same reprieve rates. In Essex two-fifths of robbery convicts and a third of burglars were hanged while only around a tenth of sheep stealers and horse thieves, and virtually none of those accused of privately stealing from shops or from people's pockets went to the gallows.⁷⁴ This meant that the types of capital convicts prevalent in a particular region had a big impact on overall hanging rates. However, there is clear evidence of major differences in hanging rates for the same offence between different types of area and particularly between the centre and the periphery.

To isolate those differences Table 3 compares pardoning rates between 1760 and 1775 for each major category of capital offence in four different types of areas — Middlesex; five counties around London with low overall pardoning rates; five southern rural counties not

⁷³ For a detailed analysis of the Prime Minister's and the Home Secretary's intervention leading to a hanging, albeit a provincial one — Drew Gray and Peter King, 'The Killing of Constable Linnell: The Impact of Xenophobia and Elite Connections on Eighteenth-Century Justice', *Family and Community History*, xvi (2013).

⁷⁴ The period covered was 1755–1815: see King, *Crime, Justice*, 274

adjacent to London; and fourteen high pardoning rate counties on the periphery. The pattern is clear. In almost every individual type of offence for which there are sufficient numbers to make meaningful comparisons, pardoning rates are much higher on the periphery than at the centre. Only about half of those accused of robbery or burglary in London avoided the gallows. On the periphery nearly two-thirds of robbers and seven out of every eight burglars were pardoned. Stealing from a specified place (almost always a dwelling house) led to pardons in three-fifths of London cases but always ended in a pardon on the periphery. Forgery followed roughly the same pattern, as did both horse stealing and housebreaking. Across all four types of areas in Table 3 pardoning rates tended to follow the pattern one would expect from the ripple effect observed earlier. Pardoning rates for burglary for example were 46 per cent in London, 64 around London, 78 in the rural counties and 88 per cent on the periphery. These results suggest that differences in overall pardoning rates were not created primarily by the different mixes of capital crimes in different regions but by real differences in pardoning policies between the centre and the periphery. Since the process of granting a pardon often implied, as Cesare Beccaria pointed out, a ‘tacit mark of disapproval’ towards the capital code itself, these differential pardoning rates may well be evidence of a much more widespread dislike of the capital code on the periphery.⁷⁵

[INSERT TABLE 3]

By analysing the large differences in ‘not found’ rates, in petty jury verdict patterns, in pardoning rates and in more general property crime prosecution rates between London and major parts of the periphery, this quantitative approach has begun to uncover the key

⁷⁵ Radzinowicz, *A History*, i, p. 128.

mechanisms that led to the huge differences in execution rates for property crimes seen in Map 1. Individually they do not entirely explain the twenty- or thirty-fold differences between London and the far western periphery, but interactions between these different decision-making patterns almost certainly created a particularly potent set of mutually reinforcing mechanisms for mercy. If local preferences on the periphery reduced the proportion of victims willing to prosecute for property crimes (and the proportion using capital charges such as housebreaking), the much smaller assize calendars (and the lack of major capital charges within them) that resulted could generate very powerful arguments against the need to hang the few offenders who were capitally convicted. Petitions such as that sent to the Home Office by the sheriff of Cornwall pleading in mitigation ‘that the number of offences contained in the calendar at the late and the Spring assizes was very inconsiderable’ and ‘that the crime of housebreaking did not occur in the late calendar except in this single incidence,’ were not confined to the periphery, but they had particular force there because indictment rates were so much lower.⁷⁶ Just as high indictment rates could lead to harsher pardoning policies, as they did in the 1780s, so low indictment rates in particular regions on the periphery tended to reduce the desire to actually hang property offenders. This mechanism, combined with the ways jurors on the periphery systematically reduced the proportion of offenders that were fully capitally convicted, seems to have created a scarcity of executions for property crime that sensitised the public in a unique way. If we turn to more qualitative sources, to the fragmentary insights contained in newspapers, government correspondence and more particularly in the pardoning archives, it becomes clear that communities on the periphery (and key officials such as the sheriffs) were particularly

⁷⁶ TNA, HO 47/7/34.

sensitive to, and often willing to directly challenge, the use of capital punishment against routine property offenders.

V

Although the Home Office pardoning archives of the late eighteenth and early nineteenth centuries, and the more scattered pardoning papers that survive for the period before the establishment of the Home Office in 1782, only contain a relatively small number of cases from counties on the western and north-western periphery, they include important indications of the depth of communal hostility to the hanging of property offenders.⁷⁷ This evidence on the cluster of attitudes most prevalent on the periphery is difficult to interpret, embedded as it often is within a range of issues raised by each specific case. Its typicality is also hard to gauge, in part because underlying attitudes were often only made explicit in moments of crisis. However, the private nature of the pardoning process did occasionally create records in which the role of local sentiment is explicitly revealed. The attitudes of the inhabitants of Cornwall, for example, come over clearly in the surviving letters relating to two offenders awaiting execution in 1767. ‘My Lord,’ a Cornish MP wrote,

I beg the favour of you to intercede with His Majesty to ... pardon the two
criminals whose petitions I ... inclose... I can't avoid interceding for 'em [sic] as

⁷⁷ Before 1782 the less complete pardoning records that survive are found mixed with other correspondence in the State Papers Domestic held at the TNA. On distribution between circuits of pardon requests see Simon Devereaux, ‘The Criminal Branch of the Home Office 1782–1830’, in Greg T. Smith, Allyson N. May and Simon Devereaux (eds.), *Criminal Justice in the Old World and the New* (Toronto, 1998), 297.

the Borough of Launceston which I represent, also that of Newport where I chuse [sic] two members both interest themselves that they should be saved. This you may imagine must make me anxious about it.⁷⁸

Borough elections could be expensive to win and the Launceston MP continued to come under tremendous local pressure.⁷⁹ ‘The people of this neighbourhood are now more anxious than ever,’ he wrote a week later, ‘how apt they are to fancy one has not done one’s uttermost if one fails of success in a point they have set their hearts upon.’⁸⁰

By mobilising their MP in this way the local inhabitants succeeded in saving the sheep stealer Richard Williams, even though the judge had left him to hang.⁸¹ Local opinion clearly opposed his being sent to the gallows and it was local opinion that won the day in this case (though not in the case of the man capitally convicted for wrecking at the same assizes).⁸² Apart from one hanging in 1742, which occurred immediately after the passing of

⁷⁸ TNA, SP 37/6/37–9. See also *Calendar of Home Office Papers, 1766–1769*, 184–8, 251.

⁷⁹ For the expense of elections that year see *Public Advertiser*, 11 Aug. 1767. Newport borough in Cornwall elected two members.

⁸⁰ TNA, SP 37/6/37–9.

⁸¹ *Calendar of Home Office Papers 1766–1769*, 256. The assize records (TNA, ASSI 23/7) for the summer assizes of 1767 indicate that two offenders were left to hang. However, the following assize records indicate that Williams was later transported.

⁸² *Gazetteer and New Daily Advertiser*, 4 Sept. 1767. There were limits to the impact of local opinion and William Pearce, who had stolen from a shipwreck, was still hanged despite the fact he was over 70. ‘The country people’ being ‘too numerous to be repelled’ had pillaged the stranded vessel and, ‘as there were many common people in court,’ the judge ‘took the

the 1741 Act that made sheep theft a capital offence, no other Cornish sheep stealer had been hanged under that act by 1767, and none would be, until the crackdown of the later 1780s.⁸³ Although sheep farming was an important part of the local economy many influential Cornish inhabitants clearly disagreed with the use of capital punishment against this crime.⁸⁴ When a Cornish sheep stealer was again left to hang by the assize judge in 1786, ‘the general wishes of his neighbourhood to prevent his execution’ were vehemently expressed.⁸⁵ In normal times (though not in the crisis of the 1780s) local opposition effectively turned the 1741 Act into a dead letter, as it did in Cumberland, and in most of the sheep-rearing counties of Wales, where there were no hangings of sheep thieves in the Act’s first forty years.⁸⁶ In relation to

opportunity of inveighing against so savage a crime, and of declaring publicly that no importunities whatever’ would induce him to reprieve. TNA, SP 37/6/41 and 37/6/45 for the government’s backing of the hanging. See also J. Rule, ‘Wrecking and Coastal Plunder’, in Hay *et al.* (eds.), *Albion’s Fatal Tree*, 168, 187. Pearce maintained he was innocent even on the gallows — *Public Advertiser*, 22 Oct. 1767.

⁸³ Radzinowicz, *A History*, i, pp. 675–8; TNA, ASSI 23/6–7; *Parl. Papers*, ‘Criminal Laws’, viii (585), (1819), 176–7.

⁸⁴ On average nearly one sheep thief a year was convicted in Cornwall 1760–85: TNA, ASSI 23/6–7 (checked against notifications of pardons in TNA, SP 44/87–92 and E 389/243–5).

⁸⁵ TNA, HO 47/4/29.

⁸⁶ In March 1786 Judge Eyre — fresh from his policy of executing everyone on the Home Circuit in the previous year — came down on the Western Circuit and broke the pattern at the Cornwall assizes: seven sheep stealers were tried. He left two to hang. See *Parl. Papers*, ‘Criminal Laws’, viii (585), (1819); TNA, ASSI 23/8, HO 47/4/29. The pattern was broken in 1786 in Cumberland: see TNA, E 389/247, T 90/165; NLW, *Crime and Punishment in Wales*,

the Bloody Code more generally, outside the tiny minority of cases where the government was determined to make an example, and excluding brief periods of high tension such as the 1780s, local opinion in areas like Wales and Cornwall seems to have played a considerable role in shaping everyday policies towards the execution of property offenders. This influence almost certainly grew in the early nineteenth century encouraged by the more general growth of opposition towards the capital code.

Similar evidence about potent local opposition to executions for burglary can be seen in 1813 when William Morgan was left to hang at Cardiff against the explicit recommendation of the jury. The ‘public mind’ was described as having ‘very hostile feelings’ about ‘a man suffering death’ for this offence, and ‘strengthened by the decided voice of his own neighbourhood for saving his life,’ a large-scale petition by Cardiff’s inhabitants was eventually successful. Even though the judges ‘thought it necessary ... to make an example’, the Glamorgan jurors and petitioners won the day, their key counter-arguments being that the condemned man himself was a ‘victim’ of this policy, and that ‘the execution of the sentence would undoubtedly operate unfavourably in this country by preventing prosecutions in future ... and the frequency of such offences is certainly likely to be increased ... by resorting to such extremes as will deter humane sufferers from arraigning future offenders.’⁸⁷ In Caernarvon in 1822, it was reported that ‘in a county such as this, not

searching the database for the offence category of sheep-stealing, for the years 1730–1800.

The inhabitants of these areas were not averse to finding sheep stealers guilty, the judges sometimes thought that Welsh jurors were too willing, but they did not usually want them hanged: see TNA, HO 47/6/4 and HO 47/16/28.

⁸⁷ TNA, HO 47/52/27. There are echoes here of the more general arguments put forward a few years later during the reform debate.

used to crime ... the feelings of the people revolt at the idea' of a highway robber being condemned to hang, since there had been 'no execution in Caernarvon for the past twenty years.'⁸⁸ In the same county in the following year a reprieve was obtained, against the judge's wishes, for a man left for execution for stealing from a relative's house after petitions were received from all levels of the society including many 'country people at a loss for want of education.' 'Public humanity does not permit that judgement to be executed' it was argued, while it was also stressed that in places such as this, where an execution for property crime very seldom occurred, 'everyone connected with the country' was desperately keen for the county to be 'spared an execution'.⁸⁹ In 1803 Carmarthen's inhabitants were equally critical when the judge left a horse thief to hang, arguing that they did 'not think the convict ... judiciously selected as an object of public example'.⁹⁰ Petitions sometimes argued that an execution would blot 'the county's reputation' and on the periphery, where very few property offenders ever reached the gallows and mercy was the rule, it is clear that hangings often created a sense amongst the local community, both that their county's reputation was on the line, and that the convict concerned was in a real sense the victim, thus putting the judges increasingly on the defensive.⁹¹

There is also considerable evidence that county sheriffs, who were responsible for actually organising hangings and therefore experienced them much more directly, were especially prone to oppose the capital punishment system in areas on the periphery. In every county these officials were occasionally active in collecting signatures for pardon, but in both

⁸⁸ Gatrell, *The Hanging Tree*, 422; TNA, HO 47/63/9.

⁸⁹ TNA, HO 47/64/14; Gatrell, *The Hanging Tree*, 422–3.

⁹⁰ TNA, HO 47/36/4.

⁹¹ Gatrell, *The Hanging Tree*, 58.

Cornwall and Wales county sheriffs seem to have been particularly averse to executing property offenders.⁹² ‘I cannot endure the thought of having a human being executed during the time I am in office’, the sheriff of Caernarvon wrote in relation to an offender left to hang for robbery.⁹³ Some sheriffs went further and illegally delayed executions. In 1784, for example, a Cornish undersheriff was threatened with prosecution for neglecting to execute a Truro housebreaker, leaving both the judge and Lord Falmouth quietly recommending to the Home Office that a conditional pardon would now be the best solution, even though ‘the man richly deserved hanging.’⁹⁴

Six years later the Home Office took an even dimmer view of the sheriff of Carmarthen’s decision to obstruct the execution of a horse thief specifically left to hang by the judge.⁹⁵ Acting with the backing of the ‘first nobility, gentry and freeholders of Carmarthen,’ and having ‘a conviction ... that he is by no means a fit object for example,’ the sheriff chose to ignore the expiration of the initial respite, when the convict should automatically have been hanged.⁹⁶ Aware that a change of ministry was imminent, he took matters into his own hands. ‘I have on my own authority’ he admitted, ‘respited him’ — his

⁹² TNA, HO 47/7/31, HO 47/53/20, HO 47/64/14.

⁹³ TNA, HO 47/63/9; Gatrell, *The Hanging Tree*, 422.

⁹⁴ TNA, HO 47/2/10. In 1798 once again a Cornish execution was delayed by the sheriff — a delay which the Home Office described as ‘an unwarrantable act’ that could lead to disciplinary measures. TNA, HO 47/22/34

⁹⁵ The following account is based on TNA, HO 47/36/4.

⁹⁶ The sheriff also wrote that he was determined that ‘nothing within my line of duty either as chief executive of the county or as a man of humanity’ would be ‘left un-attempted’ — TNA, HO 47/36/4.

excuse mainly being ‘a legal doubt ... as to the power of a sheriff in executing a criminal after the day first appointed for his execution has elapsed.’ The Home Office clearly regarded him as ‘guilty of a high misdemeanour,’ and in ‘great contempt of justice’, and when the new Home Secretary also refused to pardon the convict he was eventually forced to hang the offender about a month after he should legally have done so.

Radnorshire’s officials went a step further in 1814, conniving in the escape of an offender in gaol awaiting execution. Sarah Chandler had been convicted of forging bank notes and despite petitions from the county’s sheriff and magistrates, as well as from many ordinary citizens, judge Hardinge was adamant that she must be executed. Her case excited great sympathy, however. She had a baby still suckling, seven children under ten, and a cruel husband who refused to support them. Judge Hardinge, angered by ‘the obstinate and frantic zeal of the country for this wicked creature’s life,’ and the connivance of the magistrates with the ‘sagacity of the mob,’ stood firm, but this clash between the mood of the country and an obstinate judge was resolved when Sarah broke out of gaol and disappeared. The judge was clear who was responsible. ‘When she escaped the cell was not locked,’ he pointed out, because the sheriff had failed to provide locks and bolts. The ‘magistracy itself’ he concluded, was guilty of ‘culpable negligence if not connivance.’ She was under the ‘wing and shield of the country’ and her escape, he claimed, was no accident.⁹⁷ The Home Office was not always powerless in such situations, but the difficulties they experienced in extracting sufficient information and their desire to keep such matters out of the public eye often forced them to compromise. Local elites in every part of the country involved

⁹⁷ For another Welsh offender awaiting execution for sheep theft who escaped from gaol in 1801 due in part to the neglect of the gaoler and lack of proper locks see D. Davies, *Law and Discord in Breconshire 1750–1880* (Aberystwyth, no date), 58–9.

themselves deeply in the pardoning process, but at this stage of research it appears that it was only on the periphery that local officials were fairly regularly prepared to actually delay or directly connive against the execution of property offenders.⁹⁸

On the periphery this especially strong reluctance to hang property offenders extended right across the social scale. The petty jurors, whose decisions prevented a huge proportion of capital property offenders from being sentenced to hang, were drawn from the middling sort and often from the ranks of minor freeholders and farmers.⁹⁹ They rarely recorded the reasons behind their decisions, but occasionally newspaper reports give some clues.¹⁰⁰ One Caernarvon juror told a correspondent surprised by an acquittal that ‘neither my fellow jurymen nor myself had the least doubt of the prisoner’s guilt: but we were unwilling to bring in a verdict of guilty because we were aware the prisoner would have been punished with

⁹⁸ Further research is needed but a fairly extensive search of pardoning cases not arising from the periphery has failed to find similar cases in which sheriffs deliberately subverted the system.

⁹⁹ Welsh jurors in particular were drawn from a lower social class than English ones: see Mark Ellis Jones, “‘An Invidious Attempt to Accelerate the Extinction of our Language’: The Abolition of the Court of Great Sessions and the Welsh Language’ *Welsh Historical Review*, xix (1998), 250. On the occupation and wealth background of English jurors see Peter King, “‘Illiterate Plebeians, Easily Misled’”: Jury Composition, Experience and Behaviour in Essex 1735-1815’, and Douglas Hay, ‘The Class Composition of the Palladium of Liberty: Trial Jurors in the Eighteenth Century’ both in J. S. Cockburn and T. Green (eds.), *Twelve Good Men and True: The Criminal Trial Jury in England 1200–1800* (Princeton, 1988).

¹⁰⁰ Jurors were not supposed to talk about their deliberations in public.

death, a penalty we conceived to be too severe for the offence'.¹⁰¹ The merciful Welsh jury was something of a stereotype. Arguing that 'the Pembrokeshire personality' had 'a deep aversion to hanging,' Audrey Philpin quotes the foreman of a local jury who when asked for the verdict announced: 'not guilty, my Lord, but he must not do it again.'¹⁰²

Since the labouring poor rarely played any part in judicial decision-making, their attitudes are even more difficult to gauge but some sense of their antipathy towards the hanging of property offenders can be inferred from their unwillingness to take on the duty of hangman. Although it was rarely easy to find a hangman in any region, there is evidence that on the periphery this often proved practically impossible. In 1769 Flintshire's sheriff in petitioning the Treasury concerning the costs of executing a local burglar wrote of his 'great difficulty and expense ... in journeys to Liverpool and Shrewsbury to hire an executioner; the convict being a native of Wales it was impossible to procure any of that country to undertake the execution.'¹⁰³ Similar problems were reported by the sheriffs of Cumberland and

¹⁰¹ Mary Aris, Julia Latham and Jo Pott (eds.), *Crime and Punishment — a Welsh Perspective: Nineteenth-Century Crime and Protest* (Gwynedd, 1987), 16–18.

¹⁰² Audrey Philpin, 'Crime and Protest 1815–1974', in David W. Howell (ed.), *Pembrokeshire County History, Volume 4: Modern Pembrokeshire 1815–1974* (Haverfordwest, 1993), 305–35. For a Welsh 1784 letter recording that the writer 'does not think people should be hanged for sheep stealing' NLW, ARCH/MSS Ref. 1130, letter from Walter Churchey; see also TNA, SP 44/87/237.

¹⁰³ *The Cambrian*, 21 Ap. 1821 recalling events 50 years earlier in which a Shropshire man hired to do the hanging absconded on the way to Flint and a fellow convict was eventually persuaded to do the task on receipt of twelve guineas. Half a century later this was still the case when a person from England acted as executioner, 'it being impossible to find anyone in

Westmorland. On two separate occasions the Cumberland sheriff was unable to recruit anyone to hang an offender and had to pay for someone to travel up from London, whilst in the 1790s the sheriff of Westmorland twice paid to bring an executioner in from Scotland.¹⁰⁴ Locals might also refuse to supply wood to make the gallows and in both Merionethshire and Anglesey local carpenters refused to erect a gallows, so that men had to be brought in from England.¹⁰⁵ The direct impact of the labouring poor on capital punishment rituals could also be significant. Riots occasionally occurred in response to capital convictions for property crime that were perceived as likely to result in a hanging, and in Cornwall in the mid-eighteenth century the Chief Justice was forced to abandon his plans to gibbet an offender, after being informed that ‘his friends would cut him down’ which would give the mob an opportunity for a ‘new triumph.’¹⁰⁶

A broad spectrum of social groups on the periphery therefore seem to have adhered to a very different set of cultural norms and imperatives in relation to the hanging of property offenders. All levels of society were involved from the ‘mob’ to the magistrates. If the

Wales to execute the office.’ However, the convict here had committed murder — *The Cambrian*, 28 Aug. 1830.

¹⁰⁴ In 1809–13: TNA, E 389/252–3 and T 90/169. One of these hangings cost the sheriff £31 — a year’s wages for a labourer: TNA, T 90/167.

¹⁰⁵ Parry, *Launched*, 38 (a case in the 1870s) and Margaret Hughes, *Crime and Punishment in Beaumaris* (Llanrwst, 2006), 71–3. However, some of this evidence comes from outside the period focussed on here and involves the hanging of non-property offenders.

¹⁰⁶ Hay, ‘Property, Authority’, 50. For a northern example relating to two highway robbers in 1790 see David Bentley, *Capital Punishment in Northern England 1750–1900* (Sheffield, 2008), 20.

Bloody Code was often a dead letter on the periphery it was primarily because the citizens of those areas chose to make it so. They remade justice from the margins in a unique and relatively merciful way.¹⁰⁷ During the early nineteenth-century debates about the capital code those who advocated their repeal made virtually no reference to the patterns of execution avoidance we have traced on the periphery, but some of their general observations remain very appropriate as a description of what was happening there.¹⁰⁸ ‘If the community is dissatisfied with the law’, Basil Montagu wrote, ‘the law’s strength is relaxed; the injured parties and public withhold their assistance; the ministers of justice endeavour by different expedients to defeat its operation.’¹⁰⁹

VI

The much higher degree of communal dissatisfaction with the Bloody Code which lay behind its successful erosion on the periphery is easier to establish than to explain. Before briefly speculating about the broader social, religious and economic differences that may have played a role, two more easily-identifiable factors — the unique nature of the administration

¹⁰⁷ For the ways justice was remade more generally at the local level see the introductory chapter on ‘Shaping and Remaking Justice from the Margins’ in Peter King, *Crime and Law in England 1750–1840: Remaking Justice from the Margins* (Cambridge, 2006), 1–72.

¹⁰⁸ Although witnesses before the 1819 Select Committee on the Criminal Laws were almost all metropolitan in orientation one did report after a recent tour of the ‘western and southern counties’ that everyone he met thought hanging ‘ought to be inflicted only in cases of murder’: see *Parl. Papers*, ‘Criminal Laws’, viii (585), (1819), 102.

¹⁰⁹ Basil Montagu, ‘Some Inquiries Respecting the Punishment of Death for Crimes without Violence’ *Pamphleteer*, xii (1818), 295.

of justice in Wales, and the impact of linguistic differences — require discussion. Two aspects of the administration of the Welsh Great Sessions probably made it easier for the local population to influence the judges. First, the Welsh judges themselves were much lesser figures than their equivalents in England. English judges were full-time and when not on circuit they sat in the prestigious Westminster courts. Welsh judges were part-timers. They had an ‘amphibious professional existence ... being judges for six weeks and practising or retired barristers’ for the rest of the year.¹¹⁰ They were appointed by ministerial patronage rather than by the Lord Chancellor and had often obtained their posts because they were MPs or had parliamentary influence.¹¹¹ Judge Hardinge, for example, was MP for the rotten borough of Old Sarum.¹¹² Most of the Welsh judges therefore lacked both the natural authority, and social distance from those approaching them for pardons, that the English judges enjoyed.¹¹³ Secondly, unlike the English judges who frequently changed circuits, the

¹¹⁰ *Parl. Papers*, ‘Report into the Practice and Proceedings of the Courts of Common Law’, ix (46), (1829), 454.

¹¹¹ *Parl. Papers*, ‘Practice and Proceedings of the Courts of Common Law’, ix (46), (1829), 453; *Parl. Papers*, ‘Report of the Select Committee on the Administration of Justice in Wales’, v (461), (1817), 113–14.

¹¹² *The History of Parliament Online* (hereafter *History of Parliament Online*), <http://www.historyofparliamentonline.org> (accessed 7 Nov. 2013), ‘George Hardinge, 1743–1816’.

¹¹³ William Retlaw Williams, *The History of the Great Sessions in Wales 1542–1830* (Brechnock, 1899), 23–4; Glynn Parry, *A Guide to the Records of Great Sessions in Wales* (Aberystwyth, 1995), p. xxv; *Parl. Papers*, ‘Practice and Proceedings of the Courts of

Welsh judges were appointed to one circuit only and therefore went back to the same few counties each year. Some served their circuit for many decades: judge Moysey for instance had already served forty years by 1817.¹¹⁴ Their appointments were for life and they therefore developed long-term relationships with key local figures, from some of whom they might receive considerable patronage.¹¹⁵ As a result, to quote the 1817 parliamentary report on the administration of justice in Wales, ‘by coming often amongst them’ the judges were able to become ‘more perfectly conversant with the manners and feelings of the Welsh.’¹¹⁶ Amongst the local knowledge they would have accumulated would have been an acute sense of the aversion the Welsh had for the hanging of property offenders, which may in part explain the very high pardoning rates found in Wales.

The potential impact of linguistic differences was also particularly great in Wales, though it may well have played an equally important role elsewhere on the periphery. In Wales the majority of the population were Welsh-speaking but the proceedings of the Great Sessions were primarily held in English, a language which many of those attending court as prosecutors, witnesses and jurors did not speak or fully understand.¹¹⁷ Since few of the judges

Common Law’, ix (46), (1829), 454. Before 1773 the Welsh judges could also appoint deputies — see *Parl. Papers*, ‘Administration of Justice in Wales’, v (461), (1817), 9.

¹¹⁴ *Parl. Papers*, ‘Administration of Justice in Wales’, v (461), (1817), 14, 68; ‘Practice and Proceedings of the Courts of Common Law’, ix (46), (1829), 419.

¹¹⁵ *Parl. Papers*, ‘Administration of Justice in Wales’, v (461), (1817), 14, for a Welsh judge holding another lucrative local office under Lord Cholmondley.

¹¹⁶ *Parl. Papers*, ‘Administration of Justice in Wales’, v (461), (1817), 42.

¹¹⁷ As late as the 1891 census 54 per cent spoke Welsh: P. O’Leary, ‘Accommodation and Resistance: A Comparison of Cultural Identities in Ireland and Wales 1880–1914’, in

appointed to the Great Sessions were Welsh-speaking, and since even those amongst the Welsh-speaking witnesses who could also speak English often refused to do so, the court was plagued by language problems.¹¹⁸ As Jenkins has pointed out, ‘many monoglot Welshmen who served on juries were unable to make much sense of the proceedings ... and were therefore prone to favour and protect their neighbours,’ and this link between the relative leniency of Welsh jurors and the fact that the hearings were not conducted in their native language was also made by some Great Sessions judges.¹¹⁹ However, the systematic refusal of Welsh jurors to fully capitally convict those accused of serious property offences such as robbery and burglary was not just a function of their inability to understand the evidence. The language issue, Minkes has argued, would also have emphasised a more important point — the generally alien nature of the legal system itself.¹²⁰

The same would have almost certainly have been true in the north-west Highlands of Scotland where Gaelic-speakers remained very widespread, and to a lesser extent in

Connolly (ed.), *Kingdoms United?*, 124. Witnesses giving evidence in Welsh were examined by means of an interpreter: William Russell Oldnall, *The Practice of the Court of Great Sessions on the Carmarthen Circuit* (London, 1814), 24; *Parl. Papers*, ‘Administration of Justice in Wales’, v (461), (1817), 6.

¹¹⁸ Howard, ‘Investigating’, 414; Williams, ‘The History of the Great Sessions’, 19, suggests that less than 15 per cent were born in Wales and not all of these would have been native speakers; Jones, “‘An Invidious Attempt’”, 232; *Parl. Papers*, ‘Practice and Proceedings of the Courts of Common Law’, ix (46), (1829), 443.

¹¹⁹ Geraint H. Jenkins, *The Foundations of Modern Wales* (Oxford, 1987), 334; Parry, *A Guide*, p. xxxi; Jones, *Crime in Nineteenth-century Wales*, 221–2.

¹²⁰ Minkes, ‘Wales’, 675.

Cornwall, even though Cornish-speaking was dying out by the end of the eighteenth century.¹²¹ The extremely close geographical correlation between the peripheral areas with very low eighteenth-century execution rates and the parts of Britain that still maintained separate Celtic language traditions is striking.¹²² They were often coterminous. Devon, with no such tradition, did not have low rates. Cornwall did. Moreover two of the three counties in Wales with less radically-low execution rates were among the few areas where Welsh speaking was also less prevalent.¹²³ Unfortunately very limited evidence has survived for eighteenth-century Ireland — the other major Celtic region that could be used for comparison. However, S. J. Connolly's work on the low numbers executed in Ireland before the 1790s and on the incredibly high acquittal rates found in areas like Cork, suggests significant parallels. Here too execution rates were up to twenty times lower in Cork than in Dublin, and counties such as Fermanagh proudly claimed to have no executions for more than two decades, leading Connolly to conclude that 'the frequent use of the gallows was

¹²¹ Philip Payton, *The Making of Modern Cornwall* (Redruth, 1992), 92; S. Dodd, 'Language and Culture in the Far South-West', in Michael Ashley Havinden *et al.* (eds.), *Centre et Peripherir: Centre and Periphery* (Exeter, 1991), 228.

¹²² John Langton, 'Languages and Dialects', in John Langton and Robert John Morris, *Atlas of Industrialising Britain 1780–1914* (London, 1986), 203; S. Ellis, 'Languages 1500–1800', in Barry W. Cunliffe *et al.* (eds.), *The Penguin Atlas of British and Irish History* (London, 2001), 152–3.

¹²³ Radnorshire and Carmarthenshire — see map of the principal language zones in Wales 1750 for importance of English speaking in these counties (Jenkins, *The Foundations*, 398).

very much a feature of English society rather than of any of the three Celtic Dominions.¹²⁴ It would be easy, given these parallel geographies, to simply assert that the Celtic lands were by nature averse to capital punishment in cases not involving violence, but this is far too simplistic. While it is true that in such areas, and particularly in Wales, legal traditions tended to emphasise restorative rather than punitive justice in property crime cases, many other forces were at work.¹²⁵

In England and Wales, the core area studied here, several broader social and economic factors also correlate well with very low execution rates. The areas with extremely low rates were predominantly upland pastoral regions. The high hanging rate areas of the South and East of England were dominated by lowland arable agriculture or mixed farming.¹²⁶ While the simple juxtaposition of two commonly used sets of conjunctions — upland/pastoral/disorderly and lowland/arable/deferential — is clearly far too simplistic, these configurations may well have influenced approaches to capital punishment. The precise vectors through which this occurred are difficult to unravel and cannot be investigated here, but different levels of social inequality may well have been one link. As Leigh Shaw Taylor's recent work has shown, mapping the ratio of male farm workers to farmers (a rough proxy for levels of rural social inequality) produces a not dissimilar pattern to the execution rates found in Map 1, the ratios being lowest in western and northern England and highest in the South-

¹²⁴ S. J. Connolly, 'Unnatural Death in Four Nations: Contrasts and Comparisons', in Connolly (ed.), *Kingdoms United?*, 210–11; S. J. Connolly, 'Albion's Fatal Twigs: Justice and Law in the Eighteenth Century', in Rosalind Mitchison and Peter Roebuck (eds.), *Economy and Society in Scotland and Ireland 1500–1939* (Edinburgh, 1988), 117–39.

¹²⁵ Howard, 'Investigating', 414.

¹²⁶ M. Overton, 'Agriculture', in Langton and Morris, *Atlas*, 35.

East.¹²⁷ Moreover, as Sharon Howard has pointed out, ratios of labourers to farmers in most of Wales were also very much lower than in arable England, where communities were more likely to be divided between small groups of well-off farmers and many landless labourers for whom, as Crabbe succinctly put it ‘the wealth around them makes them doubly poor.’¹²⁸ Commentators frequently remarked on the relative absence of inequality on the periphery. As a witness before the 1826 ‘Committee on Criminal Commitments’ pointed out, ‘in Cumberland both the farmers and the agricultural labourers are content with mean and scanty food.’ The farmers’ standards of living excited ‘no envy or discontent’ amongst the labourers ‘because in point of fact it is very little better or more luxurious.’¹²⁹ A few years later a commentator on policing in the rural districts of the northern counties stressed the high levels of ‘mutual dependence and attachment’ in such areas and pointed out that,

in the thinly populated and mountainous tracts, the soil is parcelled out amongst petty proprietors between whom and their agricultural dependants there is small distinction ... Each village forms a little community approaching more nearly to a

¹²⁷ Leigh Shaw-Taylor, ‘The Rise of Agrarian Capitalism and the Decline of Family Farming in England’, *Economic History Review*, lxxv (2012), 50.

¹²⁸ Howard, ‘Crime, Communities and Authority’, 29; Leigh Shaw-Taylor’s forthcoming work also establishes that the Welsh pattern is similar to that of northern and western England. Crabbe quote cited in Christopher Hill, *Liberty against the Law: Some Seventeenth-Century Controversies* (Harmondsworth, 1996), 19.

¹²⁹ *Parl. Papers*, Report from the Select Committee on Criminal Commitments and Convictions’, vi (534), (1826–7), 56.

state of perfect equality than can readily be conceived by those who have formed their opinions ... from observations made in the more southern counties.¹³⁰

Did relatively low levels of social inequality mean that pastoral communities on the periphery were less willing to prosecute in the major courts? The survival and growth of many informal sanctioning systems in Wales in this period certainly suggests this is a possibility. Moreover, if Douglas Hay is correct in suggesting that ‘the violence of the law, measured by prosecutions and punishments, was largely determined by the need to contain the effects, direct and indirect, of substantial social inequality’ then both propensities to prosecute and willingness to hang may well have been lower in areas like Wales, Cumberland and Cornwall than they were in the South and East, because levels of inequality were also much smaller.¹³¹

Detailed research on individual counties and areas is needed before we can unravel the deeper forces that lay behind the very low execution rates for property crime found on the eighteenth-century periphery. However, beneath the higher pardoning rates and the many levels of mitigating jury verdicts (and merciful victims’ decisions) that were the immediate causes, a group of inter-related but less easily quantified factors clearly shaped the mentalities that undermined the power of the Bloody Code throughout the periphery.

VII

¹³⁰ ‘On a Rural Constabulary Force by one of the People’, TNA, HO 73/4.

¹³¹ Douglas Hay, ‘Time, Inequality and Law’s Violence’, in Austin Sarat and Thomas R. Kearns (eds.), *Law’s Violence* (Ann Arbor, 1992), 151. On the fact that ‘differences between social groups were never as clearly marked’ in Cornwall as elsewhere see Payton, *The Making*, 88.

This new research raises several broader issues which can only be briefly discussed here. For example, if the geography of hangings was so uneven and if property offenders were virtually never executed in many areas on the periphery, this raises interesting questions about the role criminal justice historians have given to the Bloody Code in maintaining the hegemony of the eighteenth-century elite — a role that is also advanced as one of the main reasons why they wanted to leave the code unrepealed.¹³² After describing the capital statutes as ‘the legal instruments which enforced the division of property by terror,’ Douglas Hay later points out that ‘the idea of justice was always dangerous ... it was easy to claim equal justice for murderers of all classes, where a universal moral sanction was likely to be found ... The trick was to extend the communal sanction to a criminal law that was nine-tenths concerned with upholding a radical division of property.’¹³³ In relation to capital punishment at least, it is difficult not to conclude, in the light of the evidence produced here, that for much of the eighteenth century the elite almost completely failed to pull off this trick in most of Wales, Scotland and the western periphery of England.

In this context, moreover, Gatrell’s statement that ‘the sanction of the gallows and the rhetoric of the death sentence were central to all relations of authority in Georgian England’ also seems problematic.¹³⁴ It might be argued, of course, that the rhetoric alone was largely sufficient and that very few actual hangings were necessary in order to achieve this effect, but the complete absence of hangings for property crime across long periods in many counties in western Wales, Highland Scotland and the far West and North-West of England, which were by no means especially orderly places, suggests that in significant parts of Britain the penal

¹³² Hay, ‘Property, Authority’, 55–63.

¹³³ *Ibid.*, 21, 35.

¹³⁴ Gatrell, *The Hanging Tree*, 32.

system functioned equally effectively in its key everyday function — the protection of property — without the use of the death penalty. This is not to say that capital punishment was not vitally important to the governing elite when they faced extreme threats to the social and political order, such as the Gordon riots, the extensive food riots of 1800–1, or the Jacobite rebellions. Moreover, as Hay has shown, the gallows could also be used strategically in the middle of a period of rioting to deter further disturbances by threatening to hang those already arrested if their fellow rioters did not desist.¹³⁵ In such extreme contexts the widespread use of the gallows and even the threat of it were a vital part of the armoury of the elite. However, the everyday use of the Bloody Code to bolster the hegemony of the ruling elite by schooling the people in ‘the lessons of Justice, Mercy and Terror’ must surely have been constrained by the fact that in certain parts of the periphery mercy was almost universally the rule.¹³⁶ Perhaps in areas like Wales and Cornwall the elite were able to reinforce their reputations as the natural leaders of the community by using their roles as sheriffs, magistrates, MPs etc. to engage deeply and effectively in the various processes that prevented property offenders from being hung. However, the potential created by their private access to ‘the levers of fear and mercy,’ would have been very seriously constrained if local opinion almost always prevented them from using the former.¹³⁷ If significant parts of eighteenth-century Britain successfully avoided using the terror of the gallows against property offenders for long periods, the role of capital punishment in English, Scottish and Welsh social relations may have been less central than we have assumed. Even if we accept that the reinforcement of hegemony involved using a changing combination of terror and

¹³⁵ Hay, ‘Property, Authority’, 49.

¹³⁶ Quote from *Ibid.*, 62–3.

¹³⁷ Quote from *Ibid.*, 51.

mercy at different times and places, we are still left with the question of how, for extended periods, the elite maintained their authority in large areas of Britain through the use of mercy alone.

Historian's accounts of the nature and timing of the growth of opposition to the capital statutes may also need considerable modification. A deep reluctance to use the Bloody Code was already well in place on the periphery before Beccaria's *Crimes and Punishments* was published, and before influential utilitarian and evangelical advocates of reform such as Bentham and Buxton were even born.¹³⁸ There were clearly more strands to the process of opinion-formation in relation to capital punishment than most historians have recognised. If the notion that the hanging of property offenders was wrong and should be avoided first became dominant in precisely those areas, such as the far western and northern uplands of Britain, where literacy was lowest and where urbanisation and more deeply market-orientated relationships had yet to gather much momentum, the relatively straightforward relationship many have posited between the emergence of opposition to the capital code and various aspects of the journey to modernity, such as the influence of the Enlightenment, will need to be considerably modified. Gatrell's emphasis on the 'sudden revolution' represented by the 'dramatic' and rapid 'retreat from hanging in the 1830s' may also need revisiting.¹³⁹ If, as he suggests, 'it was not obvious to most people before the 1830s that capital punishment for

¹³⁸ And before Blackstone's brief but influential passage in his *Commentaries*, on which see Radzinowicz, *A History*, i, pp. 3, 276–86, 345–6. Both books were published in the 1760s. On Buxton see Richard R. Follett, *Evangelicalism, Penal theory and the Politics of Criminal Law Reform in England 1808–30* (Basingstoke, 2001), 99–105. On Bentham, Radzinowicz, *A History*, i, pp. 355–96.

¹³⁹ Gatrell, *The Hanging Tree*, 9–10.

relatively trivial crimes was an inhumane way of dealing with crime,' how can we explain the strong tradition of large-scale reluctance to execute property offenders that had already been in place for nearly a century on the periphery?¹⁴⁰

Finally, the research presented here also offers new insights into the nature and reach of the central state in the eighteenth century. For example, by showing that one of the most important weapons in the state's social policy armoury was used much more intensively in England than it was in Scotland, in Wales or (most probably) in Ireland, this study has added further weight to Joanna Innes's suggestion that the tendency of eighteenth-century historians to focus on *English* governance has created a false impression of the unity of the British state.¹⁴¹ In eighteenth-century Scotland, outside periods of acute political crisis, the use of the capital code against property offenders was minimal compared to its widespread use in England. This was partly because Scotland, which had a different legal system, had largely resisted importing new capital offences from England.¹⁴² However, since Wales had the same legal code as England, the fact that Welsh policies towards the hanging of property offenders were also much more merciful than those found in England suggests that differences in statute law were not necessarily the key factor, although administrative differences such as the lower status of the Welsh judges may have played a role. It has been argued that the case for distinguishing Welsh from English policies is much weaker than that for distinguishing

¹⁴⁰ *Ibid.*, 241.

¹⁴¹ Innes, 'What would', 199.

¹⁴² Crowther, 'Crime, Prosecution', 19. On the legislative process for Scotland — Joanna Innes 'Legislating for Three Kingdoms: How the Westminster Parliament Legislated for England, Scotland and Ireland 1707–1830', in Julian Hoppit (ed.), *Parliaments, Nations and Identities in Britain and Ireland 1660–1850* (Manchester, 2003).

Scottish from English, but in relation to the Bloody Code this does not seem to have been the case.¹⁴³ Although Scotland had a different legal system to that of England and Wales, the actual policies it pursued in relation to capital punishment had much in common with the latter and very little with the former.

Since an extreme reluctance to activate the Bloody Code also dominated criminal justice policy on the western periphery of England, it seems, however, that these variations between Scotland, England and Wales may have been less important than a much more general factor — overall distance from the centre. The fact that almost every area on the far western and northern periphery largely avoided using the Bloody Code for long periods in the second half of the eighteenth century and the early decades of the nineteenth century suggests that, as James C. Scott has argued, the sheer distance of regions from the centre and the parallel erosion of central power in the western uplands caused by ‘the friction of terrain’ set severe limitations on the cultural and political influence of the British state.¹⁴⁴ Research on other areas of social and fiscal policy suggests that this pattern was not confined to the capital code. From the beginning of the Old Poor Law to the early days of the New, the state experienced many problems in implementing poor law policy in parts of the periphery. For example, while formal rate-financed poor relief was in operation in most parts of England by the mid-seventeenth century, much of Wales did not levy poor rates until the early eighteenth,

¹⁴³ Innes, ‘What would’, 183.

¹⁴⁴ Scott, *The Art*, p. xi. Hechter’s conclusion that ‘the Celtic territories were only minimally integrated’ during the long eighteenth century, while it overstates the case, also gains support from this study: see Michael Hechter, *Internal Colonialism: The Celtic Fringe in British National Development 1536–1966* (London, 1975), 123.

and some parts were still not doing so in 1780.¹⁴⁵ This pattern continued through to the New Poor Law era. The deep resistance of the Welsh to the workhouse principle was also echoed in the South-West — these regions being the main areas where out-relief absolutely dominated poor law provision, and when the central Poor Law Commissioners were forced to make policy exceptions it was primarily the same regions that benefited.¹⁴⁶ The poor law unions excluded from the General Order of 1845, for example, came almost exclusively from the North-West, the North-East, Wales and Cornwall — such exceptions, as Keith Snell has pointed out, being particularly ‘revealing of local opposition to central policy.’¹⁴⁷ In the area of prison building similar patterns can be found. By the 1630s almost every area of England had implemented the legislation requiring the building of county houses of correction, but the central state had to wait another century before most of Wales came into line.¹⁴⁸ Taxation policies could be equally difficult to enforce on the western periphery. Eighteenth-century

¹⁴⁵ Geraint H. Jenkins, *The Foundations of Modern Wales 1642–1780* (Oxford, 1987), 168; Paul Slack, *Poverty and Policy in Tudor and Stuart England* (London, 1988), 184–5. Innes, ‘What would’, 187. On North and West against South and East spatial divisions in the nature and levels of eighteenth-century poor relief see Steven King, *Poverty and Welfare in England 1700–1850* (Manchester, 2000).

¹⁴⁶ David Englander, *Poverty and Poor Law Reform in Nineteenth-Century Britain, 1834–1914* (London, 1998), 29 and 44; K. D. M. Snell, *Parish and Belonging: Community, Identity and Welfare in England and Wales 1700–1950* (Cambridge, 2006), 229–61.

¹⁴⁷ Snell, *Parish and Belonging*, 240–1.

¹⁴⁸ Joanna Innes, ‘Prisons for the Poor: English Bridewells 1555–1800’, in Francis Snyder and Douglas Hay (eds.), *Labour, Law and Crime: An Historical Perspective* (London, 1987), 62; Innes, ‘What would’, 185–7.

Land Tax burdens were lightest in the North, Wales and to a lesser extent in the South-West and heaviest in the South and East, which carried burdens six or more times greater than those of Cumbria and western Wales.¹⁴⁹ The avoidance of customs and excise duty, while widespread everywhere, was also particularly prevalent in areas like Cornwall where the jurors simply refused to convict. In 1768, for example, the trial of four smugglers indicted for the murder of a Penzance excise officer was reported as follows: ‘the trial lasted upwards of eleven hours when the facts were fully and clearly proved ... notwithstanding which the jury (contrary to the opinion of the whole court) found them not guilty.’ This pattern was not exceptional. A decade later the Cornish magistrate Edward Giddy admitted it was useless to bring Revenue cases to court because ‘a Cornish jury would certainly acquit the smugglers.’¹⁵⁰

Thus it was not only in relation to the use of capital punishment for property offenders that attitudes on the periphery were completely different. In other key areas of policy, such as the raising of taxes or the building of institutions like prisons and workhouses, the eighteenth- and early nineteenth-century state, based as it was on a multi-centred institutional framework that was less regulatory than it had been in the seventeenth century, often found it difficult to

¹⁴⁹ Donald E. Ginter, *A Measure of Wealth: The English Land Tax in Historical Analysis* (Montreal, 1992), 250–1; John Brewer, *The Sinews of Power: War, Money and the English State 1688–1783* (London, 1989), 201.

¹⁵⁰ Paul Muskett, ‘English Smuggling in the Eighteenth Century’ (Open Univ. Ph.D. thesis, 1997), 319–23. Opposition to revenue officers was also strong nearer London but murderous smugglers were sometimes convicted there without recourse to transferring the case to the Old Bailey — Cal Winslow, ‘Sussex Smugglers’, in Hay *et al.* (eds.), *Albion’s Fatal Tree*, 119–66.

fully impose its policies on the periphery.¹⁵¹ By looking at a central aspect of the state's power, its monopoly of judicial violence (and in particular its use of the key coercive force of the gallows), this study has added new weight to a growing body of research which suggests that Scott's ideas about the relative autonomy experienced by regions on the periphery have important implications for our understanding of the limitations of the central state in eighteenth-century Britain.¹⁵² The deep reluctance of the far western and northern peripheries of Britain to implement the Bloody Code to any significant degree may therefore require us to rethink not only some of our core assumptions about the foundations of the elite's hegemony and our narrative about changing attitudes to the abolition of capital punishment, but also our understanding of the geographical limitations of the reach of the fiscal-military state in the long eighteenth century.

¹⁵¹ Innes, 'What would', 187.

¹⁵² Scott, *The Art*.

Map 1. County Execution Rates for all Property Offences, England and Wales, 1750–75

(Execution rates are per 100,000 population per annum)

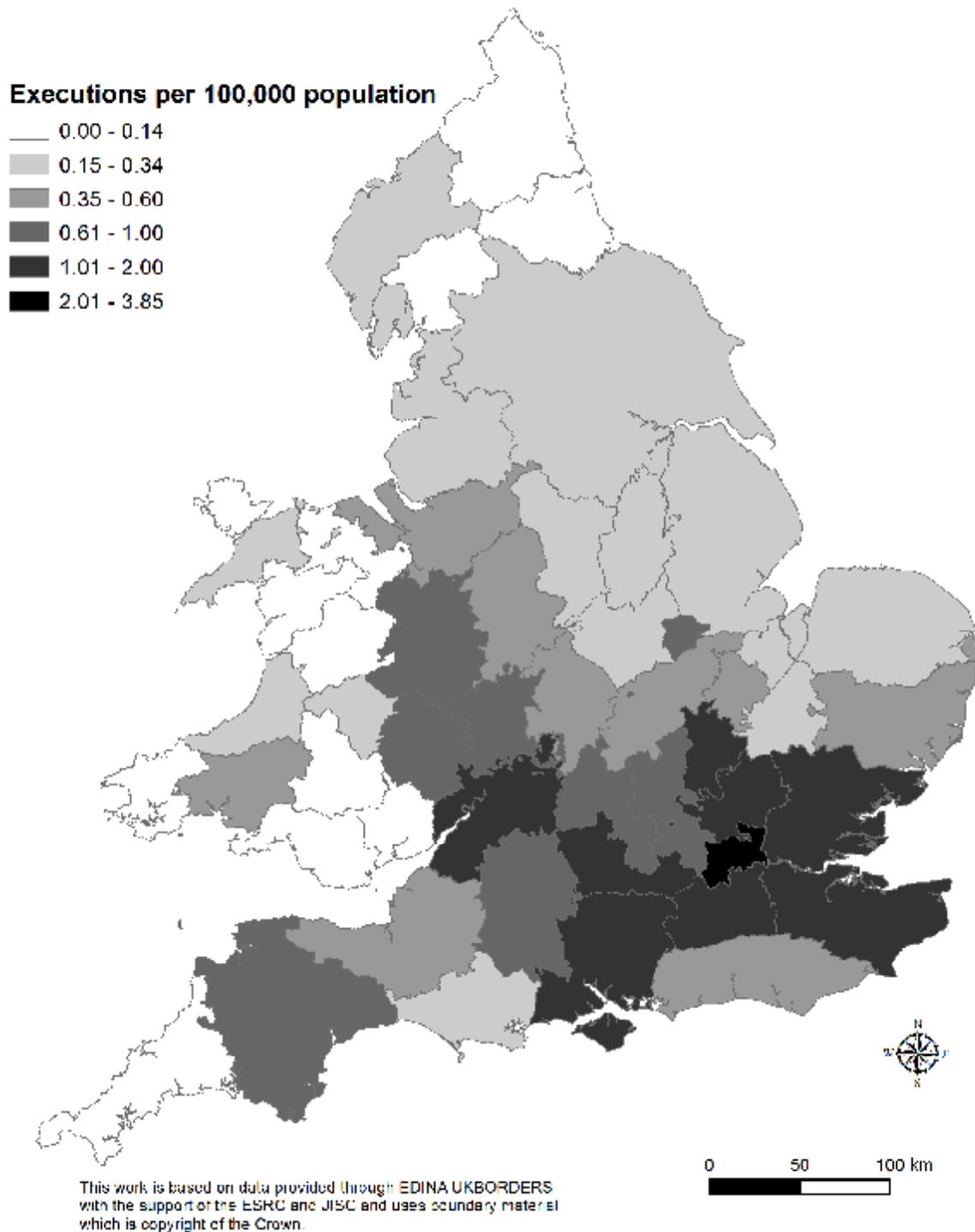


Table 1. Execution Rates for Property Offences in England (1755–75), Wales (1755–75) and Scotland (1755–70)

(Execution rates are per 100,000 population per annum)

Country	Executions - Property Offences	Population Estimate	Years of Data	Execution Rate - Property Offences
England	1,056	6,211,289	21	0.81
Wales	16	477,105	21	0.16
Scotland	20	1,317,582	16	0.09
Total	1,092	8,005,976	19	0.72

NB. Population estimate for England and Wales is based on the year 1765, and for Scotland it is based on the year 1762. Cheshire and Monmouthshire are included within England.

Figure 1. Execution Rates for Property Offences in Middlesex, Home Circuit, Norfolk Circuit and Western Peripheries, 1750–1819

(Execution rates are per 100,000 population and 5 year moving averages).

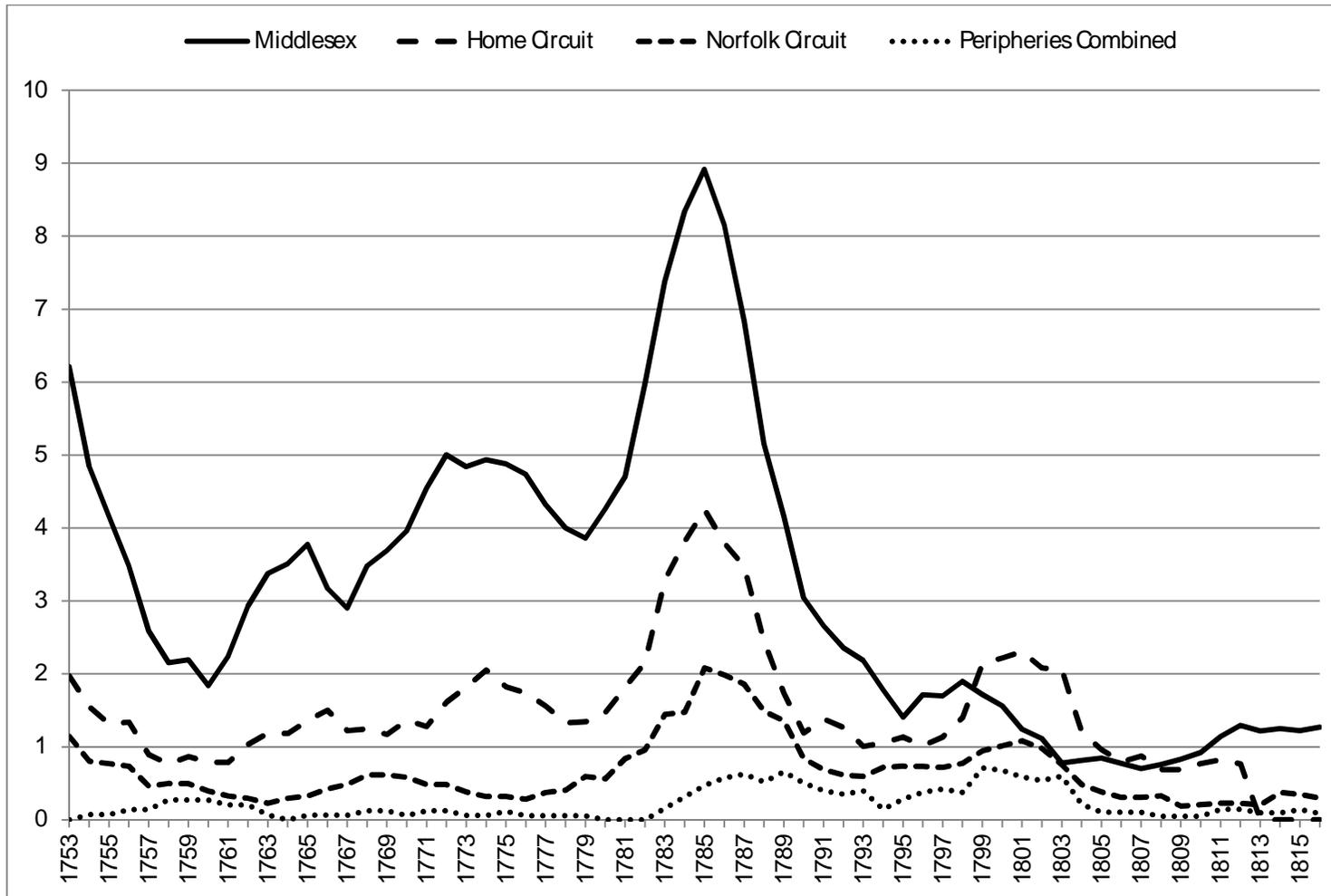


Figure 2. Execution Rates for Property Offences in Cornwall and the Brecon Circuit, 1750–1819

(Execution rates are per 100,000 population and 5 year moving averages)

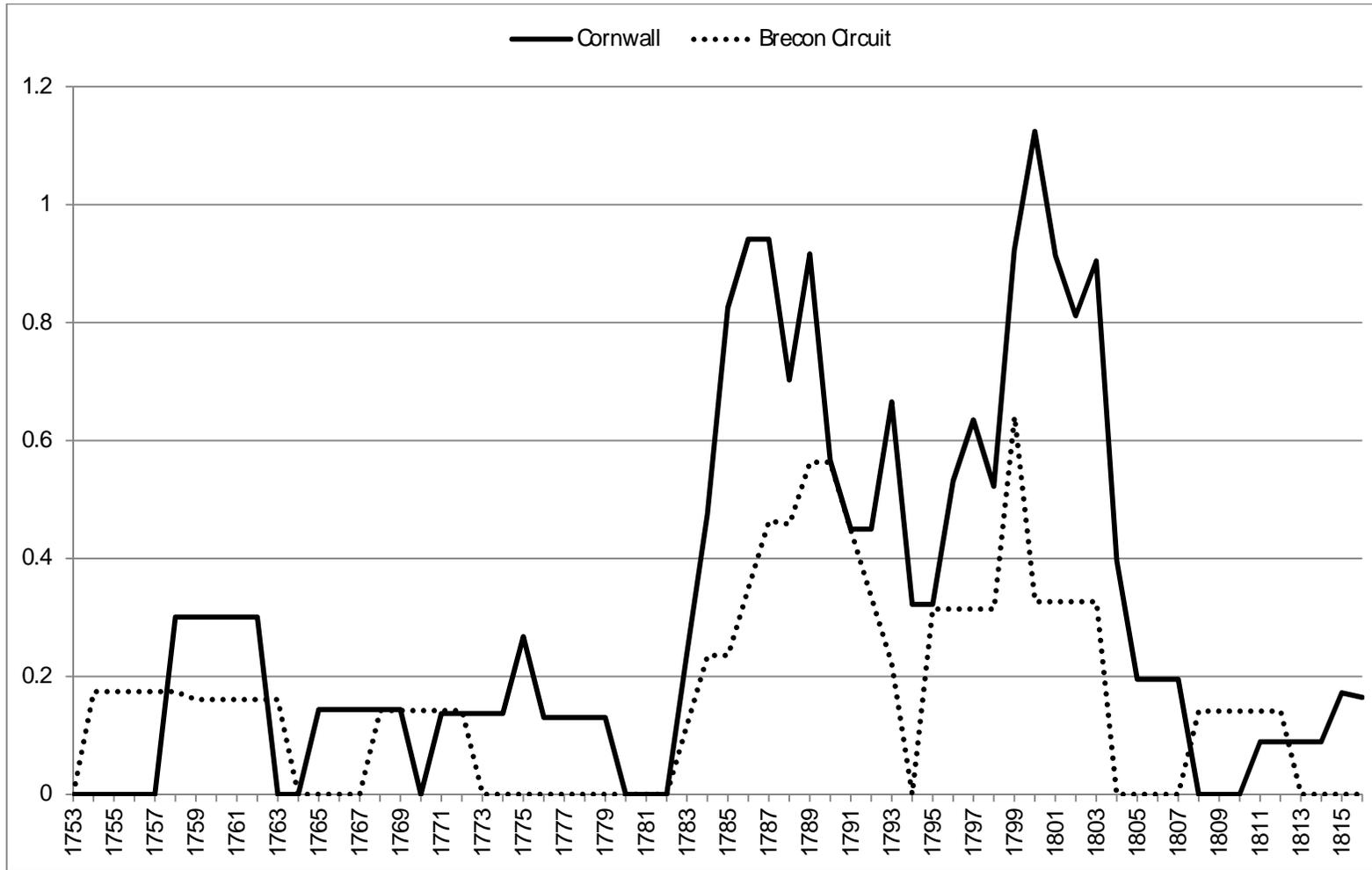


Table 2a. Robbery — Grand and Petty Jury Verdicts, 1750–75

Grand jury verdicts

	Not found	Found	Total	% Not Found
Wales	31	16	47	66%
Essex	13	103	116	11%

Petty jury verdicts

	Not Guilty	Partial Verdict	Full Guilty	Total	% NG	% PV	% FG
Wales	11	0	5	16	69%	0%	31%
Essex	35	1	67	103	34%	1%	65%

Combined Grand and Petty jury

	Full Guilty	Total	% FG
Wales	5	47	11%
Essex	67	116	58%

Table 2b. Petty Jury Verdicts — Burglary, Housebreaking and Theft from Dwelling House combined, 1750–75

Region	Not Guilty	Partial Verdict	Full Guilty	Total	% NG	% PV	% FG
Wales	60	52	41	153	39%	34%	27%
Cornwall	23	54	19	96	24%	56%	20%
Essex	47	91	96	234	20%	39%	41%
London	622	655	789	2066	30%	32%	38%
Total	704	758	849	2311	30%	33%	37%

Table 3. Percentage Pardoned by Category of Offence for Selected English and Welsh Counties, 1760–75

Offence Category	Middlesex		Met Low Pard Rate Counties		Rural Low Pard Rate Counties		Periphery High Pard Rate Counties	
	Capital Convictions	% Pardoned	Capital Convictions	% Pardoned	Capital Convictions	% Pardoned	Capital Convictions	% Pardoned
All Offs	786	52.0%	663	72.9%	555	80.0%	174	94.8%
Robbery	280	51.8%	238	58.4%	111	52.3%	14	64.3%
Burglary	218	46.3%	119	63.9%	101	78.2%	16	87.5%
House Breaking	8	62.5%	35	82.9%	55	81.8%	8	100.0%
Horse Stealing	33	78.8%	121	91.7%	105	90.5%	48	97.9%
Cattle Stealing	18	100.0%	67	98.5%	102	97.1%	65	98.5%
Stealing Specified Place	114	58.8%	36	88.9%	47	85.1%	9	100.0%
Shoplifting	22	77.3%	5	100.0%	0	-	1	100.0%
Pickpocketing	12	100.0%	7	100.0%	6	100.0%	3	66.7%
Misc Theft	0	-	5	100.0%	12	100.0%	5	80.0%
Forgery	51	21.6%	4	0.0%	7	57.1%	3	100.0%
Fraud	20	25.0%	8	37.5%	1	100.0%	0	-
Coining	10	20.0%	6	50.0%	0	-	1	100.0%
Arson	0	-	6	50.0%	8	62.5%	1	100.0%
Damage to Property	0	-	6	66.7%	0	-	0	-

Middlesex: City of London and Middlesex

Metropolitan Low Pardoning Rate Counties: Berkshire, Essex, Hertfordshire, Kent, Surrey

Rural Low Pardoning Rate Counties: Devon, Gloucestershire, Hampshire, Suffolk, Wiltshire

Periphery High Pardoning Rate Counties: Anglesey, Breconshire, Caernarvonshire, Cornwall, Cumberland, Denbighshire, Glamorganshire, Merionethshire, Monmouthshire, Montgomeryshire, Northumberland, Pembrokeshire, Radnorshire, Westmorland