

**THE BLOODIEST CODE:  
COUNTING EXECUTIONS AND PARDONS  
AT THE OLD BAILEY, 1730-1837**

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**Abstract**

This article presents the most detailed and accurate accounting to date of capital convicts at the Old Bailey during the era of England's 'Bloody Code' (1730-1837), at which time that court produced more capital convictions and executions than any other jurisdiction in the western world. It notes and explains some limitations of the two most authoritative sources for the statistics of capital punishment at the Old Bailey currently available: the published trial *Proceedings* of the court; and the statistical returns presented to Parliament from 1818 onwards. And it reviews the sorts of criteria that need to be considered in determining how a more complete accounting of all those condemned and executed might be achieved.

**Keywords:** Capital punishment; Old Bailey; 'Bloody Code'

**Introduction**

This article introduces and explains the most extensive and accurate accounting of execution and pardon at the Old Bailey that has yet been attempted. It is derived from a new web-based dataset whose aim is to provide – and to make searchable – all of the relevant and recoverable details (with documentary references) pertaining to the 9,474 men, women and (sometimes) children who were capitally convicted at London's Old Bailey courthouse from 1730 to 1837.<sup>2</sup> The Old Bailey (more properly known to contemporaries as the 'Sessions House') was the largest single criminal jurisdiction in eighteenth century Europe, the population of London having surpassed that of its principal continental rival Paris no later than 1700.<sup>3</sup> Even so, until the last three years examined here, the Old Bailey did not embrace the entire metropolitan conurbation.

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<sup>2</sup> 'Execution and Pardon: Capital Convictions at the Old Bailey, 1730-1837' <hcmc.uvic.ca>.

<sup>3</sup> Francis Sheppard, *London: A History* (Oxford University Press, 1998) pp.126-7, which also notes that London's population had exceeded that of the largest city known to westerners, Constantinople, by about 1750.

The court held the trials for all capital offences committed in both the City of London and the county of Middlesex (which included the city of Westminster). On the south side of the Thames, however, and effectively contiguous with London in most practical respects, lay Southwark. This was the largest town in the county of Surrey, the home to its county gaol, and the site of those executions which followed that county's twice-yearly assizes.<sup>4</sup> The Central Criminal Court Act 1834 (4 & 5 William IV, c.36) formally renamed the Old Bailey and extended its jurisdiction not only to Southwark but also to those parts of the counties of Essex and Kent which now also contained substantial suburban extensions of the metropolis.

## 1 The Significance of London and the Old Bailey

A full and detailed grasp of the practice of 'the Bloody Code' at the Old Bailey deserves close attention because the Old Bailey was unrivalled throughout the western world for the scale on which execution was practiced. A recent article by Peter King and Richard Ward demonstrates that, during the third quarter of the eighteenth century, more people were capitally convicted – and more of those capital convicts were actually hanged – in London than in any other part of Britain.<sup>5</sup> Execution levels in those counties immediately surrounding the capital (the Home Circuit) were close to those in the metropolis; but as we move further away from London, execution (and even conviction) levels begin to fall dramatically. Far fewer people were hanged in the Midlands and the West Country. By the time we reach those parts of the realm furthest removed from London – especially northern England and the Celtic peripheries of Scotland and Wales – we find places where not a single offender might be hanged for several years in a row, sometimes more than a decade.<sup>6</sup> Although the precise scale of this pattern perhaps varied during the years before and after those studied by King and Ward, there can be little doubt that, by a very wide margin, London usually put far more people on the gallows than did any other

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<sup>4</sup> J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton University Press, 1986) pp.25-32, 288; V.A.C. Gatrell, *The Hanging Tree: Execution and the English People, 1770-1868* (Oxford University Press, 1994) pp.30-2; J.M. Beattie, *Policing and Punishment in London, 1660-1750: Urban Crime and the Limits of Terror* (Oxford University Press, 2001) pp.12-17.

<sup>5</sup> 'It is not believed that there are 100 criminals executed in a year at present,' remarked the lawyer and antiquary Daines Barrington in the 1760s, 'and the county of Middlesex furnishes a considerable part of them'. *Observations on the More Ancient Statutes* (third edn., W. Bowyer and J. Nichols, 1769) p.462.

<sup>6</sup> Peter King and Richard Ward, 'Rethinking the Bloody Code in Eighteenth Century Britain: Capital Punishment at the Centre and On the Periphery,' *Past & Present*, 228 (August 2015) 159-205. The title of the present paper explicitly echoes and complements that of King and Ward's.

part of the realm throughout the Georgian era.<sup>7</sup> Indeed, London appears to have led the western world in putting convicted criminals to death. No towns or regions in the white ‘settler’ colonies of the British Atlantic hanged anywhere near as many people as did the imperial metropolis. During the entire second half of the eighteenth century, the five largest cities in the Thirteen Colonies hanged only 99 (Philadelphia), 56 (New York), 23 (Boston), 90 (Charleston) and 6 (Newport, RI) people each.<sup>8</sup> Amongst colonies that remained loyal to Britain after 1783, Nova Scotia hanged only 53 people from 1749 to 1815, and Upper Canada only 92 from 1792 all the way down to 1869.<sup>9</sup>

Comprehensive comparison with the major cities of Europe is more difficult, either because resources for those places are lacking or because their historians have been less quantitatively- and more culturally-minded in writing the history of punishment than have many of their British colleagues. The best available comparison is Pieter Spierenburg’s data for Amsterdam from 1651 to 1810; these figures suggest that Old Bailey executions routinely outnumbered those in the Dutch metropolis until the turn of the nineteenth century.<sup>10</sup> During the second half of the eighteenth century, executions in London positively dwarfed those of Madrid, which seldom reached double digits in any one of those years.<sup>11</sup> Reliable figures for Paris do not yet appear to be available, but even if all of the 108 people said to have been sentenced to death there from 1775 through 1786 were actually executed, the 584 hanged by the Old Bailey during the same years far outstrips any ‘excesses’ which might be expected of a regime that was on the brink of

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<sup>7</sup> The post-1805 data, which show a steady increase in the Old Bailey’s share of all executions in England and Wales, are in Gatrell, *Hanging Tree*, p.617. During the years immediately before that, however, per capita execution rates on the Home Circuit briefly exceeded those in the capital (King and Ward, ‘Rethinking the Bloody Code’, pp.173-6).

<sup>8</sup> Gabriele Gottlieb, ‘Theater of Death: Capital Punishment in Early America, 1750-1800’ (Ph.D. thesis, University of Pittsburgh, 2005) pp.98-9, 104-7, 115-20. For executions in New York City, see Daniel Allen Hearn, *Legal Executions in New York State: A Comprehensive Reference, 1639-1963* (McFarland, 1997) pp.13-29; for Newport, see Hearn, *Legal Executions in New England: A Comprehensive Reference, 1623-1960* (McFarland, 1999) pp.139-87.

<sup>9</sup> Jim Phillips, ‘The Operation of the Royal Pardon in Nova Scotia, 1749-1815’, *University of Toronto Law Journal*, 42 (1992) p.424; Peter Oliver, ‘*Terror to Evil-Doers*’: *Prisons and Punishments in Nineteenth-Century Ontario* (University of Toronto Press, 1998) pp.29-30.

<sup>10</sup> Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge University Press, 1984) pp.81-3; table appended to this article. The respective figures are:

	1730s	1740s	1750s	1760s	1770s	1780s	1790s	1800s
London (Old Bailey)	34.1	28.3	32.9	22.5	36.9	53.4	21.4	11.1
Amsterdam	26.6	27.2	21.5	18.6	16.8	19.7	28.8	55.0

<sup>11</sup> Ruth Pike, ‘Capital Punishment in Eighteenth-Century Spain’, *Histoire sociale/Social History*, 18/36

revolutionary dissolution.<sup>12</sup> The figures that Richard J. Evans provides for various German states in the early nineteenth century indicating that, even though these were comparatively merciful years in London, the Old Bailey still executed more people than did all of Bavaria, Baden and Hesse combined and more (save for one or two years in the 1830s) than were executed in the largest German state, Prussia.<sup>13</sup> Contemporary English commentators frequently congratulated their nation on what they believed to be its more humane judicial processes, including basic protections of the rights of the accused, the absence of torture in judicial proceedings, and the use (in virtually all cases) of simple hanging in place of such exquisitely-prolonged execution rituals as breaking on the wheel.<sup>14</sup> Yet it seems almost certain that, until the very last of the years summarized here, more people were actually put to death in London than in any other urban jurisdiction in the western world.<sup>15</sup>

As imposing as they must have been to contemporary execution-goers, however, absolute numbers do not necessarily tell the whole story. Some of the bare numbers might appear to be somewhat mitigated when expressed in per capita terms. Although Madrid was less than one-fifth the size of London, its per capita execution rate only exceeded that of London in perhaps three years during the second half of the eighteenth century and usually fell well behind it.<sup>16</sup> Louis XVI's Paris appears to have executed (at most) only one in every 6,000 inhabitants, compared with London's one in every 1,300 during the same years.<sup>17</sup> Most strikingly of all,

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(1986) 377-8.

<sup>12</sup> H. Monin, *L'État de Paris en 1789: Études et Documents sur l'Ancien Régime à Paris* (Maison Quantin, 1889) pp.89-91. It is unclear to me how this source yields a calculation of 32 executions for the years 1774-77, as stated in Claude Manceron, *Les Hommes de la Liberté – I: Les Vingt Ans du Roi: De la Mort de Louis XV à Celle de Rousseau 1774/1778* (R. Laffont, 1972) pp.451-2, and recapitulated by George Armstrong Kelly, *Mortal Politics in Eighteenth Century France* (University of Waterloo Press, 1986) pp.187-8.

<sup>13</sup> Richard J. Evans, *Rituals of Retribution: Capital Punishment in Germany, 1600-1987* (Oxford University Press, 1996) pp.228-30, 918, 922-7.

<sup>14</sup> Breaking on the wheel was not abolished in France until 1791 and appears to have been practiced in Germany for another half century beyond that; see Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford University Press, 2012) pp.230-8; and Evans, *Rituals of Retribution*, p.279. The chronology of decline in the use of torture in the procedural and penal practices of various western nations is concisely summarized in David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Harvard University Press, 2010) pp.101-3.

<sup>15</sup> On this point, see also Gatrell, *Hanging Tree*, pp.8-9.

<sup>16</sup> Peter Clark, *European Cities and Towns, 400-2000* (Oxford University Press, 2009) p.131; Pike, 'Capital Punishment', p.378.

<sup>17</sup> As calculated using the figures cited above at note 12 and taking the respective populations at the time to have been about 650,000 and 770,000, as given in Clark, *European Cities*, p.124, and John Landers, *Death and the Metropolis: Studies in the Demographic History of London, 1670-1830* (Cambridge

Prussia executed only one person in every 1.2 million inhabitants in 1818-27: the comparable figure for London would have been about one in every 7,000.<sup>18</sup> But London looks somewhat better in the light of other comparisons. Gabriele Gottlieb has estimated that, whereas the Old Bailey hanged about one person for every 500 in London during the second half of the eighteenth century, Philadelphia hanged one in 347 and Charleston an imposing one in 128.<sup>19</sup> Most remarkably, Amsterdam was less than a quarter of London's size, so its per-capita execution levels must actually have been considerably higher than London's throughout the eighteenth century and enormously so at the turn of the nineteenth.<sup>20</sup>

In any event, and as the data tabulated here suggest, the practice of execution at the Old Bailey also varied dramatically over time in ways which – upon closer examination and contextualization – clearly foreshadowed the decisive recession of England's 'Bloody Code' after 1829.<sup>21</sup> Nevertheless, for much of the century set out here, the Old Bailey has justifiably been characterized as England's 'Hanging Court,' though Vic Gatrell's emphatic assertion 'that the noose was at its most active [in England] on the very eve of capital law repeals!' does not hold true for the Old Bailey in the way that it may do for England overall.<sup>22</sup>

## **2 Challenges to Accuracy and Completeness**

Historians of capital punishment in London could be forgiven for believing that the statistical outlines of the subject have already been definitively established. What do the tabulated figures appended to this paper provide that might not be available in either the oldest authoritative source – the parliamentary returns – or such modern electronic resources as the Old Bailey

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University Press, 1993) p.179.

<sup>18</sup> Evans, *Rituals of Retribution*, p.229; table appended; B.R. Mitchell with Phyllis Deane, *Abstract of British Historical Statistics* (Cambridge University Press, 1962) p.19.

<sup>19</sup> Gottlieb, 'Theater of Death', pp.95-6 (she also notes that Boston hanged one in almost 700). The marked difference between Gottlieb's per capita execution rate and that which I have calculated for 1775-86 (above at note 17) is largely explained by the fact that the total number of executions during those twelve years alone comprised about one-third of all Old Bailey executions during the entire second half of the eighteenth century. Richmond, Virginia (1782-1800) is even more remarkable than Charleston: the 35 conventional criminal executions there amount to a rate of 1 in 114, and this rises to 1 in 65 if we include 26 participants in a slave rebellion who were hanged there in 1800 (Harry M. Ward, *Public Executions in Richmond, Virginia: A History, 1782-1907* [McFarland, 2012] pp.7, 191-2).

<sup>20</sup> Clark, *European Cities*, p.131. See the comparative London-Amsterdam execution figures in note 10 above.

<sup>21</sup> Simon Devereaux, 'England's "Bloody Code" in Crisis and Transition: Executions at the Old Bailey, 1760-1837', *Journal of the Canadian Historical Association*, 24/2 (2013) 71-113.

Proceedings Online (OBPO)? **Table One** presents the annual totals, as suggested by the parliamentary papers, the OBPO and the new database, of individuals condemned to death and (in the first and third cases) subsequently executed during three particularly distinctive decades in the history of capital punishment at the Old Bailey. The differences from one to the other are often relatively minor in absolute terms, but even small differences in any particular year – and some are markedly more pronounced than others – can be statistically significant. What accounts for such differences? Answering that question highlights the potential value of the new database as a resource for the study of the history of execution and as an exercise in researching the history of that subject.

**TABLE ONE Capital Punishment at the Old Bailey during the 1750s, 1780s, and 1810s**

	Con.	Ex.	Con.	Ex.	Con.	Ex.	Con.	Ex.	Con.	Ex.	Con.	Ex.	Con.	Ex.	Con.	Ex.	Con.	Ex.	Con.	Ex.
<b>1750s</b>	<b>1750</b>		<b>'51</b>		<b>'52</b>		<b>'53</b>		<b>'54</b>		<b>'55</b>		<b>'56</b>		<b>'57</b>		<b>'58</b>		<b>'59</b>	
Parliamentary Data	84	56	85	63	52	47	57	41	50	34	39	21	30	13	37	26	32	20	15	6
Database	84	58	85	63	52	45	58	42	49	33	37	21	31	13	38	26	31	22	15	6
OBPO	80	--	84	--	56	--	57	--	50	--	37	--	35	--	37	--	31	--	15	--
<b>1780s</b>	<b>1780</b>		<b>'81</b>		<b>'82</b>		<b>'83</b>		<b>'84</b>		<b>'85</b>		<b>'86</b>		<b>'87</b>		<b>'88</b>		<b>'89</b>	
Parliamentary Data	94	50	90	40	103	45	173	53	153	56	151	97	127	50	113	92	83	25	97	26
Database	97	50	100	39	98	41	169	61	142	58	169	94	122	66	133	80	84	24	82	23
OBPO	95	--	102	--	100	--	156	--	148	--	169	--	122	--	138	--	85	--	80	--
<b>1810s</b>	<b>1810</b>		<b>'11</b>		<b>'12</b>		<b>'13</b>		<b>'14</b>		<b>'15</b>		<b>'16</b>		<b>'17</b>		<b>'18</b>		<b>'19</b>	
Parliamentary Data	118	13	106	17	132	19	138	17	158	21	139	11	227	29	208	16	201	21	--	--
Database	105	11	119	19	113	15	139	14	142	19	144	12	200	18	205	15	212	24	173	22
OBPO	118	--	125	--	112	--	147	--	142	--	127	--	204	--	195	--	208	--	172	--

Con. = condemned; 'Ex.' = executed

<sup>22</sup> Tim Hitchcock and Robert Shoemaker, *Tales from the Hanging Court* (Hodder Arnold, 2006); Gatrell, *Hanging Tree*, p.7.

**(a) The Old Bailey Proceedings**

During the years since it first went 'live' in 2004, the OBPO has become justly celebrated a one of the most successful ventures in public, web-based history.<sup>23</sup> It provides fully-searchable texts of every account of criminal trials that appeared in the 'official' published account of *Proceedings* at the Old Bailey from 1674 until 1913.<sup>24</sup> It also provides a remarkable array of searching, counting and mapping features for every trial recounted in the pages of that unique and fundamentally-important resource for the history of English criminal law.<sup>25</sup> One of the OBPO's few limitations, however, is that – so far as the outcomes of trial are considered – its search functions can only measure the sentences imposed upon convicted criminals and not the degree to which those sentences were actually carried out.<sup>26</sup>

The new database summarized here goes further: it identifies every capital conviction from 1730 until 1837 and reports the officially-determined fate of each person involved. Where a person was put to death, it identifies the date, the place and the mode(s) of their execution, as well as (where relevant) the post-mortem disposition of the convict's body (dissection, gibbeting, suicide's burial, and so forth). Alternatively, where a person was pardoned, it identifies the date

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<sup>23</sup> The Proceedings of the Old Bailey: London's Central Criminal Court, 1674 to 1913 <[www.oldbaileyonline.org](http://www.oldbaileyonline.org)>. Discussions of the OBPO's character and capacities include Tim Hitchcock and Robert B. Shoemaker, 'Digitising History from Below: The Old Bailey Proceedings Online, 1674-1834', *History Compass*, 4 (2006) 193-202; Rosalind Crone, 'Crime and Its Fabrication: A Review of New Digital Resources in the History of Crime', *Journal of Victorian Culture*, 14 (2009) 125-34; Drew D. Gray, 'Putting Undergraduates on Trial: Using the Old Bailey Online as a Teaching and Assessment Tool', *Law, Crime and History*, 4/1 (2014) 104-13; and Sharon Howard, "'Bloody Code": Reflecting on a Decade of the Old Bailey Online and the Digital Futures of Our Criminal past', *Law, Crime and History*, 5/1 (2015) 12-24. The number of published works making extensive use of it is already vast; see OBPO <<http://www.oldbaileyonline.org/static/Publications.jsp>>. The potential of using the OBPO and its associated sites to recast conventional histories of society and punishment is explored in Tim Hitchcock and Robert Shoemaker, *London Lives: Poverty, Crime and the Making of a Modern City, 1690-1800* (Cambridge University Press, 2015).

<sup>24</sup> For the strengths and the limitations of the Proceedings as an 'official' account of trial, see Simon Devereaux, 'The City and the Sessions Paper: "Public Justice" in London, 1770-1800', *Journal of British Studies*, 35 (1996) 466-503, and Robert B. Shoemaker, 'The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London', *Journal of British Studies*, 47 (2008) 559-580.

<sup>25</sup> The most detailed reflections upon the *Proceedings* as a source for legal history are those of John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford University Press, 2003) pp.180-90.

<sup>26</sup> That limitation will presumably be substantially offset, so far as non-capital outcomes are concerned, by the ultimate integration of the OBPO with 'The Digital Panopticon: The Global Impact of London Punishments, 1780-1925' <<http://www.digitalpanopticon.org/>>.

and condition of that pardon, as well as any other pardon subsequently granted to them.<sup>27</sup> So far as the annual numbers of capital convictions are concerned, the search features of the OBPO produce figures which are often remarkably close to those in the fully-corrected database. Such differences as appear are probably the result of one or more of three major limitations of the *Proceedings* in its original printed format. In the first place, the *Proceedings* never published any account *at all* of the trials of 20 capital convicts between 1730 and 1837 (see **Table Two**). Most of these omissions can only be detected by the kind of detailed comparison of the *Proceedings* with pardon documents, housed in the National Archives of the United Kingdom, as well as accounts of execution published in contemporary periodicals, that has been carried out in producing this new database. Three of these omissions were probably simple errors made in the publisher's haste to bring the *Proceedings* to market: John Doyle, convicted of (and subsequently hanged for) robbery in May 1730; Catherine McCarty, convicted of uttering false coin in January 1807; and George Russell, convicted of stealing in a dwelling in January 1808.<sup>28</sup> At least one omission, that of John Attwood Eglerton's trial for sodomy in July 1816, was a mistake made the more easily because, from the 1790s onwards, the publishers of the *Proceedings* were routinely obliged to omit from publication all details of trials for rape, sodomy and bestiality. Most mystifying is the omission of James Nowlan, convicted of stealing in a dwelling in January 1803; his case does not even appear to have been noted in any contemporary newspaper.

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<sup>27</sup> The database does not, however, pursue the actual *imposition* of non-capital conditions of pardon, such as transportation or imprisonment. Again, those specifics will presumably be ultimately accounted for in the 'Digital Panopticon' database.

<sup>28</sup> Doyle was in fact mentioned in the summary of sentences printed at the end of the issue covering the sessions at which he was tried (OBPO <s17300513-1>).



TABLE TWO

Capital Convicts NOT Noted in the Old Bailey *Proceedings*, 1730-1837

SESSION	NAME	CRIME	PUBLISHED TRIAL ACCOUNT	TRIAL REFERENCE	EXECUTION DATE, or ...	...PARDON REFERENCE
May 1730	John Doyle	Robbery	<i>Daily Post</i> , 14 & 29 May 1730	OBPO <s17300513-1>	1 June 1730; OBPO <OA17300601>	-----
Feb 1774	Robert Rumball	Stealing in a Dwelling	<i>Public Advertiser</i> , 17 Feb 1774	OBPO <s17740216-1>	Died in Newgate (24 March 1774) [ <i>Daily Advertiser</i> , 26 March 1774]	-----
Dec 1774	Edward Blackmore	Stealing a Horse	<i>Public Advertiser</i> , 10 Dec 1774	OBPO <s17741207-1>	-----	TNA, SP 44/91, pp.403-6
Jan 1803	James Nowlan	St. in a Dwelling	-----	TNA, HO 26/9, f.85	-----	TNA, HO 13/15, pp.273-4
Jan 1807	Catherine McCarty	Uttering False Coin	<i>Morning Chronicle</i> , 16 Jan 1807	TNA, HO 26/13, f.54	-----	TNA, HO 13/18, p.132
Jan 1808	George Russell	St. in a Dwelling	<i>Morning Chronicle</i> , 23 Jan 1808	TNA, HO 26/14, f.76	-----	TNA, HO 13/19, p.14
June 1815	William Beazley	Robbery	<i>Morning Chronicle</i> , 26 June 1815	TNA, HO 26/21, f.12	-----	TNA, HO 13/27, pp.121-2
June 1815	Caroline Leonard	St. in a Dwelling	<i>Morning Chronicle</i> , 26 June 1815	TNA, HO 26/21, f.85	-----	TNA, HO 13/27, pp.121-2
June 1815	Peter Morris	Shoplifting	<i>Morning Chronicle</i> , 26 June 1815	TNA, HO 26/21, f.93	-----	TNA, HO 13/27, pp.121-2
June 1815	Charles Waley	Shoplifting	<i>Morning Chronicle</i> , 26 June 1815	TNA, HO 26/21, f.148	-----	TNA, HO 13/27, pp.121-2

TABLE TWO (continued)

SESSION	NAME	CRIME	PUBLISHED TRIAL ACCOUNT	TRIAL REFERENCE	EXECUTION DATE, or ...	... PARDON REFERENCE
Sept 1815	Peter Berni	St. in a Dwelling	<i>Morning Chronicle</i> , 18 Sept 1815	TNA, HO 26/21, f.15	-----	TNA, HO 13/27, pp.363-5
Sept 1815	Joseph Fisher	Burglary	<i>Morning Chronicle</i> , 15 Sept 1815	TNA, HO 26/21, f.48	-----	TNA, HO 13/27, pp.363-5
Sept 1815	John Francis	St. in a Dwelling	<i>Morning Chronicle</i> , 22 Sept 1815	TNA, HO 26/21, f.49	-----	TNA, HO 13/27, pp.363-5
Sept 1815	James Halliday	St. in a Dwelling	-----	TNA, HO 26/21, f.66	-----	TNA, HO 13/27, pp.365-6
Sept 1815	John Hunt	St. in a Dwelling	<i>Morning Chronicle</i> , 29 Sept 1815	TNA, HO 26/21, f.65	-----	TNA, HO 13/27, pp.363-5
Sept 1815	William Menzies	Coining	<i>Morning Chronicle</i> , 29 Sept 1815	TNA, HO 26/21, f.95	-----	TNA, HO 13/27, pp.363-5
Sept 1815	Henry Daniel Pratt	Burglary	<i>Morning Chronicle</i> , 21 Sept 1815	TNA, HO 26/21, f.106	-----	TNA, HO 13/27, pp.363-5
Sept 1815	Thomas Thompson	St. in a Dwelling	<i>Morning Chronicle</i> , 29 Sept 1815	TNA, HO 26/21, f.136	-----	TNA, HO 13/27, pp.363-5
Sept 1815	Frederick Werenzoff	Robbery	<i>Morning Chronicle</i> , 29 Sept 1815	TNA, HO 26/21, f.151	-----	TNA, HO 13/27, pp.363-5
July 1816	John Attwood Eglerton	Sodomy	<i>The Times</i> , 20 July 1816	TNA, HO 26/22, f.46	23 Sept 1816	-----

*Notes:*

- (1) Catherine McCarty (Jan 1807) – Although no account of her trial appears in the *Proceedings*, the relevant volume (OBP 1806-7, at p.128) indexes a ‘Sarah Macarty’ at ‘p.102’.
- (2) James Halliday (Sept 1815) – Some newspapers appear to confuse James with ‘Samuel’ Halliday, a convicted burglar at the same sessions who was subsequently hanged (OBPO <t18150913-3>, <t18150913-4>; *Morning Chronicle*, 6 Dec 1815).

The remaining omissions, however, suggest poor standards of editorial accuracy at specific periods in the publication history of the *Proceedings*. These omissions are particularly significant in thinking about the possible limitations of the OBPO because they raise the possibility (perhaps even the probability) that *other* accounts of trial – those ending in non-capital convictions or in acquittals – were *also* omitted during the same time intervals. The omission in 1774 of the trials of Rumball and Blackmore occurred at a time when at least one major contemporary periodical complained of the ‘usual inaccuracies’ of the *Proceedings*.<sup>29</sup> A prevailing sense of such inaccuracies may have been a major impetus to officials of the City of London (who licensed the publication of the *Proceedings*) to require, soon afterwards, that its accounts of trial be more full and accurate.<sup>30</sup> Even more serious, in strictly numerical terms, were the many omissions of 1815. The four capital cases missed in June of that year appear to be the result of the omission from the published *Proceedings* of an entire day of trials during the sessions for that month. Only three months later, no less than nine capital cases on at least five different days (and perhaps many other non-capital ones) were also absent from the *Proceedings*. So, for a variety of probable reasons, there are many examples of trial accounts – and certainly capital trial accounts – that never appeared in the *Proceedings* in the first place.

A second explanation for differing totals is to be found in occasional mistakes made by the publisher in noting the sentences imposed in each case. The *Proceedings* erroneously report six other capital convicts as having been either acquitted or awarded a non-capital punishment: errors which, again, can only be detected after systematic comparison with pardons and other documents. Thomas Alexander, convicted of a robbery in February 1790, was said to have been only fined and imprisoned, even though his name appears at the end of the sessions amongst the list of those capitally convicted.<sup>31</sup> William Thomas, convicted of burglary in December 1793, is said to have been acquitted.<sup>32</sup> Samuel Richards, convicted of stealing in a dwelling in January 1803, was wrongly reported in the *Proceedings* as being only transported

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<sup>29</sup> *Gentleman's Magazine*, 45 (1775) 605.

<sup>30</sup> For somewhat different estimations of how successful those efforts may actually have been, see the articles (noted above at note 24) by Devereaux and Shoemaker.

<sup>31</sup> OBPO <t17900224-80>, <s17900224-1>.

<sup>32</sup> Compare OBPO <t17931204-30> with The National Archives of the United Kingdom (TNA), HO 13/9, pp.398-9 and HO 13/10, pp.122-3 (his pardons) and his entry in the Criminal Register (TNA, HO 26/3, f.31).

for seven years for that crime.<sup>33</sup> Similarly, Henry Robinson alias Myers, convicted of housebreaking in July 1813, is said to have been transported for life.<sup>34</sup> An ‘errata’ notice at the end of the *Proceedings* for the sessions of September 1822 informs readers that Joseph Mackrell, convicted of stealing in a dwelling, ought to have been specified as having been sentenced to death.<sup>35</sup> And finally, the *Proceedings* record no sentence of death against Samuel Thomas Fielding, convicted of a robbery in September 1823, even though that crime was a capital one for which he was subsequently pardoned.<sup>36</sup>

A third and final phenomenon probably also helps to explain such variations in numbers of capital convicts as recorded in the OBPO compared with this new database. Occasionally, the presiding judge at a trial ending in a conviction might be uncertain as to whether or not that conviction was actually fully authorized by the relevant statute law: perhaps the proper ‘capital’ definition of the crime had not been met. In such instances, the judge would ‘reserve’ the case for review by the Twelve Judges of the royal courts (King’s Bench, Common Pleas and Exchequer) at the earliest possible occasion on which they could be convened to consider the facts of the particular case and weigh them against both the statutory definitions of the crime apparently involved and any case law which might pertain to it.<sup>37</sup> In some instances, the capital conviction was affirmed, in which case the convict received sentence of death at the next Old Bailey sessions and went on to be either executed or pardoned along with everyone else. In others, the conviction might be deemed to be only non-capital in character, in which case the

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<sup>33</sup> Compare OBPO <t18030112-59> with TNA, HO 13/15, pp.175-6 and TNA, HO 13/19, p.156 (his pardons) and his entry in the Criminal Register (TNA, HO 26/9, f.99).

<sup>34</sup> Compare OBPO <t18130714-70> with his pardon at TNA, HO 13/24, pp.406-8.

<sup>35</sup> OBPO <t18220911-68>, <t18220911-69>. The “errata” (*Proceedings* 1821-2, p.551) is not included in the searchable text on the OBPO, but see the image alongside the case at <t18220911-337>; see also notice of Mackrell’s case being heard at the subsequent Recorder’s Report (TNA, HO 6/7 [Recorder’s Report list, 22 November 1822]) and his ensuing pardon (TNA, HO 13/39, pp.391-2).

<sup>36</sup> Compare OBPO <t18230910-36> with notice of his case being heard at the subsequent Recorder’s Report (TNA, HO 6/8 [Recorder’s Report list, 21 November 1823]) and his ensuing pardon (TNA, HO 13/41, pp.323-5).

<sup>37</sup> The proceedings of the Twelve Judges were published by several different contemporary legal writers, all of whose works were subsequently collected in *The English Reports – Volumes 168-9: Crown Cases I-II* (W. Green & Son/Stevens & Sons, 1925-6); only the first volume (hereafter 168 Eng Rpts) contains the cases for 1730 to 1837. An important body of manuscript accounts (including some cases that were never published) appears in D.R. Bentley (ed.), *Select Cases from the Twelve Judges’ Notebooks* (Hambledon, 1997). From the mid-1790s onwards the *Proceedings* often published brief summaries of subsequent rulings on Old Bailey cases by the Twelve Judges (see main text below, at note 44). In one instance, the only evidence that a case ever went to the Twelve Judges at all is found only in manuscript sources: convicted Gordon Rioter John Gray in July 1780 (OBPO <t17800628-69>; TNA, SP 37/21, ff.154, 180).

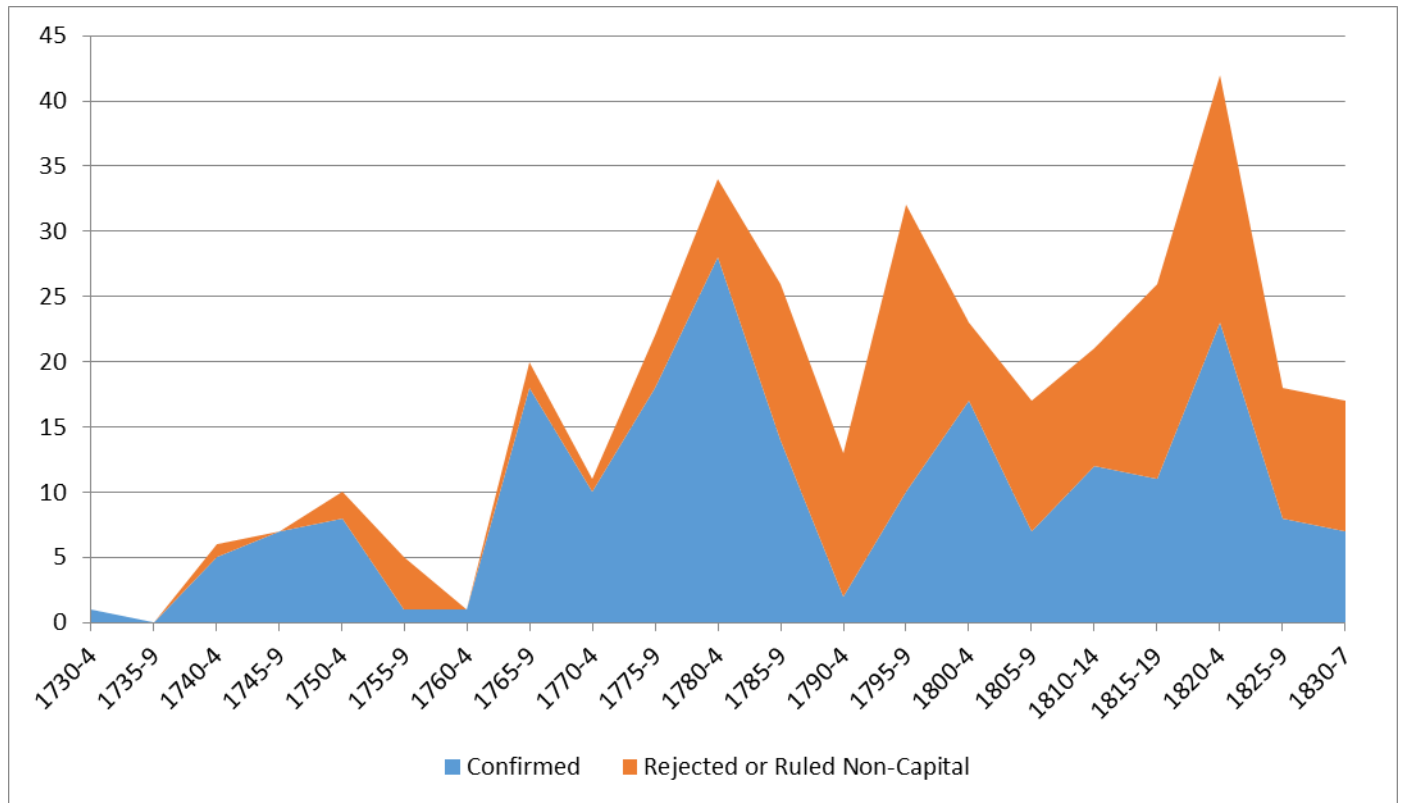
convict was sentenced to the appropriate secondary punishment at the next sessions. And in some cases, the conviction might be deemed to be entirely unjustified given the current state of statutory or case law, and the convict was ordered to be discharged, sometimes with the additional recommendation that he or she receive a free pardon to remove any lingering doubts in the matter.<sup>38</sup> A detailed comparison of the *Proceedings* and other published accounts of trials, on the one hand, with pardon records as well as the traceable proceedings of the Twelve Judges, on the other, reveals 208 individuals whose cases were reserved and subsequently deemed to be proper capital convictions, as well as 144 others whose potentially capital convictions were found to be either non-capital or entirely non-criminal given the current letter of the law (see **Figure One**).<sup>39</sup>

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<sup>38</sup> For the practice of the Twelve Judges, see Bentley (ed.), *Select Cases*, pp.1-52; Langbein, *Origins of Adversary Criminal Law*, pp.212-17, 300-6; and the articles by James Oldham, Randall McGowen and Phil Handler, as well as comments by Allyson N. May and Benjamin Berger, in *Law and History Review*, 29 (2011) 181-302.

<sup>39</sup> It is tempting to see the pattern in Figure One as indicating a growing tendency to refer cases to the Twelve Judges in conjunction with the growing public discontent over the scale and practical ineffectiveness of capital punishment in England from the early 1770s onwards. Although there may well be an element of truth to such an assumption, it should be noted that Figure One measures the number of *individuals* convicted, not the number of *cases* ending in capital conviction (some of which entailed two or more individuals). In one remarkable instance, in January 1821, no less than eight men were convicted on the same charge of aiding the escape of a convicted felon (OBPO <t18210110-48>, <o18210214-1>,

**FIGURE 1**  
**OLD BAILEY CAPITAL CASES RESPITED FOR THE TWELVE JUDGES, 1730-1837**  
**(5-year groupings)**



**SOURCES:** 'Execution and Pardon' database; OBPO; 168 Eng Rpts; Bentley (ed.), *Select Cases*.

The *Proceedings* do not always record – in a manner that the OBPO can fully and accurately ‘count’ – the final determination in such cases. The editors of the OBPO have gone to impressive lengths to compare the summaries of sentences, printed at the end of each account of sessions until 1800, with the sentences reported at the end of the individual trial accounts, thereby detecting many respited cases which might otherwise have simply been noted as capital convictions. Such cases can be isolated using the ‘Death > respited’ option in a ‘Punishment’ search. In other instances, the OBPO only notes that a sentence (capital or otherwise) was respited: these can be isolated using the ‘Special verdict’ option in a ‘Verdict’ search.<sup>40</sup> Both pose problems so far as a complete and accurate count of all capital convictions is concerned, as closer examination of one decade, the 1780s, demonstrates (see **Table Three**). In the first place, three of the ten cases that arise under a ‘Death > respited’ search were in fact subsequently deemed by the Twelve Judges to be non-capital convictions.<sup>41</sup> In a full and accurate accounting of condemnation and execution, these three ought not to be treated as any category of ‘Death’ sentence at all. On the other hand, two of the twelve ‘Special Verdicts’ of the 1780s were subsequently affirmed as capital convictions by the Twelve Judges and so ought to be included in the ‘count’ of condemned prisoners. There is perhaps more than a little pedantry in all of this. However, given that more than 350 potentially capital cases were reserved for the Twelve Judges during the century covered by this new database, it is not difficult to imagine that such cases may be a particularly significant factor in explaining the sometimes large discrepancies between the annual totals of capital convicts recorded in the database and those recorded in the OBPO, discrepancies which grow larger moving into the nineteenth century (see **Table One**). It was perhaps from a sense of this limitation and the

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<sup>40</sup> There were of course other reasons why a verdict might be respited besides reserving the case for the consideration of the Twelve Judges. The convict might have been deemed to be too ill, either medically or mentally, to receive sentence (see the two cases detailed in the next note). From the early nineteenth century onwards, the court might also refuse to pronounce sentence of death in the case of crimes which were about to become non-capital. Three men convicted of horse or sheep thefts in July 1832 had their death sentences respited because the statute abolishing capital punishment for those crimes had passed parliament the day before the end of the sessions and was to come into force immediately (OBPO <t18320705-8>, <t18320705-9>, <t18320705-10>; 2 & 3 William IV, c.62).

<sup>41</sup> Two other cases entailed problems that had nothing to do with the safety of the capital conviction. Sentence of death was not pronounced upon James Carse, convicted of murder in December 1787, because he was deemed to be obviously insane. He was confined indefinitely (as was usual in such cases) and finally pardoned on condition of naval service seven years later once he was deemed to have recovered his sanity and thus some degree of culpability for his crime (OBPO <t17881210-1>; TNA, HO 13/10, pp.184, 217-18; TNA, HO 26/3, f.14; TNA, HO 47/9, ff.101-2; TNA, HO 47/15, ff.37-9, 88-93; TNA, HO 47/19, ff.54-5). Andrew Manseller, convicted of burglary in December 1788, was deemed to be too ill

annoyance it caused some readers that, from the mid-1780s onwards, the *Proceedings* frequently supplied detailed summaries of the Judges' subsequent findings on reserved cases, usually at the end of later issues.<sup>42</sup>

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to receive sentence of death. His case never underwent any subsequent consideration, so I presume that he died soon afterwards (OBPO <t17881210-1>, <s17881210-1>).

<sup>42</sup> The first such notices appear to be those of Samuel Gascoyne and Daniel Hickman, convicted of robberies and in October and July 1783 respectively (OBPO <t17831029-26>, <o17840114-1>, <t17830723-5>, <o17840114-2>).



**TABLE THREE**

**RESPIITED CASES REFERRED TO THE TWELVE JUDGES: OLD BAILEY, 1780-89**

<b>OBPO SEARCH</b>	<b>DATE</b>	<b>NAME</b>	<b>CRIME</b>	<b>OUTCOME</b>	<b>OUTCOME REFERENCE(S)</b>
'Special Verdict' (12 cases) <sup>43</sup>	Feb 1784	Thomas Turner	Stealing in a Dwelling	Capital	168 Eng Rpts 255-6
	May 1785	James Napier [Lapier]	Robbery	Capital	168 Eng Rpts 263-4
	May 1785	Thomas Field	Removing Stamps	Judgment Arrested, left in gaol three years, then Free Pardon	168 Eng Rpts 294-5 TNA, HO 13/6, p.54
	Jan 1787	John Moffatt	Forging a Bill of Exchange	Overtured	168 Eng Rpts 317-19
	July 1787	Edward Farrell	Robbery	Overtured	None (the absence of further references suggests an unreported rejection by the Twelve Judges)
'Death respited' (10 cases) <sup>44</sup>	July 1783	Daniel Hickman	Robbery	Capital	168 Eng Rpts 241-3
	Feb 1784	Richard Wooldridge	Coining	Capital	168 Eng Rpts 256-7
	Oct 1785	James Scott	Coining	Non-capital, Free Pardon	168 Eng Rpts 302-4 TNA, HO 13/7, pp.488-9
	Sept 1786	William Trapshaw	Housebreaking	Capital	168 Eng Rpts 315-17
	July 1787	John Coogan	Forgery to obtain a Seaman's Prize Money	Capital	168 Eng Rpts 326-7
	July 1787	John McDaniel	Personation to obtain a Seaman's Wages	Overtured	None (AS ABOVE re Farrell)
	Feb 1787	John Henry Atkins [Aikles]	Forging a Promissory Note	Overtured	168 Eng Rpts 321-2
	Sept 1787	Thomas Reilly	Personation to obtain a Seaman's Wages	Capital	168 Eng Rpts 329-30

<sup>43</sup> Seven of these twelve cases were understood to be non-capital *before* sentence was respited.

<sup>44</sup> See the other two cases (Carse and Manseller) in note 41 above.

new database, it is not difficult to imagine that such cases may be a particularly significant factor in explaining the sometimes large discrepancies between the annual totals of capital convicts recorded in the database and those recorded in the OBPO, discrepancies which grow larger moving into the nineteenth century (see **Table One**). It was perhaps from a sense of this limitation and the annoyance it caused some readers that, from the mid-1780s onwards, the *Proceedings* frequently supplied detailed summaries of the Judges' subsequent findings on reserved cases, usually at the end of later issues.<sup>45</sup>

### **(b) The Parliamentary Returns (1818-38)**

For as long as historians have been studying capital punishment at the Old Bailey, however, the principle and authoritative source as to its scale has been the statistical returns compiled for parliament from 1818 onwards.<sup>46</sup> In this case, there are some profoundly significant omissions in the data which, from the outset, hinder a more complete understanding of the changing character of the administration of 'the Bloody Code'. First and most simply, Parliament never solicited or obtained any figures at all for 1819, a year in which no less than 173 people were sentenced to death at the Old Bailey and 22 of them subsequently hanged. Second, the parliamentary data do not distinguish male from female offenders until 1835. This is a particularly striking omission because historians have long appreciated that gender was probably the single most fundamental determinant of whether or not a capital convict might subsequently have gone to the gallows.<sup>47</sup> And third, the parliamentary data often fail to specify distinctions *within* general categories of capital crime which, in practice, often made the difference between life and death. This is perhaps most strikingly the case with respect to forgery: people convicted of forgeries against the Bank of England were far more likely to be hanged, during the years in which cash payments were suspended (1797-1821), than were those convicted of other types of forgery. Amongst murderers, no separate notice was taken of the unique and perennially fascinating category of infanticide until 1825; and people convicted of

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<sup>45</sup> The first such notices appear to be those of Samuel Gascoyne and Daniel Hickman, convicted of robberies and in October and July 1783 respectively (OBPO <t17831029-26>, <o17840114-1>, <t17830723-5>, <o17840114-2>).

<sup>46</sup> House of Commons Sessional Papers (HCSP): 1818 (419) xvi.183-8; 1819 (62) xvii: 295-300; 1819 (585) viii: 135-9; 1826-27 (235) xix: 199-200; 1831-32 (375) xxxiii: 16-17; 1835 (217) xlv: 34; 1836 (61) xli.58-9; 1837 (87) xlvi.56-7; 1837-8 (115) xliii.46-7.

<sup>47</sup> Beattie, *Crime and the Courts*, pp.436-9; Peter King, *Crime, Justice, and Discretion in England, 1740-1820* (Oxford University Press, 2000) pp.278-88; Gwenda Morgan and Peter Rushton, *Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England, 1718-1800* (UCL Press, 1998) pp.118-22; Beattie, *Policing and Punishment*, pp.296-7, 343-4, 356-7, 367-8.

'petty treason' (usually a wife murdering her husband, but also, in a few instances, a servant killing his or her master or mistress) were never distinguished at all. Historians of those subjects have been forced to conduct their own surveys of the *Proceedings* and other sources to determine the number of such cases and how often they led to execution or pardon. Nor were the various categories of 'murderous assaults' consistently distinguished before 1805 or at all thereafter, even though their individual numerical instance varied widely.<sup>48</sup> These, and some other key distinctions within general categories of capital offence, are all provided in the detailed table of convictions and executions appended to this article.

Turning from detailed distinctions to generalities: does the accuracy of the parliamentary returns improve when we move from of specific crimes to annual totals? A reader of **Table One** will be struck: first, by how nearly precise the fit is between the adjusted (database) figures for the 1750s and those provided in the parliamentary papers; second, by how that fit is somewhat less precise for the 1780s; and finally, by how distinct the difference between the two figures is during the 1810s. What might explain this seemingly progressive divergence between the figures provided in the parliamentary data and those in the new database?

In the first place, it should be recognized that the earliest, most congruent and most accurate figures were originally gathered by someone other than the men who provided parliament with its authoritative data from 1818 onwards. The figures for 1749 through 1771 were originally compiled and published by Stephen Theodore Janssen, Chamberlain of the City of London from 1765 to 1776, and a former Sheriff, Alderman, Lord Mayor and MP for the City.<sup>49</sup> During his term as Sheriff (1749-50) Janssen had particularly distinguished himself by his efforts to impose

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<sup>48</sup> I use this awkward term because it was only with the passage of 'Ellenborough's Act' in 1803 (45 George III, c.58) that the concept of attempted murder began to acquire more precise legal definition. The development and application of this and subsequent measures are analysed in Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (4 vols, Stevens & Sons, 1948-68), i. 69-73, 306-7, 630-1, 695-8, 734; iv. 316, 320, 323-4, 329-31, 342; Martin J. Wiener, *Men of Blood: Violence, Manliness, and Criminal Justice in Victorian England* (Cambridge University Press, 2004) pp.9-29; Peter King, *Crime and Law in England, 1750-1840: Remaking Justice from the Margins* (Cambridge University Press, 2006) part iii; Phil Handler, 'The Law of Felonious Assault in England, 1803-61,' *Journal of Legal History*, 28 (2007) 183-206; and Drew D. Gray, *Crime, Prosecution and Social Relations: The Summary Courts of the City of London in the Late Eighteenth Century* (Palgrave Macmillan, 2009) ch 5.

<sup>49</sup> Radzinowicz, *History*, i. 145-6, 325-6; Romney Sedgwick (ed.), *The History of Parliament: The House of Commons, 1715-1754* (HMSO, 1970), i. 280, 283; ii. 171

<<http://www.historyofparliamentonline.org/volume/1715-1754/constituencies/london>>

<<http://www.historyofparliamentonline.org/volume/1715-1754/member/janssen-stephen-theodore-1777>>.

a greater degree of order at Tyburn executions, and he later served on the City's Committee for Rebuilding Newgate during the 1770s.<sup>50</sup> His pioneering summary of condemnations and execution at the Old Bailey was first presented to the Lord Mayor and Aldermen in December 1772, during an era of anxiety about a great surge in the volume of capital crime and the apparent inefficacy of either capital punishment or transportation to impose any check upon it.<sup>51</sup> Janssen's figures quickly acquired universal authority, especially amongst his fellow advocates of penal reform. They were reprinted separately by John Howard in 1784 and subsequently provided as a full-scale insertion in both editions of Howard's *Account of the Principal Lazarettos in Europe* (1789, 1791), while its core contents were used in the various editions of both of Howard's major books from 1777 until 1792, as also in an important pamphlet of 1781 by Jonas Hanway.<sup>52</sup> No one seems to have known for certain exactly how Janssen compiled his data, but the fact that it almost precisely matches the concurrent data compiled for this new database suggests that he took great care in doing so.

Janssen's earlier figures were simply incorporated into the longer-term data which parliament solicited and received from the Home Office starting in 1818. John Henry Capper, who held the office of 'Clerk for the Criminal Business' in the Home Office for the first half of the nineteenth century (1800-47), supplied the data which that department's permanent under-secretaries occasionally provided to parliament from 1818 to 1835 and annually thereafter, data which the Home Office itself derived in the first instance from the Clerk of Arraigns at the Old Bailey.<sup>53</sup> This data (as Table One's figures for the 1780s and 1810s, as well as the Appended Table, suggest)

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<sup>50</sup> Simon Devereaux, 'Recasting the Theatre of Execution: The Abolition of the Tyburn Ritual,' *Past & Present*, 202 (February 2009) 127-174 (esp pp.140-6); Nicholas Rogers, *Mayhem: Post-War Crime and Violence in Britain, 1748-53* (Yale University Press, 2012) pp.53-9, 69-70. Various contemporary encomia on Janssen's activity regarding improvements in the administration of criminal justice include: [William Goodall], *The Adventures of Capt. Greenland* (4 vols, R. Baldwin, 1752) pp.i, vii-viii; *London Magazine*, 23 (1754) 473; *Poems, &c. by T[homas] Underwood* (W. Archer, 1768) pp.87-8; [Summers], *Poems on Various Subjects* (n.p., 1772) pp.34-5; [James] Scott, *Epigrams of Martial, &c* (J. Wilkie, J. Walter, and H. Parker, 1773) pp.7-8; William Scott, *A Panegyric or Sermon in Honour of Christmas-Day* (S. Crowder, G. Robinson, and J. Bew, 1775), inscription; and John Ryland, *The Preceptor, or Counsellor of Human Life* (Dilly and Etherington, 1776) pp.iii-xii.

<sup>51</sup> *London Magazine*, 41 (1772) 602; Radzinowicz, *History*, i. 277-86, 301-13, 425-46; Beattie, *Crime and the Courts*, pp.543-8, 554-65.

<sup>52</sup> John Howard, *The State of the Prisons in England and Wales* (William Eyres, 1777) pp.482-3; Howard, *An Account of the Principal Lazarettos in Europe* (William Eyres, 1789) pp.254-5; Jonas Hanway, *Distributive Justice and Mercy* (J. Dodsley, 1781) pp.11-15.

was sometimes markedly less accurate than Janssen's earlier figures for 1749 to 1771. Why?

The first and most basic reason may simply be a difference in how the 'year' is measured. The **Appended Table** follows the *Proceedings* in using the City of London's 'mayoral' year (beginning and ending on November 9<sup>th</sup>, the day that each Lord Mayor began his year in office) rather than the calendrical year. The almost precise fit between its figures for 1749-71 and those of Janssen strongly suggests that he too used the mayoral rather than the calendrical year. The evidence of the adjusted figures in **Table Four**, however, implies that the numbers which Capper compiled for parliament followed the calendar year. Adjusting the database figures for the 1780s and 1810s brings many of those years more closely into agreement with the figures reported in the parliamentary data. Even so, there remain some striking points of disagreement between the two, suggesting that Capper must still have failed to account for every capital conviction and execution.<sup>54</sup>

A second factor (as already noted above) may have been a failure to fully account for every case respited for the Twelve Judges and its ultimate outcome. The increasingly large number of such respites from the late 1760s onwards may render Capper's share of the data more peculiarly and persistently vulnerable to such miscalculations than Janssen's (see **Table One**). Capper may also have failed to keep track of respites whose cases were not considered until the following calendar year, thereby counting an execution (or pardon) in one year which properly belonged to the previous one. William Trapshaw was convicted of housebreaking in September 1786, but his respited case was not determined by the judges until February 1787. Whereas the rest of the convicts of the same sessions had been hanged in November 1786, Trapshaw was not hanged until April 1787.<sup>55</sup> His case may help to explain why the parliamentary data overstates executions in 1787 but understates them in 1786 (see **Table Four**).

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<sup>53</sup> See the references at note 45 above, as well as HCSP, 1819 (585) viii.19-22, and J.C. Sainty, *Home Office Officials, 1782-1870* (Athlone, 1975) pp.12-14, 27-8.

<sup>54</sup> His failure to achieve full accuracy is the more remarkable in so far as, from 1792 until at least 1849, the Home Office maintained – under Capper's overall direction as Clerk of the Criminal Business – an annual register of all convictions at the Old Bailey, known as the Criminal Register (TNA, HO 26/1-56), which in theory would have noted every case that ended in an execution. The precise format of the Register and breadth of its contents varied considerably over time, and there appear to be no extant volumes at all for the years 1799 and 1800.

<sup>55</sup> OBPO <t17860830-36> <o17870221-1>; 168 Eng Rpts 315-17.

**TABLE FOUR**

**Capital Punishment at the Old Bailey during the 1780s and 1810s: Adjusted Figures**

	<i>Con.</i>	<i>Ex.</i>	<i>Con.</i>	<i>Ex.</i>	<i>Con.</i>	<i>Ex.</i>	<i>Con.</i>	<i>Ex.</i>	<i>Con.</i>	<i>Ex.</i>	<i>Con.</i>	<i>Ex.</i>	<i>Con.</i>	<i>Ex.</i>	<i>Con.</i>	<i>Ex.</i>	<i>Con.</i>	<i>Ex.</i>	<i>Con.</i>	<i>Ex.</i>
<b>1780s</b>	<b>1780</b>		<b>'81</b>		<b>'82</b>		<b>'83</b>		<b>'84</b>		<b>'85</b>		<b>'86</b>		<b>'87</b>		<b>'88</b>		<b>'89</b>	
Parliamentary Data	94	50	90	40	103	45	173	53	153	56	151	97	127	50	113	92	83	25	97	26
DB ( <i>calendar year</i> )	101	47	92	37	114	45	174	60	153	73	148	81	133	74	116	68	82	24	99	26
DB ( <i>mayoral year</i> )	97	50	100	39	98	41	169	61	142	58	169	94	122	66	133	80	84	24	82	23
<b>1810s</b>	<b>1810</b>		<b>'11</b>		<b>'12</b>		<b>'13</b>		<b>'14</b>		<b>'15</b>		<b>'16</b>		<b>'17</b>		<b>'18</b>		<b>'19</b>	
Parliamentary Data	118	13	106	17	132	19	138	17	158	21	139	11	227	29	208	16	201	21	--	--
DB ( <i>calendar year</i> )	117	13	106	17	124	16	136	16	150	18	158	15	214	21	213	18	189	20	187	23
DB ( <i>mayoral year</i> )	105	11	119	19	113	15	139	14	142	19	144	12	200	18	205	15	212	24	173	22

such respites from the late 1760s onwards may render Capper's share of the data more peculiarly and persistently vulnerable to such miscalculations than Janssen's (see Table One). Capper may also have failed to keep track of respites whose cases were not considered until the following calendar year, thereby counting an execution (or pardon) in one year which properly belonged to the previous one. William Trapshaw was convicted of housebreaking in September 1786, but his respited case was not determined by the judges until February 1787. Whereas the rest of the convicts of the same sessions had been hanged in November 1786, Trapshaw was not hanged until April 1787.<sup>56</sup> His case may help to explain why the parliamentary data overstates executions in 1787 but understates them in 1786 (see **Table Four**).

A third possible explanation for deviation between the database and Capper's figures involves another category of respited capital sentence: pregnancy. Women convicted of capital crimes might forestall a potential date with the hangman by claiming to be pregnant. Whenever such a claim was made, the court convened a 'jury of matrons' (women) who would examine the prisoner to determine whether or not she was 'quick with child': that is, not only whether she was pregnant, but if so, whether the pregnancy was sufficiently advanced that the unborn child was detectably moving in the womb. Sentence of death upon a female convict found to be 'quick with child' was usually forestalled until sometime after the child's birth, at which point the woman might at last have sentence of death pronounced at the next ensuing sessions and be either executed or pardoned.<sup>57</sup>

The potential issue here, again, is whether or not Capper scrupulously related the condemnation of each such woman in one year to her eventual execution or pardon in a later one. During the 1740s and 1750s, there were some spectacularly long delays – in two instances, no less than seven years – between the conviction and subsequent disposition of pregnant capital convicts.<sup>58</sup> Yet the indefatigable Janssen's data is so very nearly precise a fit

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<sup>56</sup> OBPO <t17860830-36> <o17870221-1>; 168 Eng Rpts 315-17.

<sup>57</sup> James C. Oldham, 'On Pleading the Belly: A History of the Jury of Matrons,' *Criminal Justice History*, 6 (1985) 1-64; K.J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge University Press, 2003) pp.212-14; Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge University Press, 2003) pp.197-201.

<sup>58</sup> Two women convicted of capital crimes in 1751, Mary Carney and Elizabeth Meadows (OBPO <t17510227-37>, <t17511016-24>), were not pardoned until 1758 (TNA, SP 44/135, p.14). Seven years' confinement in Newgate was perhaps a contrived punishment for their crimes.

for the fully-adjusted information in the database that it is possible that he accounted for the potential problem posed by the eleven women (at least) who successfully 'pled the belly' during the era covered by his data. If I am right in suspecting that Capper was not careful about sentences respited for the judges, then he may well have made errors concerning the 27 women who pled their bellies from 1771 through 1837, two-thirds (18) of whom were found 'quick'.<sup>59</sup> Since none of those 18 women were subsequently hanged, however, it seems unlikely that they would have affected any of Capper counts of annual execution levels.

A fourth potential source of inaccuracy in Capper's figures may stem from delays on the part of government, from one year into the next, actually to determine the fate of capital convicts. The decision as to whether to hang or pardon each capital convict was taken at a meeting of the king and senior government ministers which came to be known as the Recorder's Report. At this meeting, the Recorder of London presented an account of each capital convict's case, and the decision would then be made as to whether he or she would die.<sup>60</sup> After George III succeeded to the throne in October 1760, Recorder's Reports were almost invariably held eight times yearly, one for each group of capital convicts at a given sessions.<sup>61</sup> That pattern came to an abrupt conclusion in the winter of 1788-9, when the king's first serious mental breakdown left no less than four accumulated sessions to be dealt with by the time he had recovered his health. Whereas the previous six Reports had been obliged to determine the fates of between nine and 14 convicts each, the one that was at last held on 13 March 1789 had to deal with no less than 48. Of the nine people whom it left to hang, five had been convicted in 1788 (at the September, October and December sessions) and the other four in 1789 (at the January

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<sup>59</sup> It should be noted here that, with only three apparent exceptions (<t18250915-296>, <t18290219-2>, <t18301028-14>), the *Proceedings* stopped reporting cases of women 'pleading the belly' after Mary Talbot in January 1790 <s17900113-1>. Many newspapers continued to note the procedure however, and they are the source of the eleven other cases noted in the database after 1790. It is quite possible that many other women pled their bellies without their doing so having been noted in the *Proceedings*. Thus far, I have only searched newspaper accounts of Old Bailey sentencing for 1810 onwards. I strongly suspect that, as far back as 1770 at least, more are to be found than are noted in the *Proceedings*.

<sup>60</sup> The origins and early practice of the Recorder's Report are analysed in Beattie, *Policing and Punishment*, pp.346-62, 448-62. For accounts of its early nineteenth-century practice, see A. Aspinall, 'The Grand Cabinet, 1800-1837,' *Politica*, 3/14 (1938) 333-44; Gatrell, *Hanging Tree*, chs 20-1; and Simon Devereaux, 'Peel, Pardon and Punishment: The Recorder's Report Revisited', in Devereaux and Paul Griffiths (eds.), *Penal Practice and Culture, 1500-1900: Punishing the English* (Palgrave Macmillan, 2004) pp.258-84.

<sup>61</sup> The detailed numbers and dates provided in this paragraph and the next can all be derived from 'Execution and Pardon: Capital Convictions at the Old Bailey, 1730-1837' <hcmc.uvic.ca>.



sessions).<sup>62</sup> The close correspondence in execution counts for 1788 and 1789 between the parliamentary data and that of the new database (see **Table Four**) suggests that Capper adjusted his figures for those two years accordingly.

He may well have been similarly careful on the three occasions, during the Regency decade, when similar accumulations of unreported sessions crossed into a new year. Of the three people (of a total of 32 capital convicts) executed on 7 March and 11 April 1811, two had been convicted in December 1810 and the other one in January 1811. Of the six people (of a total of 45 capital convicts) executed on 2 April 1814, three had been convicted in December 1813 and three others in January and February 1814. And of the two people (of a total of 49 capital convicts) executed on 22 February 1815, one had been convicted in December 1814 and the other in January 1815. The evidence of **Table Four** suggests that Capper carefully adjusted his figures appropriately in the first case; whether or not he did so in the following two, however, the differences between the database and the parliamentary data cannot be fully resolved solely as a result of this particular administrative phenomenon.

In short, having rehearsed four possible explanations for the divergences between the parliamentary figures and those presented in the new database, the simple fact may be that Capper (or the Old Bailey Clerk of Arraignment?), no doubt operating under pressure of time and using only such sources as he had ready to hand – often for cases many years past – may simply have made mistakes.

## **Conclusion**

Capital punishment has been a subject of recurrent fascination for historians of England during the seven decades since Leon Radzinowicz's formative account was first published. More recent scholarship, most notably that of King and Ward, has deepened our appreciation of how strikingly different the administration of the gallows could be in various parts of the realm. Yet London (and the Old Bailey) will continue to demand that attention be paid to its uniqueness. In part, this is a function of the unparalleled range of source materials that have been so usefully brought together in the pioneering digital scholarship of Tim Hitchcock, Robert Shoemaker and

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<sup>62</sup> A detailed account of this incident and its wider context is provided in Simon Devereaux, 'Inexperienced Humanitarians? William Wilberforce, William Pitt, and the Execution Crisis of the 1780s', *Law and History Review*, 33 (2015) 878-80.

their partners. It is also a function of how truly unique the scale with which capital punishment was actually imposed in eighteenth-century London actually was, not only by comparison with the rest of Britain, but throughout the European and Atlantic worlds. The tabulation appended to this article, and the larger database from which it is derived, seek to give greater precision and depth to the research into this subject that will undoubtedly continue to appear for years to come.

## **Appendix:**

### **TABLE OF EXECUTION AND PARDON AT THE OLD BAILEY, 1730-1837**

The table appended to this article summarizes the official application of capital punishment at the Old Bailey during the last century of England's 'Bloody Code'. A few technical notes are in order as to its presentation and substance.

#### **(a) Timeframe**

The 'year' used is the City of London mayoral rather than the calendrical year. This choice reflects the publication preference of the publishers of the Old Bailey *Proceedings*. Moreover, as noted above, Stephen Theodore Janssen appears to have used the mayoral year in producing the first set of authoritative execution statistics for 1749-71. People using the database from whence these new figures are derived can, however, use the calendrical year if they prefer.

The table starts with 1730 because it was about that time that the government began to more reliably and accessibly record virtually all pardons in the Secretary of States' 'Entry Books'.<sup>63</sup> By a striking coincidence, 1730 is also the year in which the Old Bailey *Proceedings* took a major leap forward in the detail with which trial accounts were being published.<sup>64</sup>

The table ends with 1837 (specifically, July 1837) because it was at that point that a series of statutes (7 William IV & 1 Victoria, c.84-91) comprehensively abolished most remaining elements of 'the Bloody Code'. More importantly, another statute passed at the same time (7 William IV & 1 Victoria c.77) ended the practice of the Recorder's Report and brought the administration of pardon at the Old Bailey into line with changes that had already been made on the assizes circuits. In particular, now that the monarch was no longer to be directly involved in

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<sup>63</sup> After 1760 all pardons were recorded in the 'Criminal Entry' books (TNA, SP 44/77-96; continued by TNA, HO 13 after the 1782 reorganization of the secretariat of state into distinct 'Home' and 'Foreign' departments). Before 1760, many pardons were also recorded in the more general 'Domestic Entry' books (TNA, SP 44/114-43) as well as the entry books for the 'Regencies' (TNA, SP 44/267-325); and free (unconditional) pardons were usually entered in the 'General Warrants' entry books (TNA, SP 44/356-85), an indication perhaps of their distinctive and unusual character at that time.

<sup>64</sup> Beattie, *Policing and Punishment*, pp.372-4; Andrea McKenzie, *Tyburn's Martyrs: Execution in England, 1675-1775* (Hambledon Continuum, 2007) pp.124-5; OBPO <<http://www.oldbaileyonline.org/static/Publishinghistory.jsp>>.

determining pardons at the Old Bailey, trial judges at that court could refrain from pronouncing sentence of death upon capital convicts whom they intended to pardon, a power which judges at the provincial assizes had enjoyed since 1823 (by 4 George IV, c.48).

**(b) Gender**

In each year, the first row associated with each crime gives (first) the number of males condemned for that crime and (second) the number of them who were actually hanged for it. The second row does the same for any females condemned and/or hanged for the crime. In the many instances where no females at all were ever condemned for a particular crime, no second row is provided. By the same token, there is no second row for 'Infanticide' because no males were ever convicted of that crime during the timeframe covered in this table.<sup>65</sup>

**(c) Crime**

Most of the categories of crime listed here are reasonably self-explanatory. The precise definitions and underlying legal bases of each are available on the website presenting the new database, which complement and expand upon those available on the OBPO.<sup>66</sup> Three categories of crime are sufficiently unusual and complex, however, that brief explanations are warranted.

First, one mode of robbery is here distinguished from all others: not only because the definition of 'robbery' in such cases was remarkable in itself, but because it appears to have been viewed with sufficient severity that it explains the one and only execution for any kind of robbery at all at the Old Bailey after 1829: that of Thomas Attrell in February 1833.<sup>67</sup> In April 1779 the Twelve Judges concurred with the presiding judge at the trial of James Donally, two months earlier, that extortion of money from another man by means of a threat to publicly accuse him (the victim) of having made a sodomitical assault upon another inspired so 'life threatening' a sense of danger

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<sup>65</sup> Infanticide is perhaps the most intensively studied of all crimes during the pre-modern age, so the secondary literature is vast. A recent, comprehensive survey is Anne-Marie Kilday, *A History of Infanticide in Britain: c. 1600 to the Present* (Palgrave Macmillan, 2013). For a particular study of this crime at the Old Bailey during the eighteenth century, see Mary Clayton, 'Changes in Old Bailey Trials for the Murder of Newborn Babies, 1674-1803', *Continuity and Change*, 24 (2009) 337-59.

<sup>66</sup> OBPO <<http://www.oldbaileyonline.org/static/Crimes.jsp>>.

<sup>67</sup> OBPO <t18321018-1>; *Morning Chronicle*, 13 February 1833.

in the victim's mind as to amount to a form of 'violence'.<sup>68</sup> The making of such a threat was thereby deemed to constitute the capital crime of robbery rather than mere extortion, a crime whose only capital definition (set out in the 1723 'Black Act') specifically required communication by means of a threatening letter.<sup>69</sup> The appended table includes under this category four cases which actually preceded the Judges' ruling of 1779. Those cases entailed substantially similar circumstances to those in the case of Donally and others that followed, but the degree of intimidation and/or violence which accompanied each was apparently sufficient to render them 'robberies' without resort to the specific reasoning that was affirmed by the Judges in 1779.<sup>70</sup>

Second, from the years 1828 through 1834 inclusive, the definition of housebreaking was altered in a manner which dramatically enhanced the number of convictions for that crime during the last years before it was abolished as a capital offence. Housebreaking was a companion crime to burglary, the latter of which consisted of breaking into a person's home under cover of darkness with intention of committing a felony (theft). Originally made a capital offense in 1547, a statute of 1713 expanded the definition of burglary to cases where the culprit entered a dwelling with intent to commit a felony without breaking it, provided that he or she subsequently broke the dwelling in the course of making their exit. For most of the era covered here, housebreaking consisted of: (1) breaking into a dwelling (or other building) in the daytime and stealing goods while someone therein was put in fear (no one needed to be present in the case of burglary); or (2) breaking into a dwelling (or other building) without anyone being present, provided that the value of the goods stolen was five shillings or more. Both of these acts had been capital crimes since the sixteenth century.<sup>71</sup> Before 1828 convictions for

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<sup>68</sup> OBPO <t17790217-40>; 168 Eng Rpts 199-202; *Oxford Dictionary of National Biography* 'Donally, James (fl. 1779–1784)' <<http://www.oxforddnb.com/view/article/65517>>.

<sup>69</sup> For this unusual crime, which was said to have formed the basis of organized gang activity by the early nineteenth century (and rumoured to have prompted Lord Castlereagh's suicide in 1822), see A.E. Simpson, 'Blackmail as a Crime of Sexual Indiscretion in Eighteenth-Century England,' *Criminal Justice History*, 17 (2002) 61-86, and Angus McLaren, *Sexual Blackmail: A Modern History* (Harvard University Press, 2002) ch 1.

<sup>70</sup> James Brown, September 1763 (OBPO <t17630914-52>, <OA17631012>); Thomas Morgan, April 1774 (OBPO <t17740413-31>); Thomas Jones, February 1776 (OBPO <t17760221-5>, 168 Eng Rpts 171-3); Robert Harrold, June 1778 (OBPO <t17780603-63>, 168 Eng Rpts 199-202). Harrold actually forced his victim to touch his privates in order to give colour to the threatened accusation, thereby rendering the crime more than 'a bare robbery' (as the victim stated at trial).

<sup>71</sup> Radzinowicz, *History*, i. 41-7, 582-7, 634-6; iii. 41, 59; iv. 320-1, 341; Beattie, *Crime and the Courts*, pp.161-7.

housebreaking were fairly uncommon: for every four convictions for burglary, there was only one for housebreaking. To some extent, the difference may simply have arisen from the probability that offenders believed themselves more likely to escape undetected if they committed the crime at night rather than during the day.

However, some major changes were introduced by the 1827 statute which rationalized the laws relating to the major categories of theft in England (7 & 8 George IV c.29), as a result of which the number of convictions for 'Housebreaking' increased substantially. On the one hand, the variety of places within which either a burglary or a housebreaking might be said to have taken place was significantly reduced (s.13-15). At the same time, however, the temporal definition of 'Housebreaking' was extended in such a way as to include a great many crimes that previously would have been defined as burglaries. That adjustment was explained during the course of the debates that led to the repeal of capital punishment for housebreaking (but not burglary) in 1833. 'The Reformers of the law' in 1827, one MP remarked at that time, had purposely left the punishment of death attached to the offences of burglary and stealing in a dwelling house<sup>72</sup>, and the reason was this: – as soon as there was light enough to see a man's face, the breaking ceased to be burglary; but between day-light and people rising to their business, there elapsed, at one period of the year [*i.e.*, winter], a great many hours; and it was to give honest and industrious men a full and effective security during these hours that the punishment of death was left attached to [housebreaking].<sup>73</sup>

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<sup>72</sup> He clearly meant what we now understand as housebreaking: 'stealing in a dwelling house' had ceased to be a capital crime the year before (by 2 & 3 William IV, c.62).

<sup>73</sup> *Hansard*, 3/19 (1833) 1040-41.

**TABLE FIVE**

**Convictions and Executions for Burglary and Housebreaking at the Old Bailey 1828-1834:  
Adjusted (Database) vs Unadjusted (*Proceedings*) Figures**

	1828		1829		1830		1831		1832		1833		1834	
<b>ADJUSTED</b>														
Burglary	32	5	31	6	17	0	37	0	19	0	27	0	12	0
	1	0	0	0	0	0	0	0	1	0	1	0	0	0
Housebreaking	35	4	20	2	25	2	33	0	33	1	50	1	3	0
	1	0	4	0	0	0	3	0	4	0	1	0	0	
<b>UNADJUSTED</b>														
Burglary	15	3	11	3	3	0	6	0	2	0	1	0	6	0
	0	0	0	0	0	0	0	0	1	0	1	0	0	0
Housebreaking	52	6	40	5	39	2	64	0	50	0	76	1	9	0
	2	0	4	0	0	0	3	0	4	0	1	0	0	0

In other words, the 1827 revision redefined ‘housebreaking’ to allow for: (1) breaking during night-time hours (properly speaking, a ‘burglary’) in which the inhabitant might nonetheless already be absent from the premises (*i.e.*, not present and ‘put in fear’); and (2) theft ‘to any Value whatever’ (s.12), not just the five shillings or greater previously required for a conviction for housebreaking in which the victim was absent from the premises. An attentive reader of trials for housebreaking in the OBPO after 1827 will be struck by the many instances in which the householder had clearly been away from the premises for a day or longer, during which interval the break-in could have occurred either by day or by night.

In the table appended to this article, I have treated ‘Burglary’ as a crime taking place at night (the temporal definition of which could change significantly between the summer and the winter months<sup>74</sup>), and ‘Housebreaking’ as essentially the same crime, only during the day. All convictions for ‘Housebreaking’ after 1827 have been reviewed and those which clearly transpired during the night re-categorized as ‘Burglaries’, so as to maintain broad consistency in

the essential character of (and measurement of convictions for) the two offences across the entire timespan covered here.<sup>75</sup> **Table Five** gives both the adjusted and the unadjusted figures for both crimes. When the latter are set in the longer term context of convictions for each crime, the distorting impact of the 1827 redefinition becomes readily apparent. It is highly improbable that convictions for burglary, which ran between 26 and 41 per year from 1820 to 1827, suddenly plunged to only 15 and 11 in 1828 and 1829. Equally if not more improbable is that convictions for housebreaking, which ran between only five and 18 per year from 1820 to 1827, suddenly skyrocketed to 52 and 40 in 1828 and 1829. So swift and substantial a shift in respective conviction levels can only have reflected the redefinition of 'Housebreaking' made in the 1827 Act. Only six years later, capital punishment for housebreaking was entirely abolished. Burglary, however, when accompanied by certain types of violence or an explicit attempt at murder, remained a capital crime until 1861, albeit one for which no one at the Old Bailey was actually hanged after 1830.<sup>76</sup>

Third, and most complicated of all, was the crime of forgery: the falsification of various paper instruments of financial exchange, including bank notes and private promissory notes, or even a person's will. Over the course of the eighteenth century, forgery became one of the most complicated and extensively legislated of all crimes carrying the death penalty. During the waning years of 'the Bloody Code', it was also perhaps the most controversial of all capital offences. As the appended table indicates, execution was imposed far more consistently in cases of forgery than in virtually all other capital crimes besides murder.<sup>77</sup> The appended table distinguishes two particularly significant forms of forgery from all others. In the first place, 'Forgery and Uttering' is used as a residual category, which includes forgeries of promissory notes, bills of exchange, payment orders, wills, and so forth. The second distinctive category is forgery of Bank of England currency. The appended table strongly suggests how central

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<sup>74</sup> The issue was definitively resolved by a statute of 1837 which defined 'the Night', so far as an act of burglary was concerned, as extending from 9 p.m. until 6 a.m., regardless of the season (7 William IV & 1 Victoria, c.86, s.4).

<sup>75</sup> Not all convictions for 'housebreaking' could be so adjusted: sometimes the defendant simply pled guilty, so that no details of the crime are provided in the *Proceedings*.

<sup>76</sup> 3 & 4 William IV, c.44; 24 & 25 Victoria, c.96, s.56-7.

<sup>77</sup> Radzinowicz, *History*, i. 550-1, 555-61, 590-5, 604-5, 642-50; iv. 305, 319-20; Randall McGowen, 'From Pillory to Gallows: The Punishment of Forgery in the Age of the Financial Revolution,' *Past & Present*, 165 (November 1999) 107-40; McGowen, 'Making the 'Bloody Code'? Forgery Legislation in Eighteenth-Century England', in Norma Landau (ed.), *Law, Crime and English Society, 1660-1830* (Cambridge



forges against the Bank in particular must have been to the controversies surrounding capital punishment during the early nineteenth century. Convictions for forgeries on the Bank became markedly less common after the resumption of cash payments in 1821, although no major change in the letter of the law took place at that time.<sup>78</sup> Third and final is 'Forgery (Seaman's Wages or Prize Money)', which consisted of forging any written instrument of a military serviceman (almost invariably a sailor) for the purpose of claiming outstanding wages or prize money owing to him. This mode of forgery was a variant of the next crime listed below, 'Personation,' which consisted of professing actually to be a particular serviceman (again, usually a sailor), or his wife (or other designate), in order to claim outstanding wages or prize money owed to him.<sup>79</sup> These latter two modes of forgery/fraud deserve special attention: partly because their definition and enforcement suggests the state was using its power to punish what could be seen as a crime against patriotic service; but also because they were quintessentially perpetrated by plebeians rather than the bourgeois /'white-collar' types who were the more characteristic perpetrators of most other types of forgery.

#### **(d) Multiple Convictions**

Many people were convicted of more than one type of capital crime. As best as may be judged, the most serious crime of which each individual was convicted is the one that has been ascribed to them here, on the assumption that the worst offence they committed is the one most likely to have determined their final disposition. It seems certain that violent crimes outweighed crimes against property in terms of the seriousness with which they were regarded. Thus a person convicted of a murder and a robbery is counted solely as a murderer: for example, Ferdinando Shrimpton and Robert Drummond, hanged in April 1740 after being convicted of murder and three counts of robbery.<sup>80</sup> The same goes for a person convicted of rape in addition to other

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University Press, 2002) pp.117-38; McGowen, 'Forgery and the Twelve Judges in Eighteenth-Century England,' *Law and History Review*, 29 (2011) 221-57.

<sup>78</sup> Gatrell, *Hanging Tree*, pp.187-9, 396-416, 580-3; Randall McGowen, 'The Bank of England and the Policing of Forgery, 1797-1821,' *Past & Present*, 186 (February 2005) 81-116; McGowen, 'Managing the Gallows: The Bank of England and the Death Penalty, 1797-1821', *Law and History Review*, 25 (2007) 241-82; Phil Handler, 'The Limits of Discretion: Forgery and the Jury at the Old Bailey, 1818-21,' in John W. Cairns and Grant McLeod (eds.), *The Dearest Birth Right of the People of England: The Jury in the History of Common Law* (Hart Publishing, 2002) pp.155-72; Handler, 'Forging the Agenda: The 1819 Select Committee on the Criminal Laws Revisited', *Journal of Legal History*, 25 (2004) 249-68; Handler, 'Forgery and the End of the 'Bloody Code' in Early Nineteenth-Century England', *Historical Journal*, 28 (2005) 683-702.

<sup>79</sup> For these latter two crimes, see Radzinowicz, *History*, i. 649-52.

<sup>80</sup> OBPO <t17300228-70>, <OA17300417>.

crimes, such as Samuel Gregory, hanged (and subsequently gibbeted) in June 1735 for rape, robbery, burglary and horse-theft.<sup>81</sup> And so forth.

### **(e) Deaths 'in Process'**

A substantial number of individuals in the database (113) died at some stage between condemnation and final disposition, ten of them by their own hands. Two-thirds (69) of the non-suicidal deaths took place before 1780: many, if not most of these must be attributable to "gaol fever" (generally reckoned to have been typhus), a frequent feature of the chronically overcrowded Newgate Prison. A larger and more salubrious prison was built during the 1770s, after which time (despite the destruction temporarily visited upon it during the Gordon Riots in June 1780) deaths declined dramatically amongst the inmates, especially when measured on a per capita basis.<sup>82</sup> How should these people be treated in terms of counting executions and pardons?

This table is intended to measure the government's *intentions* with respect to each capital convict. If a person died before a Recorder's Report was convened to determine their fate (as did 51 capital convicts in the appended table), they are reported as not having been hanged. Some people may find such a proceeding dubious in those instances where the crime of which a person was convicted almost always ended in execution. George Price, convicted in January 1738 of murdering his wife, died in Newgate before the Recorder's Report was held.<sup>83</sup> He would almost certainly have been hanged because murder was punished with almost uniquely unremitting severity: more so certainly than any other crime represented here in substantial numbers. Nonetheless, *some* murderers were pardoned, and where we do not know what the government intended to do in such a case, we should err on the side of caution.<sup>84</sup> If a person

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<sup>81</sup> OBPO <t17350522-20>; *Daily Courant*, 5 June 1735.

<sup>82</sup> For eighteenth-century gaol fever and the reconstruction of Newgate, see R.B. Pugh, 'Newgate Between Two Fires,' *Guildhall Studies in London History*, 3 (1978-9) 137-63, 199-222; Robin Evans, *The Fabrication of Virtue: English Prison Architecture, 1750-1840* (Cambridge University Press, 1982) pp.34-40, 63-6, 100-14; C.W. Chalklin, 'The Reconstruction of London's Prisons, 1770-1799: An Aspect of the Growth of Georgian London,' *London Journal*, 9 (1983) 21-34.

<sup>83</sup> OBPO <t17380113-10>, <OA17380308>.

<sup>84</sup> However, I have treated one convicted murderer as though he were hanged: Francis David Stirn (September 1760), who committed suicide before he could be hanged (OBPO <t17600910-19>, <OA17600915>). He did this during the years in which the Murder Act of 1752 prescribed execution of convicted murderers within two to three days of their conviction (25 George II, c.37, s.1). In the absence of any evidence that a respite might have been forthcoming during this brief interval, I have felt more confident in believing that he can safely be counted amongst the hanged. That provision of the Murder

died after a Recorder's Report had determined they should be hanged (as 61 people here did), I have treated them as though that determination were carried out.<sup>85</sup>

The same reasoning has been applied to the 79 capital convicts whose ultimate fates have proven (as yet) to be untraceable in either documents or contemporary print sources. Only 15 of these 79 people vanish from the record before a Recorder's Report, so we can pretty confidently say that the strategy adopted here safely reflects official intentions for the vast majority of them, at least so far as the basic distinction measured here (execution versus pardon) is concerned. Again, since half (38) of these people vanish from the record before 1780, it seems probable that many if not most of them also succumbed to the dangers of confinement in eighteenth century Newgate.

One truly unique case deserves special notice. William Duell, convicted on two counts of rape in October 1740, famously revived on the surgeons' dissection table after being hanged at Tyburn.<sup>86</sup> He subsequently received a pardon on condition of transportation for life, apparently at the behest of the Sheriffs of London.<sup>87</sup> He is counted here amongst the hanged because the original sentence of the law had in fact been fully executed upon him – just not with the ultimate effect which experience had taught authorities to expect!

#### **(f) Inherently Problematic Cases**

Finally, a few cases that were respited for the Twelve Judges entail judgment calls that some people might question. Three men capitally convicted in 1813 – Thomas Bontein of forging a bill of exchange, John Chalkley of killing a horse, and John Plumer of stealing in the mail – had their convictions overturned by the Twelve Judges. Accordingly, all three received free pardons: but not, apparently, before their cases had been heard at a Recorder's Report anyway.<sup>88</sup> They

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Act was repealed in 1836 (by 6 & 7 William IV, c.30).

<sup>85</sup> It was in fact becoming more common after about 1760 for people left to die at a Recorder's Report to be subsequently pardoned, so a critical eye might find some room for quibbling here as well.

<sup>86</sup> OBPO <t17401015-53>, <OA17401124>; *Weekly Miscellany*, 29 November 1740; *News from the Dead, or a Faithful and Genuine Narrative of an Extraordinary Combat between Life and Death, exemplified in the Case of William Duell* (J. Roberts, 1740).

<sup>87</sup> British Library, Newcastle Papers, Additional Manuscript 32696, ff.44-5; TNA, SP 44/132, p.37.

<sup>88</sup> OBPO <t18130602-4>, <t18130915-73>, <t18131201-39>; 168 Eng Rpts 791, 791-3, 794-5; *Morning Chronicle*, 21 March 1814; TNA, **Error! Main Document Only**.HO 13/25, pp.163-4. All three were listed as 'Death' sentence convicts in the Criminal Register (TNA, HO 26/19, ff.10, 23, 91); by this time, however, the Registers did not record anything about the disposition of each convict beyond their original

are included here, though a very strong case can be made that they should be omitted.<sup>89</sup> Similarly, although the conviction for burglary of William Burr and Joseph Looseley in February 1821 was suspected by the trial judge of being unsafe, and was apparently confirmed by the Twelve Judges to have been only a non-capital theft, the two of them nevertheless seem to have received sentence of death and had their case disposed of at a Recorder's Report. In the event, the Report essentially just imposed, as a 'conditional pardon', the sentence (transportation for seven years) which they would probably have received had they been convicted of a simple theft in the first place.<sup>90</sup> So they are counted here amongst convictions for 'Burglary' in 1821, though again a case could be made that they should not be.

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sentence at the Old Bailey, so this does not definitively resolve the question of whether or not these three men really were regarded as capital convicts.

<sup>89</sup> Plumer was convicted at the December sessions, so his conviction here is counted amongst those for 1814 rather than 1813.

<sup>90</sup> OBPO <t18210214-19>, <o18210718-1>; TNA, HO 6/6 (Best, J to [Sidmouth], 17 May 1821); TNA, HO 13/37, p.61 (Sidmouth's reply, 19 May 1821); TNA, HO 6/6 (Recorder's Report list, 17 September 1821). Their entries in the Criminal Registers designate them as convicts sentenced to 'Death' for 'Burglary' (TNA, HO 26/27, ff.10, 108; though see the reservation about the reliability of the Registers in note 86 above), as does the pardon they ultimately received (TNA, HO 13/37, pp.267-8).