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Résumé de l'article

The Hanging Tree (Oxford, 1994), de V.A.C. Gatrell, la plus célèbre et la plus influente des histoires de la pendaison en Angleterre, recourt à une enquête sur le nombre d'exécutions pour faire deux affirmations saisissantes et en apparence convaincantes. Selon la première, plus de personnes ont été pendues au début du XIX^{e} siècle en Angleterre qu'à tout autre moment depuis le début de l'époque moderne. Selon la seconde, la fin de la peine capitale serait arrivée beaucoup plus subitement que les études antérieures ne l'avaient admis. Le présent article reconnaît la première idée de Gatrell et en souligne l'importance, mais avance néanmoins qu'il sous-estime la complexité des événements tout en surestimant le caractère soudain de l'abandon de la lettre et de l'application des lois sur la peine capitale. Il y arrive en recalculant soigneusement et en analysant le nombre d'exécutions ordonnées par le tribunal Old Baley de Londres, où l'exécution se pratiquait à beaucoup plus grande échelle que dans tout autre tribunal du monde anglo-américain et dont la pratique a très profondément influencé la perception des critiques comme des défenseurs de la peine capitale.

England's "Bloody Code" in Crisis and Transition: Executions at the Old Bailey, 1760–1837*

SIMON DEVEREAUX

Abstract

The most celebrated and influential history of execution in England, V.A.C. Gatrell's The Hanging Tree *(Oxford, 1994), uses a survey of execution rates to make two very striking and seemingly persuasive assertions. First, more people were being hanged in early nineteenth-century England than at any time since the early modern era; and second, that the end of capital punishment came far more suddenly than previous studies have recognized. This article acknowledges and extends the importance of Gatrell's first insight, while arguing that he nevertheless both understates the complexity of developments and overstates the suddenness with which both the letter and the practice of capital punishment were abandoned. It does so through a careful recalculation and analysis of execution rates at London's Old Bailey courthouse, where execution was practiced on a far larger scale than in any other jurisdiction in the Anglo-American world, and whose practice most profoundly shaped the perceptions of both critics and proponents of capital punishment alike.*

Résumé

The Hanging Tree *(Oxford, 1994), de V.A.C. Gatrell, la plus célèbre et la plus influente des histoires de la pendaison en Angleterre, recourt à une enquête sur le nombre d'exécutions pour faire deux affirmations saisis-*

* I am grateful to John Beattie, Peter King, Randall McGowen, Richard Ward, and three anonymous readers for their helpful comments on this article. I owe particular thanks to King, McGowen, and Ward for allowing me to read, and to cite here, some of their forthcoming work. The research underpinning this article was funded by a Standard Research Grant from the Social Sciences and Humanities Research Council of Canada, for the awarding of which I am grateful.

santes et en apparence convaincantes. Selon la première, plus de personnes ont été pendues au début du XIX^e siècle en Angleterre qu'à tout autre moment depuis le début de l'époque moderne. Selon la seconde, la fin de la peine capitale serait arrivée beaucoup plus subitement que les études antérieures ne l'avaient admis. Le présent article reconnaît la première idée de Gatrell et en souligne l'importance, mais avance néanmoins qu'il sous-estime la complexité des événements tout en surestimant le caractère soudain de l'abandon de la lettre et de l'application des lois sur la peine capitale. Il y arrive en recalculant soigneusement et en analysant le nombre d'exécutions ordonnées par le tribunal Old Baley de Londres, où l'exécution se pratiquait à beaucoup plus grande échelle que dans tout autre tribunal du monde anglo-américain et dont la pratique a très profondément influencé la perception des critiques comme des défenseurs de la peine capitale.

This year marks two decades since the publication of the most celebrated scholarly history of capital punishment in England, V.A.C. Gatrell's *The Hanging Tree* (Oxford, 1994). Gatrell's provocative book ranges widely in its efforts to recast what had been, to that point, the main lines of explanation for the decline and fall of execution for virtually all serious crimes (save murder) by the dawn of the Victorian age. He begins by posing a dilemma on which many other historians have remarked: the steadily widening disproportion, during the last decades of England's "Bloody Code," between the large number of people capitally convicted and the smaller number who were actually hanged (see Figure 1).[1] This striking phenomenon, and its potential implications for how the criminal law was actually being enforced, had provided starting points for two earlier, almost diametrically opposed visions of the subject. Leon Radzinowicz's foundational study of 1948 noted that "the administration of capital laws in the eighteenth century ... became progressively more lenient as the century drew to its close," then even more dramatically so in the first decade of the nineteenth. "At the root of this divergence between law and practice," he maintained, "was the ever more obvious lack of harmony between the criminal law and the moral standards of the community." Such an interpreta-

tion was of a piece with Radzinowicz's central proposition: that the history of English criminal law was a "history of progress."[2] As English social and cultural values moved in a more humanitarian direction, first the practice and finally the letter of the criminal law was obliged to move with it.

Figure 1: Pardon Rates: England & Wales
Source: Parliamentary Papers (via Gatrell, *Hanging Tree*, p. 617).

By comparison, Douglas Hay's transformative 1975 article "Property, Authority and the Criminal Law" suggested that a central focus on the ebb and flow of execution rates altogether misses the point. Hay was not interested in speculating as to how far variations in execution rates might suggest either a changing public culture or a governing class that might be said to be responding to it. It made no sense that judges would so openly defy the will of Parliament — of which they themselves were, after all, particularly influential members — by refusing to enforce the letter of the laws it passed. "A conflict of such magnitude," says Hay, "would have disrupted eighteenth-century politics, and nothing of the sort happened." Indeed, those very judges who had helped to create this so often underutilized capital code nonetheless "resisted all reform" to it, despite the intellectually compelling arguments being made for such reform from the 1760s onwards. Hay's lastingly influential conclusion was that Hanoverian England's ruling élites clung to "the Bloody Code" precisely because its explicitly selective enforcement best served the purpose of maintaining those bonds of patronage and deference

which were the quintessential features of a persistently aristocratic ruling culture.[3]

Gatrell returns our attention to the issue of execution rates and expands on Hay's vision of a ruling élite determinedly clinging to its criminal law. Unlike most historians of execution preceding him, Gatrell demands that we distinguish — and closely contemplate — the actual numbers of people who were being hanged from the mere proportion which they comprised of all those capitally convicted. The fact that only 36 percent of capital convicts at the Old Bailey (other than murderers) were hanged in 1784, by comparison with 67 percent in 1760, might sound like a reassuringly solid step down the road towards greater judicial humanity — until we learn that those percentages represent only six people hanged in the earlier year, but no less than 60 in the later (see Figure 3, on p. 82). A decline of one-half in the rate of execution disguises a ten-fold increase in the actual number of people who were hanged. Gatrell sees this all-too-easily misread pattern of execution rates as extending — indeed, expanding — during the last decades of "the Bloody Code" (see Figure 2). "How easily this extraordinary fact has been forgotten," he marvels, "that the noose was at its most active on the very eve of capital law repeals!" This was (and remains) a profoundly counterintuitive assertion in the light of still generally-established historical narratives of steadily increasing criticism of the capital code, and of widening restraint in its enforcement, from the mid-eighteenth century

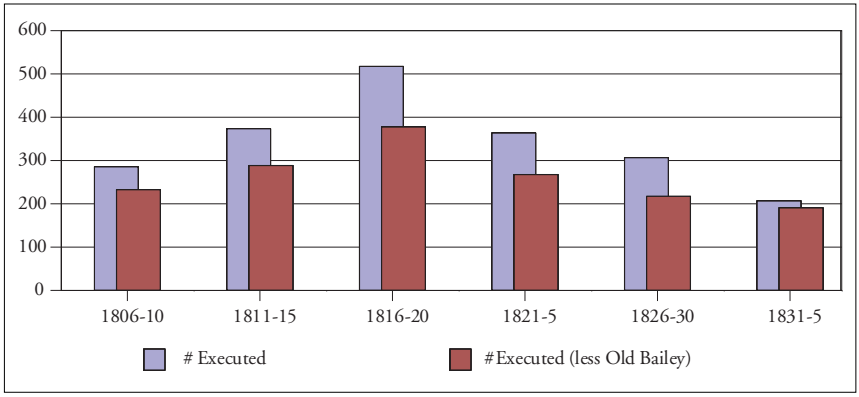

Figure 2: Execution Numbers: England & Wales, 1806–35
Source: Parliamentary Papers (via Gatrell, *Hanging Tree*, p. 617).

onwards. Gatrell's second distinctive analytical claim follows, directly and emphatically, from his first. "Then suddenly," he tells us, "and I mean suddenly — this ancient killing system collapsed. ... [After 1837 h]angings shrank to a tenth of their score a decade before," and execution was all-but-entirely confined to murders.[4]

In effect, Gatrell argues that reform of the capital code came about, not as the sensible and inevitable consequence of its having fallen into greater and greater disuse over an extended period of time, but rather with the sudden decisiveness of a plunge over the edge of a cliff. There was no "high road" to the abolition of capital punishment, along which the numbers of people being put to death were drawn down in larger and larger increments. "The Bloody Code" did not collapse because the English people were growing steadily more "sympathetic" to the sufferings of others. Such responsiveness on the part of a burgeoning middle-class opinion was inconstant at best, and far more often self-regarding than it was outwardly-directed toward the practical relief of "suffering others."[5] "Much of the energy" of those who advocated reform of the law, or who petitioned for pardons in individual cases, "was spasmodic and prejudicially selective in its targets".[6] Nor was the end of the capital code hastened by officials such as Robert Peel, the "law reforming" Home Secretary of the 1820s, who perceived, and responded to, mounting moral demands and intellectual imperatives for the reduced use of hanging, as well as the expansion of secondary punishments and new policing strategies for the prevention of crime in the first instance. Gatrell is especially vehement (and often persuasive) in arguing for a determined resistance to reform amongst members of "the Old Order," especially the judges who had ultimate power of life-and-death over persons convicted on the assizes circuits, as well as the Tories (like Peel) who governed England for five decades until the arrival of the great reforming Whig ministries of the 1830s.[7] The definitive abolition measures brought about by those Whig governments were not the inevitable outcome of a gathering reform sentiment; it was a sudden, sharp and self-conscious break with a system in which their Tory predecessors had remorselessly persisted.

This article is not the first to question Gatrell's vast and influential study. In a long and perhaps unduly neglected review (at least

amongst historians), Sarah Sun Beale and Paul H. Haagen suggest that *The Hanging Tree* might better be characterized as six incompletely realized monographs rather than a single, fully integrated one. They challenge what they perceive to be Gatrell's selective use of evidence regarding particularly controversial instances of execution, notably those of Sarah Lloyd in 1800 and Eliza Fenning in 1815, and they call attention to his unnecessarily "tendentious" and alienating tone. At the same time, they note the obvious appeal of the book amongst American readers in particular, many of whom might find discomforting parallels between late-Georgian England's increasingly unique persistence, amongst Western nations, in the practice of execution, and that of the present-day United States.[8] Randall McGowen has been more sympathetic to Gatrell's self-consciously personalized and emotive style of writing, though he raises some questions about the degree to which that style may elide the distinctions between a "history of feeling" and a "feeling" account of history in ways that are perhaps as self-defeating (or at least self-limiting) as they are illuminating.[9]

The present study approaches *The Hanging Tree* from a different direction. It maintains that Gatrell is absolutely right to insist that any proper analysis of the history of "the Bloody Code" during its final decades must begin with a fuller understanding of the statistical picture. Historians should recognize the actual numbers of people who were being put to death, as well as the difficulties that those figures must pose for any straightforwardly progressive narrative of "reform" over the long term. Nevertheless, I will also argue that Gatrell's particular focus on developments during the early nineteenth century leads him, first, to understate the complexity of longer-term developments, and second, to overemphasize the suddenness with which the strict letter of the capital code was finally abandoned.

It follows that, in my view, officialdom was more responsive and adaptive to the problem of capital punishment than Gatrell's account recognizes, not just in the 1820s, but decades earlier. Although the present article lacks the space to articulate a fully-developed analysis of the role of public opinion as a driving force of change, it essentially concurs with some of Gatrell's observations on

this complex subject. At any particular moment in time, the substance of "public opinion," as historians are capable of reconstituting it from contemporary sources, often seems both too various in its content and too inconsistently asserted to provide us with a straightforwardly measurable, unidirectional influence on the course of events. Some contemporaries criticized "the Bloody Code" on intellectual grounds, others on the more emotive ones associated with the emergence of a culture of feeling or "sympathy."[10] And although a few studies have called attention to the potential significance of changes in religious doctrine, at both the intellectual and the popular levels, we have yet to more fully explore the implications of this work for possible changes in penal practice.[11] As Gatrell (echoing David Garland) observes, the sheer variety of such largely unintegrated strands of critical voices and cultural transformations runs the risk of making the final collapse of "the Bloody Code" appear, if anything, "overdetermined"[12] — something which, again, may seem only the more peculiar given how extensive the actual scale of hanging remained in later Hanoverian England, despite all the developments which, in retrospect, must surely have been militating against it.

The present study is essentially agnostic as to the extent to which changing patterns in the administration of the capital code might be attributed to the impact on the minds of contemporary officials of any one or more of the several strands of criticism of capital punishment. What does seem readily apparent, from the statistical and legislative patterns, is that some of those officials behaved in a way that demonstrates that they understood that there were limits upon the extent to which execution might be practiced — in any particular English jurisdiction — without ultimately calling into question the practical and moral efficacy of the English criminal law.

The Role of London

An emphasis on specific jurisdictions is critical to the analysis that follows. The interpretation presented here is derived from a close analysis of execution rates at London's Old Bailey, the court at which

execution was practiced on a far larger scale than in any other jurisdiction in the Anglo-American (and perhaps the Western) world at that time.[13] An exclusive focus on London requires some justification. The closest analyses of eighteenth-century execution rates and their potential significance have been almost entirely derived from individual counties and regions rather than the metropolis.[14] Even Radzinowicz appreciated the need to determine how far the seemingly complete and reliable execution data for London from 1749 onwards could be taken to reflect patterns of enforcement in other parts of the country. He found the execution rates for London (the Old Bailey) and the Home Circuit to be broadly similar, and the figures given by Gatrell for both London and the nation at large (see Figure 1) would seem to bear this out.[15] Some caution should still be exercised, however: neither Radzinowicz nor Gatrell deploy non-metropolitan data from before 1800; and the precise accuracy of this data, which was gathered by the 1819 Commons Select Committee on Criminal Laws, is perhaps open to question.[16] Those cautions, however, present no major hindrance to the present analysis. The figures for London, which are deployed here, are not those provided in the parliamentary papers. They are, rather, the outcome of the first systematic effort to accurately determine the identity of all 10,000 or so of the people convicted of a capital crime at the Old Bailey from 1830 to 1837 inclusive, as well as whether each of these people was executed or pardoned.[17]

In any case, in trying to imagine how English contemporaries perceived and reacted to capital punishment during the eight decades preceding its sweeping reform in the 1830s, we need to remember how much — and equally, how little — of executions most contemporaries actually saw. Until the advent of the first national railway networks from the late 1830s onwards, by which time the capital code had been substantively repealed, executions remained a largely localized phenomenon, all-but-entirely attended solely by the local residents of the towns in which they took place.[18] Only London regularly afforded both execution crowds numbering in the thousands, as well as astonishingly frequent occasions for their gathering. London had a staggeringly large population: just over one in every ten people in England and Wales throughout the eighteenth century,

a proportion that actually increased to as much as 14 percent by 1831 when the metropolis's suburban extensions into adjacent counties are factored in.[19] Moreover, executions took place as many as ten times per year in London, and sometimes more often. Because of London's vast population, trials for capital crimes were conducted eight times per year (at the Old Bailey), compared with only twice annually everywhere else in England, thereby affording Londoners four times as many execution days as were "enjoyed" by the residents of any other county. Londoners additionally had access to two other occasions for execution: the twice-yearly executions for Surrey, which were carried out just across the Thames because Southwark was home to the county gaol; and the far more occasional executions of men convicted at Admiralty Sessions, whose sentences were carried out at "Execution Dock" in Wapping (a subject which has yet to find its historian).[20]

The experience of execution in London must surely have shaped imaginative perceptions of capital punishment in a more profound and influential way than did that of any other part of the English nation. In the first place, the press in London was the only truly "national" one. By the mid-eighteenth century, London's newspapers were distributed regularly by mail to most parts of the country, and the actual content of the London press was further redistributed (often via outright plagiarism) in many provincial papers.[21] The provincial inhabitants of Georgian England were therefore far more likely to know of London executions, and often to know them in considerable detail, than Londoners were those of the provinces.[22] More importantly, so far as explaining the momentum for criminal law reform might be concerned, many if not most members of the Hanoverian Parliament were year-round residents of London and parts adjacent, and consequently far more likely to be animated in their thinking about criminal law and executions by what they saw (or read about) in the metropolis than by the minimal experiences they had of the towns and counties which they nominally represented.[23]

Finally, London was also special in so far as, alone amongst all criminal jurisdictions, the final decision for life or death amongst its capital convicts lay directly in the hands of government rather than

the assizes circuit judges. All those capitally convicted during a given session at the Old Bailey received sentence of death collectively at its end. Sometime thereafter, the court's chief sentencing officer, the Recorder of London, reported their cases before the king and a select body of government ministers. This meeting, known as "the Recorder's Report," had been established after the Revolution of 1689, and it continued to be the means of determining either pardon or execution for virtually all Old Bailey convicts until the accession of Queen Victoria in 1837.[24] The scale of execution at the Old Bailey may therefore have been far more precisely reflective of governmental — and perhaps, by extension, parliamentary and press — concerns and perceptions of crime and the criminal law than was that of individual counties outside the metropolis.

The situation outside of London was different, sometimes extraordinarily so. Recent work by Peter King and Richard Ward demonstrates that, during the third quarter of the eighteenth century at least, execution levels in England declined markedly in direct proportion with a jurisdiction's distance from the capital. That is to say, the likelihood of being hanged in one of the five counties of the Home Circuit (the counties immediately bordering the metropolis) was lower than in London, lower still in the Midland counties, even less in northern England, and dwindled to virtually nil on "the Celtic Fringe" (Cornwall, Wales, and Scotland). Many English counties, and especially Welsh and Scottish ones, prided themselves on going years, even decades, without hanging a capital convict. As King and Ward explain, this was partly a result of local dynamics in the pretrial phases and in the trial itself, perhaps especially in those corners of the British Isles furthest from the capital.[25] But it also seems clear that the circuit judges, dispatched from London to enforce "the laws of the land," must have been, in substantial measure, ready to respect the local priorities of local officials, as spelled out to them on various occasions before, during, and immediately after the conduct of trials for capital crime at the assizes.[26]

That did not hold equally true at all times. In contrast, and for the years following those covered by King and Ward, Douglas Hay has demonstrated that individual judges on the assizes circuits hanged (or pardoned) in accordance: first, with a blend of central as

well as local pressures to make examples during times when crime levels were perceived to be alarmingly high; but also, secondly, with the individual judge's perception of the morality and practical efficacy of capital punishment. Though Hay might not go to Gatrell's extreme of characterizing the assizes judges as "furred homicides" and "sable bigots" — regularly hanging people in open defiance of popular sentiment — he recognizes that many of them were in the foremost ranks of the upholders of "the Bloody Code" during its final years, and that the ultimate abolition of the death penalty for most crimes in the 1820s and 1830s was critically abetted by some of them changing their minds (or at least, moderating their earlier positions).[27]

However the assizes judges made their decisions from one time to the next, there is little evidence that they felt as vulnerable to the extra-legal pressures of public opinion as expressed in London's vast periodical press and (occasionally) within Parliament, as the government ministers who presided at the Recorder's Report must surely have done. While it is true that the same judges who went to the assizes circuits also sat in rotation at the Old Bailey, it is clear that the practice of the Report was to rely primarily on the Recorder to come into each meeting with a full mastery of the facts of each case. On the three occasions during the 1780s when there is evidence of a trial judge being separately consulted on an Old Bailey capital case, it was only under the extreme pressure of time: either new evidence on a case appearing during the brief interval between when the Report had left someone to die and the scheduled date of their execution (on both of which occasions the Recorder may simply have been out of town); or, on one occasion, because murder cases were never heard at a Recorder's Report, given that an interval of only two to three days was allowed between conviction and execution for that crime.[28] It is, of course, possible that the trial judges exerted influence on the decisions of the Recorder's Report from behind-the-scenes, through either correspondence or conversations with such critical participants as either the Recorder himself or the Lord Chancellor.[29] Tempting as it might seem to presume that such back-stairs influence on the Reports was routine, however, my own research has produced no conclusive proof of it.

The Opening Phase (1760–1783)

For all these reasons, the scale, frequency, and experience of capital punishment in London might plausibly have been the most important determinant amongst contemporaries in thinking about the subject and in acting (or, as Gatrell would have it, so seldom acting) to change it. What did Londoners see? Figure 3 gives us some idea.[30] The dotted line, which trends downwards from 1760 on, presents the story as it has generally been understood: a steady decline (with only a few brief, albeit dramatic, reversals) in the proportion of people hanged amongst all those convicted of capital crimes at London's Old Bailey. It is the solid line, which ascends from 1760 through the mid-1780s, to which we should pay particular attention. This line shows the actual number of people hanged in each year. The extraordinary disjunctions that are sometimes apparent between these two lines — declines in the proportion hanged often masking increases in the absolute numbers, and sometimes vice versa — should remind us that the ways that historians often like to measure phenomena in the past can sometimes carry us far away from how contemporaries actually experienced them. Judges did not hang percentages; they hanged people. Execution-goers did not see a certain percentage of

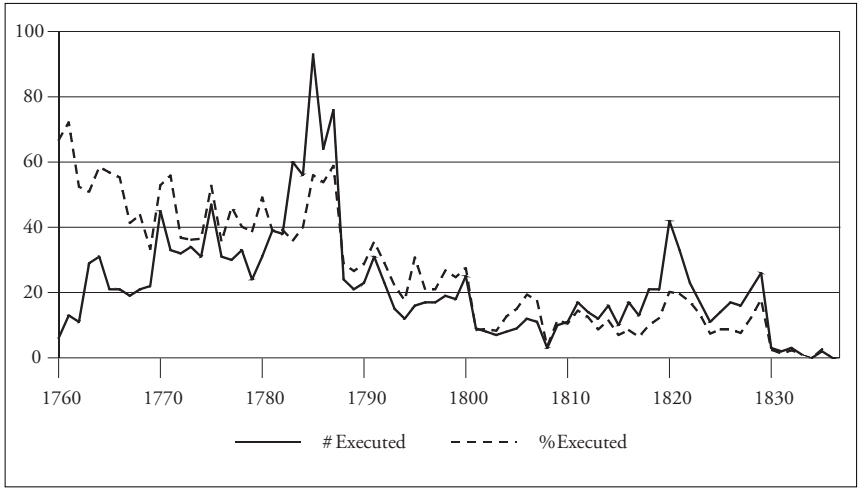

Figure 3: Old Bailey Executions, 1760–1837
Source: Old Bailey Database.

capital convicts hanged; they saw a specific number of people put to death on a specific occasion.

Imagine a person, born around 1740, who saw his first London execution in 1760 and then continued to attend them until the early 1790s.[31] A person who first began to attend London executions in about 1760 would have started observing them at a time when they had reached an unprecedentedly (and unexpectedly) small scale following the heights to which they had risen only a decade earlier in the "crime wave" which followed the end of the War of the Austrian Succession and which inspired so many debates, in Parliament and the press, about the need for new penal measures.[32] Only ten Old Bailey convicts were hanged in 1760, and they were hanged in groups of one (on two occasions), two (twice), and four (once). Only ten years later, that person would have seen forty-five such convicts hanged in one year, in groups of two, three (on three occasions), five (three times), six and, on one day, no less than 13. Not much more than a decade further on, our now middle-aged observer would have seen 61 convicts hanged in 1783, in groups of one (four times), three (twice), five, six (three times), eight, and (on no less than two occasions) ten. Despite the fact that, in these three particular years, this person would respectively have seen 80 percent, then just over half, and finally just over one-third of all Old Bailey capital convicts hanged, can anyone believe that what this person actually saw would have led them to believe that they were living in an age of growing humanity in the application of the law?[33] Contemporaries surely measured their sense of the capital code by the scale in its practice of which they had immediate experience, either in person or via the press.

Again, it must be emphasized how uniquely different London was to every other part of the country. The most recent analyses of execution outside the capital focus on the percentage of people hanged on the circuits and how dramatically different a story those figures tell to that perceived by Radzinowicz through the primary lens of London. Cumulative execution rates across the circuits do not appear to have declined in any significant way until after the turn of the nineteenth century, although some individual counties, notably Surrey, Sussex, and Staffordshire, appear to show a similar broad,

downward trend in execution rates before that time — again, with the profound exception of the 1780s — to that which prevailed in London.[34] But again: contemporaries, whether we are speaking of those who decided whether or not each capital convict actually went to the gallows, or of those who witnessed the consequent execution, did not experience hanging in terms of the proportions by which most historians have subsequently measured the phenomenon over time. At any given moment, contemporaries evaluated capital punishment — judges by what they intended to achieve, the public by what was seen on the gallows — in conjunction with whatever living memory each individual might have had of previous experience.[35] Consider the evidence of Table 1. The figures for each of the five counties of the Home Circuit were not distinguished in the data gathered by the 1819 Report on Criminal Laws, so we can use only the crudest of devices — division by five — to infer the approximate number of people executed in each county in each year. The counties of the Home Circuit were the closest to London in terms of both geography and population. Yet as terrible as the proportion of executions carried out on the Home Circuit may have been throughout the eighteenth century, the actual number of people hanged, on any given occasion in any one county, clearly never approached the horrific heights that were scaled in London. The observed experience of capital punishment in the assizes towns was fundamentally different to that of the metropolis.

So far, much of what has been said reinforces one of Gatrell's most important points. *The Hanging Tree* made a vitally important analytical advance in demanding that historians focus on the numbers of individuals actually put to death on the gallows, rather than the analytically blank (and, in Gatrell's view perhaps, morally sterile) proportions of capital convicts hanged. It is with the experience of the years before 1800, however, that the interpretation presented here parts company with Gatrell. His account views the very last decades of the capital code, the 1820s especially, as its bloodiest era. Viewed on a cumulative, national scale — combining the total numbers hanged both in London and on the assizes circuits — that may have been true (see Figure 2). In the particular — and far more influential — case of London alone, however, the narrative is more

	Old Bailey	*Home Circuit (avg per county)*			*Old Bailey*	*Home Circuit (avg per county)*
1760	6	0		1790	23	3.8
	13	1.2			31	1.2
	11	0.6			23	2.4
	29	2.6			15	3.6
	31	3.2			12	1.8
1765	21	2.8		1795	16	1.2
	21	2			17	6.5
	19	1.8			17	3.6
	21	3.4			19	3.4
	22	1.2			18	3.6
1770	45	3		1800	25	5.6
	33	0.6			9	10.8
	31	3.2			8	4.6
	34	2.8			7	3.8
	31	4			8	1.2
1775	47	3		1805	9	4
	31	3.2			12	1.4
	30	2.8			11	1.6
	32	2.4			3	2.2
	24	2.6			10	2.8
1780	49	2.2		1810	11	2.2
	39	4			17	2
	39	3.4			14	3
	60	5.8			12	3.2
	56	5.6		1814	16	1.6
1785	93	12.6				
	64	7.8				
	76	7.4				
	24	1.6				
1789	21	2.8				

Table 1: Comparative Annual Execution Levels:
Old Bailey vs Home Circuit Counties, 1760-1814
Sources: Old Bailey Database; HCSP 1819 (585) VIII: 168-74.

NOTE: As in Figure 1, murder is excluded.

complicated. Rather than a pattern of steady ascent towards peak killing-levels in the 1820s, London displays a pattern which is better characterized — if I may be permitted to adopt a somewhat flippant term for the deliberate killing of so many people — as "Boom, Bust, and Echo."[36] Each of these phases will be considered in turn.

"Boom" (1783–87)

The terrible onset of the "Boom" in London executions has already been partially evoked through our imaginary mid-Georgian execution attendee. We left him or her in 1783, contemplating, surely with awe and dismay, how he or she had lived to see a terrible increase in the numbers of people being hanged in London, both yearly and on individual occasions.

As Figure 3 indicates, however, the worst lay in the immediate future. In 1785, and again in 1787, more people were hanged in London — and in greater numbers on individual occasions — than at any time in the last two centuries.[37] The full horror of some execution scenes, in simple numerical terms, is perhaps better conveyed in Figure 4, which illustrates the number of people hanged on each execution day at Newgate from 1783 to 1788 inclusive. The awful peak was achieved in February 1785. "This morning a shocking spectacle was exhibited before the debtors dour at Newgate," noted the account in the *Gentleman's Magazine*, "where 20 miserable wretches were in one moment plunged into eternity" (though it nevertheless deemed that display to be "indispensably necessary" to "the safety, peace, and good order of society" at that time).[38] This fearsome return to a Tudor-era scale of execution was driven by relentlessly high levels of crime (both reported and actually convicted), conjoined with a systemic breakdown in the availability of acceptable secondary punishments. Both of these issues, not coincidentally, are omitted from Gatrell's account: the first self-consciously and from the outset, the second largely by silent omission.[39] In doing so, however, he eliminates from the analysis two factors that must surely have been, for contemporaries — either the victims of crime, or those obliged to deal with it — amongst the most urgently-felt dimensions of the situation.

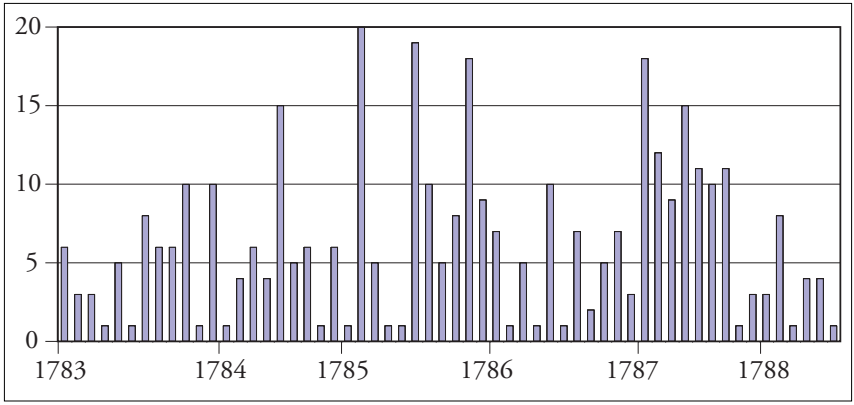

Figure 4: Numbers executed at the Old Bailey/Newgate, 1783–1788
Source: Old Bailey Database.

The problem posed by the massive scale of executions in the metropolis was not simply the cruelty of official spirit that they so clearly seemed to reveal. "We are struck with horror even on reading the history of savage jurisprudence, customs, and butchery of mankind in ancient times," wrote William Black, a pioneer of mortality statistics, in 1788. Black continued,

> But I doubt whether, in the most flagitious and facinorous ages of Rome, the Tarpeian rock was besmeared with the blood of such a multitude of human victims; or that in any part of the globe, from London to the Antipodes, out of an equal proportion of mankind, there are so many sacrifices annually made to violated jurisprudence; and to the modern idol, property and money![40]

Beyond the outright cruelty that metropolitan execution levels seemed to reveal, however, lay some intransigent problems for government. It was clear to more and more observers that such profligacy with human life was conspicuously failing to deter crime, and probably inspiring contempt for that established authority, which the criminal law was intended to reaffirm. "Eighteen convicts ordered for execution on Tuesday next," a horrified London *Times* remarked in January 1787, asserting that "This is truly a dreadful

national calamity, and calls loudly for the intervention of the legislature, that by their timely exertions a reform in our police may take place, and such disgraceful exhibitions not so often shake the metropolis of the British empire from its propriety."[41] Where *The Times* called for a reform in the police, others took up the call for Beccarian ideals of certainty and proportion in punishment. "The number of criminals executed every sessions at the Old Bailey," observed the *Morning Post* in March 1789,

> is a melancholy proof that examples of that nature will not deter the vicious, and ought to convince us, that some other mode is necessary to be adopted, not only for the prevention of crimes, but for the preservation of so many of our fellow creatures. ... [I]f it was generally known and understood that every person convicted a *certain offences*, must *expect no mercy*, it would operate more forcefully on the minds of the profligate and abandoned, than any other means whatever.[42]

It seemed clear to many observers that execution levels could be reduced given a reform of either police or of punishments, or both. Why did those governments, which personally determined each and every execution in the metropolis, not act accordingly?

From the outset of the decade, in fact, governments had been proposing measures that might enable them to "safely" reduce the scale on which executions were being carried out. In December 1783 the traditional procession of the condemned from Newgate Prison to Tyburn was abolished in favour of a swifter and more self-consciously stylized execution ritual staged immediately outside the prison: one that aimed to make the deterrent shock-value of the execution display itself at least as important as the number of people actually executed on any given occasion.[43] In 1785, the government tried to pass a comprehensive measure of police reform for metropolitan London, one of whose principal objects was to avert the need for large-scale execution displays by preventing the occurrence of serious crimes in the first place by rendering "detection certain, and punishment with a moderate degree of severity, unavoidable." In introducing the measure in the Commons, the Solicitor General

emphasized precisely the government's recognition that "the crowds that every two or three months fell a sacrifice to the justice of the country, with whose weight ... the gallows groaned," demonstrated that "the present laws, and the mode of executing them now in use, were inadequate to the end ... [I]nstead of operating as a prevention to crime[s], [they] rather tended to inflame and promote them, by adding desperation to villany."[44] Several historians have considered the nature and various purposes of the Metropolitan Police bill.[45] What warrants particular emphasis here is that, in introducing it, the government explicitly acknowledged that large-scale executions were failing to have that deterrent effect which was their essential justification, and that it clearly perceived more certain and sustained policing activity as the means by which it might cease to rely so heavily on them.

After the Police bill was rejected by local metropolitan officials and Parliament alike, the government sponsored another measure the following year which appears to have been intended to reduce the felt need to hang so many capital convicts. It aimed to achieve this reduction by subjecting a greater proportion of capital convicts to an aggravated mode of execution — postmortem dissection — which, since 1752, had been reserved for murderers.[46] That bill also failed. The following year, the government supported the launch in June 1787 of the Proclamation Society (that is, the Society for Enforcing the Royal Proclamation for the Suppression of Vice and Immorality), in the hope that it might provide the stimulus for the sort of sustained magisterial attention to morals offences, not just in London but throughout the country, which had been a major object of the 1785 police bill.[47] Historians are free to insist that the sort of calculus of severity that informed some of these measures says little for the "humanity" of government officials during the 1780s. It does indicate, however: first, that the government knew that the scale on which execution was being practiced was a counter-productive failure as a deterrent strategy; and second, that it was seeking plausible means by which to reduce execution levels.

"Bust" (1788–1808)

Those means at last arrived at the decade's end through a mixture of efforts at last fulfilled and an unforeseen opportunity grasped. We turn now to the era of "Bust" in London executions. In the first place, the beginnings of convict transportation to Australia in summer 1787 promised a systemic alleviation of the crisis in secondary punishments that had prevailed, more or less continuously, since the outbreak of the American Revolution a dozen years earlier.[48] Secondly, in the spring of 1788, the king's recovery from his first major bout with insanity posed a major problem so far as executions were concerned. Four sessions of capital convicts had accumulated without going to a Recorder's Report and leading to an execution. If these convicts were now to be put to death on a scale commensurate with that which had been practiced over the past few years — and which had regularly provoked so many appalled comments in the press — there would not be a gallows large enough to hang them all on a single occasion. Nor could the government see any merit in an execution display (or a sequence of them!), which would surely detract from the public joy at the monarch's recovery. The prime minister maintained that the extraordinary drop in the execution rate that per force followed was to be only a temporary departure from established practice.[49]

As Figure 3 reveals, however, it in fact heralded a dramatic and sustained reduction in London executions. The years following the outbreak of the French Revolution did see a brief resurgence in London's execution levels, then a further decline from 1793 — possibly, as James Mackintosh later speculated, with the advent of a more reform-minded Lord Chancellor in that year.[50] Lord Loughborough's successor, however, Lord Eldon — one of the great arch-Tories of the early nineteenth century — later claimed that it was he who had initiated a measure of principled restraint in the imposition of death in London from 1801 onwards. Eldon maintained that he had introduced "a distinction ... between those cases [of robbery] which are attended by personal violence, and those which are not," and the execution figures for robbery — the crime for which most Old Bailey convicts were being hanged in the 1790s

— did indeed drop markedly from 1801 onwards.[51] The three years before Loughborough became Lord Chancellor (1790–2) saw 35 percent of Old Bailey robbers hanged (in contrast to 46 percent during the 1780s); the eight years of his chancellorship (1793–1800) saw only 24 percent; but Eldon's first decade on the woolsack saw just over 12 percent, a further reduction of one-half from Loughborough's rate.[52] All told, by 1807–8 the practice of execution in London was approaching extinction levels. After three men were hanged at the Old Bailey in August 1807, a full five months would elapse before only one was hanged in January 1808; even more strikingly, it would not be until ten months after that, in November, that only one more man was hanged.[53]

One of the central arguments made by advocates for the repeal of the capital code was that, in many instances, it had effectively been falling into disuse anyway. By the time Samuel Romilly initiated the long parliamentary campaign for criminal law reform in 1808, some crimes had become dead letters, at least at the Old Bailey. After 1807 no one in London was hanged for returning from transportation. That crime may have ceased to be perceived as the threat to justice it had once seemed because, from the 1780s onwards, almost everyone convicted of it had in fact merely escaped custody at home — usually from the prison hulks — rather than actually returning all the way from New South Wales. The certainty of pardon for this crime came to be so well understood that, in defiance of the conventional exhortation to take their trial, fully half of all those indicted for it from 1810 onwards simply pled guilty.[54] Clearly no one expected to see this capital crime, which once had been amongst the most remorselessly enforced, revived as a practical component of the capital code, and no government ever tried to defy that hardening expectation.[55] Even more dramatically, no one at the Old Bailey had been hanged for stealing from the person (that is, picking someone's pocket) since 1751, a fact that undoubtedly contributed to the relatively smooth passage of the measure repealing that capital offence in 1808.[56]

Small wonder, then, that Romilly began the long parliamentary campaign for repeal in the immediate context of the lowest levels of execution in London's history.[57] This earliest and (as we will see)

most vigorous phase of the parliamentary movement to abolish the capital code was driven not only by the immediate living memory of the worst numerical levels of execution in two centuries, but by the more recent abandonment — in practice — of the enforcement of the letter of the capital code in all but a handful of instances. As we will now see, the problem faced by Tory governments after 1815 was not simply (as Gatrell would have it) clinging fiercely to their "right" to execute significant numbers of capital convicts. The problem, rather, was the challenge posed by their attempt to reclaim that power, even to a relatively modest extent, after having allowed it to so substantively fall into abeyance for a quarter century.

"Echo" (1809–29)

Gatrell's image of a criminal code more and more savagely applied on the eve of its reform achieves its numerical persuasiveness largely by ignoring what had happened before 1801. Restricting the temporal vision in this way creates a markedly different impression of the nineteenth-century practice of capital punishment, as may be appreciated by similarly confining the pattern in London only to 1800 onwards (see Figure 5, which also, take note, reduces the vertical scale from 100 to only 50). One last diminished "Echo" of the horrors of the 1780s would occur. In the wake of alarming new heights of criminal conviction following the end of the Napoleonic Wars, coupled with official anxiety at vigorous new displays of social, economic, and political radicalism (five of the 42 people hanged at the Old Bailey in 1820 were the "Cato Street Conspirators"), the Tory government embarked upon a distinct revival in the absolute scale of execution in London.

I have not yet been able to determine which figures in government were the driving forces behind this revival. We do know, however, that ten months after Robert Peel took over the Home Secretaryship from Lord Sidmouth in January 1822 at least one of these decision-makers appears to have been — yet again — changing his mind. "Times are gone by when so many Persons can be executed at once as were so dealt with twenty years ago," Lord Chancellor Eldon remarked to Peel in November 1822.[58] Bearing in

Figure 5: Old Bailey Executions, 1800–1837
Source: Old Bailey Database.

mind that Eldon had begun his career in Tory government with election to Parliament in 1783, followed by appointment as Solicitor General in 1788, we can easily imagine both the times he had most urgently in mind and the personal authority with which he could evoke them.[59] Peel, in conjunction with Eldon (who continued as Lord Chancellor until 1827), seems to have taken his advice largely to heart.[60] The 1820–21 resurgence in Old Bailey execution levels — 42 hanged in the first year, 33 in the next — subsequently plunged to 17 in 1823, and then to only 11 in 1824, the latter a figure comparable with the historic lows of the early nineteenth century.[61] Executions increased one more time in 1828–29 (was this because Eldon had at last retired?), but in his final year in office (1830), Peel would establish the minimal scale for London executions that was carried forward by Whig governments thereafter, until they actually abolished the capital code for most of the offences involved.[62]

Why was this being done? Much of *The Hanging Tree* is devoted to questioning — sometimes, on the face of it, very persuasively — the mitigating influence of any sort of changing public opinion. Gatrell tells us from the outset that defenders of capital punishment felt obliged to reduce the proportion of those hanged simply because "It was understood that there was a threshold beyond which the num-

ber of executions could not safely pass."[63] The forces that defined that "threshold," however, appear to be more impersonal or mechanical in character rather than the product of any felt moral or practical imperatives amongst living human beings at the time.[64] This begs three closely interrelated questions. First, Gatrell's own language irresistibly evokes some sort of widely-acknowledged public sensibility being at work here: "The 'people' might put up with a lot," he notes, as to the prospect of mass-executions, "[b]ut they would not put up with this."[65] Second, Gatrell acknowledges that the numbers put to death in Georgian England pale by comparison with those of the Tudor and early Stuart eras.[66] This suggests that something pretty fundamental had already changed by the eighteenth century — arguably, indeed, by the mid-seventeenth century — in terms of personal sensibilities and public authorities, as well as the perceived effects of the one on the other.[67] Third and finally (and as noted in the introduction), much of *The Hanging Tree* is devoted to the proposition that the "modernizing" sensibilities that historians associate with the late eighteenth and early nineteenth centuries — above all, perhaps, "sympathy" — had little meaningful impact on the administration of the capital code. Sympathy was the felt prerogative of a small, self-appointed, and self-regarding group: more a matter for self-congratulation than a spur to meaningful and sustained activity on behalf of the all-too-many people being sent to the gallows.

Gatrell is on to something powerful and important when he invites us to think more rigorously about how we might define "public opinion" in this era, and measure how effectively it may or may not have influenced official views and behaviour as to capital punishment. Table 2 tries to evoke something that is perhaps inherently immeasurable: surges and ebbs in the momentum for reform of the capital code in the late Hanoverian Parliament, as well as the implicit role of public opinion in driving it. The issues raised here are large and complicated; this analysis confines itself only to two broad impressions that a glance at this table might suggest. The first, which appears to strongly favour Gatrell's analysis, is that the great campaign for capital law repeal, led by Romilly (who died in November 1818) and then James Mackintosh, looks as though it had largely dissipated soon after Peel's arrival in the Home Office in January 1822.

Measures	1808	1809	1810	1811	1812	1813	1814	1815	1816	1817	1818	1819	1820	1821	1822	1823	1824	1825	1826	1827	1828	1829	1830
Select Ctte. on Criminal Laws												X	X				X						
Petitions for Criminal Law Reform												69+		56+	57+								60+
Stealing from Person repeal	ACT	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Shoplifting Repeal			BCP	BCP		BCP			BCP		BCP		ACTP	BCP		ACT (below)	--	--	--	--	--	--	--
Stealing in a Dwelling repeal			BCF	BCP									BCF	BCP						ACTP (below)			
Stealing on Rivers repeal			BCF	BCP									BCF	BCP		ACT (below)							
Stealing in Bleaching Grounds repeal				ACT	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Forgery repeal (partial)													BCF	BCF	BCF								ACT
Multiple & Miscellaneous Capital Repeal measures													ACTS (2)			ACTS (3)							
Consolidation measures																			BCF	ACTS (3)	ACT		

BCF = bill failed in the House of Commons

BCP = bill passed the House of Commons, but failed in the House of Lords

ACTP = partial repeal enacted

ACT = full repeal enacted

Table 2: The Criminal Law in Parliament, 1808–1830
Sources: Commons Journals; Lords Journals; Statutes at Large.

Secondly, however, we might also note how intensive public petitioning for criminal law reform was in 1819, 1821, and 1822. Gatrell observes that the number of these petitions and their signatories was "piffling" and "not ... unduly impressive" in comparison with concurrent petitioning campaigns against slavery or religious exclusion.[68] But surely this petitioning, coming at the end of a decade-long struggle by Romilly and others for legislative reform, was one of the things underpinning Eldon's conviction, expressed in his letter to Peel of November 1822, that it was time to draw down the numbers being hanged in London. The number and scale of those petitions and signatories may have been small compared with those favouring repeal of slavery or of religious exclusion, but it was still impressive. In any case, those other reform campaigns may not afford an appropriate standard by which to measure petitions for reform of the criminal law. Slavery and religious exclusion were, after all, injustices practiced against entire categories of otherwise law-abiding peoples. Those subject to the capital code were, at least, convicted wrong-doers. Perhaps it should not be surprising that there were so many non-signatories of petitions against capital punishment: people who may actually have agreed with the Tory government that hanging some people for certain categories of property crime might still be morally acceptable.[69] The "injustice" done to a convict hanged for committing a crime was of a somewhat more debatable character than that done to an enslaved human being or to one merely born into the Catholic faith. That being so, the fact that these petitions can be temporally associated with a dramatic scaling back in executions at the Old Bailey may be only the more telling and impressive a testimony to the sense they may have inspired of the growing practical limitations on capital punishment.

But what of our first impression of Table 2? After Peel became Home Secretary, the momentum for reform, at least as measured by select committees and by bills to repeal particular capital crimes, does indeed look as though it had largely evaporated by comparison with that which seems so readily apparent from 1808 to 1822. Both Peel himself and the Tory governments of the 1820s deserve renewed energy and attention from historians of criminal justice: far more than present space will allow.[70] Such a treatment must begin by

broadly concurring with the core of Gatrell's moral portrait of those governments, and of Peel in particular.[71] Peel was entirely comfortable with his right to allow men and women who had broken the laws of the land to be hanged, and the sight (which Gatrell forces us to confront) of him fighting hard against pleas for mercy in individual cases is a powerful reminder that the past is indeed, sometimes, a "foreign country" in ways that some historians may be disinclined to appreciate while finding their way to the "modern world." On the whole, too, so far as the core elements of the capital code were concerned — robbery, burglary, stealing in a dwelling, and forgery — Peel's efforts to ensure retention so far as the letter of the law was concerned were almost entirely successful.[72] That achievement, however, was much harder fought, and more complicated in both its execution and outcomes than a reader of Gatrell's account might surmise.

In the first place, there were substantial concessions in law itself. Any impression that the reform movement stalled after 1822 misses something significant. The apparent level of activity, as measured by legislative proposals, drops markedly. One of the principal reasons for that drop, however, is that two of the three key measures that reformers had repeatedly brought before Parliament between 1810 and 1821, those repealing capital punishment for stealing in shops and for stealing goods on a navigable river, were passed into law by a single measure of 1823: a measure that Peel himself supported over the objections of the government's law officers.[73] The first of these two concessions was, arguably, of largely symbolic value: no one at the Old Bailey convicted of shoplifting had been hanged for 30 years.[74] But the reformers knew that — it had, indeed, been one of the central elements of the argument for repeal — and Tory governments had nonetheless resolutely opposed the repeal of the law: until now. A more consequential reform was to increase, from 40 shillings (£2) to £5, the value of goods that determined whether stealing in a dwelling was a capital offence. This was done as part of the important statute of 1827 that consolidated the capital laws relating to theft.[75] That single clause immediately reduced by almost two-thirds the number of convictions for this crime at the Old Bailey; and whereas five people were hanged for it in 1826 (comprising almost a

third of the convicts put to death that year), only one was hanged under the revised statute in 1828, and another in 1829.[76] If Peel and his colleagues were undoubtedly bloody-minded — if by that phrase we mean that they were determined to retain the option of hanging people convicted for the most serious crimes — they nevertheless made some real concessions over the course of the decade.

Even more striking, as the main body of this article has argued, were the concessions in the practised scale of execution that took place under Peel, regardless of the letter of the law. Here we might turn to one of the most controversial of the specific elements of "the Bloody Code." Peel could be immovable once the Recorder's Report had determined to hang a convicted forger such as Joseph Hunton in 1828.[77] Even before Hunton's case had been decided, Peel instructed one of the many campaigners for mercy on his behalf to "spare me the pain of the personal interview which you solicit for yourself & the sister of Hunton." Four years earlier, the night before another famous forger was hanged, Peel had similarly requested that Henry Fauntleroy's soon-to-be-widow "spare me an interview, which could have no result favorable to your husband, and which must be distressing to the feelings of both of us."[78] As revolting as some modern readers will find these examples of Peel's "squeamishness" with the secondary victims of the gallows, however, we ought also to note three other dimensions of his administration of the death penalty against forgery. First, the Bank of England's extraordinary role in putting people on the gallows was substantively curtailed after the resumption of cash payments in 1821. From 1818 to 1821 inclusive, the 87 men and women convicted of committing forgeries on the Bank accounted for just over one-tenth of all capital convicts at the Old Bailey (other than murderers), and almost one-third of those convicts who were executed. The 16 people who were similarly convicted from 1822 through 1830 comprised only one-hundredth of all capital convicts and about 7.4 percent of those executed. Second, after 1829 no one was ever again hanged for forgery, by either Peel or his Whig successors, in either London or the nation at large.[79] Finally, although the consolidating Forgery Act of 1830 retained the death penalty for that crime, the government found passing the measure to be a hard slog even before the election of that year further

weakened its failing grip over the Commons.[80] One of the more hardline conservative members of government, the second Earl of Ellenborough, suspected that Peel was losing his nerve on the measure, much perhaps like he had the year before on Ireland and Emancipation.[81]

All of this suggests that there is still merit in the older vision of Peel — that of Radzinowicz and of Norman Gash — as a moderate reformer forging a middle path between, on the one hand, the hardline retentionists of his party and the government whom he served, and on the other, the demands for more radical reform of the criminal law that could be heard both within Parliament and without.[82] Peel's sometimes torturous defences of the capital principle in his speeches to the Commons may have been intended as much to reassure the former while containing the excesses (as he saw it) of the latter. Parliament was an irreducibly public forum by the 1820s, its debates printed and circulated far more extensively than ever before, and we should read what Peel said there in light of his consciousness of the various audiences before whom he spoke. A few months after becoming Home Secretary, he had told the prime minister that, on the subject of criminal law reform, on which "we should make up our minds with respect to the course to be pursued in the House of Commons," there was not, "when the question is looked at in its details, any irreconcileable difference upon real points of importance between the reasonable advocates for the mitigation of the criminal law and the reasonable defenders of it."[83] Peel may have expected the reduction in the scale of executions at the Old Bailey after 1822 — a reduction in which other members of government who participated at Recorder's Reports, such as Ellenborough and the Duke of Wellington, did not always concur — to help buy him time to get to whatever middling position he may have had in mind.[84] Such time could also be purchased by the appointment of select committees, whose composition could sometimes be strongly influenced by government.[85] Similarly, by taking so prominent a lead in the consolidating measures of 1826–7, Peel aimed to "preoccupy the Ground," which was otherwise in danger of being claimed by "an abundant disposition on the part of new members to become legislators" and pummel him with "daily motions … for Papers connected

with the administration of the Law."[86] The evidence of Table 2 suggests that Peel's various strategies for rendering quiescent a once loud and persistent reform sentiment, at least for the time being, broadly succeeded.

That does not mean, however, that he felt himself entirely free to act solely upon the dictates of his personal conscience in all matters relating to capital punishment. Gatrell's vision of the remorseless executioner, while mostly accurate as far as it goes, still needs to be reconciled with the ultimately more complicated political and cultural realities of the time, as well as the more complicated realities of Peel's character, ambitions, and political tactics. Peel had compelling reasons of his own to not yet entirely relinquish the capital option for key crimes. From its beginnings in 1808, Romilly's campaign against the capital code was inseparably bound up with arguments about the current ineffectiveness of transportation and the insufficiency of imprisonment as alternative punishments.[87] Reformers understood that conservatives were only the more unlikely to relinquish either the practice or the principle of capital punishment without alternative punishments that were both available with certainty and plausibly imposing (that is, deterrent) in their character. Peel acted on this centrally important question from the outset of his Home Secretaryship, seeking to find means by which to make all three non-capital alternatives — transportation, confinement on board prison hulks, and the use of penitentiaries, gaols, and houses of correction — more obviously deterrent in character than he deemed them presently to be. No later than 1826, however, he appears to have thought such efforts to be useless, and consequently turned his efforts towards acquiring the means of preventing serious crime in the first instance rather than concerning himself overly much with punishing it more effectively. It is surely no accident that his dramatic scaling back in execution levels at the Old Bailey took place in 1830, the first year in which his new Metropolitan Police force was in place.[88]

The account presented in *The Hanging Tree* is largely uninterested in such complexities, at least over the longer term. Gatrell views the last decades of "the Bloody Code" primarily in terms of the morality (or rather, immorality) of capital punishment and its prac-

tice in early nineteenth-century England, with little sustained consideration of those other centrally related contexts — crime levels, as well as secondary penal options — which most contemporaries saw as inextricably bound up with the question of how much of the capital code should be retained and how far its letter might be put into practice. He does discuss them in the particular case of Peel, though to markedly different purpose and effect than that suggested here.[89] In so confining his vision, Gatrell makes a powerful case: one that must be answered. It is nevertheless an extremely partial perspective on a larger world of changing principles and practices of criminal law during an era of profound upheaval in English society and culture.

Finally, though, and to return to where we began, none of this should detract from the basic validity of one of Gatrell's central assertions: that the Tory governments of the 1820s remained committed to upholding the principle of executing people for the most serious categories of property crime, as well as the core legislative components of the capital code, the latter of which would not be decisively abandoned until the Whigs at last came to office at the end of 1830. It should, however, give us pause regarding the larger argumentative thrust of *The Hanging Tree*, which is resolutely to minimize those ultimately transformative forces of opinion that were at work in English society and its public fora, notably Parliament and the press. The numerical pattern of execution as practiced in London, as far back to 1760 at least, and the record of legislative measures (those that failed, as well as those that succeeded), strongly suggest that these forces were being more powerfully felt and responded to by England's hangmen than many readers of Gatrell might realize.

Conclusion

So capital punishment in London did not "suddenly" tumble over a moral, psychological, and practical cliff after 1830, as Gatrell's powerful account would have it. True, he admits, there were ever-widening "imbalances" between conviction and execution levels that are crucial in understanding the "sudden" collapse of capital punishment after 1830. Those imbalances "accumulated slowly," but he insists that they were "by no means obvious to all" and therefore

"cannot account for the exact timing of the bloody code's repudiation."[90] In contrast, this overview of changing execution levels in London has tried to demonstrate two things. First, Gatrell is quite right in so far as he insists that we cannot return to any old-style narrative of steady decline in both the scale and public acceptability of capital punishment from the mid-eighteenth century onwards. The sheer number — far more than the proportion — of people being hanged in London in the middle of this era defies any simple notion of a progressive advance of abolitionist sentiment. At the same time, however, the longer-term pattern of executions in London — the jurisdiction that was surely the most powerful motor of élite perceptions of capital punishment in England — by no means follows that which Gatrell posits: a steady decrease in the proportion of capital convicts executed, coupled with a steady increase in the actual numbers of people put on the gallows. The worst profligacy in terms of human life in London was in fact displayed during the 1780s, almost half a century before that decade which Gatrell's "sudden" transformation demands that he highlight. What can be said about London in the 1820s, and which helps supply the last chapters of *The Hanging Tree* with their undoubted emotive and argumentative force, is that it did witness, especially at its beginning and end, a considerably marked revival in the numerical scale of execution in London. That revival, however, was only an "echo" of the far more ghastly era that separated the American from the French Revolutions. The practice of execution in London at the beginning (and perhaps also the end) of the 1820s may well have stood out the more starkly and brutally, in the minds of contemporaries, for the contrast which it would have formed with the marked dwindling of capital punishment during the first decade of the 1800s and its near-extinction in 1807–8. Lord Chancellor Eldon appears to have thought so.

Secondly, although government officials entertained few or no doubts regarding the morality of execution, it is nevertheless clear that its efficacy — its practical impact as a deterrent and a moral lesson for the public-at-large — sometimes provoked serious doubts in their minds during the six decades surveyed here. Those doubts often inspired these men to make significant changes in both the character

of execution and the numerical scale with which it was practiced. Arguably, again, the most significant of those adjustments was actually made during the 1780s rather than the decades following: the years with which Gatrell is primarily concerned. And those doubts and concerns were powerfully reinforced and brought home to these men by both the practical experience of administering the capital code — they were actually thinking about what they were doing and what they were trying to achieve — and by the reactions of an increasingly pervasive public press as to how well (or how badly) the adjustments they made actually worked. Government ministers did indeed persist in upholding hanging as a viable moral imperative in a way that might well shock modern sensibilities; and *The Hanging Tree* derives much of its potency precisely from its explicit and self-conscious appeal to "we modern and conscientiously sympathetic kinds of people."[91] But once we cross the imaginative threshold that separates our world (as we usually like to think about it) from the rather different one over which such men sought to assert authority, sometimes via the ultimate exercise of power over life and death, we may yet find room to recognize the intelligence and responsiveness of those men during an era of crisis and transformation that rightly continues to command the close attention of historians.

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Endnotes:

1 V.A.C. Gatrell, *The Hanging Tree: Execution and the English People, 1770–1868* (Oxford: Oxford University Press, 1994), 18–21.

2 Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750 – Volume One: The Movement for Reform* (London: Stevens and Sons, 1948), quotes at 151, 39, and ix respectively.

3 Douglas Hay, "Property, Authority and the Criminal Law," in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, eds. Hay et al (London: Allen Lane, 1975), 17–63 (quotes at 23, 24). Randall McGowen has convincingly portrayed the intensive parliamentary debates over the criminal law as embodying a clash between a newly emergent "bourgeois" conception of how law should be administered and the traditional "aristocratic" vision so powerfully evoked by Hay; see "The Image of Justice and Reform of the Criminal Law in Early Nineteenth-Century England," *Buffalo Law Review* 32 (1983): 89–125. Hay has recently revisited the subject of judicial influence over the extent and the administration of the capital code during the era covered in this article; see his "Hanging and the English Judges: The Judicial Politics of Retention and Abolition," in *America's Death Penalty: Between Past and Present*, eds. David Garland, Randall McGowen, and Michael Meranze (New York: New York University Press, 2011), 129–65.

4 Gatrell, *Hanging Tree*, 7, 9. A number of offences would continue to nominally warrant the death penalty, but only five more people would be executed for crimes other than treason or murder; all of them were convicted of attempted murder, which remained a capital crime until 1861. See Phil Handler, "The Law of Felonious Assault in England, 1803–61," *Journal of Legal History* 28 (2007): 183–206, at 197.

5 Gatrell, *Hanging Tree*, pts III-IV. For a recent attempt to push back against any straightforward assertion about the emergence of sympathy during this era, see Simon Dickie, *Cruelty and Laughter: Forgotten Comic Literature and the Unsentimental Eighteenth Century* (Chicago: University of Chicago Press, 2012).

6 Gatrell, *Hanging Tree*, 416.

7 Gatrell, *Hanging Tree*, pt VI.

8 Sara Sun Beale and Paul H. Haagen, "Revenge for the Condemned," *Michigan Law Review* 94 (May 1996): 1622–59.

9 Randall McGowen, "Revisiting *The Hanging Tree*: Gatrell on Emotion and History," *British Journal of Criminology* 40 (2000): 1–13.

10 The "intellectual" analysis, emphasizing the particular impact in the 1760s and early 1770s of publications by Beccaria, Blackstone, and William Eden, is time-honoured and continues to proliferate; important statements include Radzinowicz, *History*, chs 9–10; and J.M. Beattie, *Crime and the Courts in England, 1660–1800* (Princeton, NJ: Princeton University Press, 1986), 554–9. The impact of the late eighteenth-century "culture of sympathy" is particularly emphasized in Randall McGowen, "A Powerful Sympathy: Terror, the Prison, and Humanitarian Reform in Early Nineteenth-Century Britain," *Journal of British Studies* 25 (1986): 312–34; and Dana Y. Rabin, *Identity, Crime, and Legal Responsibility in Eighteenth-Century England* (Basingstoke: Palgrave Macmillan, 2004). Gatrell's case for "the limits of sensibility" is stated at length in *The Hanging Tree*, pt iii.

11 Randall McGowen, "'He Beareth Not the Sword in Vain': Religion and the Criminal Law in Eighteenth-Century England," *Eighteenth-Century Studies* 21 (1987–88): 192–211; McGowen, "The Changing Face of God's Justice: The Debate over Divine and Human Punishment in Eighteenth-Century England," *Criminal Justice History* 9 (1988): 63–98; Andrea McKenzie, *Tyburn's Martyrs: Execution in England, 1675–1775* (London: Hambledon Continuum, 2007).
12 Gatrell, *Hanging Tree*, 25; David Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford: Oxford University Press, 1990), 124–5.
13 My focus in this article is primarily on the total numbers and rates of execution in any given year, without reference to important distinctions in the annual rates of execution for particular crimes from one year to another. I will pursue that more detailed analysis — with particular reference to the crimes of robbery, burglary, stealing in a dwelling, and forgery — in a companion piece to this article.
14 Beattie, *Crime and the Courts*, 451–6, 513–19, 530–8, 582–92; Peter King, *Crime, Justice, and Discretion in England, 1740–1820* (Oxford: Oxford University Press, 2000), 273–8; Hay, "Hanging and the English Judges," 129–65. Some might also call attention to Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London: Allen Lane/Penguin Press, 1991), which makes a variety of numerically-based assertions regarding the social-economic character of convicted criminals in the metropolis. The basis for Linebaugh's numerical analyses, however, is the Ordinary of Newgate's Account of the last dying speeches of condemned offenders, a publication that is not completely preserved and which had in any case vanished completely by the end of the 1760s (see McKenzie, *Tyburn's Martyrs*, ch 5).
15 Radzinowicz, *History*, 153–4.
16 The report affords no real clues or reassurances as to how full and accurate the circuit data may be; the committee's interrogation of the five clerks of assize, as to how they gathered it, occupies only a single page of text. See House of Commons Sessions Papers [hereafter HCSP] 1819 (585) VIII: 101–2.
17 This database (hereafter "Old Bailey Database") — fully searchable by convict name, gender, age, and offence; judge and jury; recommendations for mercy by prosecutor, judge, or jury; the dates of trial, Recorder's Report, and final outcome; and the character of the ensuing execution or conditional pardon — will be available free to the web on the University of Victoria's Humanities and Computing Media Centre website <http://hcmc.uvic.ca/about/projects.php> in the late summer or autumn of 2014. Its basic figures for conviction versus execution are almost precisely the same as those produced for Parliament in 1819 (HCSP 1819 [585] VIII: 156–9) during the years before the 1780s, but some statistically significant variations occur in many of the years thereafter.
18 David D. Cooper, *The Lesson of the Scaffold* (London: Allen Lane, 1974), 20, 114, 125; David Taylor, *Hooligans, Harlots, and Hangmen: Crime and Punishment in Victorian Britain* (Santa Barbara, CA: Praeger, 2010), 154, 240 n25.

19 Jeremy Gregory and John Stevenson, *The Routledge Companion to Britain in the Eighteenth Century, 1688–1820* (London: Routledge, 2000), 244–5; Eric J. Evans, *The Forging of the Modern State: Early Industrial Britain, 1783–1870* (3rd edn, Harlow: Longman Pearson, 2001), 512–3.
20 Beattie, *Crime and the Courts*, 309–13; Gatrell, *Hanging Tree*, 30–2.
21 Michael Harris, *London Newspapers in the Age of Walpole: A Study of the Origins of the Modern English Press* (Cranbury, NJ: Fairleigh Dickinson University Press, 1987), ch 2; C.Y. Ferdinand, *Benjamin Collins and the Provincial Newspaper Trade in the Eighteenth Century* (Oxford: Oxford University Press, 1997), 18, 88, 91, 127.
22 Zoe Dyndor, "Death Recorded: Capital Punishment and the Press in Northampton, 1780–1834," *Midland History* 33 (2008): 179–95 (esp. 180–1).
23 Paul Langford, *Public Life and the Propertied Englishman, 1689–l798* (Oxford: Clarendon Press, 1991), 192–6.
24 The origins and early practice of the Recorder's Report are analysed in J.M. Beattie, *Policing and Punishment in London, 1660–1750: Urban Crime and the Limits of Terror* (Oxford: Oxford University Press, 2001), 346–62, 448–62. For 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 *Penal Practice and Culture, 1500–1900: Punishing the English*, eds. Devereaux and Paul Griffiths (Basingstoke: Palgrave Macmillan, 2004), 258–84.
25 Peter King and Richard Ward, "The Bloody Code and the Unbloody Code: Capital Punishment at the Centre and On the Periphery," *Past and Present* (forthcoming).
26 Douglas Hay, "Writing about the Death Penalty," *Legal History* 10 (2006): 35–51.
27 Hay, "Hanging and the English Judges," *passim*; compare Gatrell, *Hanging Tree*, 497.
28 The National Archives, UK (hereafter TNA): State Papers (SP) 44/95, p.61 (James Smith, Feb 1781); and Home Office Papers (HO) 13/4, pp.29, 36, 37–8 (John Lockley, April 1786). In the case of the murderer, McGennis (HO 13/1, pp.15–16), a reference was also made to the Recorder (HO 13/1, p.15). Between 1752 and 1836, murder cases were effectively excluded from the Recorder's Report by "The Murder Act (25 Geo. II, c.37, reiterated in 9 Geo. IV, c.31, s.4), the relevant provision of which was repealed by 6 & 7 Will. IV, c.30.
29 My "Old Bailey Database," once operative, will enable users to measure the execution/pardon rates for each trial judge.
30 Figure 3 excludes some categories of capital crime and execution. In all years, I have excluded murder because the purpose of this figure is to measure fluctuations in the official inclination to execute offenders during the decades before the comprehensive abolition of capital offences in the 1820s–30s — and execution for murder continued for more than a century beyond that. I

have also eliminated the 33 convictions and 18 executions for the Gordon Riots in 1780, because of the unique scale of that particular event, and the uniquely individualized and geographically distributed character of the executions that followed (for which, see Linebaugh, *London Hanged*, 363–5; and Matthew White, "'For the safety of the city': The Geography and Social Politics of Public Execution after the Gordon Riots," in *The Gordon Riots: Politics, Culture and Insurrection in Late Eighteenth-Century Britain*, eds. Ian Haywood and John Seed [Cambridge: Cambridge University Press, 2012], 204–25).

31 As it happens, at least one well-known and extensively-documented contemporary matches this description perfectly: James Boswell (1740–95), whose diaries provide us with several vivid accounts of his reactions to London executions, and who occasionally published notices of them for newspaper publication. Boswell was nothing if not a man of the era of sensibility, however. He seldom if ever commented on the number of people executed. He was, rather, preoccupied with his own efforts to "enter into" the mental and emotional worlds of particular condemned felons in the moments before their deaths, and to decide whether he would fare better or worse on the brink of his own personal dissolution — a topic with which he was obsessively concerned. See Irma S. Lustig and Frederick A. Pottle (eds), *Boswell: The Applause of the Jury, 1782–1785* (New York: McGraw Hill, 1981), 89–90, 287, 304, 330–2, 337–8, as well as the discussions in Richard B. Schwartz, "Boswell and Hume: The Deathbed," in *New Light on Boswell: Critical and Historical Essays on the Occasion of the Bicentenary of The Life of Johnson*, ed. Greg Clingham (Cambridge: Cambridge University Press, 1991), 116–25, and Gatrell, *The Hanging Tree*, 284–92 (which, oddly, chooses not to pursue Boswell into the 1780s, though there is still much evidence there for the argument made concerning his execution-going in the 1760s and 1770s).

32 On this mid-century morals and penal crisis — which, from 1749 through 1753, led to execution rates at the Old Bailey of between 70 and 85 percent, with more than 80 individuals hanged in 1750 and 1751 each — see Beattie, *Crime and the Courts*, 520–53; Richard Connors, "'The Grand Inquest of the Nation': Parliamentary Committees and Social Policy in Mid-Eighteenth-Century England," *Parliamentary History* 14 (1995): 285–313; Bob Harris, *Politics and the Nation: Britain in the Mid-Eighteenth Century* (Oxford: Oxford University Press, 2002), ch 7; and Nicholas Rogers, *Mayhem: Post-War Crime and Violence in Britain, 1748–53* (New Haven, CT: Yale University Press, 2012).

33 "Old Bailey Database." In this instance, I have included executions for murder, since the purpose is to measure what execution attendees saw, rather than to highlight categories of criminality towards which (unlike murder) public and official attitudes had changed decisively by the 1830s.

34 Beattie, *Crime and the Courts*, 533 (table 10.1), 587 n124, 588 n126, 589 (figure 10.1); Hay, "Hanging and the English Judges," 133–4 (figures 5.1, 5.2).

35 The data collected by Parliament in 1819 must surely have revolutionized thinking about capital punishment by giving it, for the first time, a history extending beyond the living memory of most contemporaries.
36 The phrase is, of course, derived from a popular Canadian study of the large-scale significance of postwar demographic distributions: David K. Foot and Daniel Stoffman, *Boom, Bust, and Echo: How to Profit from the Coming Demographic Shift* (Toronto, 1996; revised edn, 1998).
37 Philip Jenkins, "From Gallows to Prison? The Execution Rate in Early Modern England," *Criminal Justice History* 7 (1986): 51–71.
38 *Gentleman's Magazine* 54 (1785): 151. Of the 14 occasions from 1783 to 1788 inclusive where only a single person was hanged, seven were convicted murderers, who were obliged (under the terms of the Murder Act; see note 29 above) to be hanged on separate days from the other capital offenders of the same sessions.
39 "[M]any people ... care more about the pain suffered by crime's victims than about the pain inflicted on criminals," Gatrell informs us, conceding that he "might not have sufficiently acknowledged the ethical and emotional foundations of that position" (*Hanging Tree*, ix).
40 William Black, *A Comparative View of the Mortality of the Human Species* (1788), 411–12.
41 *The Times* (6 January 1787).
42 *Morning Post* (17 March 1789) (emphases in original).
43 Steven Wilf, "Imagining Justice: Aesthetics and Public Executions in Late Eighteenth-Century England," *Yale Journal of Law and the Humanities* 5 (1993): 51–78; Simon Devereaux, "Recasting the Theatre of Execution: The Abolition of the Tyburn Ritual," *Past & Present* 202 (Feb 2009): 127–174.
44 [William Cobbett], *The Parliamentary History of England, from the Earliest Period to the Year 1803*, 25 (1785–6): 888–9.
45 Studies of the measure are now legion. The best recent accounts are Ruth Paley, "The Middlesex Justices Act of 1792: Its Origins and Effects" (PhD diss., University of Reading, 1983), ch 6; Elaine A. Reynolds, *Before the Bobbies: The Night Watch and Police Reform in Metropolitan London, 1720–1830* (Basingstoke: Macmillan, 1998), 73–6; and J.M. Beattie, *The First English Detectives: The Bow Street Runners and the Policing of London, 1750–1840* (Oxford: Oxford University Press, 2012), 147–59.
46 By "the Murder Act," for which see note 29 above.
47 Both measures shared the same principal proponent: the young William Wilberforce, at that time a close friend of the prime minister, William Pitt the Younger; see Simon Devereaux, "An Inexperienced Humanitarian? William Wilberforce and the Execution Crisis of the 1780s" (forthcoming). For a detailed analysis of the 1786 anatomy bill, see Richard Ward, "The Criminal Corpse, Anatomists, and the Criminal Law: Parliamentary Attempts to Extend the Dissection of Offenders in Late Eighteenth-Century England," *Journal of British Studies* (forthcoming). For the background, character, and wider contexts of the Proclamation Society, see Joanna Innes, "Politics and

Morals: The Reformation of Manners Movement in Later Eighteenth-Century England," in *The Transformation of Political Culture: England and Germany in the Late Eighteenth Century*, ed. Eckhart Hellmuth (Oxford: Oxford University Press, 1990), 57–118; and M.J.D. Roberts, *Making English Morals: Voluntary Associations and Moral Reform in England, 1787–1886* (Cambridge: Cambridge University Press, 2004), ch 1.

48 Beattie, *Crime and the Courts*, 560–618, remains the most comprehensive scholarly account of the various dimensions of the penal crisis of this period, though a vivid evocation of overcrowded gaols in particular appears in David Mackay, *A Place of Exile: The European Settlement of New South Wales* (Melbourne: Oxford University Press, 1985).

49 Douglas Hay, "The Laws of God and the Laws of Man: Lord George Gordon and the Death Penalty," in *Protest and Survival: The Historical Experience: Essays for E.P. Thompson*, eds. John Rule and Robert Malcolmson (London: The Merlin Press, 1993), 104–6; Simon Devereaux, "Imposing the Royal Pardon: Execution, Transportation, and Convict Resistance in London, 1789," *Law and History Review* 25 (2007): 126–7.

50 Gatrell, *Hanging Tree*, 21 n48.

51 Horace Twiss, *The Public and Private Life of Lord Chancellor Eldon* (London: John Murray, 1844), i, 398–9.

52 Simon Devereaux, "The Bloodiest Code: Execution and Pardon at London's Old Bailey, 1730–1837" (forthcoming). Lord Erskine of course served as Lord Chancellor to the "Ministry of All the Talents" (February 1806–April 1807); but in comparison with Eldon, this famous "liberal" hanged three of the eight convicted robbers who came before Recorder's Reports at which he served. Eldon's tally from 1801 through 1810 was 12 out of 101. The most up-to-date biographies of both Loughborough and Eldon say little or nothing about their practice of the capital code: see ODNB: Wedderburn, Alexander, 1st earl of Rosslyn (1733–1805); Erskine, Thomas, 1st baron Erskine (1750–1823); and Scott, John, 1st earl of Eldon (1751–1838); as well as R.A. Melikan, *John Scott, Lord Eldon, 1751–1838: The Duty of Loyalty* (Cambridge: Cambridge University Press, 1999). But Douglas Hay has been working extensively on the individual hanging proclivities of the assizes judges (Hay, "Hanging and the English Judges," 129–65).

53 It would be erroneously claimed that Sir Richard Phillips, one of the two Sheriffs of London and Middlesex from September 1807 to September 1808, presided over "no hangings during his term of office" (A.H. Phillips [ed], *Georgian Scrapbook* [London: T. Werner Laurie, 1949], 110). Nevertheless, the fact that he presided over the hanging of only one person during that time is remarkable enough.

54 As can be seen from a reading of these cases in "The Old Bailey Proceedings Online, 1674–1913" (<http://www.oldbaileyonline.org/>). From 1810 to 1837, 29 pled guilty and another 29 took their trial, with a slight preference toward the former position emerging from about 1820.

55 The vast majority of those convicted of returning from transportation to

America down to 1775 (when the practice was ended by the outbreak of the Revolutionary War), most of whom actually had returned all the way from overseas, were hanged ("Old Bailey Database," which distinguishes, so far as source materials allow, the circumstances of each convicted "returnee").

56 48 Geo. III, c.129. Significantly for the argument that will be made in the final section of this article, the government did subsequently attempt to query the positive effects of this repeal — that is, entirely removing the possibility of hanging someone for picking a pocket at some point in the future (Radzinowicz, *History*, 497–503).

57 Radzinowicz, *History*, ch 16.

58 British Library (BL), Additional Manuscript (Add MS) 40315, ff.63–4; see also Hay, "Hanging and the English Judges," 150, who also detects in this a significant change of tone on Eldon's part. Gatrell, too, notes this highly suggestive letter in passing, but dismisses it as nothing more than one of a few uncomfortable "murmurings, confined to diaries or letters to friends" (*Hanging Tree*, 543–4).

59 I may be stretching the literal word of the evidence here. If Eldon meant to evoke the 1780s, he ought to have said 30 or 40 years ago rather than "twenty." Perhaps his reference point was that significant reduction in Old Bailey execution rates, which he himself had imposed from 1801 onwards: a reduction that perhaps he thought marked the definitive break with the high execution levels of the late eighteenth century.

60 Peel may also have learned a lesson — or perhaps was being prodded by Eldon to do so — from that same determination to hang eight convicted burglars, seven months earlier, which Gatrell so vividly evokes (*Hanging Tree*, 554–63) in arguing for Peel's "dominance over the Council and the king" (p.563) at Recorder's Reports during the 1820s. Whether or not Peel's influence was the dominant one, the subsequent reduction in Old Bailey executions should cast doubt on the overall representativeness of Gatrell's vividly detailed case study.

61 As in Figures 3 and 5, I have omitted murderers from this count.

62 For a discussion of this last resurgence and its possible explanation, see Devereaux, "Peel, Pardon, and Punishment," 262–3.

63 Gatrell, *Hanging Tree*, 20.

64 For a more sophisticated reading of this point, see McGowen, "Revisiting *The Hanging Tree*," 3–4, 10–11.

65 Gatrell, *Hanging Tree*, 19–21. The quotation marks he places around "people" are presumably meant to signal his reader to be sceptical as to there being any real substance to this concept.

66 Gatrell, *Hanging Tree*, 6–7.

67 J.A. Sharpe, "Civility, Civilizing Processes, and the End of Public Punishment in England," in *Civil Histories: Essays Presented to Sir Keith Thomas*, eds. Peter Burke, Brian Harrison, and Paul Slack (Oxford: Oxford University Press, 2000), 215–30 (esp. 217–22).

68 Gatrell, *Hanging Tree*, 405.

69 To be fair, the section of *The Hanging Tree* from which I am quoting ends by

emphasizing that "Peel could fairly have said [in the Commons] that majority opinion still unambiguously supported the capital code" (*Hanging Tree*, 403–8, quote at 408). Again, however, Gatrell's larger object is to question the strength of reforming sentiment and to minimize its role. My argument here is that, although such sectors of conservative opinion undoubtedly existed and should not be minimized, nevertheless government seems clearly to have been responding to the other in practice.

70 The sort of energy and attention, for instance, which Boyd Hilton has given to economic policy and religious ideology in the Tory governing mentality, for a summary of which, see his *A Mad, Bad, and Dangerous People? England, 1783–1846* (Oxford: Oxford University Press, 2006).

71 Gatrell, *Hanging Tree*, ch 21.

72 These four categories of crime routinely comprised 75–80 percent of all capital convictions at the Old Bailey throughout the last century of "the Bloody Code"; see the figures reproduced in Devereaux, "Bloodiest Code" (forthcoming).

73 4 Geo. III, c.53 (which also abolished capital punishment for stealing naval stores); T.C. Hansard (ed), *The Parliamentary Debates from the Year 1803 to the Present Time* (hereafter *Hansard*), 2/9 (1823): 1245–6; Radzinowicz, *History*, 580. The following year, in reviewing a French volume on the law of evidence, Thomas Denman, a leading opposition member of Parliament and future Recorder of London, viewed "Mr Peel's five acts in the Session of 1823" as "effecting Sir Samuel Romilly's proposals" and maintained that they "have not been so much celebrated as they deserve" simply because much yet remained to be done (*Westminster Review* 40 [1824]: 169–07 [at 183]).

74 Three men had been hanged for stealing on river as recently as 1812; Devereaux, "Bloodiest Code" (forthcoming).

75 7 & 8 Geo. IV, c.29, s.12; Radzinowicz, *History*, 582–3.

76 Devereaux, "Bloodiest Code" (forthcoming); compare Gatrell, *Hanging Tree*, 579–81. The impact in the country at large, in terms of both numbers convicted and numbers hanged, appears to have been similarly dramatic (HCSP 1831–2 [375] XXXIII.4, 9).

77 Gatrell, *Hanging Tree*, 406, 409–16, 585.

78 TNA: HO 13/52, p.107; HO 13/43, p.306; for the latter case, see Sara Malton, "Forgery, Fiscal Trauma, and the Fauntleroy Case," *European Romantic Review* 18 (2007): 401–15, and Randall McGowen, "The Fauntleroy Forgeries and the Making of White-Collar Crime," in *Legitimacy and Illegitimacy in Nineteenth-Century Law, Literature and History*, eds. Margot Finn, Michael Lobban, and Jenny Bourne Taylor (Basingstoke: Palgrave Macmillan, 2010), 93–118. As striking as these two examples of Peel's "squeamishness" with the secondary "victims" of his gallows practice may be, they are in fact the only two such cases recorded in the Criminal Entry Books (HO 13), which may go some way towards confirming Gatrell's perception of the social-economic selectiveness of petitioning campaigns in individual cases.

79 On these first two points, see the figures in Devereaux, "Bloodiest Code" (forthcoming); on the second, compare those for England and Wales overall given in HCSP 1835 (217) XLV.28. On the centrality of forgery to "the Bloody Code" at this time, see Phil Handler, "Forging the Agenda: The 1819 Select Committee on the Criminal Laws Revisited," *Journal of Legal History* 25 (2004): 249–68, as well as Randall McGowen, "The Bank of England and the Policing of Forgery," *Past and Present* 186 (2005): 81–116, and "Managing the Gallows: The Bank of England and the Death Penalty, 1797–1821," *Law and History Review* 25 (2007): 241–82.

80 11 Geo. IV & 1 Will. IV, c.66; D.R. Fisher, "The Election of 1830," in *The History of Parliament: The House of Commons, 1820–1832*, ed. Fisher (Cambridge: Cambridge University Press, 2009), i, 227–33, freely available online at <http://www.histparl.ac.uk>. See also the account in Phil Handler, "Forgery and the End of the 'Bloody Code' in Early Nineteenth-Century England," *Historical Journal* 48 (2005): 683–702.

81 Lord Colchester (ed), *A Political Diary, 1828–1830, by Edward Law, Lord Ellenborough* (London: Richard Bentley, 1881), ii, 264, 267–8, 271, 273–4, 294–5.

82 Radzinowicz, *History*, ch 18; Norman Gash, *Mr Secretary Peel: The Life of Sir Robert Peel to 1830* (London: Longmans, 1961), chs 9, 14. More recently, see Hilton, *Mad, Bad, and Dangerous*, 318–21; and Devereaux, "Peel, Pardon, and Punishment," 275–8. Of course, Peel may have had no explicit definition of the exact middling position to which his strategy might eventually lead him.

83 Charles Duke Young, *The Life and Administration of Robert Banks, Second Earl of Liverpool* (London: Macmillan, 1868), iii, 216; quoted in Gash, *Mr Secretary Peel*, 319. Again, it deserves to be emphasized: if Peel and the Tories were as serenely convinced of the moral authority of capital punishment, as Gatrell would have it, why did the incoming Home Secretary view the need to contain the reform campaign in so urgent a light?

84 Colchester (ed), *Political Diary*, i, 101; Francis Bamford and the Duke of Wellington (eds), *The Journal of Mrs. Arbuthnot, 1820–1832* (London: Macmillan, 1950), ii, 59.

85 Ursula Henriques, "Jeremy Bentham and the Machinery of Social Reform," in *British Government and Administration: Studies Presented to S.B. Chrimes*, eds. H. Hearder and H.R. Loyn (Cardiff: University of Wales Press, 1974), 169–79; David Eastwood, "'Amplifying the Province of the Legislature': The Flow of Information and the English State in the Early Nineteenth Century," *Historical Research* 62 (1989): 276–94 (at 284–7); Clare Wilkinson, "The Practice and Procedure of the House of Commons, c.1784–1832 " (PhD diss., University of Wales Aberystwith, 1998), 165–9.

86 BL, Add MS 40390, ff.131–4.

87 This is explicit in the debates of the time: *Hansard*, 1/11 (1808): 877–86; 1/14 (1809): 713–16; 1/15 (1810): 366–74 (extended version at 1/19 [1811]: i–li). There were also separate and extensively-published debates at this time

over the role of transportation and the need for government to build, at long last, the large-scale penitentiary in London that had first been proposed in the Penitentiary Act of 1779 and again in the measure of 1794, which authorized Jeremy Bentham to pursue the project. The secondary literature touching on both subjects is vast. For the former, see Simon Devereaux, "The Making of the Penitentiary Act, 1775–1779," *Historical Journal* 42 (1999): 405–33; for the latter, Janet Semple, *Bentham's Prison: A Study of the Panopticon Penitentiary* (Oxford: Oxford University Press, 1993). For the debates surrounding the ultimate realization of the penitentiary from 1812 onwards, in Parliament as well as the public at large, see Randall McGowen, "Penal Reform and Politics in Early Nineteenth-Century England: 'A Prison Must Be a Prison'" (forthcoming).

88 Devereaux, "Peel, Pardon, and Punishment," 273–5. Compare the most recent authoritative biographical accounts, *ODNB*, Peel, Sir Robert, 2nd baronet (1788–1850), and *History of Parliament: Commons, 1820–1832*, ed. Fisher, vi, 672–816 (at 676), freely available online at <http://www.histparl.ac.uk>, both of which clearly reflect the impact of Gatrell's vision upon the subject.

89 Gatrell, *Hanging Tree*, 572–9.

90 Ibid., 21.

91 Ibid., 1.