DATES OF TRIALS

Until October 1775, and again from December 1816, the printed *Proceedings* provide both the start and the end dates of each sessions. Until the 1750s, both the *Gentleman's* and (especially) the *London Magazine* scrupulously noted the end dates of sessions, dates of subsequent Recorder's Reports, and days of execution.

From December 1775 to October 1816, I have derived the end dates of each sessions from newspaper accounts of the trials. Trials at the Old Bailey usually began on a Wednesday. And, of course, no trials were held on Sundays.

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NAMES & ALIASES

I have silently corrected obvious misspellings in the *Proceedings* (as will be apparent to users who hyper-link through to the trial account at the OBPO), particularly where those misspellings are confirmed in supporting documents. I have also regularized spellings where there may be inconsistencies at different appearances points in the OBPO.

In instances where I have made a more radical change in the convict's name, I have provided a documentary reference to justify the more marked discrepancy between the name used here and that which appears in the *Proceedings*.

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AGE

The printed *Proceedings* almost invariably provide the age of each Old Bailey convict from December 1790 onwards. From 1791 onwards, the Home Office's "Criminal Registers" for London and Middlesex (HO 26) do so as well. However, no volumes in this series exist for 1799 and 1800, and those for 1828-33 inclusive (HO 26/35-39) omit the ages of the convicts. I have not comprehensively compared the ages reported in HO 26 with those given in the *Proceedings*, and it is not impossible that there are discrepancies between the two.

Until it ceased publication in the 1760s, the Ordinary's *Account* (OA) usually noted the ages of all those convicts who were hanged. In all such instances (and more than half of all capital convicts from 1730 through 1770 were hanged), I have not bothered to cite the OA as the source.

In several cases, I have been able to determine the age of a convict by using the online version of the *Proceedings* to search the text of trials for phrases such as "what age" and the words "age/d" (as in, "what age are you?" and he/she "is aged seventeen").

In all instances where a convict's age has been determined using a source other than the *Proceedings* or the OA, I have noted the source used in the list of "Supplementary" documents and publications. These include documents (such as petitions for mercy, judges' case reports, and hulks or transportation registers) or other printed accounts (such as newspapers and criminal *Calendars*).

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CRIMES CONVICTED

"Benefit of Clergy": Defining a Capital Crime at Law

Historians have often noted that the majority of capital offenders in eighteenth-century England were condemned for crimes that were not the product of recent legislation but rather dated from as far back as the early Tudor era.[=] These included the worst crimes of violence (murder and rape), as well as those modes of theft which inspired the greatest sense of fear in their victims (robbery, burglary and housebreaking). About three-quarters of the more than two hundred separately-defined capital crimes that existed on the English statute books by the nineteenth century had only been defined as such after 1740.[=] With the distinctive exception of forgery, however, and especially forgeries of Bank of England currency, few of these statutes produced many capital convictions (at least at the Old Bailey). Only two capital crimes substantially represented in the database had been created after the Tudor era: stealing in a shop (shoplifting) in 1699; and stealing in a dwelling (theft by servants) in 1713.

A capital crime was created by a parliamentary statute which specifically stated that a particular act was now a "felony without Benefit of Clergy". This was a legacy of the medieval practice of allowing the church to remove the consideration and punishment of the criminal acts of its servants to its own courts – courts in which the imposition of capital punishments was impossible. Such privilege was famously open to abuse because the legally-accepted test of a man's status as a clergyman was the ability to read: an ability which, in fact, a great many laymen were capable of either demonstrating or at least plausibly emulating.[=] Tudor monarchs

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[=] Douglas Hay, "War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts," *Past & Present*, 95 (May 1982), 146-7; John H. Langbein, "*Albion's* Fatal Flaws," *Past & Present*, 98 (Feb 1983), 99-101, 117-19; J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton UP, 1986), pp.141-8; Joanna Innes and John Styles, "The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century England," *Journal of British Studies*, 25 (1986), 420-30.

[=] The classic account of this expansion – the product essentially of a lack of systematic legal codification – is Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (4 vols., Stevens & Sons, 1948-68), i, part I.

[=] Leona C. Gabel, *Benefit of Clergy in England in the Later Middle Ages* (Octagon Books, 1969; original

and their legislators, who would eventually preside over the creation of a state church from the 1530s onwards, quickly began to assert the superior jurisdiction of secular (royal) courts over spiritual ones so far as the most serious categories of crime were concerned. A statute of 1487 (4 Hen. VII, c13) restricted access to benefit of clergy to the first conviction only and imposed branding as a means to subsequently identify a repeat offender. This legal device later became a useful one when courts became increasingly concerned to restrict the use of the gallows to only the worst sorts of offenders: but it remained largely gender-specific because few if any females could plausibly claim to be clerics. Women were at last admitted to benefit of clergy on the same terms as men in 1691 (3 & 4 Will. & Mary, c9, s6), and the now often desultory reading test was entirely abolished in 1706 (5 Anne, c6, s6).[=]

The Petty Treason Act of 1497 (12 Hen. VII, c7) inaugurated the process of defining capital crimes by specifically excluding them from the privilege of benefit of clergy.[=] That became the established procedure for more than three centuries, until benefit of clergy itself was at last entirely abolished in 1827 (7 & 8 Geo. IV, c28, ss6-7).[=] From then onwards, criminal statutes deemed serious crimes simply to be "felonies" subject to specific punishments – including death – which were to be applied according to the varying degrees of that crime and of a convict's participation in it.

(A) Major Forms of Theft

The vast majority of all capital convictions at the Old Bailey were for "crimes against property" – that is, thefts – the most serious of which entailed the threat (and sometimes the actual use) of violence against persons and/or their property.

The five major categories of property crime in the database are briefly described here. Several other categories of theft appear below under the general heading ***(E) Miscellaneous***. They have been placed there for one of two reasons:

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edn, 1928-9); Peter Heath, *The English Parish Clergy on the Eve of the Reformation* (Routledge & Kegan Paul, 1969), pp.119-34; John Baker, *The Oxford History of the Laws of England – Volume VI: 1483-1558* (Oxford UP, 2003), pp.531-6; R.H. Helmholz, *The Oxford History of the Laws of England – Volume One: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford UP, 2004), pp.511-14.

=J.M. Beattie, *Policing and Punishment in London, 1660-1800: Urban Crime and the Limits of Terror* (Oxford UP, 2001), pp.287, 296-7, 315-18.

=Beattie, *Crime and the Courts*, pp.141-8; David Dean, *Law-Making and Society in Late Elizabethan England: The Parliament of England, 1584-1601* (Cambridge UP, 1996), pp.189-95; Baker, *Oxford History of the Laws*, pp.536-40; K.J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge UP, 2003), pp.46-8.

=Radzinowicz, *History*, i, 578-80.

(1) They are numerically too infrequent to warrant a separate “Crimes Convicted” category of their own, yet too distinctive in their character and/or enforcement to be treated as sub-categories of one of the five major forms of theft described here. Such forms of theft include: Stealing in a Bleaching Ground, Stealing in a Church (Sacrilegious Stealing), Stealing in the Mail, and Stealing on a Navigable River.

(2) They are insufficiently central to the actual, long-term practice of capital punishment to be allotted one of the nine major category definitions. The database contains more than a hundred convictions for “Pickpocketing” (stealing privately from the person), but no one at the Old Bailey was hanged for that crime after 1750.

(A1a) Robbery

Robbery consists of theft in the course of a personal confrontation between the criminal and his or her victim, a confrontation in which the implicit threat or the actual use of violence is present. The term “robbery” covers a large and varied degree of circumstances, ranging from the use of truly murderous violence (for which John Austin, the last man ever hanged at Tyburn, was made a special example of in November 1783) to seemingly mild verbal or physical altercations in the course of a theft. As fewer and fewer people came to be hanged for robbery, such distinctions were central to the decision whether to hang or pardon such criminals. With the one exception discussed immediately hereafter, however, no attempt has been made to introduce any such categories, a perilous exercise in any case since the letter of the laws themselves offered little or no help on that score.

Robbery was first made a capital crime in 1531 (23 Hen. VIII, c1, s3), but a statute of 1692 (3 & 4 Will. III, c9) was the definitively encompassing one for the period covered here. Its enforcement was enhanced by a statute of the following year (4 & 5 Will. III, c8) which ensured the payment of rewards to people who successfully prosecuted highway robbers. Although no one at the Old Bailey was hanged for robbery after 1829 (*save in one special case, noted immediately below*), certain forms of robbery with violence outlasted the substantial abolition of “the Bloody Code” which had taken place by 1837. The death penalty was not abolished for them until 1861 (24 & 25 Vict., c96, s43).[=]

(A1b) Robbery - Sodomy Accusation

One mode of robbery has been explicitly distinguished in the database, however – not only because the definition of “robbery” in such cases was remarkable in itself, but because it

[=] Radzinowicz, *History*: i, 637, 734; ii, 57-8, iv, 321, 341; Beattie, *Crime and the Courts*, pp.52, 148-61. Although robbery was by far the largest category of capital conviction in the eighteenth-century English courts, there have been astonishingly few detailed scholarly studies of the crime in its legal (as opposed to its social and cultural) dimensions.

appears to have been viewed with sufficient severity that it explains the one and only execution for any kind of robbery at the Old Bailey after 1829 (that of Thomas Attrell in February 1833). In April 1779 the Twelve Judges made a ruling in the case of James Donally, convicted of robbery at the Old Bailey two months earlier. The Judges concurred with the presiding judge at trial that Donally's extortion of money from another man, by means of a threat to publicly accuse him (the victim) of having made a sodomitical assault upon Donally, inspired so "life threatening" a sense of danger in the victim's mind as to amount to a form of "violence". [=] The making of such a threat was thereby deemed to constitute the capital crime of robbery rather than mere extortion, a crime whose only capital definition (set out in the 1723 "Black Act") specifically required communication by means of a threatening letter (*see below at* ***E18***). Capital punishment for this specific mode of robbery was abolished by statute in 1837 (7 Will. IV & 1 Victoria, c87, s4).[=]

The database includes under this category four cases that actually preceded the Judges' ruling of 1779. They entailed substantially similar circumstances to those in the case of Donally and others that followed, but the degree of intimidation and/or violence which accompanied each was apparently sufficient to render them "robberies" without resort to the reasoning that was set out by the Judges in 1779.[=]

(A2) Burglary & Housebreaking

Next to robbery, burglary and housebreaking were the most serious forms of theft with violence. Both entailed the breaking into a dwelling in the course of an act of theft. As with robberies government sought, by a statute of 1707 (5 Anne, c31), to enhance the regularity with which both burglary and housebreaking were punished by providing rewards to those who prosecuted such cases successfully.

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

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

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

The definition of “Burglary” was to break into a person’s home under cover of darkness with intention of committing a felony (theft): this was made a capital crime in 1547 (1 Edw. VI, c12, s10). A statute of 1713 (12 Anne, c7, s3) expanded the definition of the capital crime to cases where the culprit entered a dwelling with intent to commit a felony without breaking it, provided that he or she subsequently broke the dwelling in the course of making their exit.

For most of the era covered here, “Housebreaking” consisted of: (1) breaking into a dwelling (or other building) in the daytime and stealing goods while someone therein was put in fear (no one needed to be present in the case of burglary); or (2) breaking into a dwelling (or other building) without anyone being present, provided that the value of the goods stolen was five shillings or more. Both of these acts had been capital crimes since the sixteenth century (5 & 6 Edw. VI, c9, s4; 39 Eliz. I, c15, s1-2). [=]

Convictions for housebreaking appear to have been fairly uncommon: for every four convictions for burglary, there was only one for housebreaking. (This is why the database treats “Housebreaking” as a sub-set of “Burglary” for purposes of comparative statistical analysis.) To some extent, the difference may simply have arisen from the probability that offenders believed themselves more likely to escape undetected if they committed the crime at night rather than during the day. Convictions for either one of these crimes might crucially depend upon whether or not the victim’s home had actually been “broken” in any way during the course of the crime, an issue which often provoked close scrutiny at trial. After 1713, if no breaking had actually occurred in the course of the theft, the capital crime of which the defendant was convicted might be “reduced” to stealing in a dwelling (*see below, at* ***A4***). It is also conceivable that a mercifully-minded prosecutor might actually charge a burglary or housebreaking as “stealing in a dwelling” in the first instance, especially once it became apparent that the chances of being hanged for the latter offence were much lower than were those for either of the former ones.

The database treats “Burglary” as a crime taking place at night (the temporal definition of which could change significantly between the summer and the winter months[=]) and “Housebreaking” as essentially the same crime only during the day. However, some major changes were introduced by the 1827 statute which rationalized the laws relating to the major categories of theft in England (7 & 8 Geo. IV, c29), as a result of which the number of convictions for “Housebreaking” increased enormously. On the one hand, the variety of places within which

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[=] Radzinowicz, *History*: i, 41-7, 582-7, 634-6, iii, 41, 59, iv, 320-1, 341; Beattie, *Crime and the Courts*, pp.161-7.

[=] The issue was definitively resolved by a statute of 1837 which defined “the Night”, so far as an act of burglary was concerned, as extending from 9 p.m. until 6 a.m., regardless of the season (7 Will. IV & 1 Vict., c86, s4).

either a burglary or a housebreaking might be said to have taken place was significantly reduced (s13-15). At the same time, however, the temporal definition of "Housebreaking" was extended in such a way as to include a great many crimes that previously would have been defined as burglaries. That adjustment was explained during the course of the debates that led to the repeal of capital punishment for housebreaking (but not burglary) in 1833. "The Reformers of the law" in 1827, one MP remarked at that time,

> had purposely left the punishment of death attached to the offences of burglary and stealing in a dwelling house[=], and the reason was this: – as soon as there was light enough to see a man's face, the breaking ceased to be burglary; but between day-light and people rising to their business, there elapsed, at one period of the year [*i.e.*, winter], a great many hours; and it was to give honest and industrious men a full and effective security during these hours that the punishment of death was left attached to [housebreaking].[=]

The 1827 revision redefined "housebreaking" to allow for: (1) breaking during night-time hours (properly speaking, a "burglary") in which the inhabitant might nonetheless already be absent from the premises (*i.e.*, not present and "put in fear"); and (2) theft "to any Value whatever" (s12), not just the five shillings or greater previously required for a conviction for housebreaking in which the victim was absent from the premises. An attentive reader of trials for housebreaking after 1827 will be struck by the many instances in which the householder had clearly been away from the premises for a day or longer, during which interval the break-in had occurred, either by day or by night.

All convictions for "Housebreaking" after 1827 have been reviewed and those which clearly transpired during the night re-categorized as "Burglaries", so as to maintain broad consistency in the essential character of the two offences across the entire timespan covered here.[=]

Only six years after the expansion of this criteria for housebreaking, capital punishment for that crime was entirely abolished by an Act of 1833 (3 & 4 Will. IV, c44). As with robbery however, burglary – when accompanied by certain types of violence or an explicit attempt at murder – remained a capital crime until 1861 (24 & 25 Vict., c96, s56-7), albeit one for which no one at the Old Bailey was actually hanged after 1830.

[=] He clearly meant what we now understand as housebreaking: "stealing in a dwelling house" had ceased to be a capital crime the year before (*see below, at A4*).

[=] *Hansard*, 3/19 (1833), col. 1040-1.

[=] Not all convictions for "housebreaking" could be so adjusted: sometimes the defendant simply pled guilty, so no details of the crime are provided in the *Proceedings*.

(A3) Steal[ing] in [a] Shop

Two major categories of theft – stealing in a shop and stealing in a dwelling – were of considerably more recent vintage. Their emergence as distinctive categories of capital crime in the early eighteenth century reflected the changing social and economic character of London and many other growing urban centres during that era. Another, more particular context of both statutes was an unprecedented increase in the number and proportion of *women* convicted of property crime in London during the successive reigns of William III and Anne (1689-1714).[=]

Shoplifting (or, privately stealing in a shop), where the goods stolen were valued at five shillings or more, became a capital crime in 1699 (10 & 11 Will. III, c23). The creation of this capital offence was a direct consequence of the emergence of the first recognizably modern commercial shops in London and other major urban centres. The statute also covered thefts from a warehouse or a stable.

Prosecutions for shoplifting undoubtedly fell far short of the actual number of instances in which it was detected, for reasons which John Beattie has suggested. Certain detection usually required that perpetrators be caught red-handed, in which case the immediate restoration of the goods stolen was a far more attractive resolution than a prolonged and costly criminal prosecution. Moreover, prosecutions of – and especially any severe punishment for – a crime so manifestly susceptible to the temptations of a moment (effectively, in many minds, a *petty* theft) might have rendered a tradesman unpopular in the neighbourhood. Finally, women were by far the most frequent offenders, and many people were undesirous of seeing women hanged under most circumstances. Nor (as people using the database will soon see) does there appear to have been any great appetite in government for enforcing the ultimate penalty of the law upon convicted shoplifters. Execution levels for the crime were routinely low, and no one at the Old Bailey was hanged for it after 1793. It was effectively abolished as a capital offence (at least at the Old Bailey) after a statute of 1820 (1 Geo. IV, c117) raised the necessary value of the goods stolen to £15 (a sixty-fold increase). No one at the Old Bailey was capitally convicted for shoplifting after this, and the crime entirely ceased to be capital only three years later (4 Geo. IV, c53).[=]

(A4) Stealing in [a] Dwelling

[=] Beattie, *Policing and Punishment*, pp.63-71.

[=] Radzinowicz, *History*, i, 47-8, 554-5, 580, 666-70; Beattie, *Crime and the Courts*, pp.178-9; Beattie, *Policing and Punishment*, pp.36-7, 66-7, 328-30; Deirdre Palk, *Gender, Crime and Judicial Discretion, 1780-1830* (Boydell, 2006), chap 3.

The theft of goods worth forty shillings (£2) or more from inside a dwelling – without any breaking or any persons necessarily present – was made a capital crime in 1713 (12 Anne, c7). This law was particularly intended to deter theft by servants, who had more or less full access to any valuables in the homes of their master or mistress.[=] Servants, the vast majority of whom were young women, were usually newcomers to London, whose character and reliability were often almost entirely unknown to their employers – hence the anxiety which led to the creation of this particular capital crime. The Larceny Consolidation Act of 1827 (7 & 8 Geo. IV, c29, s12) increased the required value of the goods stolen to £5, an adjustment which dramatically reduced the number of convictions for this crime. The death penalty for it was entirely abolished in 1832 (2 & 3 Will. IV, c62).[=]

People using the database will soon discern how large a proportion of capital convictions this crime produced at the Old Bailey (especially after 1800), but also how infrequently those convictions ended in execution (especially after 1790). The near-certainty of escaping the noose for this crime was fairly well-understood and may even have inspired some late eighteenth-century prosecutors, anxious to reduce the risk of putting a person on the gallows (especially during an era of growing doubts about the morality and practical value of capital punishment), to choose to prosecute a crime that was actually a burglary or a housebreaking as the "lesser" capital crime of stealing in a dwelling.

(A5) Animal Theft

Two of the three major forms of animal theft represented here became capital crimes in the mid-eighteenth century, reflecting (again) the changing social-economic experience of England and its capital. A "Regular Search" of each or all sorts of animal theft will produce a table in which I have indicated, in each instance, the number of animals stolen – a consideration that could be crucially important in the case of sheep-stealing (*see below*, ***A5b***).

Capital punishment for all three major forms of animal theft – horse, sheep and cattle – was abolished by a single Act of 1832 (2 & 3 Will. IV, c62).

- ***(A5a) Horse***

[=] The 1713 statute explicitly excluded "apprentices under the age of fifteen years, who shall rob their masters" (s2) from the operation of the new law – perhaps from a confidence that the corporal punishments which masters were empowered to apply to their apprentices would be sufficient "correction" in the case of especially young apprentices stealing from their masters.

[=] Radzinowicz, *History*: i, 48-9, 670-2; iv, 305-6; Beattie, *Crime and the Courts*, pp.173-5; Beattie, *Policing and Punishment*, pp.37-9, 66-7, 335-7.

Horses were indispensable to all effective travel, communication and transportation of goods before the advent of the railways in early Victorian England, as well as to farming in an economy that remained substantially agriculturally-based until that time. They were also quite easy to steal. Not surprisingly, then, horse-theft had been a capital crime since 1545 (37 Hen. VIII, c8, s2). [=] Execution for stealing a horse became less frequent at the Old Bailey after the mid-eighteenth century and distinctly uncommon by the early nineteenth.

- ***(A5b & A5c) Sheep & Cattle***

The theft of sheep and cattle alike were made capital crimes by a single statute of 1741 (14 Geo. II, c6), although the wording of that Act as to cattle was deemed to be sufficiently imprecise that a clarifying statute was passed the following year (15 Geo. II, c34). These laws were passed in the context of poor harvests in 1740 and 1741, and consequent deprivations and desperation amongst the rural populace. The sheer scale of sheep and cattle droving into London (especially Smithfield Market) must also have made parliament cognizant of the vast scale of investment in the production and sale of meat, and the potential scope of black marketeering in that area. The number of sheep stolen by an individual offender often made the difference between life or death: the theft of only one sheep could plausibly be represented as a crime of desperation, driven by the hunger of oneself or one's family; the theft of several argued the probability that the animals were being sold into England's extensive black market in meat, making the crime one of profiteering rather than desperation. [=]

Sheep-stealers were hanged only rarely at the Old Bailey, though it is noteworthy that one of the few people to be hanged there after 1829 for any crime other than murder was George Widget, convicted in April 1831 of stealing fifty-one sheep.

Scarcely anyone convicted at the Old Bailey of stealing cattle was actually hanged for it.

- ***(A5d) Deer***

=[?]Radzinowicz, *History*: i, 675-7; iv, 305; Beattie, *Crime and the Courts*, pp.167-70; Peter Edwards, *Horse and Man in Early Modern England* (Hambledon Continuum, 2007): N.W. C. Woodward, "Horse-Stealing in Wales, 1730-1830," *Agricultural History Review*, 57 (2009), 70-108; Arthur MacGregor, *Animal Encounters: Human and Animal Interaction in Britain from the Norman Conquest to World War One* (Reaktion, 2012), chap 2.

=[?]Radzinowicz, *History*: i, 675-8; iv, 305; Beattie, *Crime and the Courts*, pp.170-2; John Rule and Roger Wells, *Crime, Protest and Popular Politics in Southern England, 1740-1850* (Hambledon, 1997), chap 10; Timothy Shakesheff, *Rural Conflict, Crime and Protest: Herefordshire, 1800-1860* (Boydell, 2003), chap 4; N.W.C. Woodward, "Seasonality and Sheep-Stealing: Wales, 1730-1830," *Agricultural History Review*, 56 (2008), 25-47.

Deer-stealing under certain specific circumstances was made a capital crime by the infamous "Black Act" of 1723. However, as one might expect given the degree to which Middlesex was urbanized by that time, this crime very rarely appeared at the Old Bailey. There are only two convictions for it, and I have left them amongst the small handful of crimes (five) that appear under ***Miscellaneous – Black Act*** (*see below at* ***E2***).

(B) Violence - Murder

(B1) "Murder"

The general term "Murder" is used here as a residual category, covering all types of murder *other* than the three specific forms distinguished below (in all three cases, the killer had a special relationship to the victim). Searches under "Murder" using the "Regular Search" function will produce a table of results, in each of which the distinctive features of the particular murder involved – either an unusual sort of victim or the unusual circumstances of a particular murder – might be noted in parentheses. When only the term "Murder" appears, it indicates that the victim was an adult of no apparently special relationship to his or her killer.

The crime of murder was removed from Clergy by a series of statutes from 1531 (23 Hen. VIII, c1) to 1547 (1 Edw. VI, c2); the death penalty for it was suspended by an Act of 1965 (Eliz. II 1965, c71) whose effect become permanent by a parliamentary resolution of 1969.[=]

(B2) "Infanticide"

This was the murder of an infant by its unwed mother, usually immediately (or soon after) birth. Under a statute of 1624 (21 Jas. I, c.27), the mother could be (and usually was) convicted simply on the evidence of having concealed the birth of an infant subsequently found dead. After passage of "Ellenborough's Act" in 1803, an act of homicide *per se* had to be proven for conviction on a charge of infanticide, although the crime still applied only to the illegitimate offspring of unwed mothers (43 Geo. III, c58, s3). The definition of "infanticide" only became gender neutral when that crime was fully subsumed into a general law of homicide in the Offences Against the Person (Consolidation) Act in 1828 (9 Geo. IV, c31, s3). Until that time, men who murdered infants could only be charged for doing so where a deliberate act of murder could be proven – which largely explains why "infanticide" is entirely confined to female perpetrators in this database.

Execution of women for this crime became practically impossible after passage of the Infanticide Acts of 1922 and 1938 (12 & 13 Geo. V, c18; 1 & 2 Geo. VI, c36), and it became an

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[=] Radzinowicz, *History*, i, 629, 733; Beattie, *Crime and the Courts*, pp.77 n4, 143; Brian P. Block and John Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain* (Waterside Press, 1997), chaps 18-19.

even more remote possibility when a passage in the Homicide Act of 1957 (5 & 6 Eliz. II, c11, s6) restricted application of the death penalty for infanticide only to those instances where an individual had committed two or more murders on separate occasions. The possibility of being hanged for two or more acts of infanticide only ended, strictly speaking, when a parliamentary resolution of 1969 rendered permanent the 1965 Act suspending the death penalty for murder.[=]

(B3) "MurderHusband" vs "MurderWife"

Until the Offences against the Person Act in 1828 recast it as murder like any other (9 Geo. IV, c31, s2), the murder of a husband by his wife was deemed to be a form of "Petty (petit) Treason" – effectively, an act of rebellion against a father–figure akin to rebellion against one's king (*i.e.*, High Treason). Petty treason was defined in law by a statute of 1497 (12 Hen. VII, c7).[=] Until 1790 women convicted of this form of murder were burned at the stake, usually after having been hanged first (*see below, at* ***Outcomes Executed***).[=]

The database also distinguishes all cases of husbands murdering their wives so that readers may better appreciate for themselves the degree of possible gender bias in the definition and punishment of the respective forms of spousal homicide during this era.[=] In a few instances, such as that of William Taunton in September 1769, the wife in question was a "common law" spouse.

(B4) "MurderByServant" vs "MurderOfServant"

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

[=] Radzinowicz, *History*, i, 628-9; Beattie, *Crime and the Courts*, pp.77 n4, 143.

[=] On this subject, see (most recently) Simon Devereaux, "The Abolition of the Burning of Women in England Reconsidered," *Crime, History & Societies*, 9/2 (2005), 73-98. Shelley Gavigan has pointed out that, since the actual crime of "petty treason" itself was not abolished until 1828, the inherent detestation of such overt acts of rebellion by women may have remained largely unaffected by any changing sensibilities of the 1780s which animated the abolition of burning; see her, "Petit Treason in Eighteenth Century England: Women's Inequality before the Law," *Canadian Journal of Women and the Law*, 3 (1989-90), 335-74.

[=] On this topic, see Jennine Hurl-Eamon, "'I Will Forgive You If the World Will': Wife Murder and Limits on Patriarchal Violence in London, 1690-1750," in Joseph P. Ward (ed.), *Violence, Politics and Gender in Early Modern England* (Palgrave Macmillan, 2008), pp.223-47.

The murder of a master or mistress by his or her servant was also deemed to be a form of "Petty Treason" (by the statute of 1497) until 1828.[=] Unlike a wife murdering her husband, however, no distinctive form of execution was regularly imposed upon those convicted of killing their master/mistress. The two people here convicted of murdering their masters before passage of the Murder Act of 1752 (25 Geo. II, c37) were both hanged at the site of their crime (*see below, at* ***Outcomes-Executed***).[=] The two who were convicted of it afterwards were, like virtually all other convicted murderers, hanged at the regular place of execution (Tyburn until November 1783, Newgate thereafter) and their bodies subsequently turned over to the surgeons for dissection, a requirement that was finally abolished by the 1832 Anatomy Act (2 & 3 Will. IV, c75, s16).[=]

As with spousal homicides, the database also distinguishes all cases of masters or mistresses who murdered their servants, so that the other side of the coin is apparent. This crime could provoke especial public detestation if it seemed to involve a grossly excessive abuse of the power of physical correction which the law vested in parental authority figures. Elizabeth Brownrigg, convicted and hanged in 1767 for the particularly savage murder of her 14-year-old servant girl, was the era's superlative example of this particular form of homicide.[=]

(C) Violence - Sexual Assaults

The early stirrings of "Victorian" moral norms from the late 1790s onwards appear to have inspired the editors of the Old Bailey *Proceedings*, often under specific orders from the judge

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[=] A third form of this crime, the murder of a senior cleric/clergyman by his junior, never arose at the Old Bailey during the era covered here.

[=] The first detailed study of on-site executions is Steve Poole, "'For the Benefit of Example': Crime-Scene Executions in England, 1720-1830," in Richard Ward (ed.), *A Global History of Execution and the Criminal Corpse* (Palgrave Macmillan, 2015), pp.71-101.

[=] On the role of the Murder and Anatomy Acts in ensuring a supply of corpses for England's surgeons, see Ruth Richardson, *Death, Dissection and the Destitute* (U of Chicago P, 1987; 2nd edn, 2000); Elizabeth T. Hurren, *Dying for Victorian Medicine: English Anatomy and Its Trade in the Dead Poor, c.1834-1929* (Palgrave Macmillan, 2012); and 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*, 54 (2015), 63-87.

[=] Kristina Straub, "The Tortured Apprentice: Sexual Monstrosity and the Sufferings of Poor Children in the Brownrigg Murder Case," in Laura J. Rosenthal and Mita Choudhury (eds.), *Monstrous Dreams of Reason: Body, Self, and Other in the Enlightenment* (Bucknell UP, 2002), pp.66-81; Patty Seleski, "A Mistress, a Mother, and a Murderess Too: Elizabeth Brownrigg and the Social Construction of an Eighteenth-Century Mistress,"in Katherine Kittredge (ed.), *Lewd and Notorious: Female Transgression in the Eighteenth Century* (U Michigan Press, 2003), pp.210-32; Kate Clarke, *Bad Companions: Six London Murderesses Who Shocked the World* (History Press, 2013), pp.33-75.

who presided at trial, to suppress all details of the case in published accounts of trial for these crimes. From that time onwards, I have used newspapers and other printed sources to supply crucial details of each conviction – the age and status of the victim, any apparent evidence of consent (in the case of Sodomy), and so forth – wherever possible and provided those details in the "Search Results" table for the crime.

(C1) Rape

Rape became a capital crime by a statute of 1576 (18 Eliz. I, c7), remained so under the Offences against the Person Act of 1828 (9 Geo. IV, c31, s16), and ceased to be only thirteen years later (4 & 5 Vict., c56, s3).[=] Once convicted of a rape, virtually the only way a man might avoid execution was to raise doubts about the previous sexual morality of the victim and/or the honesty of her testimony at trial. On this point, the age of the victim could be crucial; the Elizabethan law against rape specifically stated that girls less than ten years old could not be deemed to have "consented" to sexual intercourse under any circumstance, a point that was raised in opening remarks at the trial of David Scott, convicted of rape at the Old Bailey in September 1796. That provision was reiterated in the 1828 Offences against the Person Act (s17), which also made sexual intercourse with a girl aged ten or eleven a misdemeanour punishable by imprisonment "for such Term as the Court shall award". The data presented here appear to indicate that the odds of escaping execution on a conviction for rape improved from the 1770s onwards.[=]

(C2 & C3) Sodomy & Bestiality

Sodomy and bestiality were made capital crimes in 1533 (25 Hen. VIII, c6), were sustained as such under the 1828 Offences against the Person Act (9 Geo. IV, c31, s15), and did not cease to be so until 1861 (24 & 55 Vict., c100, s61). In contrast to rape, the probability of being executed for these sexual crimes seems to have increased after 1770; they also remained capital offences for two decades longer than rape. [=] It is remarkable to note that, of only eleven people hanged at the Old Bailey for any crime other than murder from 1830 to 1837 inclusive, two of them

=[?]Radzinowicz, *History*: i, 631-2, 734; iv, 322-4.

=[?]Next to murder and infanticide, rape is the capital crime that has been most intensively studied by scholars of criminal justice. For the era covered here, however, no book-length study has yet superseded Anna Clark, *Women's Silence, Men's Violence: Sexual Assault in England, 1770-1845* (Pandora, 1987). But see also Gregory Durston, "Rape in the Eighteenth-Century Metropolis," *British Journal for Eighteenth-Century Studies*, 28 (2005), 167-79; 29 (2006), 15-31; Esther Snell, "Trials in Print: Narratives of Rape Trials in the Proceedings of the Old Bailey," in David Lemmings (ed.), *Crime, Courtrooms and the Public Sphere in Britain, 1700-1850* (Ashgate, 2012), pp.23-41; Garthine Walker, "Everyman or a Monster? The Rapist in Early Modern England, c.1600-1750," *History Workshop Journal*, 76 (2013), 5-31; and Walker, "Rape, Acquittal and Culpability in Popular Crime Reports in England, c.1670-c.1750," *Past & Present*, 220 (Aug 2013), 115-42.

were men who had engaged in consensual sexual intercourse with one another.[=]

The distinction between "bestiality" (penetrative sex with an animal) and sodomy is not always clear in the trial accounts, especially after the *Proceedings* ceased to publish the details of such trials (as well as those for rape) from the 1790s onwards. [=] That gap has been supplied using newspaper accounts.

(D) Currency Offences

(D1) Coining

Coining is one of the two oldest capital crimes represented in the database: the making or importation into the kingdom of false money was made a form of High Treason in 1350 (25 Edw. III, c2). Several more statutes, defining different sorts of coining, were passed during the great re-coinage of the 1690s. An important Act of 1742 (15 Geo. II, c28) made repeated convictions for uttering false coin a conventional (*i.e.*, non-treasonous) capital crime; many of the people in this database, especially in its latter decades, were in fact convicted of this "lesser" form of coining. Capital punishment for all forms of coining was abolished in 1832 (2 Will. IV, c.34).[=]

Coining was one of the few capital offences which generated a large proportion of convictions – and executions – of women, presumably because the degree of technical skill which the crime entailed made it far less plausible for judges and juries to persuade themselves that such

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[=] Radzinowicz, *History*: i, 632, 733; iv, 316, 329-31. The most comprehensive monographs on this subject during this era remain Rictor Norton, *Mother Clap's Molly House: The Gay Subculture in England, 1700-1830* (GMP, 1992; new edn, 2006), and Netta Murray Goldsmith, *The Worst of Crimes: Homosexuality and the Law in Eighteenth-Century London* (Ashgate, 1998). See also A.D. Harvey, "Prosecutions for Sodomy in England at the Beginning of the Nineteenth Century," *Historical Journal*, 21 (1978), 939-48.

[=] John Smith and James Pratt (OBPO <t18350921-2118>; *The Times*, 28 Nov 1835).

[=] Bestiality is only just beginning to attract detailed scholarship for the early modern era; no major work has yet appeared exploring it in detail for the era covered by the database. For now, see Graham Parker, "Is a Duck an Animal? An Explanation of Bestiality as a Crime," *Criminal Justice History*, 7 (1986), 95-109.

[=] Radzinowicz, *History*, i, 600-1, 652-4.

women were acting under the control of their husbands or any other male authority figure. [=] Women convicted of treasonous modes of coining were burnt at the stake until 1790, long after men convicted of the same crime were only drawn to the place of execution on a sledge and then hanged (*see below*, ***Outcomes-Executed***).

(D2) Conceal a Bankruptcy

The act of concealing one's bankruptcy from one's creditors was first made a capital crime by an Act of 1706 (4 & 5 Anne, c17) which lapsed ten years later, then another of 1719 (5 Geo. I, c24) which also expired after a decade. It was made a capital offence permanently in 1732 (5 Geo. II, c30) and abolished in 1820 (1 Geo. IV, c115).

Only four people in the database were convicted of this crime, but its cultural impact appears to have been lasting: perhaps because three of those four men were hanged; and perhaps because two of those three featured in editions of the *Select Trials* well into the nineteenth century. [=] (The crime is even referenced in the celebrated 1951 film version of Dickens' *A Christmas Carol*, though not in the original story itself.) This offence would appear to be only the most extreme form of "restraint" imposed upon debtors in an age which famously imprisoned people for that misfortune – a sobering testimony to the extent to which legislators were prepared to afford protection to creditors in an era of rapidly modernizing and expanding commercial exchange. [=]

(D3) Embezzle

Embezzling was made a capital crime by several different statutes, each of them specifying its application to the employees of a specific company. All three of the men in the database who were convicted of this crime (none of whom were hanged) worked for the Bank of England, and

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[=] There is no book-length academic study of coining for the Hanoverian era. Three detailed studies of prosecutions associated with the 1690s recoinage are: Malcom Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge UP, 2000), part ii; Nicholas Tosney, "Women and 'False Coining' in Early Modern London," *London Journal*, 32 (2007), 103-23; and Carl Wennerlind, *Casualties of Credit: The English Financial Revolution, 1620-1720* (Harvard UP, 2011), chap 4. A rich and evocative study of eighteenth-century coining *outside* of London is John Styles, "'Our Traitorous Money Makers': The Yorkshire Coiners and the Law, 1760-83," in John Brewer and John Styles (eds.), *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries*, (Hutchinson, 1980), pp.172-249.

[=] William Montgomery (OBPO <t17521026-45>), Alexander Thompson (OBPO <t17560115-26>), John Perrott (OBPO <t17611021-22>), and James Bullock (OBPO <t18070916-48>, the latter of whom was pardoned on condition of transportation for life (HO 13/19, pp.98-100). See also Andrew Knapp and William Baldwin, *The New Newgate Calendar* (5 vols., J. Robins, 1826), ii, 485-9 (Montgomery); iii, 97-113 (Perrott); v, 179-82 (Bullock).

[=] Radzinowicz, *History*, i, 520-1, 549, 553, 641-2; Emily Kadens, "The Last Bankrupt Hanged: Balancing Incentives in the Development of Bankruptcy Law," *Duke Law Journal*, 59 (2010), 1229-1319.

so would have been convicted under the authority of an Act of 1742 (15 Geo. II, c13). Given how infrequently it appears to have been used, it is perhaps surprising that this specific crime outlasted the comprehensive abolition of most remaining capital crimes as of 1837. It seems to have remained a capital offence until 1861 (24 & 25 Vict., c24).=

(D4) Forgery

Over the course of the eighteenth century, forgery – the falsification of various paper instruments of financial exchange, including bank notes and private promissory notes, or even a person's will – became one of the most complicated and extensively legislated of all crimes carrying the death penalty. During the waning years of "the Bloody Code", it was also perhaps the most controversial of all capital offences. Execution was imposed far more consistently in cases of forgery than in virtually all other capital crimes besides murder.

The creation of forgery as a capital crime and its severe enforcement was inspired by the rapid expansion of commercial exchange in England following "the financial revolution" of the 1690s, the decade which saw the establishment of the Bank of England and the National Debt. The security of instruments of financial exchange and of national revenue became important concerns for parliament thereafter.=

A simple and comprehensive understanding of the legislative history of forgery is not easily achieved. The first attempt to create an encompassing capital crime in this area was made in 1562 (5 Eliz. I, c14), but the first widely effective one appears to have been that of 1729 (2 Geo. II, c25). The subject is made the more complex because the first two statutes that repealed capital punishment for some forms of forgery did so in largely "negative" terms. Acts of 1830 (11 Geo. IV & 1 Will. IV, c66) and 1832 (2 & 3 Will. IV, c123) abolished capital punishment for all acts of forgery <u>not</u> specified therein, without explicitly stating which particular capital statutes remained active. The comprehensive abolition measure of 1837 (7 Will. IV & 1 Vict, c84) is more readily grasped, though it still seems to have missed two obscure forms of the crime that subsequently had to have the capital sentence removed from them four years later (4 & 5 Vict., c56).=

=Radzinowicz, *History*: i, 637-40, 733-4; iv, 341-2.

=P.G.M. Dickson, *The Financial Revolution in England: A Study in the Development of Public Credit, 1688-1715* (Macmillan, 1967); John Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783* (Unwin Hyman, 1989); Wennerlind, *Casualties of Credit*.

=Radzinowicz, *History*: i, 550-1, 555-61, 590-5, 604-5, 642-50; iv, 305, 319-20; Randall McGowen, "From Pillory to Gallows: The Punishment of Forgery in the Age of the Financial Revolution," *Past & Present*, 165 (Nov 1999), 107-40; McGowen, "Making the 'Bloody Code'? Forgery Legislation in Eighteenth-Century England," in Norma Landau (ed.), *Law, Crime and English Society, 1660-1830* (Cambridge UP, 2002), pp.117-38; McGowen, "Forgery and the Twelve Judges in Eighteenth-Century England," *Law and*

- ***(D4a) Forgery Misc[ellaneous]***

The database distinguishes two particularly significant forms of forgery from all others. "ForgeryMisc" is used as a residual category, which includes forgeries of promissory notes, bills of exchange, payment orders, wills, and so forth. A "Regular Search" of this crime will generate a table in which users can discern which specific convictions consisted of only the act of forging the instrument, or the act of uttering it, or both. That is true, also, of the first of the other two major forms of forgery which are specifically distinguished in the database ….

- ***(D4b) Forgery Bank***

The evidence of the database dramatically indicates how central forgeries against the Bank of England in particular must have been to the controversies surrounding capital punishment during the early nineteenth century. Forgeries of the Bank's trading instruments first became capital crimes in 1697 (8 & 9 Will. III, c20). Convictions for forgeries on the Bank became markedly less common after the resumption of cash payments in 1821 (they had been suspended in 1797), even though no major change in the letter of the law took place at that time.[=] Forgery against the Bank ceased to be a capital crime in 1837 (7 Will. IV & 1 Vict., c84).

- ***(D4c) Forgery Seaman***

This crime consisted of forging the will – or any other written instrument – of a military serviceman (almost invariably a sailor) with the aim of claiming outstanding wages or prize money owing to him. It became a capital crime by an Act of 1757 (31 Geo. II, c10) and remained so, with various additions, until the comprehensive abolition of capital punishment for almost all modes of forgery in 1837 (7 Will. IV & 1 Vict, c84). This type of forgery was inherently related to …

- ***(D4d) Personation***

This crime consisted of professing <u>actually to be</u> a particular serviceman (again, usually a sailor), or his wife (or other designate), in order to claim outstanding wages or prize money owed to

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History Review, 29 (2011), 221-57.

=[?]V.A.C. Gatrell, *The Hanging Tree: Execution and the English People, 1770-1865* (Oxford UP, 1994), pp.187-9, 396-416, 580-3; Randall McGowen, "The Bank of England and the Policing of Forgery, 1797-1821," *Past & Present*, 186 (Feb 2005), 81-116; McGowen, "Managing the Gallows: The Bank of England and the Death Penalty, 1797-1821," *Law and History Review*, 25 (2007), 241-82; Phil Handler, "The Limits of Discretion: Forgery and the Jury at the Old Bailey, 1818-21," in John W. Cairns & Grant McLeod (eds.), *'The Dearest Birth Right of the People of England': The Jury in the History of Common Law* (Hart, 2002), pp.155-72; Handler, "Forging the Agenda: The 1819 Select Committee on the Criminal Laws Revisited," *Journal of Legal History*, 25 (2004), 249-68; Handler, "Forgery and the End of the 'Bloody Code' in Early Nineteenth-Century England," *Historical Journal*, 28 (2005), 683-702.

him. It became a capital crime by an Act of 1721 (8 Geo. II, c22) and continued so, with various additions, until its abolition in the Forgery Act of 1830 (11 Geo. IV & 1 Will. IV, c66).[=]

These latter two modes of forgery/fraud are interesting, not only because their enforcement might be suggestive of the state using its power to punish what could be seen as a crime against the rewarding of patriotic service (rather than commercial exchange), but also because they were quintessentially perpetrated by plebeians rather than the bourgeois/ "white-collar" types who were the more characteristic perpetrators of most other types of forgery.

(E) Miscellaneous Offences

(E1) Arson

In an era in which an uncontrolled fire could – and sometimes did – destroy entire towns (most famously, the City of London itself in September 1666) the deliberate setting fire to any premises was regarded as a particularly heinous offence.

The wilful burning of a variety of structures was made a capital crime by a series of statutes from 1531 (23 Hen. VIII, c1) onwards. Capital punishment for two forms of arson remained in force beyond the comprehensive abolition of "the Bloody Code" which took place in 1837, at which time a new statute (7 Will. IV & 1 Vict., c89) spelled out the remaining offences: first, setting fire to a dwelling house while any person was inside; and second, arson in a variety of military premises, as first established by law in 1772 (12 Geo. III, c24). The former was abolished as a capital crime in 1861 (24 & 25 Vict., c97, s2), but the last capital elements of the latter were not finally eliminated until the Criminal Damage Act of 1971 (Eliz. II 1971, c48).[=]

(E2) Black Act

The "Black Act" of 1723 (9 Geo. II, c22) was an infamous statute which created several new capital offences (the exact number is debatable). Although it has famously been seen as a particularly blunt attack upon the "common rights" of rural plebeians, it has also been plausibly

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[=] For these latter two crimes, see Radzinowicz, *History*, i, 649-52.

[=] Radzinowicz, *History*: i, 654-5, 686-94, 733-4; iv, 308, 321, 330-1, 341. No major study of the crime of arson per se has yet appeared, though there have been many studies of rural "incendiarism" as a form of social protest during the 1830s and 1840s. The origins of the 1772 law concerning arson in royal dockyards are examined in Gwenda Morgan and Peter Rushton, "Arson, Treason and Plot: Britain, America and the Law, 1770-1777," *History*, 100 (2015), 374-91; the most famous incident dealt with under its authority is examined in Jessica Warner, *John the Painter: Terrorist of the American Revolution* (Profile Books, 2005).

interpreted as a clumsily conceived “emergency” response to the danger posed by Jacobite gangs in southern England in the years following the failed invasions of 1715 and 1719.[=]

Two important and frequently-deployed capital crimes created under the Black Act are of sufficient numerical significance to be treated separately: shooting at a person (*see below, at E5i*), and extortion by means of a threatening letter (*see below, at E18*). It also provided the legal basis for five other capital convictions at the Old Bailey; the term “BlackAct” is used only as a residual category to capture these five.

- [E2a] Deer Stealing *[William Johnson, Dec 1733, & William Hart, July 1756]*

The “Black Act” made the hunting, wounding, killing, destroying or stealing deer a capital crime if committed within Royal Forests or any other enclosed areas in which such deer were specifically kept. It also made the hunting, wounding, killing, destroying or stealing deer in <u>any</u> place a capital crime <u>if</u> the culprit was armed and disguised while committing the act. As one might expect, given the extent of urbanization in eighteenth-century London, this crime appeared very rarely at the Old Bailey. Only two men were convicted of it after 1730, and the only one of them to be hanged (Johnson) had also committed a murder in the course of the crime. A case reviewed by the Twelve Judges in 1783 determined that this provision of the “Black Act” had been effectively repealed by a statute of 1776 (16 Geo. III, c30) which comprehensively redefined all deer-stealing offences as non-capital felonies, even though that measure had not taken explicit cognizance of the relevant provisions of the “Black Act”.[=]

- [E2b] Maiming a Horse *[Robert Mott, Sept 1783, & John Chalkley, Sept 1813]*

The capital crime of maiming a horse was deemed, by a judicial interpretation of 1770, to have been created by a passage in the “Black Act” which specified the maiming of “cattle”. Only two people represented here were convicted of the crime, and both received free pardons. This crime was made non-capital in 1824 (4 Geo. IV, c54, s2).[=]

- [E2c] Cutting Down Trees *[Robert Taylor, Dec 1818]*

[=] Radzinowicz, *History*, i, 49-79; Pat Rogers, “The Waltham Blacks and the Black Act,” *Historical Journal*, 17 (1974), 465-86; E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (Allen Lane, 1975); Eveline Cruickshanks and Howard Erskine-Hill, “The Waltham Blacks and Jacobitism,” *Journal of British Studies*, 24 (1985), 358-65; John Broad, “Whigs and Deer-Stealers in Other Guises: A Return to the Origins of the Black Act,” *Past & Present*, 119 (May 1988), 56-72.

[=] Radzinowicz, *History*, i, 58-60, 581, 678; 168 Eng Rpts 238-9.

[=] Radzinowicz, *History*, i, 66-8; 168 Eng Rpts 138-9.

This provision of the "Black Act" was notoriously complex as to its interpretation by the judges, the more so because two later (and apparently unrelated) Acts of 1766 (6 Geo. III, c36 & c48) both made substantially similar offences felonies punishable by only transportation for seven years at most. The statutes of 1766 perhaps reflected the general disinclination of the judges to actually hang anyone for this crime. The one and only person convicted of it at the Old Bailey had cut down no less than 121 trees, had his case reserved for consideration by the Twelve Judges, and received a free pardon after seven years on board the hulks. This capital crime was definitively eliminated in the 1827 statute which consolidated laws concerning Malicious Injuries to Property (7 & 8 Geo. IV, c30, s19).[=]

(E3) Escaped Hulks *[George Mawley, April 1785]*

This capital crime consisted, more specifically, of a second escape from the hulks. Closely related to the crime of returning from transportation, it is one of the most obscure capital offences represented here.[=] The "Hard Labour Act" of 1776 (16 Geo. III, c43), which set out the regimen for the Thames prison hulks established in that year, contained a provision (s15) which made a second escape from confinement in any institution established under that law a capital offence. The "Penitentiary Act" of 1779 (19 Geo. III, c74), which superseded the "Hard Labour Act", carried that provision forward (s64) but altered the punishment for a first escape from a doubling of the original term to a simple addition of three years to it.

Only one person in the database was convicted of this crime. George Mawley had originally been convicted of a non-capital theft at the Old Bailey in February 1782 and sentenced to three years on board the Thames prison hulks; six months later, he was convicted of escaping from them and had the requisite three years added to his sentence. He paid for his second escape with his life.[=]

This highly unusual and specific capital crime was not finally abolished until 1843 (6 & 7 Vict., c26, s1 & 22), although an Act of 1812 (52 Geo. III, c44, s40) had restricted its application solely

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[=] Radzinowicz, *History*, i, 22, 61-6, 484-5, 574-5, 586; Carl J. Griffin, "'Cut down by some cowardly miscreants': Plant Maiming, or the Malicious Cutting of Flora, as an Act of Protest in Eighteenth- and Nineteenth-Century England," *Rural History*, 19 (2008), 29-54; Griffin, "Protest Practice and (Tree) Cultures of Conflict: Understanding the Spaces of 'Tree' Maiming in Eighteenth- and Nineteenth-Century England," *Transactions of the Institute of British Geographers*, 33 (2008), 91-108.

[=] Obscure enough that it is the one and only capital offence described here that does not receive detailed notice and explication from the indefatigable Leon Radzinowicz (though see *History*: i, 239-40 n26; iv, 319). It was clearly identified by at least one contemporary critic of "the Bloody Code", however: see Basil Montagu, *The Opinions of Different Authors upon the Punishment of Death* (3 vols., Hurst, Rees, Orme, and Brown, 1812-16), iii, 419, 421.

[=] OBPO <t17820220-36>, <t17820911-102>), <17850406-81>; *The Times*, 26 May 1785, 2 June 1785.

to the institution that subsequently became Millbank Penitentiary. However, the law had become largely irrelevant soon after Mawley's case because, from the mid-1780s onwards, people on board the hulks were there solely while awaiting dispatch overseas under sentence of transportation, rather than a specific sentence of confinement. Whenever such men escaped the hulks, they were convicted – on the first offence – of the capital crime of returning from transportation (*see below*, ***E10***).

(E4) High Treason

Rebellion against the sovereign authority of the state was – and nominally remains – the most detested of all criminal offences. Its formal enunciation as a capital crime as early as 1350 (25 Edw. III, c2), and its continuation as such until the Crime and Disorder Act of 1998 (Eliz. II 1998, c37, s36), make High Treason the longest-lasting death penalty offence represented here.[=] Most eighteenth-century trials for High Treason were conducted in the High Courts (usually King's Bench), so this crime is represented by only twelve people here – all but one of them (Francis de la Motte) convicted of the "Cato Street Conspiracy" of 1820.[=]

The peculiarly aggravated modes of executing convicted traitors – most of which were substantially attenuated by the eighteenth century – are discussed below in ***Outcomes-Executed***.

(E5) Murderous Assault

I have used this somewhat awkward term to cover a variety of specific criminal offences which, during the early nineteenth century, came to be assimilated into the general category of "attempted murder". The "Plot on Chart" function of the database treats the various categories of attempted murder (described hereafter) as a single crime, but a "Regular Search" will produce a list in which the specific act is noted in parentheses.

- (i) Stabbing

The "Stabbing" Act of 1604 (1 James I, c8) deemed stabbing a person, who then died within the next six months, to be an act of murder. The one person in the database who was convicted under this specific statute – John Webb (January 1746), who was hanged for the crime – arguably belongs amongst those convicted of murder, but I have tabulated his act under "murderous assault" because of its clear relationship to the other crimes defined here.

- (ii) Cutting

=Radzinowicz, *History*, i, 220-7, 611-17; David Crook, "The Seditious Murder of Thomas of Sibthorpe and the Great Statute of Treasons, 1351-2," *Historical Research*, 88 (2015), 402-16.

=John Stanhope, *The Cato Street Conspiracy* (Jonathan Cape, 1962); Gatrell, *Hanging Tree*, pp.298-314.

The “Coventry” Act of 1670 (22 & 23 Chas. II, c1), so-named because it was inspired by a vicious assault on the MP Sir John Coventry, made it a capital crime “on purpose and of malice-aforethought, and by lying in wait, [to] unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject of his Majesty, with intention in so doing to maim or disfigure” a person.

After passage of “Ellenborough’s Act” in 1803 (43 Geo. III, c58) – which also made non-fatal stabbing a capital felony – the precise legal distinction between “stabbing” and “cutting” became somewhat nebulous. The conventional practice was to prosecute the accused on three separate indictments – intent to murder, intent to disable, and intent to maim – and then to leave the judge and jury to determine for themselves what best described the act at hand. For the purposes of the parenthetical attributions in the database, “stabbing” has been defined as a deep, penetrative wound and “cutting” as a surface wound which nonetheless might bleed profusely. (One man, John Palmer in September 1808, was condemned for “cutting” by means of assault with a crowbar, an instrument which surely would not have been contemplated by the authors of the “Coventry Act”.) The choice of the terms “stabbing” or “cutting” that was used in subsequent pardons, however, sometimes seems to disagree with the distinction adopted here, but it is difficult to discern precisely how such distinctions were made by contemporary authorities and how consistently they were applied.[=]

- (iii) Shooting

“The Black Act” of 1723 (9 Geo. II, c22) made it a capital crime, amongst many other things, to “wilfully and maliciously shoot at any person in any Dwelling-house, or other Place”. Before 1803 this was – by a very wide margin – the most frequently convicted category of murderous assault at the Old Bailey.

- (iv) Poisoning

Many other types of assault, some of them clearly attempts at murder (or at least acts which might easily have led to the victim’s death), remained punishable only by a fine or a short term of imprisonment. Dissatisfaction with this state of affairs, reinforced by an increasing cultural intolerance of violence from the late eighteenth century onwards, inspired passage of “Ellenborough’s Act” in 1803 (43 Geo. III, c58), named for the Lord Chief Justice of King’s Bench who sponsored it. This was the first major attempt to expand the scope of acts which might be construed as attempted murder and to define them all as capital crimes.[=] As we have seen, this

[=] On these difficulties, see Phil Handler, “The Law of Felonious Assault in England, 1803-61,” *Journal of Legal History*, 28 (2007), 189-91.

[=] It also made a capital crime of abortion (s2) and recast “infanticide” (s3) as a more conventional mode of homicide (*see above*, *at* ***B2***).

included not only cutting and maiming as well as shooting, but also stabbing even when the victim did not subsequently die. It also included, for the first time, poisoning.

As people using the database will soon discern, after "Ellenborough's Act" came into effect, convictions for both stabbing (all of them non-fatal) and cutting and maiming became markedly more common than they had been before. The addition of poisoning was particularly significant because it targeted a form of attempted murder that was perhaps seen as being more often committed by women than men. Certainly the three people who were convicted of that crime between 1803 and 1837 were all women: most infamously Eliza Fenning, whose singular execution for it in July 1815 inspired lasting controversy.[=]

- (v - vii) Strangling, Blunt Instrument, or Simple Physical Attack

"Ellenborough's Act" was repealed and replaced by the 1828 Act for Consolidating and Amending Offences against the Person (9 Geo. IV, c31), which now openly deployed the term "attempts to murder" and extended the constituent acts of violence to attempts to drown, suffocate or strangle a person (s11), while also adding the more generalized term "wounding" to forms of murderous assault such as shooting, stabbing, and cutting and maiming (s12).

An 1837 amending Act (7 Will. IV & 1 Vict., c85) made shooting, poisoning, drowning, suffocation and strangling, and wounding all non-capital crimes in those instances where no actual bodily harm resulted from the assault (s3); but it retained the death penalty for assaults "by any Means whatsoever" whereby "any bodily Injury dangerous to Life" ensued and there had been "Intent … to commit Murder" (s2). Thereafter, only five people in all of England were hanged for attempted murder, which at last ceased to be a capital crime in 1861 (by 24 & 25 Vict., c100, ss11-15).[=]

(E6) Mutiny *[Richard Fuller, July 1797]*

This crime – represented by only a single person in the database – was a variation and extension upon the established capital crime of "seducing to treason" (*see below, at* ***E19***). It made the act

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[=] Gatrell, *Hanging Tree*, pp.353-67; Patty Seleski, "Domesticity is in the Streets: Eliza Fenning, Public Opinion and the Politics of Private Life," in Tim Harris (ed.), *The Politics of the Excluded, c.1500-1850* (Palgrave Macmillan, 2001), pp.265-90; Clarke, *Bad Companions*, pp.76-130.

[=] On the general subject of "murderous violence" and the changing laws applying to it, see: Radzinowicz, *History*: i, 69-73, 306-7, 630-1, 695-8, 734; iv, 316, 320, 323-4, 329-31, 342; Martin J. Wiener, *Men of Blood: Violence, Manliness, and Criminal Justice in Victorian England* (Cambridge UP, 2004), pp.9-29; Peter King, *Crime and Law in England, 1750-1840: Remaking Justice from the Margins* (Cambridge UP, 2006), part iii; Handler, "Law of Felonious Assault," passim, and Drew D. Gray, *Crime, Prosecution and Social Relations: The Summary Courts of the City of London in the Late Eighteenth Century* (Palgrave Macmillan, 2009), chap 5.

of inducing a serviceman to desertion or mutiny a capital offence and was established in 1797 (37 Geo. III, c70) in the wake of the great naval mutinies of that year at Spithead and the Nore. It was abolished as a capital crime in 1837 (7 Will. IV & 1 Vict., c91).=

(E7) Pickpocket

Stealing privately from the person (pickpocketing) was made a capital crime in 1565 (8 Eliz. I, c4 s2), and just over a hundred people were convicted of it at the Old Bailey from 1730 onwards. The formal rationale for applying the death penalty to picking pockets – that the inherent secretiveness of the crime, and the difficulty of its detection, meant that it could only be deterred by the most severe of punishments – was still occasionally reiterated by eighteenth-century commentators.

The practical reality, however, is that relatively few people were being hanged for this offence by the second quarter of the eighteenth century, and no one at all at the Old Bailey after 1750. A substantial proportion of prosecutions for this crime were brought by men who had been robbed by prostitutes, under circumstances which reflected no credit upon the victim-prosecutor. As one witness to a similar sort of situation memorably remarked (in the trial for robbery of Thomas Hawkins in January 1740) "if you have been in Bitches Company, you must take Bitches doings."=

As early as 1772, one influential advocate of criminal law reform, William Eden, singled out pickpocketing for repeal. Even William Paley, whose arguments for a general retention of capital punishment in *Principles of Moral and Political Philosophy* (1785) became a touchstone for parliamentary opponents of abolition, had conceded that the death penalty for picking pockets was inappropriate given the all-too-frequent moral culpability of the victims.

For all these reasons, presumably, the early nineteenth-century parliamentary campaign for the abolition of capital punishment scored its first victory with this offence. The death penalty for picking pockets was repealed in 1808 (48 Geo. III, c129) on the first attempt, a victory which arguably helped to open the door for the substantive repeal of the "Bloody Code" within the next three decades.=

=Radzinowicz, *History*, i, 487-93, 618; James Dugan, *The Great Mutiny* (G.P. Putnam=s Sons, 1965); Ann Veronica Coates and Philip MacDougall (eds.), *The Naval Mutinies of 1797: Unity and Perseverance* (Boydell, 2011).

=OBPO < t17400116-4>; quoted in Andrea McKenzie, *Tyburn's Martyrs: Execution in England, 1675-1775* (Hambledon Continuum, 2007), p.55.

=Radzinowicz, i, 248-59 (esp. 256 n34), 307-9, 497-503, 636-7, 660-6; Beattie, *Crime and the Courts*, pp.180-1; Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge UP,

(E8) Prison Escape

More specifically, this crime consisted of aiding the escape of a convicted felon. Its definition as a capital offence at all was highly problematic. It applies here solely to eight men who were convicted in January 1821 of helping two others convicted of burglary escape from Newgate Prison. The case was reserved for the Twelve Judges, who determined that the statutory basis for this crime, an Act of 1743 (16 Geo. II, c31), specified only that aiding the escape of a convicted felon was itself a felony – but not a felony "without benefit of clergy" (*see the introductory remarks at the beginning of this section*). The statute in question, moreover, specified a punishment – transportation to America for seven years – which had ceased to be available in 1775 (*see below at* ***Outcomes - Pardons***). The judges reviewed previous rulings on the matter and determined that four of the eight men had never been previously convicted of felony and so could only be sentenced to whipping and twelve months in prison, which was duly ordered at the Old Bailey in February 1821. The other four, however, having been deemed to have received "benefit of clergy" as a consequence of prior felony convictions, were sentenced to death, then pardoned on condition of transportation for life.[=] However, the judges (and presumably also the government) appear to have been sufficiently troubled by the state of the law in such cases that, a few months later, an Act was passed (1 & 2 Geo. IV, c88) which definitively specified that the crime was felony within benefit of clergy, punishable only by a variety of non-capital means.

(E9) Receiving *[Thomas Lattimore, July 1830]*

Along with "Stealing" (*see below, at* ***E15***), this is one of two non-capital offences which appear in the database purely as secondary convictions (or charges) where an individual was also convicted of a capital crime – in Lattimore's case, housebreaking.

The belief that the ready availability of receivers was a primary impetus to capital thefts frequently provoked demands that receiving should itself be made a felony (rather than a misdemeanour), or at least more severely punished. Two statutes in the early eighteenth century (1 Anne, c9; 5 Anne, c31) made receiving a misdemeanour punishable by transportation for fourteen years – the most severe punishment awarded throughout that century next to execution or transportation for life. A statute of 1770 (10 Geo. III, c48) made receiving jewels, gold and silver plundered by robbers and burglars a felony that could be tried and convicted even before the robbers or burglars in question had themselves been apprehended. A bill of

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2003), pp.185-90; Palk, *Gender, Crime and Judicial Discretion*, chap 4; Mary Clayton, "The Life and Crimes of Charlotte Walker, Prostitute and Pickpocket," *London Journal*, 33 (2008), 3-19.

[=] OBPO <t18210110-48>, <o18210214-1>, <o18210214-2>; 168 Eng Rpts 882-4; HO 13/36, pp.318-20. This crime, too, was only glancingly noticed by Radzinowicz (*History*, i, 624).

1783 that failed to pass even proposed to make receiving a capital crime in its own right. A number of extensions of the 1770 Act followed, all of them finally combined in the Larceny Consolidation Act of 1827, which made receivers in all cases of felony themselves guilty of non-capital felony (7 & 8 Geo. IV, c.29, s54-7).[=]

(E10) Return from Transportation

A person who returned to Britain or Ireland before their sentence of transportation had been completed was deemed to be guilty of a capital offence. That punishment was first prescribed by the Transportation Act of 1718 (4 Geo. I, c11, s2) and was one of the means whereby that statute made transportation to America more regular and effective than hitherto.[=] It was subsequently reiterated in the statutes of the 1780s (and beyond) which provided for transportation to Australia (*the transitional era between the American and Australian regimes is briefly summarized below at* ***Outcomes-Pardons***). The death penalty for this crime was abolished in 1834 (4 & 5 Will. IV, c67).[=]

A "Regular Search" of the three hundred or so people convicted of this crime between 1730 and 1834 will produce a table in which I have indicated, so far as can be known, the exact circumstances of each convict's "return". People using the database will note that the vast majority of people convicted of "returning" from transportation after 1775 had in fact simply escaped confinement on board English prison hulks while awaiting transportation proper (*see also the capital crime* ***Escaped Hulks***, *discussed above at* ***E3***).

Three men in the database (and perhaps as many as five), who are counted here amongst those convicted of this crime did not actually undergo all of the conventional stages of capital conviction and subsequent consideration for pardon. Occasionally, it appears to have been believed that simply confirming a person's identity satisfactorily – without resort to a formal trial – was sufficient to affirm their status as returned transports, and that the court could simply reiterate the former sentence of transportation without submitting the convict to the remaining procedures attendant on a full-scale capital conviction. This was done in the cases of

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[=] Radzinowicz, i, 23, 234, 407, ii, 21-2, iii, 22, 71-3, 93, 215-16, 272-3, 342-3, 507-22, 526, 527-8, 532-4; Beattie, *Crime and the Courts*, pp.189-90; Beattie, *Policing and Punishment*, pp.38-9, 250-1, 319.

[=] Radzinowicz, *History*, i, 624-5; Beattie, *Crime and the Courts*, pp.503-6; A. Roger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775* (Clarendon Press, 1987); Beattie, *Policing and Punishment*, pp.427-32; Gwenda Morgan and Peter Rushton, *Eighteenth-Century Criminal Transportation: The Formation of the Criminal Atlantic* (Palgrave Macmillan, 2004), chaps 5-6.

[=] One specific form of returning from transportation – returning to St Helena, prescribed by an Act of 1825 (6 Geo. IV, c85, ss17-18) – was inadvertently omitted in the 1834 repeal. The death penalty for it was separately repealed seven years later (4 & 5 Vict., c56); see Radzinowicz, *History*, iv, 319-20.

George Vaughan and William Baker in January 1740.[=] In removing these two offenders from the conventional sequence of trial, condemnation, Recorder's Report, and execution or pardon, the recently-elected Recorder of London, Sir John Strange, may have been following the occasional tendency of his predecessor (Sir William Thomson) to interpret the Transportation Act of 1718 in a manner which sometimes seemed positively to infringe upon the crown's exclusive power over the administration of pardon.[=]

Thirty years later, doubts about the legality of thwarting the proper operation of a capital statue in this manner seem to have arisen. Maximillian Miller was tried and convicted in December 1771 for returning from transportation, but the question of whether he might simply be "remitted to his formal sentence" was nonetheless referred to the Twelve Judges. Although they upheld the legality of the latter proceeding, Miller was nonetheless pardoned like any other capital convict (though his case never went before a Recorder's Report).[=] The issue reappeared more fully in 1781-2 when a particularly notorious convict, Patrick Madan, like Vaughan and Baker in 1740, was deemed to have returned from transportation without actually undergoing any trial for that offence and was simply remitted to his former sentence. The case was again referred to the Twelve Judges and the procedure was again upheld, but the government went to the trouble of obviating questions about its legality by issuing a specially-drafted pardon to Madan.[=]

Finally, a fifth man, Samuel Stevenson in February 1789, though more definitively "tried" for returning from transportation, seems (like Miller and Madan) never to have actually gone before a Recorder's Report before being pardoned as a "capital respite".[=] After that, all other people convicted at the Old Bailey of returning from transportation underwent trials, went

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=OBPO <o17400116-1>. Vaughan, popularly known as "Lord Vaughan," was the brother of a peer. The government had intended to allow him the privilege of self-transportation upon his original conviction in October 1735, but had been dissuaded from doing so by the Recorder of London, who feared that such leniency would undermine the system (SP 44/128, p.452; SP 36/38/2, ff.1-2). See Ekirch, *Bound for America*, p.72; Beattie, *Policing and Punishment*, p.443; and Morgan and Rushton, *Eighteenth-Century Criminal Transportation*, pp.74-5.

=On this point, see Beattie, *Policing and Punishment*, pp.437-44; for Strange, see ODNB, "Strange, Sir John (*bap.* 1696, *d.* 1754)" <http://www.oxforddnb.com/view/article/26635?docPos=19>.

=OBPO <t17711204-69>; 168 Eng Rpts 139-40 (quote at p.139); 1SP 44/91, pp.114-15.

=OBPO <o17811205-1>, <o17820109-1>, <s17820410-1>; 168 Eng Rpts 214; HO 42/1, ff.36-7, 443-6; SP 44/95, pp.248-9. For Madan, see Emma Christopher, *A Merciless Place: The Lost Story of Britain's Convict Disaster in Africa and How It Led to the Settlement of Australia* (Allen & Unwin, 2010), passim.

=OBPO <t17890225-100>; HO 13/7, pp.71, 136-7; HO 47/9, ff.101-10.

before Recorder's Reports, and were subsequently pardoned or executed, like virtually all other capital convicts at that court.

So were any or all of these five men truly "capital convicts" like all others? There are treated as such here because: first, the act which they were confirmed as having committed – returning from transportation before the expiration of their term – was a capital crime at law; and second, in all instances following Vaughn and Baker in 1740, the government appears to have thought it necessary and appropriate to issue a capital pardon for them. Nevertheless, the questions that were raised concerning the procedure whereby the status of transportable convict had been attributed to Vaughan, Baker and Madan without formal trial might incline some people to think that these three men should in fact be omitted from a database of "capital convicts" proper.

(E11) Riot

The Riot Act of 1715 (1 Geo. I, c5) was passed during the deeply unsettled era in which a potential Jacobite invasion jeopardized the security of the recent Hanoverian succession. It imposed capital punishment where twelve or more people refused to disperse within an hour of a magistrate ordering them to do so. Capital punishment under the Riot Act proper was repealed in 1837 (7 Will. IV & 1 Vict., c91), though a variety of riotous attacks upon property that were spelt out in the 1827 Act consolidating Malicious Injuries to Property (7 & 8 Geo. IV, c30, s8) remained capital crimes until 1841 (4 & 5 Vict., c56).[=] Just over three-quarters of the forty-three people in the database convicted of rioting were participants in the Gordon Riots of 1780, far and away the largest, most sustained and most alarming outbreak of popular disorder in England during the eighteenth century.[=]

(E12) Smuggling

[=] Radzinowicz, *History*: i, 620, 733; iv, 319-20.

[=] The last half-century has given rise to a vast and rich body of scholarship on virtually all dimensions – political, social and economic – of crowd activity during the eighteenth century. One of the most recent of comprehensive studies is Adrian Randall, *Riotous Assemblies: Popular Protest in Hanoverian England* (Oxford UP, 2006). Important studies of the Gordon Riots and their aftermath include: J. Paul De Castro, *The Gordon Riots* (Humphrey Milford/Oxford UP, 1926); Christopher Hibbert, *King Mob: The Story of Lord George Gordon and the Riots of 1780* (Longmans, Green, 1958); George Rudé, *Paris and London in the Eighteenth Century: Studies in Popular Protest* (Viking Press, 1971), pp.201-92; Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (Allen Lane/Penguin Press, 1991), chap 10; Nicholas Rogers, "The Gordon Riots Revisited," *Historical Papers/Communications historiques* 1988, pp.16-34; Rogers, "Crowd and People in the Gordon Riots," in Eckhart Hellmuth (ed.), *The Transformation of Political Culture: England and Germany in the Late Eighteenth Century* (German Historical Institute London/Oxford UP, 1990), pp.39-55; Rogers, *Crowds, Culture and Politics in Georgian Britain* (Clarendon Press, 1998), chap 5; and Ian Haywood and John Seed (eds.), *The Gordon Riots: Politics, Culture and Insurrection in Late Eighteenth-Century Britain* (Cambridge UP, 2012).

The term “smuggling” embraces a variety of specifically-defined offences concerning the landing of imported goods without paying customs duties. All of the ones represented here – rioting (by three or more people) against customs officers, rescuing fellow smugglers after their apprehension by authorities, refusing to surrender after an Order in Council for one’s apprehension on such crimes – were first made capital crimes in 1746 (19 Geo. II, c34). Various additions and consolidating Acts subsequently appeared. The death penalty for all smuggling offences was abolished in 1837 (7 Will. IV & 1 Vict., c91).[=]

Perhaps the most striking aspect of smuggling is that all fifty-five of the men condemned for it at the Old Bailey committed their crimes, not in metropolitan London, but in one of the coastal counties of southern England. Officials were loath to try this highly-organized crime in local jurisdictions for fear of juries sympathetic to (or intimidated by) the perpetrators. More than half of the smuggling cases represented here relate to the sustained government campaign against smuggling gangs of the 1740s (especially the Hawkhurst gang in Sussex and Kent) who were infamous for their use of murderous violence against customs officials and informers. After execution at Tyburn, the bodies of several of these men were returned to the jurisdiction in which the crime was committed and gibbeted there as a lasting warning to others in the neighbourhood.[=]

(E13) Stealing in a Bleaching Ground *[John Tizzard, April 1730, & Alice Impey, Feb 1746]*

A statute of 1745 (18 Geo. II, c27) was only the last and most comprehensive of the legislative measures which imposed capital punishment for stealing from industrial-scale cloth works since 1670 (22 Chas. II, c5). It was perhaps inspired by the particular demand for cloth production (especially for ships’ sails) during Britain’s 1739-48 war against the Bourbon powers. Neither of the two people in the database convicted of this crime was hanged for it; indeed, the second was amongst the small proportion of capital convicts at the Old Bailey to receive an unconditional (free) pardon.[=] The meagre use of this capital law perhaps explains why its repeal

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[=] Radzinowicz, *History*, i, 626-7.

[=] Despite an enduring scholarly fascination with both “social crime” and Hanoverian Britain’s formidable fiscal capacities, there has been no full-scale academic monograph on this perennially fascinating topic. Important contributions include Cal Winslow, “Sussex Smugglers,” in Douglas Hay *et al*, *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (Allen Lane, 1975), pp.119-66; Nicholas Rogers, *Mayhem: Post-War Crime and Violence in Britain, 1748-53* (Yale UP, 2012), pp.119-30; and Zoe Dyndor, “The Gibbet in the Landscape: Locating the Criminal Corpse in Mid-Eighteenth-Century England,” in Ward (ed.), *Global History of Execution*, pp.102-25.

[=] The woman in question, Alice Impey, does not appear in the OBPO proper, but her trial account in the *Proceedings* can be viewed on the final photographic image accompanying <t17460226-36> (and see her death sentenced noted at <s17460226-1>); her pardon is recorded at SP 44/370, pp.88-9.

in 1811 (51 Geo. III, c41), achieved on the first attempt, was one of the earliest successes of the sustained parliamentary campaign against death penalty offences which commenced in 1808.[=]

(E14) Stealing in a Church

Stealing from a church or chapel – or "sacrilegious" stealing – had been a separately-defined capital crime since 1531 (23 Hen. VIII, c1, s3). The Larceny Consolidation Act of 1827 reduced its scope only to instances in which breaking of the premises took place (7 & 8 Geo. IV, c29, s10), and it was abolished as a capital offence altogether in 1835 (5 & 6 Geo. IV, c81).[=]

(E15) Stealing

This term covers non-capital (*i.e.*, non-aggravated) forms of theft. The distinction between Grand and Petty Larceny (theft of goods worth one shilling or more, versus theft of goods worth less than a shilling), which once had made Grand Larceny a nominally capital crime, was abolished by an Act of 1706 (5 Anne, c6) which effectively rendered them both non-capital crimes. That practice was cemented by the Transportation Act of 1718 (4 Geo. II, c11), which made Grand and Petty larcenists alike subject to transportation to America for seven years. Both statutes were a response to the efforts of London officials to find a sufficiently imposing penalty for the vast number of petty thieves with whom they were obliged to deal by the late seventeenth century.[=]

The only appearance of such non-capital thefts in the database is as a secondary conviction (or charge) where the individual was also convicted of a capital offence. In all such instances, a "Regular Search" will generate a table in which the precise value of the goods stolen is indicated. Review of those values will indicate those instances of "pious perjury" (as Blackstone termed it) where juries had clearly reduced the stated value of the goods stolen – sometimes in open defiance of common sense – to render a particular conviction non-capital. The many instances of a stated value of 39 shillings strongly suggest non-capital conviction on a charge of Stealing in a Dwelling, while those of 4 shillings 10 pence suggest non-capital conviction on a charge of Shoplifting (*see the explanations above at* ***Crimes Convicted – (A) Thefts***).

(E16) Stealing in the Mail

[=] Radzinowicz, *History*, i, 308, 512-3, 525 n10, 633, 674-5; Beattie, *Crime and the Courts*, pp.172-3. A parallel measure, making the same provision for Ireland (51 Geo. III, c39), was passed in tandem.

[=] Radzinowicz, *History*, i, 580-1, 635.

[=] Beattie, *Crime and the Courts*, pp.181-2, 424-30, 451-3, 506-10; Beattie, *Policing and Punishment*, pp.23-31, 432-3.

Stealing in the mail was made a capital crime in 1765 (5 Geo. III, c25, s17) and ceased to be so in 1835 (5 & 6 Geo. IV, c81). The statute specifically targeted employees of the Post Office; it was akin to those statutes which prescribed capital punishment for embezzlement by employees of the Bank of England (*see above*, *at* ***D3***) and the South Sea Company (24 Geo. II, c11).[=] The Act of 1765 also made robbing the mail in the course of its transport and delivery a capital crime (s18), though presumably the main body of statutes dealing with robbery offered no hindrance to prosecutions for that crime beforehand. One of several occasions on which the Post Master General had culprits gibbetted for robbing the mail predates the Post Office Act of 1765, whose relevant section did not specifically require that aggravated mode of execution.[=] The database therefore does not distinguish robbing the mail – as opposed to stealing in the mail – from the many other categories of robbery.

The creation of this largely unremarked capital offence, and the severity with which it was punished, suggest how vital the security of the mail was perceived to be to Hanoverian England's rapidly expanding commercial economy. Almost half of the forty-seven men convicted of this crime at the Old Bailey were hanged, the last of whom (John Barrett in February 1832) was one of only eleven non-murderers hanged there after 1829.

(E17) Stealing on a [Navigable] River

Stealing goods worth forty shillings (£2) or more from on board vessels in navigable rivers or ports was made a capital crime in 1751 (24 Geo. II, c45). Its repeal was one of the earliest targets of the parliamentary campaign against capital punishments which commenced in 1808 but was not achieved until Robert Peel himself sponsored the measure as Home Secretary in 1823 (4 Geo. IV, c53).[=] I have classified Robert Davie amongst the sixty-one men convicted of this crime at the Old Bailey, even though his conviction for stealing from a vessel (in September 1750) in fact predated the 1751 statute. The technical complexity of how his crime was construed to be a capital one – and the saving of his life by a petition from London merchants anxious to hear his evidence of similar depredations – appear to have been the immediate impetus to that Act's passage. Indeed, the Act was shepherded through the Commons by one of the most prominent of those petitioning merchants, Sir William Calvert, an Alderman and MP for the City of London, as well as a former Sheriff and Lord Mayor.[=]

[=] Radzinowicz, *History*, i, 640.

[=] Christopher Johnson and John Stockdale (OBPO < t17530718-33>, <OA17530723>; SP 44/134, p.219). Their case was probably deemed to require special treatment because they had also killed the mail carrier.

[=] Radzinowicz, *History*, i, 503-5, 515-17, 522, 549-50, 554, 580, 633-4, 672-4; Beattie, *Crime and the Courts*, pp.145, 175-8; Linebaugh, *London Hanged*, chaps 5, 9, 12 *passim*.

(E18) Threatening Letter

Four men in the database were convicted of extortion by means of a threatening letter. This had been made a capital crime by the "Black Act" of 1723 (9 Geo. II, c22); the death penalty was removed from that crime in 1823 (4 Geo. IV, c.54, s2).[=]

(E19) Treason

In contrast to "High Treason" (*see* ***E4***, *above*), this term is used to signify the crime of enlisting – or (as in all nine instances in the database) inciting someone else to enlist – in the military forces of a foreign power without the king's consent. This species of treason was first made a capital crime in 1736 (9 Geo. II, c30) and ceased to be so in 1819 (59 Geo. III, c69).[=]

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JUDGES

Each Old Bailey sessions was attended by three (and sometimes more) of the twelve royal judges. Those judges held appointments at one of three London-based "High Courts": Common Pleas, Exchequer, or King's Bench. The Recorder of London, the senior judge and sentencing officer of the City of London, also tried cases; so did the Common Serjeant of the City of London (many Common Serjeants subsequently became Recorder); and so too – very occasionally – did a Deputy Recorder.[=] From 1824 onwards, "a third civic judge" (in addition to the Recorder and Common Serjeant) was appointed to preside over trials at the increasingly busy Old Bailey [=], though John Hyde had clearly served such a function as early as 1770-2.

[=] *Commons Journal*, 26 (1750-4), pp.212, 223, 237, 238, 261, 292; SP 44/85, pp.242, 244-5, [2]73; *London Evening Post*, 24-27 Nov 1750; Romney Sedgwick (ed.), *The History of Parliament: The House of Commons*, *1715-1754* (HMSO, 1970), i, 519-20; Sir Lewis Namier and John Brooke (eds.), *The History of Parliament: The House of Commons*, *1754-1790* (HMSO, 1964), ii, 179 <http://www.historyofparliamentonline.org/volume/1715-1754/member/calvert-william-1703-61>, < http://www.historyofparliamentonline.org/volume/1754-1790/member/calvert-sir-william-1703-61>.

[=] Radzinowicz, *History*, i, 73-5, 641, E.P. Thompson, "The Crime of Anonymity," in Douglas Hay *et al*, *Albion's Fatal Tree*, pp.255-344.

[=] Radzinowicz, *History*, i, 617-18.

[=] This position was only appointed on a few occasions, invariably on a purely temporary basis.

[=] Allyson N. May, *The Bar and the Old Bailey, 1750-1850* (U of North Carolina P, 2003), p.146.

The High Court judges held the positions of greatest prestige. When they conducted capital criminal trials on the assizes circuits outside London, they had more or less complete control over which convicts were hanged and which were pardoned.[=]

For the Old Bailey, however, the decision-making power as to life or death was exercised by the king and his senior government ministers, who met to hear a report of every case of the most recent Old Bailey sessions from the Recorder of London (*see below at* ***Recorder's Report***). It is not impossible that the presiding trial judge might still exercise a decisive influence on the decision made at the Recorder's Report: he might privately convey his views on a case to the Recorder, the Lord Chancellor, or an individual member of government before it met. On the whole, though, it seems unlikely that trial judges at the Old Bailey were able to exert the sort of consistent influence on decision-making as to life or death in the way that they did outside the capital.

Although there is some evidence that two or more judges might preside over a particular trial (as the *Proceedings* maintain was the case with the Cato Street Conspirators in April 1820), the usual practice during the era covered by the database was for only one to preside at each trial.[=] One observer of Old Bailey trials in October 1785 appears to have been surprised to see one judge on the bench (George Nares) reading a newspaper while the Recorder was hearing a case[=], a reaction which perhaps suggests some basic expectation of consultation amongst the judges present over the course of a trial, perhaps especially when London law officers (as opposed to a High Court judge) were presiding.

Sources on Judges

The printed *Proceedings* almost invariably provide the name of the judge who presided at each trial from December 1750 onwards.

In all instances where the judge has been identified using a source other than the *Proceedings*, I have noted the source used in the list of "Supplementary" documents and publications. Before 1760 the name of the presiding judge is sometimes provided in the detailed reports prepared for the Recorder's Report, some of which are preserved in SP 36 and SP 43. Judges can also be

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[=] On this subject, see Douglas Hay, "Hanging and the English Judges: The Judicial Politics of Retention and Abolition," in David Garland et al. (eds.), *America's Death Penalty: Between Past and Present* (New York UP, 2011), pp.129-65.

[=] A "collegial bench" was the rule in continental proceedings, and evidence for it at the eighteenth-century Old Bailey has been explored in John Langbein, "Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources," *University of Chicago Law Review*, 50 (1983), 31-36.

[=] L.F.S. Upton (ed.), *The Diary and Selected Papers of Chief Justice William Smith, 1784-1793* (Toronto UP, 1963-65), ii, 8-9.

identified in other documents (such as petitions for mercy, or a judge's individual report on a case) or in other printed accounts of the trial (such as newspapers). For 1791-8 and 1801-5, the Home Office's "Criminal Registers" for London and Middlesex (HO 26/1-11) identify the judge who presided at trial.

The Judges & their Courts

The search-feature for the database lists only the name(s) by which each judge was known while serving on the bench and the range of years during which they might be expected to be found presiding over trials at the Old Bailey.

I have identified which judge served on which court and at what time (as well as normalized the spellings of their names) using the standard biographical reference: Edward Foss, *Biographica Juridica: A Biographical Dictionary of the Judges of England from the Conquest to the Present Time, 1066-1870* (London, 1870). Most of the judges now also have entries in the *Oxford Dictionary of National Biography* (2004-). Those who served as members of parliament before promotion to the bench also have entries in the relevant volumes of *The History of Parliament* (1964-). Some of the non-High Court judges have been identified using the immensely useful appendix to Allyson N. May, *The Bar and the Old Bailey, 1750-1850* (U of North Carolina P, 2003), pp.243-61.

Several judges changed courts over the course of their careers: usually to secure a position of greater prestige; but sometimes because certain courts had less business or because they specialized in matters more to their liking. All High Court judges were members of the House of Lords while in office, but only a few of them actually gained (or inherited) peerages proper (*i.e.*, a title and seat in the House Lords which their eldest son might subsequently inherit). Most received knighthoods upon promotion to the bench.

"Abbot-C/Tenterden-Lord – 1816-32"= Charles Abbot, *subseq.* 1st Baron Tenterden (1762-1832); *Justice of Common Pleas 1816, Justice of King's Bench 1816-32 (Chief Justice 1818-27, Lord Chief Justice 1827-32)*

"Abney-T – 1740-50" = Thomas Abney (1690/91-1750); *Baron of Exchequer 1740-43, Justice of Common Pleas 1743-50*

"Adair-J – 1779-89" = James Adair (ca.1743-1798); *Recorder of London 1779-89*

"Adams-R – 1749-73" = Richard Adams (1710-1773); *Recorder of London 1749-53, Baron of Exchequer 1753-73*

"Alderson-E – 1830-41" = Edward Alderson (1787-1857); *Justice of Common Pleas 1830-4*, *Baron of Exchequer 1834-57*

"Alexander-W – 1824-31" = William Alexander (ca.1761-1842); *Baron of Exchequer 1824-31*

"Alvanley-Lord – 1801-4" = Richard Pepper Arden, 1st Baron Alvanley (1745-1804); *Lord Chief Justice of Common Pleas 1801-4*

"Arabin-WStJ – 1822-41" = William St Julien Arabin (ca.1775-1841); *Civic Judge of Old Bailey/Central Criminal Court 1822-41*

"Ashurst-WH – 1770-99" = William Henry Ashhurst (1725-1807); *Justice of King's Bench 1770-99*

"Aston-R – 1761-78" = Richard Aston (1717-1778); *Justice of Common Pleas 1761-5*, *Justice of King's Bench 1765-8*

"Bathurst-H – 1754-71" = Henry, 2nd Earl Bathurst (1714-1794); *Justice of Common Pleas 1754-71*, *Lord Chancellor 1771-8*

"Bayley-J – 1808-34" = John Bayley (1763-1841); *Justice of King's Bench 1808-30*, *Baron of Exchequer 1830-4*

"Best-WD – 1818-29" = William Draper Best, *subseq*. 1st Baron Wynford (1767-1845); *Justice of King's Bench 1818-24*, *Chief Justice of Common Pleas 1824-9*

"Birch-T – 1746-57" = Thomas Birch (1690-1757); *Justice of Common Pleas 1746-57*

"Blackstone-W – 1770-80" = William Blackstone (1723-1780); *Justice of Common Pleas 1770-80*

"Bolland-W – 1829-39" = William Bolland (1772-1840); *Baron of Exchequer 1829-39*

"Bosanquet-JB – 1830-42" = John Bernard Bosanquet (1773-1847); *Justice of Common Pleas 1830-42*

"Buller-F – 1778-1800" = Francis Buller (1746-1800); *Justice of King's Bench 1778-94*, *Justice of Common Pleas 1794-1800*

"Burland-J – 1774-76" = John Burland (1724-1776); *Baron of Exchequer 1774-76*

"Burnet-T – 1741-53" = Thomas Burnet (ca.1694-1753); *Justice of Common Pleas 1741-53*

"Burrough-J – 1816-29" = James Burrough (1750-1839); *Justice of Common Pleas 1816-29*

"Carter-L – 1726-34" = Lawrence Carter (1668-1734); *Baron of Exchequer 1726-34*

"Chambre-A – 1799-1815" = Alan Chambre (1739-1823); *Baron of Exchequer 1799-1800, Justice of Common Pleas 1800-15*

"Chapple-W – 1737-45" = William Chapple (1677-1745); *Justice of King's Bench 1737-45*

"Clarke-C – 1743-50" = Charles Clarke (ca.1702-1750); *Baron of Exchequer 1743-50*

"Clive-E – 1745-70" = Edward Clive (1704-1771); *Baron of Exchequer 1745-53, Justice of Common Pleas 1753-70*

"Coleridge-JT – 1835-58" = John Taylor Coleridge (1790-1876); *Justice of King's Bench 1835-58*

"Dallas-R – 1813-23" = Robert Dallas (1756-1824); *Justice of Common Pleas 1813-23 (Chief Justice 1818-23)*

"Dampier-H – 1813-16" = Henry Dampier (1758-1816); *Justice of King's Bench 1813-16*

"Denison-T – 1741-65" = Thomas Denison (1699-1765); *Justice of King's Bench 1741-65*

"Denman-T – 1822-30" = Thomas, 1st Baron Denman (1779- 1854); *Common Serjeant of London 1822-30, Lord Chief Justice of King's Bench 1832-50*

"Eldon-Lord – 1799-1801" = John Scott, 1st Earl of Eldon (1751-1838); *Lord Chief Justice of Common Pleas 1799-180, Lord Chancellor 1801-6, 1807-27*

"Ellenborough-Lord – 1802-18" = Edward Law, 1st Baron Ellenborough (1750-1818); *Lord Chief Justice of King's Bench 1802-18*

"Eyre-J – 1763-99"	= James Eyre (1733-1799); *Recorder of London 1763-72, Baron of Exchequer 1772-93 (Chief Baron 1787-93), Chief Justice of Common Pleas 1794-99*
"Fortescue-W – 1736-41"	= William Fortescue (ca.1687-1749); *Baron of Exchequer 1736-8, Justice of Common Pleas 1738-41*
"Foster-M – 1745-63"	= Michael Foster (1689-1763); *Justice of King's Bench 1745-63*
"Garrow-W – 1817-32"	= William Garrow (1760-1840); *Baron of Exchequer 1817-32*
"Gaselee-S – 1824-37"	= Stephen Gaselee (1762-1839); *Justice of Common Pleas 1824-37*
"Gibbs-V – 1812-18"	= Vicary Gibbs (1751-1820); *Justice of Common Pleas 1812-13, Chief Baron of Exchequer 1813-14, Chief Justice of Common Pleas 1814-18*
"Glynn-J – 1772-9"	= John Glynn (ca.1722-1779); *Recorder of London 1772-79*
"Gould-H – 1761-94"	= Henry Gould (1710-1794); *Baron of Exchequer 1761-3, Justice of Common Pleas 1763-94*
"Graham-R – 1800-27"	= Robert Graham (1744-1836); *Baron of Exchequer 1800-27*
"Grose-N – 1787-1813"	= Nash Grose (1740-1814); *Justice of King's Bench 1787-1813*
"Gundry-N – 1750-54"	= Nathaniel Gundry (ca.1701-1754); *Justice of Common Pleas 1750-54*
"Gurney-J – 1832-45"	= John Gurney (1768-1845); *Baron of Exchequer 1832-45*
"Harrison-T – 1783"	= Thomas Harrison (?-?); *Deputy Recorder of London 1783*
"Heath-J – 1780-1816"	= John Heath (1736-1816); *Justice of Common Pleas 1780-1816*
"Hewitt-J – 1766-68"	= James Hewitt (1709-1789); *Justice of King's Bench 1766-68*

"Holroyd-G – 1816-28" = George Holroyd (1758-1831); *Justice of King's Bench 1816-28*

"Hotham-B – 1775-1805" = Beaumont, 2nd Baron Hotham (1737-1834); *Baron of Exchequer 1775-1805*

"Hullock-J – 1823-29" = John Hullock (1767-1829); *Baron of Exchequer 1823-29*

"Hyde-J – 1770-72" = John Hyde (ca.1737-1796)[=]; *Old Bailey Judge (as a Senior Counsel for the City of London) 1770-72*

"Kenyon-Lord –1788-1802" = Lloyd, 1st Baron Kenyon (1732-1802); *Lord Chief Justice of King's Bench 1788-1802*

"Knowlys-N – 1803-33" = Newman Knowlys (1758-1836); *Common Serjeant of London, 1803-22, Recorder of London 1822-33*

"Law-CE – 1830-50" = Charles Ewan Law (1792-1850); *Common Serjeant of London, 1830-33, Recorder of London 1833-50*

"Lawrence-S – 1794-1812" = Soulden Lawrence (1751-1814); *Justice of Common Pleas 1794, Justice of King's Bench 1794-1808, Justice of Common Pleas 1808-12*

"LeBlanc-S – 1799-1816" = Simon LeBlanc (1748/49-1816); *Justice of King's Bench 1799-1816*

"Lee-W – 1730-54" = William Lee (1688-1754); *Justice of King's Bench 1730-54 (Chief Justice 1737-54)*

"Legge-H – 1747-59" = Heneage Legge (1704-1759); *Baron of Exchequer 1747-59*

"Littledale-J – 1824-41" = Joseph Littledale (1767-1842); *Justice of King's Bench 1824-41*

[=] Probably the same "John Hyde" who was appointed to the Supreme Court of Bengal in 1774 (http://en.wikipedia.org/wiki/John_Hyde_%28judge%29). This appears to be confirmed by the fact that his position as City Counsel was taken over soon afterwards by John William Rose, a future Recorder of London (*General Evening Post*, 7-9 July 1774).

"Loughborough-Lord – 1780-93" = Alexander Wedderburn, 1st Baron Loughborough, *subseq*. 1st Earl of Rosslyn (1733-1805); *Lord Chief Justice of Common Pleas 1780-93*, *Lord Chancellor 1793-1801*

"Lyndhurst-Lord – 1831-34" = John Singleton Copley, 1st Baron Lyndhurst (1772-1863); *Lord Chancellor 1827-30*, *Lord Chief Baron of Exchequer 1831-34*, *Lord Chancellor 1834-35*, *1841-46*

"MacDonald-A – 1793-1813" = Archibald MacDonald (1747-1825); *Chief Baron of Exchequer 1793-1813*

"Mansfield-Lord – 1756-88" = William Murray, 1st Earl of Mansfield (1705-1793); *Lord Chief Justice of King's Bench 1756-88*

"Mansfield-J – 1804-14" = James Mansfield (ca.1734-1821); *Chief Justice of Common Pleas 1804-14*

"Maseres-F – 1779" = Francis Maseres (1731-1824); *Deputy Recorder of London 1779*

"Mirehouse-J – 1822-50" = John Mirehouse (1789-1850); *Old Bailey Judge 1822-3*, *Common Serjeant of London 1833-50*

"Moreton-W – 1753-63" = William Moreton (ca.1696-1763); *Recorder of London 1753-63*

"Nares-G – 1771-86" = George Nares (1716-1786); *Justice of Common Pleas 1771-86*

"Noel-W – 1757-62" = William Noel (1695-1762); *Justice of Common Pleas 1757-62*

"Nugent-T – 1758-90" = Thomas Nugent (?-1790); *Common Serjeant of London 1758-90*

"Park-JA – 1816-38" = James Alan Park (1763-1838); *Justice of Common Pleas 1816-38*

"Parke-J – 1828-55" = James Parke, *subseq*. 1st Baron Wensleydale (1782-1868); *Justice of King's Bench 1828-34*, *Baron of Exchequer 1834-55*

"Parker-T – 1738-72"	= Thomas Parker (c.1695-1784); *Baron of Exchequer 1738-40, Justice of Common Pleas 1740-42, Chief Baron of Exchequer 1742-72*
"Patteson-J – 1830-52"	= John Patteson (1790-1861); *Justice of King's Bench 1830-52*
"Perrott-G – 1763-75"	= George Perrott (1710-1780); *Baron of Exchequer 1763-75*
"Perryn-R – 1776-99"	= Richard Perryn (ca.1723-1803); *Baron of Exchequer 1776-99*
"Pratt-C – 1761-66"	= Charles Pratt, *subseq*. 1st Earl Camden (1714-1794); *Chief Justice of Common Pleas 1761-66, Lord Chancellor 1766-71*
"Reynolds-J – 1725-38"	= James Reynolds (1686-1739); *Justice of King's Bench 1725-30, Chief Baron of Exchequer 1730-38*
"Richards-R – 1814-23"	= Richard Richards (1752-1823); *Baron of Exchequer 1814-23 (Chief Baron 1817-23)*
"Richardson-J – 1818-24"	= John Richardson (1771-1841); *Justice of Common Pleas 1818-24*
"Rooke-G – 1793-1808"	= Giles Rooke (1743-1808); *Justice of Common Pleas 1793-1808*
"Rose-JW – 1789-1803"	= John William Rose (1744-1803); *Recorder of London 1789-1803*
"Ryder-D – 1754-56"	= Dudley Ryder (1691-1756); *Chief Justice of King's Bench 1754-56*
"Scarlett-J/Abinger-Lord – 1834-44"	= John Scarlett, *subseq*. 1st Baron Abinger (1769-1844); *Lord Chief Baron of Exchequer 1834-44*
"Silvester-J – 1790-1822"	= John Silvester (1745-1822); *Common Serjeant of London 1790-1803, Recorder of London 1803-22*
"Skynner-J – 1777-87"	= John Skynner (ca.1723-1805); *Baron of Exchequer 1777-87*

"Smythe-S-Stafford – 1750-77" = Sidney Stafford Smythe (1705-1778); *Baron of Exchequer 1750-77 (Chief Baron 1772-77)*

"Strange-J – 1739-42" = John Strange (ca.1696-1754); *Recorder of London 1739-42*

"Sutton-TM – 1805-7" = Thomas Manners Sutton, *subseq.* 1st Baron Manners of Foston (1756-1842); *Baron of Exchequer 1805-7*

"Taunton-W – 1830-35" = William Taunton (1773-1835); *Justice of King's Bench 1830-35*

"Thomson-A – 1787-1817" = Alexander Thomson (ca.1744-1817); *Baron of Exchequer 1787-1817 (Chief Baron 1814-17)*

"Thomson-W – 1715-39" = William Thomson (1678-1739); *Recorder of London 1715-39*, *Baron of Exchequer 1729-39*

"Tindal-N – 1829-46" = Nicholas Tindal (1776-1846); *Chief Justice of Common Pleas 1829-46*

"Urlin-S – 1742-6" = Simon Urlin (1696-1754); *Recorder of London 1742-46*

"Vaillant-J – 1817-20" = John Vaillant (ca.1764-1827); *Old Bailey Judge 1817-20*

"Vaughan-J – 1827-39" = John Vaughan (1769-1839); *Baron of Exchequer 1827-34*, *Justice of Common Pleas 1834-39*

"Willes-E – 1768-87" = Edward Willes (ca.1723-1787); *Justice of King's Bench 1768-87*

"Willes-J – 1737-61" = John Willes (1685-1761); *Chief Justice of Common Pleas 1737-61*

"Williams-J – 1834-46" = John Williams (1777-1846); *Baron of Exchequer 1834*, *Justice of King's Bench 1834-46*

"Wilmot-JE – 1755-71" = John Eardley Wimot (1709-1792); *Justice of King's Bench 1755-66*, *Chief Justice of Common Pleas 1766-71*

"Wilson-J – 1786-93" = John Wilson (1741-93); *Justice of Common Pleas 1786-93*

"Wood-G – 1807-23"	= George Wood (1743-1824); *Baron of Exchequer 1807-23*
"Wright-M – 1739-55"	= Martin Wright (1692/93-1767); *Baron of Exchequer 1739-40, Justice of King's Bench 1740-55*
"Yates-J – 1764-70"	= Joseph Yates (1722-1770); *Justice of King's Bench 1764-70, Justice of Common Pleas 1770*

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JURY – LONDON OR MIDDLESEX?

For all but the last three years covered by this database, the Old Bailey conducted capital trials for two jurisdictions: the City of London; and the adjacent county of Middlesex (which included the City of Westminster). Defendants were tried in alternating batches derived from first one, then the other, of these two jurisdictions. Each defendant had to be tried by a jury comprised of men resident in the jurisdiction where the crime had been committed.

For each defendant, I have identified whether the jury was that of "London" (L) or "Middlesex" (M). The database also records whether this was the first, second or third such jury for each jurisdiction (M1, M2, M3, or L1, L2, etc.) at that particular sessions. However, since every jury was composed of substantially different individuals from one sessions to the next, users are unlikely to find any use in pursuing distinctions amongst particular juries over the long term (*i.e.*, more than one sessions). Only the basic geographical distinction – London or Middlesex – might be of long-term statistical relevance.

I have also included "HF" to signify those few instances in which a special jury was empanelled of "half foreigners" – a jury *de medietate linguae*. This was a privilege occasionally extended when the accused was a foreigner and/or unable to understand the English language.[=]

After passage of the Central Criminal Court Act of 1834 (4 & 5 Will. IV, c36), the Old Bailey's jurisdiction was extended to include those parts of the counties of Essex, Kent and Surrey into which London's suburbs now extended. From that time (November 1834) onwards, juries were no longer composed of men resident in any one place, and they were now designated simply by a number ("First Jury", "Second Jury", and so forth). These numbers have been included in the database, but again – because no "First Jury" at any one post-1834 sessions was composed of the same individuals as a "First Jury" at another (and so forth) – people using are of the

[=] On this subject, see Matthew Lockwood, "'Love ye therefore the strangers': Immigration and the Criminal Law in Early Modern England," *Continuity and Change*, 29 (2014), 349-71.

database will surely find little meaning in long-term analyses of cases heard by each jury-type during this era.

Sources for Juries

From December 1749, the printed *Proceedings* almost invariably identify the specific trial jury at each trial. Before then, the relevant jury is sometimes identified in the detailed reports prepared for the Recorder's Report, some of which are preserved in SP 36 and SP 43. In all instances where the jury has been identified using a source other than the *Proceedings*, I have noted the source used in the list of "Supplementary" documents and publications.

The jurisdiction of each jury could be inferred from the geographical location of the crime (something which the OBPO has rendered searchable and mappable); but I have resisted the temptation to positively identify the jury in this manner in all but a few cases in which the jurisdiction seems blindingly obvious.

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MERCY RECOMMENDATIONS AT TRIAL

When a trial ended in a capital conviction, one of the participants might choose to recommend him or her to mercy. People using the database can investigate the probability of securing a pardon depending upon "Who" recommended mercy and/or the particular grounds on which they did so ("Why").

Plotting the distribution of recommendations to mercy over time strongly suggests that such recommendations became far more common: (1) in eras when execution levels were high (notably the 1780s); and/or (2) in eras when public criticism of capital punishment was increasing (notably the 1820s). Such generalizations must be made with some caution, however, because we cannot know with any certainty how consistent the different editors of the printed *Proceedings* were in recording recommendations to mercy over the century covered by this database.

"Mercy Appeal - Who"

In the vast majority of instances, only three players at trial recommended mercy after conviction. The most frequent parties to do so were the trial "Jury" (993 instances) or the "Prosecutor" (745 instances). The "Judge" is known to have done so in only nineteen instances (fully five of them, oddly enough, in the year 1748). On four other occasions, a "Witness" did so.

On no less than 466 occasions, the *Proceedings* tell us that mercy was recommended but do not tell us who made the recommendation. My impression is that most such recommendations

probably came from the “Jury”, but individuals using the database will want to form their own impressions and opinions on this score.

“Minimum Mercy Appeals”

Use this feature to isolate those convicts who received more than one mercy recommendation at trial (*e.g.*, from the Judge as well as the Jury).

“Mercy Appeal - Why”

The incidence (and potential effectiveness) of mercy recommendations can also be measured in terms of the grounds on which the recommendation was made. The language used to characterize the grounds of appeal sometimes varies, but I have categorized all mercy recommendations under one of eight headings:

(1) ***“Unknown”*** (814 instances) -> No information whatsoever is provided justifying the recommendation. Users of the database might find, however, that a close reading of the trial suggests what the reason might be.

(2) ***“Personal Characteristic”*** (472 instances) -> The principal ground here is usually the convict’s age: he or she is deemed to be either too young or too old to be an appropriate example to put on the gallows.

(3) ***“Good Character”*** (465 instances) -> The convict seems hitherto to have borne an unblemished public character; most often, it will be explicitly stated that this is their first known offense. This category often seems to overlap with “Personal Characteristic”, but I have tried to distinguish a feature over which the convict had no personal control (their age, which might suggest good character to date) from one which they did (their previous good behaviour, which in theory would prove their good character, regardless of their age).

(4) ***“Circumstances of [the] Crime”*** (231 instances) -> Some feature of the crime suggests that, in this particular case, the convict should not be treated as seriously as might another person convicted of the same crime. The most common such feature was a lack of violence used in committing the crime.

(5) ***“Personal Connection”*** (74 instances) -> The convict’s connection to another person is seen as grounds for a recommendation to mercy. Sometimes this means their connection to a person of wealth or stature in the community; more often than not, it is an expression of sympathy for aged and/or reputable parents, or a concern for a family whom an executed convict might leave destitute. Of course, sympathy for a survivor and recognition of the survivor’s stature might sometimes be inextricably linked as considerations.

(6) ***"Legal Reservation"*** (41 instances) -> The party making the recommendation entertains doubts as to whether the crime has really been adequately defined or proven. Often doubts are expressed as to the honesty or accuracy of one of the witnesses, especially if it is a confederate turning king's evidence.

(7) ***"Regrets [the] Crime"*** (34 instances) -> The convict behaved in some manner which clearly suggest that s/he regrets the crime; this most often takes the form of returning stolen goods.

(8) ***"Death Sentence"*** (10 instances) -> The party making the recommendation appears to believe, as a matter of principle, that the crime in question ought not to carry the death penalty. Somewhat surprisingly, perhaps, five of the ten known instances date to 1788-91, a period before public opposition to the capital code had gained the sort of force that it had by the second decade of the nineteenth century.

People using the database will want to consult individual records to see a more precise recapitulation of the grounds of each recommendation and form their own judgments.

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JUDGE'S RESPITE

Before the sessions ended, a capital convict could have pronouncement of his or her sentence of death respited (delayed) by a presiding judge on one of two grounds: doubts as to the legality of the conviction; or in the case of women, being "quick" with child.[=] People using the database can measure the possible consequences (if any) of each procedure upon the subsequent fates of capital convicts.

"Respited-Judge"

A judge could respite a prisoner's death sentence if there were doubts as to whether the capital conviction was legally valid. Perhaps the crime was improperly charged. Or perhaps evidence produced at trial had provoked some doubts as to whether the precise conditions that made the crime a capital offence had been fully established on this particular occasion.

Sentence of death in such cases would be respited until after a meeting could be convened of the twelve high court judges. At that meeting, the Twelve Judges would review the evidence of the case, as well as any relevant legal precedents of which they were aware, and decide whether the conviction was legally "safe". Their ruling would then be announced at the end of

[=] In a few (rare) instances, sentence of death might also be delayed because the convict was too ill to come into court to receive it at the end of the sessions.

the first Old Bailey sessions which followed their meeting. If the conviction had been properly determined, sentence of death was at last pronounced on the prisoner at the next sessions, and his or her case considered at the next Recorder's Report.

In some instances, the Twelve Judges might deem conviction on a non-capital charge might to be more appropriate. If the conviction seemed entirely problematic, however, they usually recommended a free pardon. All instances of both of these non-capital outcomes (there were at least 160 of them) have been omitted from the database.

The substance of the Twelve Judges' findings in many of these cases were collected in several published compilations, all of which are collected in volume 168 of the standardized modern series of *English Law Reports* (cited here as "168 Eng Rpts"). Several rulings that exist only in manuscript form are transcribed in D.R. Bentley (ed.), *Select Cases from the Twelve Judges' Notebooks* (Hambledon, 1997). From the 1780s onwards, the printed *Proceedings* occasionally published the Twelve Judges' rulings as appendices. I have sometimes been able to locate a newspaper notice of a ruling for which no other record exists. And in a very few instances, I have been obliged to infer the outcome given the convict's subsequent disposition (if a respited capital offender went to a subsequent Recorder's Report, for example, his or her capital conviction had surely been affirmed).[=]

Such reserved cases become more and more common from the late eighteenth century onwards, and each person using the database may decide for him- or herself which reason(s) best explain this growth. Was it a function of the increasing number and technical complexity of capital offences (perhaps especially forgery) from that time forward? Or did it stem, at least in some measure, from a greater willingness to raise such objections given a growing hostility to capital punishment in general?

Perhaps the most striking instance of a judicial respite at the Old Bailey was the case of James Donally, whose conviction in February 1779 established the legal principal that accusing a man of committing sodomy provoked a sufficient degree of fear in his mind as to amount to a form of robbery (*see above at* ***Crimes Convicted, A1b***).

"Belly-Q" or "Belly-NQ"

A woman convicted of a capital crime might "plead her belly" – that is, claim that she could not be hanged because she was pregnant – and hope subsequently to receive a pardon. When a woman made this claim, the court ordered a "jury of matrons" (women) to be empanelled and

[=] The history and workings of this review procedure have been examined in Bentley 1997, as well as three articles by James Oldham, Randall McGowen and Phil Handler that appear in the Feb 2011 issue of the *Law and History Review*, and John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford UP, 2003), pp.303-6.

to examine the convict to determine whether or not she was “quick” with child (*i.e.*, whether the pregnancy was sufficiently advanced that the unborn child was discernibly moving). If the woman was found to be “quick” with child, sentence of death was respited and further consideration of the case suspended until sometime after the birth had taken place. If the woman was found “not quick”, then sentence of death was pronounced in the usual order, and the woman’s case went forward to the next Recorder’s Report along with the other capital convicts of her sessions.

Until the late eighteenth century, the printed *Proceedings* appear to have reported instances of this procedure as a matter of routine. Thereafter, however, newspaper accounts reveal several instances of its having taken place without the procedure being noted in the *Proceedings*. More such instances may come to light in the future, as further newspapers are made available in digitally-searchable format.

This procedure also appears to have been a little more complicated by the early nineteenth century. The cases of many women who were apparently found to be “Quick” with child nonetheless went forward to the next Recorder’s Report anyway. Perhaps by then, women were deemed to be so certain of receiving pardon that, save in the most serious of crimes, there was no need to delay the workings of the decision-making process. In any event, people using the database are invited to decide for themselves how far this unusual procedure contributed to the possibility of securing a pardon.[=]

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THE RECORDER’S REPORT

For the entire period covered by the database, the decision whether to execute or to pardon each capital convict was made at a meeting known as “the Recorder’s Report”. At some point after each trial sessions ended at the Old Bailey, a meeting would be convened of the king, the Recorder of London, and the king’s senior government ministers, including:

(1) at least one of the two Secretaries of State, both of whom shared responsibility for the national government’s role in administering criminal justice; after the reconfiguration of the Secretaryship in March 1782, this became the assigned task of the Home Secretary alone (though the other Secretaries of State usually attended anyway);

[=] A detailed history of the procedure has been provided in James C. Oldham, “On Pleading the Belly: A History of the Jury of Matrons,” *Criminal Justice History*, 6 (1985), 1-64.

(2) the Lord Chancellor, who (as senior legal official of the realm and "keeper of royal conscience") was apparently deemed to have a special relevance in advising the king as to how his royal prerogative of mercy ought to be exercised [=];

(3) the Archbishops of Canterbury and York: their presence (as the senior primates of the state church) presumably conveyed an aura of religious authority to the life-or-death decisions being made at the meeting; and …

(4) a variety of other senior members of cabinet, including the first Lord of the Treasury ("the prime minister").

The precise scheduling of the meeting was determined by the Recorder in consultation with the Secretary of State. By the early nineteenth century, it became conventional for the Recorder to be in close contact with the Lord Chancellor as well, with the two of them determining which particular cases would need the closest consideration at the meeting itself.

The Recorder, in his capacity as chief sentencing officer (as well as a trial judge) at the Old Bailey, would prepare a detailed written account of each capital case to be reviewed at the Report. A number of what appear to be these "reports"[=] are preserved for the reign of George II (1727-60) in the State Papers Domestic (SP 36) and State Papers Regencies (SP 43). No such reports appear to have survived from 1760 onwards.

The extent to which the Report, at different times, determined the actual condition of pardon (as opposed to the simple decision of whether to hang or not) is discussed below at ***Outcomes–Pardons***.

All people convicted of a capital crime at the Old Bailey could expect to have their case heard at a Recorder's Report. The sole comprehensive exception to this rule was people convicted of murder between 1752 and 1836. Under the terms of a 1752 Act (25 Geo. II, c37), people convicted of murder were required to be executed within two to three days of their conviction at trial, so that the particularly heinous character of that offence would be fresh in the minds of the public at the time of execution. This requirement, which rendered it impossible for such cases to be included in the Reports of all other Old Bailey convicts before the king and council, was only abolished in 1836 (6 & 7 Will. IV, c30), the year before the practice of the Report itself was abolished.

[=] During those rare intervals in which the office of Lord Chancellor was "in commission", the task of attending and advising at the Recorder's Report fell to the next highest judge in the nation's legal hierarchy, the Lord Chief Justice of King's Bench.

[=] I use the word "report" (small-r) to distinguish the document prepared by the Recorder from the "Report" (large-r) as an event.

A few other capital convicts did not go before a Report. In some instances – notably from the early nineteenth century – this appears to have stemmed from a determination on the part of government to achieve the speediest resolution in a case which clearly did not deserve to end in execution. By that time, such decisions may also have reflected the growing impatience in government circles with the obligation to wait upon the king's convenience in holding a Recorder's Report. A significant number of people convicted of the particular crime of returning from transportation also appear to have been awarded pardons without having their cases sent before a Report (Patrick Madan, in April 1782, is a striking example).

The practice of the Recorder's Report was abolished by statute (1 Vict., c.77) in 1837 for several reasons. First, the growing premium on uniformity of practice in the administration of the law made the continued use of a pardon procedure that was unique to London objectionable to many people on simple grounds of principle. Second, the comprehensive abolition of most of "the Bloody Code" by that time had reduced the number of cases to be heard by any Report to a comparatively small number. Third, rape, sodomy and bestiality remained capital crimes for several more years, and the men who conducted the Report before the monarch may well have been unwilling to review the details of such cases in the presence of a new queen who was only eighteen years old at her accession in June 1837. Fourth, and above all perhaps, the Home Secretary – who presided over a system of pardoning and of non-capital punishments which had, in recent years, become unprecedentedly extensive and elaborate (*see below, at* ***Outcomes-Pardons***) – had simply grown impatient with the increasingly meaningless administrative burden of waiting upon royal convenience to get the pardon process rolling in the nation's largest criminal jurisdiction.[=]

Sources for the Recorder's Report

The dates of Recorder's Reports have been derived almost entirely from newspaper notices. Until the 1750s, both the *Gentleman's* and (especially) the *London Magazine* regularly noted the dates and outcomes of Recorder's Reports – probably from a reading of the Ordinary of Newgate's *Accounts* of condemned prisoners, a source that ceased publication in the 1760s.

[=] The origins of the Recorder's Report during the reign of William III (1689-1702), and its practice from then until the mid-eighteenth-century, are explored in Beattie, *Policing and Punishment*, chaps 7, 9. Its practice at the end of the period covered by the database has been analyzed in Gatrell, *Hanging Tree*, chaps 20-21, and Simon Devereaux, "Peel, Pardon, and Punishment: The Recorder's Report Revisited," in Devereaux and Paul Griffiths (eds.), *Penal Practice and Culture, 1500-1900: Punishing the English* (Palgrave Macmillan, 2004), 258-84.

Before 1760 the dates of Recorder's Reports can sometimes be determined (or confirmed) from documents preserved in the State Papers Domestic (SP 36), State Papers Regencies (SP 43) and the State Papers Entry Books (SP 44).

No later than 1760, it became common practice for the Recorder to provide the Secretary of State (after March 1782, the Home Secretary) with a tabulated list of each convict whose case would be heard at the forthcoming Report. That summary list would provide: (1) the convict's name; (2) the crime of which he or she had been convicted; (3) a reasonably detailed summary of the "Substance of the Petitions" (if any) submitted for mercy, by him- or herself, or by others; and (4) a brief statement of who was submitting (or endorsing) the petition(s) for mercy.

Before 1816, only a handful of these lists have survived, specifically those for the Gordon Rioters of 1780 (SP 37/21, ff.146-7, 177-8, 180) and three from 1783 (HO 42/2, ff.96-7, 230-1, 306-9). From 1816 onwards, they are (almost) entirely preserved in HO 6/1-22.

For such lists as survive from the 1780s, the page number on which the published account of the convict's trial began in the *Proceedings* was also included – a striking indication of the increasingly central importance of the *Proceedings* in the administration of the pardon process by the late eighteenth century.[=] By the end of the era covered by the database, the page numbers of each case were provided by the Recorder in a separate list of the convicts which accompanied the note whereby he indicated to the Secretary of State that he was now ready to report the cases of the last sessions – a practice which presumably enabled the Secretary of State and any other interested government participants in the Report (above all, the Lord Chancellor) to review the cases themselves before the Report was convened. Many of these notes and accompanying lists are preserved in HO 6 and PC 1.

One copy of the tabulated summary list would be kept for the Recorder's reference, the other for the Secretary of State's. These lists provide the date on which the Recorder expected to appear before the council. In a few instances, however, Reports had to be delayed, so the dates on the lists are not invariably a reliable guide as to when the meeting was actually held.

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POST-TRIAL RESPITES

This component of the database enables one to measure the possible impact of decision-making processes in confirmed capital cases prior to the final disposition of each prisoner (Execution or Pardon). Such decisions were usually made at the Recorder's Report. Sometimes, however, they had to be made by the Secretary of State, either:

[=] Simon Devereaux, "The City and the Sessions Paper: 'Public Justice' in London, 1770-1800," *Journal of British Studies*, 35 (1996), 466-503.

(1) in cases of murder (between 1752 and 1836) where doubts had arisen as to the certainty of the convicted killer's guilt after sentence was pronounced immediately upon the conclusion of the trial; or …

(2) in cases where doubts had arisen in the case of a non-murderer whom the Report had left to be executed.

"(RR)" indicates that the respective "Respite" decision was made at the Recorder's Report. Note that people convicted of "Murder" between 1752 and 1836 will have no initial "(RR)" respite because their case never went to a Recorder's Report (*see below*).

"(*Date*)" indicates that the respective "Respite" decision was made on the date indicated, either after the Recorder's Report or (for murderers from 1752 to 1836) after conviction at trial.

If you wish to isolate people who were respited after being left to die at the Recorder's Report, choose "ToDie" under ***Decision at Report*** in conjunction with any option under ***Post-Report Respites*** and/or ***Minimum Respites***.

"ToDie"

Except in the case of people convicted of murder between June 1752 and July 1836, the Recorder's Report always made the first (and usually final) determination as to who would be hanged. The Murder Act of 1752 (25 Geo. II, c37) required that convicted murderers be hanged within two days of their trial (or three, if one of the intervening days was a Sunday). Only the Secretary of State could respite that sentence, either on the advice of the trial judge or in the light of dramatic new evidence produced after trial. After the relevant provision of the Murder Act was repealed in 1836 (6 & 7 Will. IV, c30), detailed review of murder cases returned to the Recorder's Report during the last year of its existence.

"SpecifiedPardon" or "Pleasure"

During eras in which the full range of secondary punishments was available with certainty, the Report appears to have specified the condition of pardon that would be imposed. Surviving minutes of Recorder's Reports before 1760 (found in the entry books for the Regencies, SP 44/267-325) clearly show this to have been the case, as do the surviving Recorder's lists for 1816-37 (HO 6/1-22). After 1760, the Report probably continued to determine specific conditions of pardon until the end of transportation to America in 1775. Nevertheless, if no document exists which clearly indicates that the Report specified the condition of pardon, I have assumed – following the standard terminology deployed in accounts of Reports that were published in contemporary magazines and newspapers throughout the era covered by the

database – that the Report only respited the convict during "Pleasure" and that the specific condition of pardon was determined later.

The documentary evidence clearly indicates that, from no later than 1780 (when a handful of Recorder's lists survive at SP 37/21, ff.146-7, 177-8, 180) until sometime in the 1790s, the Recorder's Report specifically only respited convicts during "Pleasure", leaving the specific conditions of their pardons to be recommended by the Recorder of London at a later date. This circumstance was surely a result of the continuing uncertainty, during this era, as to the availability of specific modes of noncapital punishment (most especially, transportation to a particular destination).

From January 1797 onwards, the dates of pardons issued for convicts usually coincide precisely with the date of the Recorder's Report, something which could scarcely have been possible unless government was again in a position to determine specific conditions of pardon at the Report itself.[=] It needs to be remembered that the "Pardon" references used in this database were not pardons *per se*, but rather orders to the Sheriffs of London and Middlesex to carry into effect pardons that had already been issued.

"SpecifiedTimeDelay"

In cases where doubts arose in the case of a person who was scheduled to be executed, the execution might be delayed for a specified period of time, intended to allow for a proper investigation of the new allegations. The Secretary of State frequently wrote to the Sheriffs of London and Middlesex to insist that they make clear to the condemned that such a delay by no means constituted a guarantee that a pardon would follow. Many such cases ended with a second and final order that the prisoner was "ToDie". Where the doubts raised appeared to be convincing, however, the convict was respited during "Pleasure" and subsequently pardoned.

Multiple Respites

Use this option to isolate people who were respited more than once, either after conviction for murder or after the Recorder's Report. The decision to continue to issue time-specific respites to a convict – most frequently perhaps, Kenneth McKenzie, convicted of murder in December 1784 – presumably indicates reluctance on the part of government to issue a pardon without extremely good reason to do so (*i.e.*, a determination that the crime ought to be punished by death unless there was compelling reason to spare the convict's life).

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[=] From May 1792, however, pardons were being issued within days of the Report (sometimes only one day), a lapse of time that may also be sufficiently short to indicate that conditions of pardon were once more being determined at the Report itself.

OUTCOMES – EXECUTED

Dates, places and modes of execution have been determined (or confirmed) primarily by using newspapers. On only a few rare occasions after 1790 did London's two principal daily newspapers – the *Morning Chronicle* and the *Times* – entirely neglect to report the execution of Old Bailey convicts. The surviving Ordinary's *Accounts* provide the information for most executions down to the early 1760s; a substantially complete record of them for the same era (probably derived from the *Accounts*) appears in the *Gentleman's* and *London Magazines*. The earliest volumes of the Home Office's "Criminal Registers" for London and Middlesex (HO 26), which began in 1792, also recorded the dates of executions.[=]

Mode of Execution

With the uncommon exception of executions at the site of the crime (*see below*), Old Bailey convicts were invariably hanged at one of two fixed sites – Tyburn (until November 1783), then immediately outside Newgate Prison (from December 1783 onwards).[=] The change of execution site in 1783 also entailed a change in the mode of hanging. People hanged at Tyburn were left to strangle at the end of a rope tied to one of the three cross-beams of "the triple tree", a procedure in which death could be many minutes in coming. (William Duell, hanged for rape in November 1740, famously revived after being cut down![=]) Those hanged at Newgate were meant to die instantly by means of a platform which dropped from beneath their feet. However, executioners at this time do not seem to have been aware of the need to scale the

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[=] The best scholarly histories of English executions during the era covered by the database are McKenzie, *Tyburn=s Martyrs* for the earlier period, and Gatrell, *Hanging Tree* for the later.

[=] The database contains two exceptions to this rule: Frederick Finnegan (<t18341124-5>, hanged 1 Dec 1834 at Horsemonger Lane Gaol, in Surrey) and Patrick Carroll (<t18350511-1119>, hanged 19 May 1835 at Maidstone Gaol, in Kent). The Central Criminal Court Act of 1834 (4 & 5 Will. IV, c36) had expanded the jurisdiction covered by the Old Bailey to those sections of the greater London area which now extended into the adjacent counties of Essex, Kent and Surrey. Although nothing in that Act appears to have explicitly required it, people convicted of a murder committed in one of those three newly-added areas were hanged in the relevant county capital rather than at Newgate. Interestingly, this practice appears to have extended *only* to the crime of murder. The only two people in the database hanged for any other crime after the Central Criminal Court Act came into operation – John Smith and James Pratt, hanged 27 Nov 1835 for sodomy <t18350921-2118> – had committed their crime in Surrey, but were nonetheless hanged at Newgate.

[=] Another man, Thomas Reynolds, also revived (only briefly) after hanging at Tyburn in July 1736. He does not appear in this database because he was convicted (under the Black Act) of turnpike rioting at the Court of King's Bench, not the Old Bailey. For his case and execution, see: OA 26 July 1736 <OA17360726>; *London Evening Post*, 24-27 July 1736; *London Daily Post*, 28 July 1736; and Thompson, *Whigs and Hunters*, pp.210, 256-8.

length of the drop (*i.e.*, of each rope used) to the weight of the individual convict, so many convicts still endured a prolonged asphyxiation.

Whether they were hanged at Tyburn or Newgate, the basic ***Mode of Execution*** for almost all convicts is defined here as *"SimpleHanging"*.

A number of means were sometimes used to impose an aggravated ***Mode of Execution***, usually in the case of particularly heinous crimes. The most famous by far was hanging, drawing and quartering for persons convicted of "High Treason". In such cases, the convict was sequentially:

(1) "drawn" from the place of confinement to the place of execution on a sledge (or hurdle), their proximity to the earth (and Hell beneath it) indicative of the superlative detestability of their crime;

(2) "hanged" by the neck <u>almost</u> until dead;

(3) cut down while still alive (and, ideally, still conscious) and then ritually disembowelled, their internal organs then being burned in fire as a purgation of their crime;

(4) "decapitated", with their head subsequently put on public display (most often, before the eighteenth century, on London Bridge) until destroyed by the elements; and finally …

(5) the remainder of the body "quartered", with each of the four parts sometimes being sent to a different, distant part of the nation to be publicly displayed as a warning to others never to similarly defy the lawful authority of the king and his government.

For this subject, see especially Katherine Royer, *The English Execution Narrative, 1200-1700* (Pickering & Chatto, 2013).

Few people in the database (only twelve) were convicted of "High Treason": not so much because the crime was less common than during the Tudor and Stuart eras, but rather because most people tried for it in London had their cases heard at the court of King's Bench rather than at the Old Bailey.

In any case, by the time this database begins, the traditional practice of executing traitors had fallen almost entirely into disuse in England. After James II's infamously excessive use of the practice in the wake of Monmouth's Rebellion of 1685 (at the so-called "Bloody Assizes"), subsequent English monarchs may have self-consciously avoided using the full-scale ritual for fear of being associated with the "tyranny" of Britain's last Catholic king. All twelve of the people here who were executed for "High Treason" underwent substantially mitigated variations of the traditional execution ritual (*see* "Decapitated" *below*). A statute of 1814 (54 Geo. III, c146) formally abolished the hanging, drawing and quartering of traitors in favour of

hanging until dead, followed by decapitation and quartering, the parts "to be disposed of as His Majesty and his Successors shall think fit;" it also preserved the option of imposing death by decapitation, in place of hanging.[=]

Four modes of aggravated execution appear in the database, all but the first associated with punishment for treason:

(1) ***"HangedAtSiteOfCrime"*** (55 instances) -> Unusually, for a practice which might sensibly be associated with primitive beliefs about setting a curse upon the site of a particularly infamous crime, this practice appears to have been more common *after* the mid-eighteenth century than before. However, that temporal distribution was largely a function of this punishment being used in two particular cases. On 26 July 1768, no less than seven men were hanged near Sun Tavern Fields, Shadwell for attempting to kill an official charged with preventing thefts on the river Thames. Twelve years later, eighteen people convicted of participating in the Gordon Riots of June 1780 were hanged at the site of their respective criminal acts.

The most common crime punished by this practice was Murder, which accounts for nineteen people, spread more or less evenly across the entire period of its usage here.

After the convicted arsonists Edward Lowe and William Jobbins were hanged (in November 1790) near the home they had tried to burn down, there was a long interval before the very last example of on-site execution to be found in this database – John Cashman, who was hanged on 12 March 1817 near the building in which he had been convicted of the relatively minor capital crime of Stealing in a Dwelling. The unusual severity of his execution perhaps reflected the particular danger posed to the public by the goods he had stolen: more than thirty guns, with ammunition.[=]

(2) ***"Decapitated"*** (6 instances) -> All six of the Old Bailey convicts subjected to this practice had been convicted of High Treason, and the decapitation of all six of them was carried out *after* they had been killed by conventional hanging. The first of the six was Francis de la Motte, executed at Tyburn on 27 July 1781 (whose heart was also cut out and burnt post-mortem). The

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=[?]The notably understudied subject of aggravated modes of execution is now being extensively analyzed by a major research project at the University of Leicester, "Harnessing the Power of the Criminal Corpse", which will in due course lead to the publication of several volumes exploring different aspects of the topic. The first products include: Shane McCorristine, *William Corder and the Red Barn Murder: Journeys of the Criminal Body* (Palgrave Macmillan, 2014); Ward (ed.), *Global History of Execution*; and Hurren, *Dissecting the Criminal Corpse*.

=[?]The first detailed scholarly study of on-site executions is Steve Poole, "'For the Benefit of Example': Crime-Scene Executions in England, 1720-1830," in Ward (ed.), *Global History of Execution*, pp.71-101.

remaining five were all convicted (along with six others, who received conditional pardons) of the so-called "Cato Street Conspiracy".[=]

(3) ***"BurntAtStake"*** (13 instances) -> Where men convicted of treason were disembowelled and quartered, women convicted of treason were burned at the stake. (The formal rationale for this dubious distinction was that women's bodies should be spared the indignity of public exposure during the course of disembowelment!) Treason in its most obvious, political form – "High Treason" – was (*as noted above*) a rarely-convicted crime at the Old Bailey. More usually it took the form of "Coining" (*see above*, *at* ***Crimes-Currency Offences, D1***). It also appears in the form of "Petty (Petit) Treason", a form of murder that was deemed to be aggravated by an act of rebellion against lawful authority – including a woman's murder of her husband (*see above, at* ***Crimes-Violence, B4***).

By the time when this database begins, both genders were allowed a measure of mitigation in the punishments for treason. Just as male traitors did not have any of the once conventional bodily "tortures" imposed upon them until after death by hanging, women were now hanged before their bodies were committed to the flames. The burning alive of the infamous murderess Katherine Hays in 1726 appears to have been a deliberate exception to an already established rule in this regard, though it's possible that many of the female coiners executed at Tyburn only thirty years earlier were still being burned alive.

Burning at the stake was abolished in 1790 (by 30 Geo. III, c48). In part this reflected the growing reverence, during an era of increasingly self-conscious "sensibility" amongst England's propertied elites, attributed both to women's bodies and to women's unique spiritual capacities. These new sensibilities must have been further affronted by the transparent inequities in the treatment of men and women convicted of treason, particularly the form of it that was most often represented here: coining. Male and female coiners alike were drawn to the place of execution on a hurdle. Once there, however, virtually all men were only hanged and their bodies subsequently allowed a decent burial [=]; the bodies of women were still being burned at the stake. Finally, with the abolition of executions at Tyburn in 1783, the full sensory horrors of post-mortem cremation – once safely confined to the physical margins of the

[=] The nature and apparent impact of their uniquely-stylized executions on 1 May 1820 is discussed in Gatrell, *Hanging Tree*, pp.298-314.

[=] There were at least three exceptions to this rule. John Brown, after having been hanged in December 1733, was slashed across the chest. Joseph Wood committed suicide the night before his scheduled execution in March 1758; his body was drawn to Tyburn on a sledge the next day and hanged on the gallows alongside the regular convicts for execution, then reportedly taken down, cut open and his heart removed. Thomas Ives was also reported in several periodicals to have been disembowelled and his organs burnt after he was hanged in April 1774.

metropolis – were now being experienced outside Newgate Prison, deep in the heart of urban London. This last factor must surely have been definitive in prompting the abolition of 1790.[=]

(4) ***"DrawnOnSledge"*** (60 instances) -> This was the most persistently enforced of the modes of execution that were imposed upon traitors during the era covered by the database. Everyone subjected to this ritual humiliation prior to death had been convicted of treason – all save Francis de la Motte, however, of the somewhat less serious form of treason, coining (*see above*). The removal of executions immediately outside of Newgate Prison in December 1783 all-but-entirely ended this practice. It was revived, in a surely attenuated form, for three coiners executed there on 24 November 1790, and one last time for a fourth executed on 6 July 1827.

Post-Execution Disposition

The execution of particularly heinous offenders could be further aggravated by subjecting their bodies to public indignities after death. Such treatment of convicts' corpses sought to enhance the deterrent horrors of execution by tapping into the enduring popular belief that a person's soul might remain lodged in their body for an unknown period of time immediately after death, a belief system vividly evoked in Ruth Richardson, *Death*, *Dissection*, *and the Destitute* (1987; new edn, 2000).

Four such post-mortem aggravations were imposed upon some of the convicts in this database:

(1) ***"Quartered"*** (2 apparent instances) -> The only two apparent instances of this practice are the coiners William Tinman and Philip Murray, who were hanged at Tyburn on 26 May 1738 after having been drawn there on a sledge (*see above* for a discussion of the ***Modes of Execution*** associated with treason and their general disuse by this era). If their bodies were quartered (as some periodicals state), it must have been in a purely ceremonial fashion at the place of execution: the Ordinary of Newgate (who does not mention their being quartered at all) reports that both men were buried soon afterwards (OA 26 May 1738 <OA17380526>).

(2) ***"SuicideBurial"*** (4 known instances) -> Until the practice was abolished by statute in 1823 (by 4 Geo. IV, c52), it was common for people who committed suicide to be ceremonially buried at a crossroads with a stake driven through their chest. Since considerably more than four people in the database are known to have killed themselves at some point during the legal process before Execution or Pardon (ten, all but one of them before the statute of 1823), I may

[=] On this subject, see Devereaux, "Abolition of the Burning of Women," 73-98. Shelley Gavigan points out that the crime of "petty treason" itself was not abolished until passage of the Offenses Against the Person Act in 1828 (9 Geo. IV, c31, s2), which may suggest that, as late as 1790, distaste for that uniquely-defined crime had not yet been overborne by any changing sensibilities regarding women. See her, "Petit Treason in Eighteenth Century England: Women's Inequality before the Law," *Canadian Journal of Women and the Law*, 3 (1989-90), 335-74.

yet find evidence in contemporary periodicals of some of these other convicts having been subjected to the same post-mortem indignity.[=]

(3) ***"Gibbetted"*** (46 instances) -> The practice of gibbeting (hanging in chains) the corpse of an executed felon was more common in the first half of the eighteenth century: 27 of the 46 instances of it in the database pre-date 1750. That figure is the more striking given that here it covers only two decades, the 1730s and 1740s. If the as-yet-unknown figures for 1700-1729 were included, the predominance of the first half of the century would probably be even more pronounced.

The Murder Act of 1752 (25 Geo. II, c37) required that convicted murderers be either gibbetted or publicly dissected by surgeons, and the former option appears to have been exercised (to the detriment of the anatomical profession!) in no less than ten of the remaining eighteen instances of gibbetting Old Bailey convicts after this Act's passage. The Anatomy Act of 1832 (2 & 3 Will. IV, c75, s16) abolished dissection of the bodies of murderers, but retained the possibility of placing them in the gibbet until the practice of gibbeting was entirely abolished two years later (by 4 & 5 Will. IV, c26). In practice, however, murderers were now buried within the precincts of the prison in which they were executed.

From the mid-eighteenth century onward, gibbeting appears to have been particularly used in the case of violent attacks on government authority. Of the 26 men gibbetted from 1747 onwards, smugglers account for seven cases and men who robbed the mail another four. No Old Bailey convict was hung in chains after 1799, when John Haines and Thomas Clark were gibbeted on Hounslow Heath for having attempted to shoot and kill a Bow Street officer.[=]

(4) ***"Dissected"*** (250+ instances) -> Dissection of the corpse was by far the most common mode of post-mortem aggravation, though authorities did not explicitly treat it as such until after passage of the Murder Act in 1752 (25 Geo. II, c37). By the early eighteenth century, London surgeons were legally entitled to receive up to ten bodies of executed criminals per annum in furtherance of anatomical instruction and research. The bodies they received could be those of a person convicted of any capital crime.

[=] At least one of the ten, Daniel Jackson in December 1740, was subsequently deemed by a coroner's jury to have been insane (*non compos mentis*), which would have precluded a suicide's burial (*LONDON MAGAZINE* 1740, p.612).

[=] The use of the gibbet in mid-eighteenth-century England (including the Old Bailey smuggling cases) is discussed in Zoe Dyndor, "The Gibbet in the Landscape: Locating the Criminal Corpse in Mid-Eighteenth-Century England", in Ward (ed.), *Global History of Execution*, pp.102-25.

The situation changed following passage of the Murder Act in 1752, which stated that the bodies of all convicted murderers should be either dissected or hung in chains after execution. Although the language of the Act did not explicitly preclude the possibility of turning over the bodies of other felons for dissection, its central purpose – to impose a special mark of horror upon murderers above all other classes of capital convicts – logically dictated that such an exclusion should follow. Nevertheless, the bodies of at least a dozen other non-murderers were obtained by the surgeons after the Murder Act was passed. Such exceptions must surely have been allowed, at least in part, because restriction of dissection to murderers alone effectively reduced the supply of felons' corpses to London anatomists below the number that was guaranteed them by law. They may also have been a response to a practice which contemporaries believed to be reaching epidemic proportions by the turn of the nineteenth century: grave-robbing, with a view to supplying the demand of anatomy schools for subjects.[=]

At present, I am only certain as to the identity of two people whose bodies were turned over to anatomists after execution during the years after 1752. Thomas Ashby and Edward McDonald, hanged in October 1773, were said to have been turned over to a surgeon because they had "no friends to bury them" (*London Chronicle*, 26 Oct 1773). After them, I have (as yet) detected only one other instance of Old Bailey convicts being turned over to an anatomist: two men amongst the eighteen who were hanged on 9 January 1787, and who were said to have made prior arrangements to this effect "with a wish, that it might, in some degree, make atonement for the injuries they had done their country" (*Morning Chronicle*, 13 Jan 1787).

Because I have relied solely upon newspaper accounts, and because those accounts do not always specify the particular person whose body was turned over to the surgeons, the total number of people identified in the database as having been "Dissected" is only a minimum figure. The following is a list of dates (perhaps incomplete) on which unidentified felons' bodies were reported to have been obtained by the surgeons:

5 June 1732 (1 body)
5 March 1733 (2 bodies)
2 October 1734 (2 bodies)
18 January 1738 (2 bodies)
13 February 1740 (1 body)
14 March 1739 (3 bodies)
5 October 1744 (unspecified number of bodies)
21 January 1747 (3 bodies)

[=] It is striking, for instance, that two men were turned over to the surgeons in January 1787, only a few months after a government-sponsored bill to expand the supply of felons' corpses to anatomists had failed in parliament. For that measure and its failure, see Ward, "Criminal Corpse, Anatomists, and the Criminal Law," 63-87; and Simon Devereaux, "Inexperienced Humanitarians? William Wilberforce, William Pitt, and the Executions Crisis of the 1780s," *Law and History Review*, 33 (2015), 853-70.

16 May 1750 (2 bodies)
13 July 1752 (3 bodies)
17 March 1755 (4 bodies)
18 May 1757 (1 body)
31 March 1758 (1 body)
9 Jan 1787 (2 bodies)

I hope to identify these people (and perhaps others) and to update their entries at some time in the future.

The continued provision to the surgeons of the bodies of non-murderers after passage of the Murder Act is the more remarkable in so far as that measure was also intended to help bring the Tyburn execution ritual under control. The family and friends of executed criminals, most of whom could usually expect to be allowed to give their loved ones a conventionally decent burial after death, sometimes violently resisted the efforts of surgeons to carry bodies away from Tyburn. Restricting dissection to the very worst category of criminals, in conjunction with the enhanced presence of the Sheriffs and other municipal officers, seems to have substantially reduced riotous behavior at Tyburn executions after the early 1750s.[=]

The section of the Murder Act which prescribed anatomization was abolished with the passage of the Anatomy Act of 1832 (2 & 3 Will. IV, c75), which aimed to enhance the surgeons' now greatly-reduced supply of legally-obtained corpses by instead making available to them the unclaimed bodies of people who died in the workhouse (see Richardson, *Death, Dissection, and the Destitute*, and several other authors subsequently). Thomas Reilly, hanged for the murder of his wife in July 1832, was the last Old Bailey convict to be subjected to post-mortem dissection. Thereafter, the bodies of convicted murderers were buried within the walls of the prison in which they were executed.

* * * * *

OUTCOMES – PARDONS

Multiple Pardons

Use this feature to isolate those individuals who received more than one pardon (*see below*).

Conditions of Pardon

[=] On this subject, see especially Peter Linebaugh, "The Tyburn Riot Against the Surgeons," in Hay *et al.*, *Albion's Fatal Tree*, pp.65-117.

The vast majority of pardons in the database were imposed on condition of ***TRANSPORTATION*** for seven years (T7), fourteen years (T14), or for life (TL). Until 1775 such convicts were transported to the American colonies (usually Maryland or Virginia) where they were sold into indentured service. From 1787 until the 1860s, convicts were transported to New South Wales or (later) one of the other Australian colonies.

Pardons on condition of ***IMPRISONMENT*** at hard labour for a specified number of years were used during the era in which transportation was rendered unavailable by the American Revolutionary War (1775-83). During this time, men were sent to prison ***HULKS*** on the River Thames, while women were sent to one of the houses of correction in London or Middlesex.

With the expansion of the British war effort from 1778 onwards, it became more common for men to be pardoned on condition of ***MILITARY*** service rather than confinement on board the increasingly controversial hulks. The navy and army were reluctant to accept capital convicts into their ranks (there was less objection to petty criminals [=]), so military pardons feature in the database almost entirely during wartime – the Seven Years War (1756-63), the War with America (1775-83), and the Wars with Revolutionary and Napoleonic France (1793-1815) – when the urgent necessity for servicemen overrode conventional scruples. During the latter conflict, most of the Old Bailey condemned who were pardoned on condition of military service – 121 of a total of 172 – received that pardon in the second instance, having initially been pardoned on condition of transportation and having served some time already on board the hulks. Such men were presumably believed to have shown themselves more amenable to discipline in the mass than those who had only just been sentenced to die.

From July 1782 onwards, ***TRANSPORTATION*** again became the main condition of pardon: first on condition of being sent to Africa or America; but from December 1785 onwards, on condition of being transported to places "Beyond the Seas". The lack of specificity in the latter instance reflected the absence of a designated place for convicts to be received until the government resolved, in the summer of 1786, to create a new penal settlement at New South Wales. From January 1787, pardons began to specify New South Wales or parts adjacent as the convict's destination. This extended delay in actually resuming transportation overseas meant that men pardoned on that condition spent long periods on board prison hulks (now also established at Portsmouth and Plymouth) awaiting the actual execution of their conditional pardons.

Formal pardons on condition of ***IMPRISONMENT*** continued to be used, but only in small numbers and usually only with respect to women or young offenders. Convicts who were

[=] Stephen R. Conway, "The Recruitment of Criminals into the British Army, 1775-81," *Bulletin of the Institute of Historical Research*, 58 (1985): 46-58; Peter King, "War as a Judicial Resource: Press Gangs and Prosecution Rates, 1740-1830," in Landau (ed.), *Law, Crime and English Society*, pp.97-116.

subsequently remitted the remainder of their sentences of imprisonment have been classified as receiving ***EARLY RELEASE*** from custody.

By the early nineteenth century, however, pardons issued on condition of ***TRANSPORTATION*** often "disguised" what amounted to terms of ***IMPRISONMENT***. Men sentenced to transportation for seven years (and sometimes longer) often spent the entire term of their conditional pardon on board the hulks. At the end of their service, they had to be issued a free pardon in order to be discharged from custody – because the actually stated condition of their pardon, transportation, had never been carried into effect and remained formally binding until a free pardon was issued. By the 1820s free pardons issued for men on board the hulks had become the single largest category of pardon recorded in the Criminal Entry Books (HO 13). It also became increasingly common for men pardoned on condition of transportation for life or for fourteen years to receive subsequent pardons reducing the term of their sentence, often (again) ending in a free pardon to secure their discharge from the hulks.

Similarly, after the first "national penitentiary" at Millbank was opened in 1816, many men and women sentenced to transportation in fact served some, or all, of their time imprisoned there. The lists of capital convicts whose cases were heard at Recorder's Reports during this latter era (preserved in HO 6/1-22) occasionally indicate specifically that a convict pardoned on condition of transportation was in fact to serve his or her time in the penitentiary (the database entries note such indications in the "Other Documents" section). As with men confined on board the hulks, free pardons issued to people currently confined in Millbank became an increasingly common form of pardon in the Criminal Entry Books.

Four other conditions of pardon were rarely used, almost entirely from the 1780s to the 1810s:

(1) Obliging a convict to ***RETURN TO THE PARISH*** of their origin was used six times, all during the 1790s – three times as a pardon of first instance, and three times as a secondary pardon. I have classified this as a sub-category of ***FREE*** (or unconditional) pardon.

(2) Very young capital convicts might be sent either to the ***MARINE SOCIETY*** or the ***PHILANTHROPIC SOCIETY***, two famous charitable organizations that sought to apprentice children to useful trades. Eleven boys were sent to the Marine Society during the 1790s and 1810s, five as a pardon of the first instance and six as a secondary pardon. Eight children were sent to the Philanthropic Society during the 1790s and 1800s, all as pardons of the first instance. For the purposes of the database, I have classified these as modes of ***IMPRISONMENT***, though some readers may think that this overstates the relative severity of the convict's ensuing treatment.

(3) Forty-eight capital convicts were given ***EARLY RELEASE*** on condition of their ***GOOD BEHAVIOUR*** for a specified period of time thereafter – two, three, seven or fourteen years or life, or for that portion of the original conditional pardon that remained unserved. Such a pardon was issued only once in the 1750s; the other forty-seven instances date from the 1780s to the 1810s. Twenty-three of these were pardons of the first instance (including the one awarded in the 1750s), while the remaining twenty-five were secondary pardons.

Sources for Pardon Conditions

The dates and conditions of pardons were almost invariably recorded in the various entry books of the Secretaries of State from the late 1720s until 1782, and in the "Criminal" entry books of the Home Office (HO 13) thereafter.[=] Until 1783, pardons were recorded in more than just the one series of volumes that have been formally designated "Criminal" entry books (SP 44/77-96). Most strikingly, during his thirty-year tenure as a Secretary of State (1724-54), the Duke of Newcastle's clerks usually recorded the pardons awarded by his office in the main series of "Domestic" entry books (SP 44/97-143) rather than the "Criminal" entry books. And until about 1760, free (unconditional) pardons were separately recorded in the entry books for "Warrants" (SP 44/338-385) – an indication, presumably, of how unusual free pardons for capital criminals must once have been deemed to be.

Strictly speaking, the records in the entry books are not copies of the pardons proper; they are copies of the orders issued by the Secretary of State to the Sheriffs of London and Middlesex to execute pardons that had been issued for the convicts in their custody. Copies of the actual pardons themselves are filed in the vast and minimally-catalogued records of the Court of Chancery. Before the period when the Secretary of State's entry books begin listing "pardons" in the 1720s, the records of Chancery are the primary means of discovering whether or not, and to whom, pardons were issued. The indefatigable genealogist, Peter Wilson Coldham, has extensively examined the Chancery records to produce several volumes listing indentured servants sent to the American colonies from the mid-seventeenth century onwards; some of these volumes have been used in this database to supply records of pardons that are missing from the entry books.

* * * * *

OUTCOMES – DEATH & UNKNOWN

[=] In March 1782, the two offices of Secretary of State, each of whose occupants shared responsibility for the oversight of both domestic and foreign affairs, were reconfigured as mutually exclusive secretaries of state for Home and Foreign "Departments" – that is, as Home and Foreign Secretaries with nominally exclusive control over their respective areas.

Nearly two hundred people in the database were neither executed nor pardoned, but simply disappear from the available documentary or newspaper/periodical records at some point after receiving sentence of death.

Died

A substantial number of people – 113 (just over 1% of the total) – died after receiving sentence of death at the end of the sessions, but before being either executed or pardoned.

Where sources are available to identify the cause of death as "Suicide" (ten individuals, all of them men), the date of the suicide has been given and the source of that information is provided. The date and source have also been provided, wherever possible, in those instances where there is evidence that the body of the individual was subjected to a "Suicide's Burial". All but one of the ten known suicides killed themselves before passage of a statute in 1823 (4 Geo. IV, c52) which at last forbade this time-honoured practice (*see above*, ***Post-Execution Disposition***).

The cause of premature death in 103 other instances (all but five of them men) is unknown, though many of these people must surely have succumbed to "gaol fever" (generally thought to have been typhus). Such deaths appear to have occurred most frequently:

(1) during the mid-1730s;

(2) from the late 1740s through the mid-1750s, a timespan which includes the Old Bailey's infamous "Black Assizes" of April 1750, in which gaol fever amongst the prisoners was communicated to the court at large, killing the Lord Mayor himself and several other officials and jurors;

(3) during the late 1760s through the mid-1770s, which includes a second "Black Assizes" at the Old Bailey in September 1772, an event which at long last triggered the much-delayed building of a new prison at Newgate; and …

(4) during the 1780s, during the long suspension of regularized convict transportation.

Unknown

I have been entirely unable to determine the ultimate outcome for seventy individuals (sixty men and ten women) in the database. Many (perhaps most) of them must also have died before they could be either executed or pardoned, mainly (again) from gaol fever. Some of these individual mysteries may subsequently be resolved, either as more documents are examined or more newspapers digitized.

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EXTRA REFERENCES

The full text of each record in the database can be accessed by clicking on the green circle alongside each name in the table generated by a "Regular Search" command. In addition to all the standardized information, each record/person may have up to three other bodies of supplementary reference material:

(1) ***Printed Sources*** -> This category lists printed materials which provide either major alternative accounts of the case – notably those found in various editions of the *Select Trials* from the mid-eighteenth through the nineteenth centuries – or printed editions of manuscript materials. I have not attempted to provide comprehensive listings to all contemporary published accounts of famous cases, such as the forgers William Dodd or the Perreau brothers. People with access to the databases "Eighteenth Century Collections Online", or even Google Books, will readily find much of this material.

(2) ***Other Documents*** -> This category provides references to (and short summaries of, and excerpts from) manuscript documents related to the case. References to several other ranges of materials which I have not consulted can be found at the individual trial accounts on the "Old Bailey Proceedings Online" website, which can be linked to directly from each individual convict's record on this site. Such additional records include pre-trial depositions and more unusual materials, such as records of the Post Office (re robberies of and in the mail) and the Royal Mint (re coining offenses) held in the National Archives (UK).

References from two major ranges of documentary material housed in the National Archives have not yet been integrated into the database, though I expect to be able to do this soon:

(a) SP 36/1-109 – State Papers Domestic: George II (for 1727-49)

(b) HO 17 – Criminal Petitions, Series One: 1819-1838. This material is presently being fully-indexed; it is also being made commercially accessible (<www.findmypast.co.uk>).

(3) ***Notes*** -> This third, residual category is used to draw attention to any unusual features of the case (*e.g.*, its absence from the printed *Proceedings*).

The following is a list of all the abbreviations used in these three categories of extra reference materials.

Printed Sources

168 Eng Rpts = *The English Reports – Volume 168: Crown Cases, I* (1925)

ANNALS OF NEWGATE (1776) = *The Annals of Newgate; or, Malefactors Register* (1776; 4 vols.)

Aspinall (ed), HOBHOUSE DIARY = Arthur Aspinall (ed.), *The Diary of Henry Hobhouse (1820-1827)* (1947)

AUTOBIOGRAPHY OF WILLIAM JERDAN = *The Autobiography of William Jerdan* (1852-3; 4 vols.)

Bentley = D.R. Bentley (ed.), *Select Cases from the Twelve Judges' Notebooks* (1997); *supplements the material provided in* 168 Eng Rpts (*above*)

BLOODY REGISTER (1764) = *The Bloody Register: A Select and Judicious Collection of the Most Remarkable Trials …* (1764; 4 vols.)

BOSWELL DIARIES = Frederick A. Pottle et al (eds.), *Boswell's Journals, 1762-1795* (1950-89; 13 vols.)

BOSWELL'S PRIVATE PP = Various Authors (eds.), *The Private Papers of James Boswell: Correspondence* (1966- ; 9 vols. to date)

CAMDEN MISCELLANY, xxxix = Ian R. Christie (ed.), "George III and the Southern Department: Some Unpublished Royal Correspondence," in *Camden Miscellany XXX* (*Camden Society*, 4/39; 1990), pp.415-39

Colchester (ed), ELLENBOROUGH DIARY = Lord Colchester (ed.), *A Political Diary, 1828-1830, by Edward Law, Lord Ellenborough* (1881; 2 vols.)

Coldham C = Peter Wilson Coldham (comp.), *The Complete Book of Emigrants in Bondage, 1614-1775* (1988)

Coldham M = Peter Wilson Coldham (ed.), *More Emigrants in Bondage, 1614-1775* (2002)

COMMONS PP = House of Commons Parliamentary Papers (Chadwyck-Healy database <www.parlipapers.chadwyck.com>)

CORR. DUKE OF BEDFORD (1842-6) = *Correspondence of John, Fourth Duke of Bedford, Selected from the Originals at Woburn Abbey* (1842-6; 3 vols.)

CORR. EDMUND BURKE = Thomas W. Copeland (ed.), *The Correspondence of Edmund Burke* (1958-78; 10 vols.)

CORR. GEORGE III = Sir John Fortescue (ed.), *The Correspondence of King George III from 1760 to 1783* (1927-28; 6 vols.)

CORR. GEORGE IV = A. Aspinall (ed.), *The Letters of King George IV, 1812-1830* (1938; 3 vols.)

CORR. PRINCE REGENT = A. Aspinall (ed.), *The Correspondence of George, Prince of Wales, 1770-1812* (1963-71; 8 vols.)

CRIMINAL RECORDER (1809-11) = *The Criminal Recorder; or, Biographical Sketches of Notorious Public Characters*; by "A Student of the Inner Temple" (1809-11; 4 vols.)

CTRD = Convict Transportation Registers Database (Queensland State Archives, Australia; *digital search platform for* HO 11) <http://www.slq.qld.gov.au/resources/family-history/convicts>

Devereaux 2007 = Simon Devereaux, "Imposing the Royal Pardon: Execution, Transportation, and Convict Resistance in London, 1789," *Law and History Review*, 25 (2007): 101-38

DIARY OF JOHN BAKER = Philip C. Yorke, *The Diary of John Baker* (1931)

Earl of March, A DUKE AND HIS FRIENDS (1911) = Earl of March, *A Duke and His Friends: The Life and Letters of the Second Duke of Richmond* (1911; 2 vols.)

FARINGTON DIARY = Kenneth Garlick & Angus Macintyre, and Kathryn Cave (eds.), *The Diary of Joseph Farington* (16 vols.; 1978-84)

Flynn, SECOND FLEET = Michael Flynn, *The Second Fleet: Britain's Grim Convict Armada of 1790* (1993)

GENERAL WILLIAMSON'S DIARY (1912) = John Charles Fox (ed.), *The Official Diary of Lieutenant-General Adam Williamson, Deputy-Lieutenant of the Tower of London, 1722-1747* (*Camden Society*, 3/2; 1912)

Gillen, FOUNDERS = Mollie Gillen, *The Founders of Australia: A Biographical Dictionary of the First Fleet* (1989)

HATHERLEY MEMOIR = W.R.W. Stephens (ed.), *A Memoir of the Right Hon. William Page Wood, Baron Hatherley, with Selections from His Correspondence.* (1883; 2 vols.)

HMC [*series #*] = Historical Manuscripts Commission Reports (*various series*)

Jackson, NEW AND COMPLETE NEWGATE CALENDAR (1795) = William Jackson, *The New and Complete Newgate Calendar; or Villany Displayed in All Its Branches* (1795; 6 vols.)

Jay, THE LAW (1868) = Cyrus Jay, *The Law: What I Have Seen, What I Have Heard, and What I Have Known* (1868)

Johnson, GENERAL AND TRUE HISTORY (1742) = Capt. Charles Johnson, *A General and True History of the Lives and Actions of the Most Famous Highwaymen, Murderers, Pirates, &c.* (1742; 2 vols.)

Knapp and Baldwin, NEWGATE CALENDAR (1824-8) = Andrew Knapp and William Baldwin, *The Newgate Calendar* (1824-8; 4 vols.)

Knapp and Baldwin, NEW NEWGATE CALENDAR (1826) = Andrew Knapp and William Baldwin, *The New Newgate Calendar* (1826; 5 vols.)

Kriegel (ed), HOLLAND HOUSE DIARIES = Abraham D. Kriegel (ed.), *The Holland House Diaries, 1831-1840: The Diary of Henry Richard Vassall Fox, third Lord Holland, with Extracts from the Diary of Dr John Allen* (1977)

LAST JOURNALS OF HORACE WALPOLE (1910) = A. Francis Stewart (ed.), *The Last Journals of Horace Walpole During the Reign of George III from 1771-1783* (1910; 2 vols.)

LATER CORR. GEORGE III = A. Aspinall (ed.), *The Later Correspondence of George III* (1962-70; 5 vols.)

Lewis (ed), CORR. HORACE WALPOLE = W.S. Lewis (ed.), *The Yale Edition of Horace Walpole's Correspondence* (1937-83; 48 vols.)

Macklecan, HISTORY OF THE LIVES AND ACTIONS (1747-8) =Capt. James Macklecan, *A General and True History of the Lives and Actions of the most Famous Highwaymen, Murderers, Pirates, &c.* (1747-8, 2 vols.) [essentially a reprint of Johnson 1742]

MALEFACTOR'S REGISTER (1779) = *The Malefactor's Register; or, New Newgate and Tyburn Calendar* (1779; 5 vols.)

Mountague, OLD BAILEY CHRONICLE (1788) = James Mountague, *The Old Bailey Chronicle* (1788; 4 vols.) [substantially reprints ANNALS OF NEWGATE (1776)]

OA = *The Ordinary of Newgate, His Account of the Behaviour, Confession, and Dying Words, of the Malefactors, Who were Executed at Tyburn, On* [date]; available online at "The Proceedings of the Old Bailey: London's Central Criminal Court, 1674 to 1913" <http://www.oldbaileyonline.org/> [some hyperlinks, where relevant]

OBSP = *The Proceedings on the King's Commissions of the Peace, Oyer and Terminer, and Gaol Delivery for the City of London; and also the Goal Delivery for the County of Middlesex, Held at Justice-Hall in the Old-Bailey, On [dates]*; available online at "The Proceedings of the Old Bailey" <http://www.oldbaileyonline.org/> [trial accounts and judges' respites are hyperlinked from this site]

ODNB = *Oxford Dictionary of National Biography* <www.oxforddnb.com>

Paley 1989 = Ruth Paley, "Thief-takers in London in the Age of the McDaniel Gang, c.1745-54," in Douglas Hay and Francis Snyder (eds.), *Policing and Prosecution in Britain, 1750-1850* (Oxford, 1989), pp.301-41

Palk (ed), PRISONERS' LETTERS = Deidre Palk (ed.), *Prisoners = Letters to the Bank of England, 1781-1827* (London Record Society #42, 2007)

Parker (ed), PEEL PRIVATE PP = Charles Stuart Parker (ed.), *Sir Robert Peel from His Private Papers* (1891-9; 3 vols.)

Pelham, CHRONICLES OF CRIME (1887/91) = Camden Pelham (ed.), *The Chronicles of Crime* (1887/1891; 2 vols.)

SELECT TRIALS (1742) = *Select Trials at the Sessions-House in the Old-Bailey* (1742; 4 vols.)

SELECT TRIALS (1764) = *Select Trials … at the Sessions-House in the Old-Bailey* (1764; 4 vols.)

Southey, LETTERS FROM ENGLAND (1807) = [Robert Southey] *Letters from England, by Don Manuel Alvarez Espriella* (3rd edn, 1814, 3 vols.; original edn, 1807)

STATE TRIALS = T.B. Howell et al (comp), *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors* (1816-28; 34 vols.)

Strachey and Fulford (eds), GREVILLE MEMOIRS = Lytton Strachey and Roger Fulford (eds.), *The Greville Memoirs, 1814-1860* (1938; 8 vols.)

TYBURN CHRONICLE (1768) = *The Tyburn Chronicle: or, Villainy Display'd in All Its Branches* (1768; 4 vols.)

Upton (ed), SMITH DIARY = L.F.S. Upton (ed.), *The Diary and Selected Papers of Chief Justice William Smith, 1784-1793* (1963-5; 2 vols.)

Wilberforce and Wilberforce (eds), LIFE OF WILLIAM WILBERFORCE = Robert Isaac Wilberforce and Samuel Wilberforce (eds.), *The Life of William Wilberforce* (1838; 5 vols.)

WORKS OF JOHN WESLEY (1975-) = Frank Baker and Richard P. Heitzenrater (eds.), *The Works of John Wesley* (1975-)

Documents Housed in Archives

Add MS = British Library, Additional Manuscript

Bodleian Library (Oxford U[niversity])

MS North c.3 = Papers of John Stuart, 2rd Earl of Bute

MS Wilberforce d.17 = Papers of William Wilberforce

British Library, RP = British Library, Exported Manuscripts (copies)

Brotherton Library, Sydney/Townshend Papers = Papers of Thomas Townshend, Lord Sydney

Bucks RO, D/SB/OE = Buckinghamshire Record Office, Scrope Bernard Papers

CO 267 = Colonial Office Papers (National Archives, UK): 2Sierra Leone, Original Correspondence

E 197/34 = Exchequer Papers (National Archives, UK): 3Bills of Sheriffs' Cravings, 1800-6

HO = Home Office Papers (National Archives, UK)

HO 6 = Judges' and Recorder's Reports, 1816-38 [*23 boxes*]

HO 13 = Criminal Entry Books, 1782-1849 [*98 volumes*]

HO 26 = Criminal Registers, Old Bailey (London & Middlesex), 1791-1837 [*43 volumes*]

HO 28/4-8 = Admiralty: Correspondence, 1784-92

HO 429/1-4 = Admiralty: Entry Books, 1779-1815, 1784-1803

HO 36 = 5Treasury Entry Books, 1776-1829 [*21 volumes*]

HO 42 = Domestic Correspondence, 1782-1820 [*218 boxes*] [=]

HO 43 = Domestic Entry Books, 1782-1837 [*54 volumes*]

HO 47 = 6Judges' Reports, 1784-1829 [*75 boxes*] [=]

HO 48 = Law Officers: Reports & Correspondence, 1782-1818 [17 boxes]

HO 49 = 7Law Officers: Letter Books, 1762-1843 [*8 volumes*]

HO 50/452 = 8Military Correspondence: 9Miscellaneous & Supplementary

HS (as in "HS Sydney") = Home Secretary

[=] Available on microfilm from Gale Cengage Learning; PDF files of each box can be freely downloaded from the National Archives (UK) website < http://www.nationalarchives.gov.uk/records/digital-microfilm.htm>.

[=] I have benefitted enormously from the work of Paul Carter and the National Archives Local History Research Group, who have fully-indexed this range of materials.

Huntington Library, HM = Huntington Library (San Marino, CA), Manuscripts

Northants RO, Fitz/B = Northamptonshire Record Office, Wentworth-Fitzwilliam Manuscripts

Nottingham UL, PwV 107-11 = Nottingham University (Hallward) Library, 103rd Duke of Portland's Private Correspondence Books, 1794-1801

PC = Privy Council Papers (National Archives, UK)

PC 1 = Unbound Papers

PC 1/3097 = Papers relating to the Gordon Riots (June 1780)

PC 2 = Registers, 1746-1830 [*112 volumes*] [=]

PRO 30 = Gifts and Deposits [*i.e.*, Private Papers] (National Archives, UK)

PRO 30/22 = Papers of Lord John Russell

PRO 30/45/1 = 11Hatton Papers

SP = [Secretary of] State Papers (National Archives, UK) [=]

SP 35 = State Papers Domestic for George I, 1714-1727 [*78 boxes*]

SP 36 = State Papers Domestic for George II, 1727-1760 [*163 boxes*]

SP 37 = State Papers Domestic for George III, 1760-82 [*27 boxes*]

SP 43 = State Papers Regencies, 1716-1755 [*128 boxes*]

SP 44 = Entry Books

SP 44/77-96 = 12Criminal: Correspondence & Warrants, 1704-1782

SP 44/13114-43 = Secretaries' Letter Books, 1714-1782

SP 4414/227-32 – Naval Books, 1745-1784

SP 44/15235, 248-66a = Petitions Books, 1688-93, 1713-81

[=] All the volumes of PC 2 from 1649 to 1800 inclusive (#'s 54-156), as well as a selection of items in PC 1, can be consulted on the "Anglo-American Legal Tradition" website <http://aalt.law.uh.edu/AALT.html>.

[=] Available digitally at "State Papers Online: Early Modern Government in Britain and Europe" (GALE Cengage Learning). SP 35-37, as well as the first 27 boxes of SP 43, are also available on microfilm from Gale.

SP 44/16267-325 = Regencies Books, 1716-1755

SP 4417/326-30 – Treasury Letter Books, 1714-1783

SP 4418/356-85 = Warrant Books, 1714-1782 [=]

SP 45 = 19State Paper Office, etc.: Various

SP 4520/5 = Privy Council Minutes, 1744-1752

SP 4521/6 = Minutes of the Lords Justices, April-Sept 1755

SP 46 = 22State Papers Domestic: Supplementary

SP 46/150-1 = 23General, 1743-1820

SS (as in "SS Newcastle") = Secretary of State

State Library of New South Wales, Mitchell Library A3226-7 = Papers of Duncan Campbell, Superintendent of the Hulks

T = Treasury Papers (National Archives, UK)

T 1 = 24Treasury Board Papers & In-Letters, 1557-1922

T 64/262 = 25Sheriffs' Bills of Cravings, 1746-85

T 9026/148-50, 159, 163-9 – Sheriffs' Bills of Cravings, 1752-1812 (with gaps)

WO 1 = War Office Papers (National Archives, UK): In-Papers and Miscellaneous Papers

[=] Free (unconditional) pardons were exclusively recorded in these books until 1760; thereafter, they were entered alongside all other pardons in the Criminal Entry Books (SP 44/77-96 & HO 13).