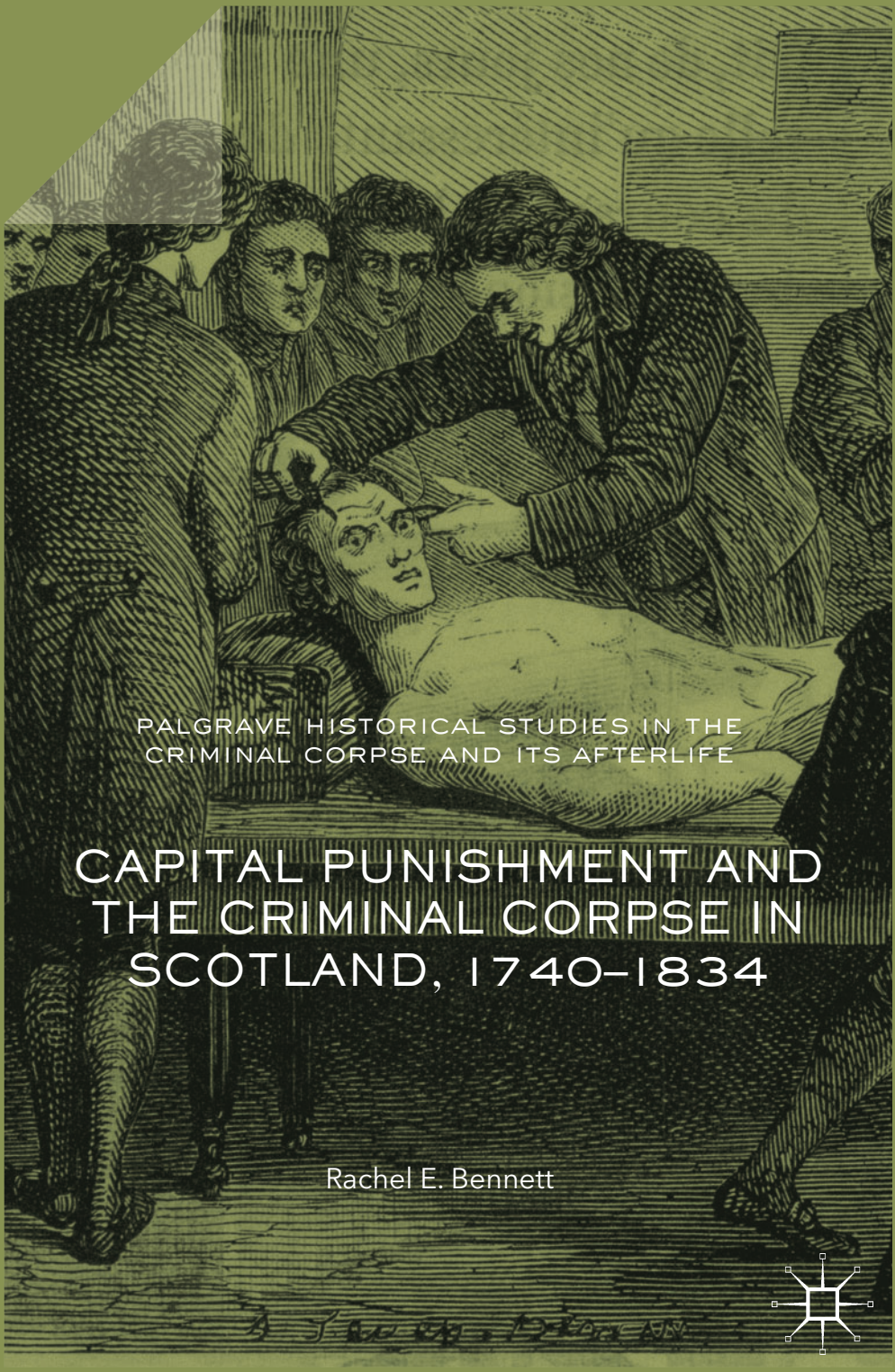

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CAPITAL PUNISHMENT AND THE CRIMINAL CORPSE IN SCOTLAND, 1740–1834

Rachel E. Bennett

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Dedicated to the memory of
Marion Harvey Potts
(1933–2013)

Preface

Capital punishment has a long and storied global history. Within the annals of this penal narrative, the eighteenth and nineteenth centuries have offered a sustained attraction to historians of Western Europe. However, studies of the Scottish capital punishment experience have remained limited by comparison. This book seeks to redress this scholarly lacuna. Based upon an extensive gathering and analysis of previously untapped resources, it takes the reader on a journey from the courtrooms of Scotland to the theatre of the gallows. It introduces them to several of the malefactors who faced the hangman's noose and explores the traditional hallmarks of the spectacle of the scaffold. The study demonstrates that the period between 1740 and 1834 was one of discussion, debate and fundamental change in the use of the death sentence and how it was staged in practice. In addition, it contextualises the use of capital punishment against the backdrop of key events in Scottish history in this period including Anglo-Scottish relations in the wake of the 1707 Act of Union, the aftermath of the 1745 Jacobite Rebellion and the rapid industrialisation and urbanisation witnessed by the country. In doing so, the current study goes beyond redressing a scholarly gap and instead demonstrates that an exploration of Scotland's unique capital punishment history enhances the current field in some areas but provides a crucial caveat to the broader narrative in others. Finally, this study writes the post-mortem punishment of the criminal corpse into Scotland's capital punishment history. In demonstrating that the journey of several capitally convicted offenders, predominantly murderers,

did not end upon the scaffolds of Scotland, it takes the reader from the theatre of the gallows to the dissection tables of Scotland's main universities and to the foot of the gibbets from which criminal bodies were displayed. In doing so it identifies an intermediate stage in the long-term disappearance of public bodily punishment.

Warwick, UK Rachel E. Bennett

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The completion of this work would not have been possible without the unwavering support of my family and friends. Special thanks must go to my parents Ronnie and Alison Bennett, and to my sister Laura and my nana Fay, for the encouragement and support they have always given me. I would also like to thank my friends who have kept me laughing these past few years and Lauren Darwin with whom I have spent countless hours discussing all things crime and punishment. Her comments on previous drafts of this research were very much appreciated. Finally, I would like to thank my nana, Marion Harvey Potts, who was a truly brilliant woman in every way. The completion of this book is dedicated to her memory.

Contents

Abbreviations

ED CRC	Edinburgh University Centre for Research Collections
GUA	Glasgow University Archives
HO	Home Office
JC	Justiciary Court
NAS	National Archives of Scotland
SP	State Papers
TNA	The National Archives, Kew

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CHAPTER 1

Introduction

The history of capital punishment has been the focus of extensive and sustained investigation, with the eighteenth and nineteenth centuries offering a particularly pervasive attraction to crime historians of Western Europe. However, studies of the Scottish experience have remined limited. This study provides the first in-depth investigation into the implementation of the death sentence and the carrying out of capital punishment in Scotland. It is shaped by the most thorough gathering and analysis of the Scottish Justiciary Court records to date and draws upon previously untapped resources offering rich qualitative detail related to the country's capital punishment history. The study is focused upon the whole of Scotland to provide a national history of capital punishment whilst also exploring key regional variations over time. Within this, it seeks to provide a fresh perspective upon key events in eighteenth- and early nineteenth-century Scottish history including Anglo-Scottish relations in the post-Union period, the aftermath of the 1745 Jacobite Rebellion and the rapid urbanisation, and population growth and density, witnessed in parts of the country, and how these things impacted upon the use of the death sentence.

This period in Scotland's capital punishment history offers the potential for rich analysis as, following the 1707 Act of Union (6 Ann c.11), Scotland and England were governed by the same Parliament at Westminster. However, Scotland had maintained its own legal and court systems and, as this study will demonstrate, was distinct in its application of the criminal law. The following chapters will show that Britain's capital

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punishment history in the eighteenth and early nineteenth centuries was not homogeneous, nor can the Scottish experience be assimilated into a more Anglo-centric narrative. When compared to their English counterparts, far fewer Scottish malefactors met their fate at the scaffold. This fact has been acknowledged by historians, and perhaps goes some way towards explaining the dearth in extensive studies focused upon Scotland. However, while the Scottish courts may have been discretionary in their use of the death sentence, they were not averse to using the full weight of the law. The study will demonstrate that an examination of Scotland's capital punishment history in this period does reinforce certain themes and long-term developments highlighted within studies of England. However, in delving into the distinctions, this book will rethink elements of the British narrative and reveal distinct Scottish beliefs about capital punishment and, crucially, the role of the death sentence within the criminal justice system.

A central aim here is to chart the journey of offenders from the courtroom, where they would hear their lamentable fate, to the scaffold, where they would publicly suffer for their crimes and finally, for some, to the dissection table or the gibbet cage where post-mortem infamy would be inflicted upon their corpses to add further severity to the punishment of death. The study will explore the traditional hallmarks of gallows culture between the mid-eighteenth and early nineteenth century including the procession to the place of execution and the deliverance of last dying speeches as well as providing an examination of execution practices in this period. Crucially, it will demonstrate how this period was one of debate and fundamental transition in the carrying out of the public execution spectacle. Furthermore, it will highlight that the enacting of additional punishments upon the body had been a penal option prior to the mid-eighteenth century but was used on a discretionary basis. However, the 1752 Murder Act (25 Geo II c.37) placed post-mortem punishment more squarely within the criminal justice system. It stipulated that the bodies of offenders executed for murder were to be either publicly dissected or hung in chains to "add some further terror and peculiar mark of infamy to the punishment of death." Despite this, the post-mortem punishment of the criminal corpse has been largely neglected within histories of capital punishment until recently. Pioneering research into the subject has shed light upon the complex contemporary beliefs that existed surrounding the dead body and how they helped to shape the implementation of the post-mortem punishments of dissection and hanging in chains and

the multitude of reactions they generated.[1] In examining the unique implementation of post-mortem punishment in Scotland, the current study will question its effects upon the condemned criminal and the spectator, and situate its usage within a wider examination of the changing nature of Scottish execution practices across this period.

Exploring the Historiography

This introductory chapter will highlight the key themes and central research questions to be addressed throughout the study. However, it must first situate the current research within the vast body of secondary literature consulted in its development. As studies of capital punishment in Scotland in this period are very limited, this section will adopt a dual approach by demonstrating not only the originality of the study but also its historic relevance. It will first address Scotland's unique position in the wake of the 1707 Union with England as, although they were governed by the same parliament, each country retained their own legal and court systems. In turn, research has shown that the British Parliament rarely passed criminal legislation for Scotland and that high-ranking members of the legal system were afforded a large degree of autonomy to deal with criminal matters north of the border.

The second part of this section will thematically explore the existing body of work focused upon the long-term developments in capital punishment and execution practices in England and Continental Europe. There is a considerable historical field focused upon the eighteenth and early nineteenth centuries and the current study acknowledges that it is not possible to consult every work here. Instead, it has drawn out particularly pertinent key themes including the disappearance of older execution practices by the mid-eighteenth century and the decline in sanguine spectacles of pre-mortem suffering that were more characteristic of the Early Modern period. In addition, various works have demonstrated that this period was one of transition in terms of the theatre of the gallows and the carrying out of the public execution. An engagement with these broad developments in capital punishment and execution practices provides crucial context for the analyses conducted in subsequent chapters of this study.

When investigating the debates over the 1707 Act of Union, its provisions and its eventual passage through the two parliaments, historians have emphasised the importance of economic considerations on the part

of the Scottish authorities for their acceptance of the act. For Queen Anne and the English Parliament, the major drivers for a political union with Scotland, to bolster the existing regnal union, were couched in concerns over the securing of the succession. There was a strong desire to quell the potential threat of Scotland being used as a stronghold for a rebellion in favour of the deposed male Stuart line.[2] Therefore, two of the most prominent institutions in Scotland, the Church and the legal system, were largely protected and afforded a degree of continued autonomy by the Articles of the Union in what Connolly termed an important "reassurance offered to Scottish sensibilities."[3] In addition, in the new British Parliament there were to be 45 Scottish Members in the House of Commons and 16 elected peers in the House of Lords. This brought the total number in the Commons to 558 as representation of England and Wales remained unchanged. Examining representation in Parliament per head of population, Hoppit demonstrated that the Union diminished Scottish representation.[4] Furthermore, when investigating how Westminster legislated for the three kingdoms of England, Scotland and Ireland between 1707 and 1830, Innes showed that following their respective unions, Scotland with England in 1707 and Ireland with Britain in 1800, legislation relating to the latter two countries declined. For Scotland, the main criminal legislation passed in the eighteenth century dealt with unrest and peaked following the 1745 Jacobite Rebellion and again with a few further acts passed following civil unrest towards the end of the eighteenth century.[5]

When examining the ways in which Scotland maintained a degree of autonomy following 1707, Paterson characterised the system of the governing of the country as "political management by the social elite whose values were moderation and rationalism."[6] Similarly, Fry described the British influence in Scotland as being managed by "native Scottish surrogates."[7] These elite men included the Lord Advocate, as the most senior member of the legal system, the Solicitor General and, on occasion, the Lord Justice Clerk and Justiciary Court judges, although they were answerable to a minister in London, from 1782 this was the Home Secretary. In 1725 various areas of Scotland, including Stirling, Dundee, Ayr, Elgin and most notably Glasgow, witnessed serious unrest following the introduction of the Malt Tax, from which Scotland had been exempted by Article XIII of the Union. General Wade and 400 dragoons were required to quell the riots. The Lord Advocate, Robert Dundas, was a key opponent of the tax and was dismissed from office over his handling

of the situation. In London, the events were believed to have demonstrated Scotland's inability, or unwillingness, to implement law and order on such a contentious issue and thus Robert Walpole appointed Islay Campbell, who would later inherit the Dukedom of Argyll, to manage Scottish affairs between the 1720s and 1761. He exercised great influence over Scottish MPs, ensuring political stability in Scotland for much of the period, but in return he had great patronage and authority to govern the country.[8] The political management of Scotland in the second half of the eighteenth century was vested in Henry Dundas, whose influence and powers of patronage resulted in him being referred to as the "uncrowned King of Scotland."[9] In cases where a criminal had been capitally convicted and were sending petitions to London for a remission of the sentence, the opinion of the Lord Advocate was often solicited by both the petitioners and the authorities in London and could be pivotal in the decision-making process.

In addition to acknowledgements that Scotland maintained her distinct legal system in the wake of 1707, there have also been some investigations of the distinctions of this legal system. These studies include legal commentaries produced by Scottish writers in the eighteenth and early nineteenth centuries that expounded the distinction of Scots law.[10] The subject has also received the more recent attention of historians. With a specific focus upon Stirlingshire, Davies provided surveys of the different types of criminal courts that operated in Scotland in the century leading up to the abolition of the Heritable Jurisdictions in Scotland by an act in 1747 (20 Geo II c.43).[11] In addition, works by Farmer, Connolly and Crowther have respectively examined the mechanics of Scots law in the eighteenth and early nineteenth centuries. They have explored some of the distinctions within the Scottish court system that were not as readily comparable to English practices, such as the heavier reliance upon common law and the system of public prosecution.[12] An engagement with this body of work will allow the current study to advance our understanding of the distinctions between the English and the Scottish legal systems and to offer some explanations for Scotland's lesser use of capital punishment, especially when compared to its southern counterpart.

In terms of works dedicated to the study of the use of the death sentence in Scotland in this period, responses to homicide have received some historical analysis. Kilday's *Women and Violent Crime* offered a detailed analysis of female offenders in Lowland Scotland between 1750

and 1815 and included chapters dedicated to homicide and infanticide.[13] More recently, Knox's study of homicide in eighteenth-century Scotland provided a fresh perspective upon recorded and prosecuted levels of interpersonal violence in this period.[14] In addition, quantitative surveys of Scottish crime in the first half of the nineteenth century using the parliamentary returns, which were available more regularly after 1836, include those of Donnachie, whose work presented some discussion of the punishment of property offences, and King's work on homicide rates.[15] King and Ward's more recent study of the geography of capital punishment in the third quarter of the eighteenth century highlighted major regional variations in the use of hanging in Britain for property offences at the centre, namely in London and the Home Counties, and on the peripheries which included large parts of northern and western England as well as Wales and Scotland.[16] Historical attention has also been afforded to the development of police courts in Scotland in the first third of the nineteenth century.[17] In terms of studies of the types of punishments meted out to Scottish offenders, Young's *Encyclopaedia of Scottish Executions* detailed the cases of some of the criminals executed in this period but does not appear to have been based upon a systematic analysis of the court records as it is incomplete.[18] In addition, in his investigation of petty crimes committed within Scottish burgh societies during the Reformation period, Falconer explored the important interplay between inclusion and exclusion through the use of punishments that fell short of the death sentence but involved public displays of humiliation and the performance of public penitential acts in these local areas.[19] Building upon the current historiography, this study provides the most extensive geographical and chronological examination to date of the implementation of the death sentence and the carrying out of capital punishment in this period.

Within the current historical field dedicated to the history of capital punishment, substantial attention has been given to the carrying out of the death sentence in England and Continental Europe in this period. Key themes include the theatre of the gallows, the behaviour of the condemned and the importance of the spectators to the spectacle.[20] Gatrell's *The Hanging Tree* remains the leading monograph cited by historians of English execution practices. He detailed various aspects of the execution spectacle and provided a qualitative analysis of the practicalities and potential effects of the scaffold from 1770 until executions were moved behind prison walls in 1868. Gatrell called for historians to further engage

with what happened upon the scaffold, to get closer to the "choking, pissing and screaming than taboo, custom or comfort usually allow", to gain an understanding of its importance and how contemporaries felt about it.[21] A central element of the public execution in this period was the crowd in attendance. Sharpe argued that there was little evidence of any great ceremony attending executed criminals in the Late Middle Ages but cited an elaboration of the scaffold ritual in the mid-sixteenth century owing to a desire on the part of the authorities to use it as a means of ideological control.[22] Similarly, in his study of capital punishment in Germany, Evans found that executions were not ceremonial affairs until the late seventeenth century.[23] In France, although there was a great deal of interest in Early Modern executions, Friedland regarded the seventeenth and eighteenth centuries as marking the high point of a "public fascination with watching executions."[24] Banner also highlighted similarities between practices in Europe and the American colonies. He found that executions in the eighteenth century were conducted in big, open spaces to accommodate large crowds and included processions and last dying speeches as was customary in Britain.[25]

Prior to the eighteenth century, the importance attached to the death sentence has been linked to the long-term process of state formation between *c.*1400 and *c.*1700 in Western Europe. Due to a quest for stabilisation, emerging states sought a means by which to maintain control and thus used the death penalty. Garland distinguished between three eras of capital punishment in the West: The Early Modern, the Modern and the Late Modern. Within this, he characterised the Early Modern period as the "heyday of capital punishment" in terms of both the level of executions but also the manner in which they were carried out.[26] In France, Friedland charted the development of punishments increasingly spectacular and violent in nature, such as drawing and quartering, boiling alive, live burial and breaking on/with the wheel which formed the basis of Early Modern execution ritual.[27] The 'Scottish Maiden', a similar mechanism to the 'Halifax Gibbet' used in West Yorkshire in England, was something of a precursor to the more infamous guillotine used in late eighteenth-century Revolutionary France. Now housed in the National Museum of Scotland, the 'Maiden' was introduced in mid-sixteenth-century Edinburgh to enact, and possibly to add further ceremony to, the punishment of decapitation for certain offences. Its last recorded use occurred in 1716.

An additional method of execution used in several Early Modern countries, including the Netherlands, Germany, France and Scotland, was breaking on/with the wheel. The executions involved tying the condemned down before the executioner proceeded to break their bones and limbs. The punishment could be conducted 'from below' where the executioner would begin at the legs and work their way to the head, a prolonged and agonising death, or the perceived more merciful breaking 'from above' where a blow to the head was intended to kill the person first. The punishment remained the standard form of prolonged execution in Amsterdam in the seventeenth and eighteenth centuries.[28] There are a few examples of the punishment being used against murderers in Scotland in the late sixteenth and early seventeenth centuries. It is apparent that the condemned suffered the more prolonged execution and their point of death was unclear as the bodies were left on the wheel for a whole day.[29] However, between the Early Modern period and the mid-nineteenth century, which marked the beginning of his Modern period, Garland argued that the primary purpose of capital punishment altered from being an instrument of rule, which was essential to state security, to becoming an instrument of penal policy with a narrower focus of "doing justice and controlling crime."[30] Within this transition, despite the continued importance and ceremony attached to the public execution, more overt displays of prolonged physical suffering declined.

Foucault's *Discipline and Punish* remains one of the pioneering works within the historiography of crime and punishment. His opening chapter detailed the prolonged execution, through quartering, of the would-be regicide Robert Damiens in 1757. He contrasted this with the more regimented running of a house for young prisoners in Paris in the mid-nineteenth century in order to form the basis for his discussion of the shift from the public punishment of the body to the more private attempts at the reformation of the mind.[31] However, subsequent historians have demonstrated that the journey from the scaffold to the prison did not follow such a linear trajectory.[32] Within this, the manner in which certain forms of executions were carried out was adapted over time. In some countries, burial alive and the drowning of women rapidly diminished in frequency, and decapitation, which had once been reserved only for the nobility, came to be used for a wider group of offenders.[33] Burning following trials for witchcraft ceased between the late seventeenth and early eighteenth centuries. Similarly, the burning of women for treason and petty treason in England was increasingly mitigated by the executioner

strangling them first.[34] In Prussia in 1749 Friedrich II issued a decree stating that the objective of the punishment of breaking on the wheel was "not to torment the criminal but rather to make a frightful example of him in order to arouse repugnance in others." Therefore, unless the case was utterly abhorrent, the criminal would be strangled by the executioner prior to their bodies being broken on the wheel. However, this was to be done in secret, without attracting the attention of the crowd, again demonstrating that the ceremony of the punishment remained an important element of the execution ritual, although increasingly this did not include prolonged pre-mortem suffering.[35]

When questioning the gradual changes that occurred to execution practices in the eighteenth and nineteenth centuries we need to situate the study within the historiography focused upon the changing sensibilities of the execution crowd. German sociologist Elias argued that a long-term civilising process had occurred in Western Europe between the medieval period and the twentieth century. Through a detailed analysis of the changes to everyday manners and behaviours he provided an explanatory framework for changes in social organisation.[36] Although he did not place capital punishment into his model, subsequent historians have acknowledged his study when attempting to understand the changing crowd reactions to the public execution.[37] However, they have also shown that these changes cannot be solely attributed to the idea that as people became more civilised they began to view capital punishment with disdain. In his study of judicial punishment in England between the mid-sixteenth and late twentieth centuries, Sharpe argued that there was no "simple unilineal development, no simple progress from barbarity to humanity."[38] Furthermore, in his examination of penal thinking during the English Enlightenment, Cockburn highlighted how eighteenth-century commentators acknowledged the brutality of elements of traditional gallows culture but relegated them to an "earlier and unenlightened era of violence and insensitivity."[39] However, he demonstrated that this Enlightenment idea of a newly sensitised society, wherein witnessing the execution spectacle could actually be counter-productive, concealed cultural continuities in how people responded to the gallows and the government's failure to develop a coherent penal policy on the implementation of judicial violence. For example, with their passing of the Murder Act, Sharpe argued that the government gave further momentum to the fashion of attending executions and knowingly provoked further violence.[40] Subsequent chapters of the current study will demonstrate

how the stipulations of the act harnessed anxieties over the treatment of the dead body for the ends of punishment and could provoke negative crowd reactions.

In his study of ritual in Early Modern Europe, Muir labelled the public execution as one of several examples of "carnivalesque rites of violence." However, he attributed the gradual decline of public judicial rituals of punishment towards the end of the Early Modern period to an "expanding sensibility to the shame of violence even when violence was inflicted on the criminally culpable." His framework of analysis is particularly pertinent to the current study's discussion of the gradual changes that occurred to the staging of the public execution as he argued that, as the authorities abandoned ritual punishments, they became less tolerant to popular rites, such as public executions, that had the potential to lead to violent disorder.[41] This broadly resonates with Foucault's argument that, by the early nineteenth century, bodily punishment had gradually ceased to be a spectacle and that the theatrical elements of public executions were downgraded as part of a shift in how penal ceremony was understood.[42]

In his investigation of the criticism levelled at the public execution in the mid-eighteenth century, McGowen stressed the changes in the way respectable society viewed the spectacle. He proposed that they had begun to lose faith in the deterrent value of the scaffold and that this was due to a "class dimension that was not reducible to psychological states."[43] These shifts in attitudes may have signalled respectable society's desire to distance itself from the execution spectacle, whether from an ideological or a spatial stance. However, Gatrell argued that, by the mid-eighteenth century, curiosity had become a "valued element in the sympathetic sensibility" and was retained as an alibi for attendance at the public execution by people of various social standings into the 1830s.[44] Furthermore, the subsequent chapters of the current study will show that, while we cannot accurately depict the composition of each execution crowd or its response to the gallows scene, we must acknowledge that public executions continued to attract large and diverse crowds throughout the eighteenth and early nineteenth centuries. In addition, this study will present a further dynamic to the history of the crowd and the public execution by questioning their reactions to the post-mortem punishment of the body. It will demonstrate that there were examples of adverse attitudes towards the punishments of dissection and hanging in chains

which led to open attempts to prevent them, even though the execution of the criminal had occurred with no reported unrest.

Structuring the Narrative

The study commences in the mid-eighteenth century when the Union was over three decades old and had begun to provide some of the economic benefits desired by the Scots. However, Scotland remained legally, culturally and socially distinct and nowhere were these distinctions more acute than in the Highlands. During the Jacobite Rebellions of 1715 and 1745, it was in the Highlands that the deposed Stuarts gained most of their support and they employed anti-Union rhetoric to stir the existing resistance to central government control in the area. However, with the decisive defeat of the rebels at the Battle of Culloden in 1746, came a renewed and vigorous determination to suppress elements of Highland culture believed to have made the area a hive for unrest, and then to permanently establish central government control, including over jurisdiction within the criminal courts. The year 1747 marked the final step, in the long-term dismantling of the older Scottish judicial system, with the abolition of Heritable Jurisdictions.

The mid-eighteenth century also witnessed the passing of the Murder Act in 1752 which placed the post-mortem punishment of the criminal corpse at the centre of the criminal justice system's response to homicide. The act was passed at a time of increased execution levels in Scotland and in England and was intended to add some further severity to the punishment of death. The study ends in 1834 as this year saw an act (4 & 5 Will. IV c.26) passed to formally abolish the penal option to hang an offender's body in chains. As the dissection of criminal bodies had already been abolished by the 1832 Anatomy Act (2 & 3 Will. IV c.75), the year 1834 marked the final repeal of the clauses set out in the Murder Act. Despite the importance of these specific dates in bookending the study, these chronological parameters also allow the book to demonstrate that the period between the mid-eighteenth and early nineteenth century was one of debate and transition in the use of the death sentence and one of fundamental change in the carrying out of the public execution spectacle in Scotland.

The study will be presented in two parts. Part I will focus upon the implementation of the death sentence in Scotland between 1740 and 1834. It will provide an examination of the malefactors who met their fate at

the scaffold and the types of offences they had committed. It will demonstrate the impact of unrest, urbanisation, Britain's involvement in warfare abroad and public discourse upon Scotland's use of capital punishment. In his study of capital punishment in England, Gatrell commented that he excluded Scotland and Ireland as "much basic research remains to be done on those countries' legal and criminal histories; luckily, Scotland had few hangings anyway."[45] Crowther attributed the lack of research into Scotland's criminal history to "nervousness" among some historians of the differences in Scots law, whereby certain elements of the legal system such as the manner of building up evidence and the system of public prosecution were not readily comparable to English practices.[46] Therefore, building upon the body of work dedicated to the Scottish legal system and its continued distinction after 1707, Chap. 2 of the current study will explore the nuances of the Scottish legal and court systems that impacted upon the use of the death sentence. It will demonstrate that there was some contemporary awareness, and even pride, of Scotland's lesser use of the noose than their southern neighbours. In addition, the chapter will identify patterns of long-term change in the punishment for certain crimes at certain times and, in doing so, will provide a crucial context in which to place the analysis provided in the following chapter.

Chapter 3 will address three key periods in Scotland's capital punishment history, namely the decade following the defeat of the 1745 Jacobite Rebellion, the 1780s and the first third of the nineteenth century. It will demonstrate that, while there were discernible similarities north and south of the border in terms of an increase in the sheer number of executions as well as an intensification of debates over criminality, the drivers behind this and the responses to it in Scotland differed markedly. In providing a thorough examination of the previously neglected Scottish experience, the chapter will also offer a unique perspective of Britain's use of the death sentence at these three crucial junctures. Chapter 4 will focus upon the Scottish women who faced the death sentence during this period. Although female offenders are included in the figures presented in Chaps. 2 and 3, they made up only a small proportion of executed malefactors and thus the chapter will provide a closer inspection of the small number of cases where the death sentence was used to combat female criminality. It will highlight the importance of judicial discretion in deciding who to send to the gallows and explore how the legal and press attitudes and responses to capitally convicted women, which often differed to those surrounding men, can provide a further dynamic to our

understanding of the place of capital punishment in the Scottish criminal justice system. For example, although the crime of infanticide was a form of homicide, it was treated with some distinction and this period witnessed an increasing reluctance to send women to the gallows for this crime. Comparatively, for certain other types of murder, where a wife had murdered her husband or a woman had used extreme violence in the perpetration of her crime, there was an evident desire on the part of the courts to make examples of these individuals due to the belief that they had strayed so far from their traditional and domestic gender roles.

This study seeks to explore the journey of capitally convicted offenders from the courtroom to the scaffold and, in some cases, to the dissection table or the gibbet cage. Therefore, while the chapters that make up Part I of the work will provide crucial information and analyses of the drivers behind the use of the death sentence, Part II will focus more upon the theatre of the gallows. Although there are extensive monographs dedicated to the history of public executions in England, France, Germany and the Netherlands, studies of the Scottish experience are very limited. Chapter 5 seeks to redress this scholarly lacuna by examining the key components of the scaffold spectacle including the procession to the gallows, the deliverance of last dying speeches and the importance of the execution crowd. It will also demonstrate how this period was one of focal change in how public executions were carried out and in how legal and lay contemporaries viewed the execution spectacle. In addition, while most capitally convicted criminals were hanged by the neck until dead in this period, the chapter will demonstrate that the disappearance of sanguine execution spectacles of pre-mortem suffering, more characteristic of the Early Modern period, was not instantaneous in Scotland. Instead, the chapter will identify an intermediate stage in the history of public bodily punishment wherein the almost obsolete spectacles of pre-mortem suffering were gradually replaced by the discretionary infliction of post-mortem punishments, even in the years immediately preceding the Murder Act.

McGowen argued that the post-mortem punishments of dissection and hanging in chains as practices pulled in opposite directions. The body in chains acted as a reminder of the mortal body. When it was dissected, the body was opened up by professionals and justified in the name of science and was supposed to be "divorced from passion, opposed to delight and justified as useful to humanity."[47] While the punishments were carried out before different types of audiences in Scotland, in reality there was less difference than McGowen implied as both hanging in chains and dissection

placed the criminal corpse on show and involved its public dismemberment, whether under the surgeon's lancet or rotting in the gibbet cage. In turn, they each tapped into contemporary anxieties over the disposal of the dead body. In providing an analysis of the post-execution punishments of dissection and hanging in chains, Chaps. 6 and 7 will respectively draw upon examples where criminals and the watching crowd appeared to fear the post-mortem element of the punishment more than the death sentence itself. In addition, an exploration of cases when the crowd reacted negatively to the punishments, or even took steps to illegally prevent them, will shed further light upon their capacity to fulfil the desire of the Murder Act, namely to add more severity to the punishment of death.

To construct this study and harness the sheer volume of source material gathered in its creation, the methodology employed will be a blend of quantitative and qualitative analysis. A quantitative survey of the malefactors sent to the gallows, including analyses based upon the types of offences committed, the geography of capital punishment and the shifting proportions of capitally convicted offenders who were subsequently executed, allows the study to explore long-term patterns and developments in the implementation of the death sentence. It also facilitates examinations into peak periods of capital punishment in Scotland between the mid-eighteenth and early nineteenth centuries. The study concedes that, numerically speaking, certain sample sizes are relatively small. For example, there were only 47 women executed and 22 men hung in chains across this period. However, these analyses are bolstered by an extensive qualitative reading of richly detailed source materials that offer information on things such as judicial discretion, the carrying out of executions and how contemporary legal authorities, condemned criminals and the watching crowd viewed and responded to the death sentence and the post-execution treatment of the corpse in practice. It is now beneficial to detail the types of sources gathered in the creation of this research and provide information on how they will be used throughout.

Although Article XX of the 1707 Union stipulated that all Heritable Jurisdictions enjoyed by the law of Scotland would continue, the 1747 Act for the Abolition of the Heritable Jurisdictions abolished heritable sheriffs and Baillies of Regalities as well as limiting the powers of the Baron courts. In the wake of the 1745 Jacobite Rebellion, and fears over the influence of key figures holding heritable powers, particularly in northern Scotland, the act aimed to end a complex system in favour of a more central and government controlled one. Davies argued that

the act was the conclusion to a long process of a slow decline of the old Scottish legal system.[48] At one time the Barons had the power of life and death over those within their jurisdiction. However, by the seventeenth century, Kidd found that these powers were increasingly vested in the central criminal courts.[49] From a reading of legal commentaries published in the eighteenth century, as well as works discussing Scots law in this period, it is apparent that jurisdiction over capital cases was almost exclusively vested in the High Court and its circuit courts. Following the 1672 Courts Act they had exclusive rights to hear cases of treason and the four pleas of the crown; murder, robbery, fire raising and rape.[50] John Erskine stated that the jurisdiction of the sheriff had once extended to both civil and criminal cases but it became increasingly limited from the early sixteenth century onwards.[51] There were a handful of executions for theft following trials before the sheriff of certain areas in the mid-eighteenth century. However, they appeared to have ceased by the second half of the eighteenth century.[52]

Following the 1672 act, the High Court was to sit in Edinburgh and twice a year two of the five Lords of Justiciary would travel to hear cases at each of the three circuits. Although the court sat at three places at each circuit, the Sheriff Depute of the surrounding areas would attend with the criminals to be tried from their area. For example, the Northern Circuit sat at Aberdeen, Inverness and Perth but covered a vast geographical area including Caithness, Sutherland, Nairn, Elgin, Ross and Cromarty as well as Shetland and Orkney.[53] Of the remaining two circuits, the Southern Circuit sat at Ayr, Dumfries and Jedburgh and covered the border areas, and the Western Circuit sat at Inveraray, Stirling and Glasgow, with the predominant amount of cases tried at the latter, especially by the turn of the nineteenth century. The main Justiciary Court records used here are the minute books of the High Court and the three circuits.[54] They offer details about the offender and the crimes committed as well as containing information on pre-trial processes and sentencing practices. A systematic search and collation of these records has allowed for the building of the most accurate and detailed database of everyone capitally convicted in Scotland across this period, which forms the backbone of this study. There were other records kept by the Justiciary Court but they survive only intermittently and are in varying conditions. For example, the procurator fiscal papers would have provided valuable information for both prosecuted and unprosecuted crime, but they have largely not survived for the eighteenth century. The Books of Adjournal

offer information on the indictments, biographical details of some offenders and witness statements.[55] However, whilst they are valuable supplementary sources, they have not survived in their entirety for much of this period and do not allow for the same level of systematic analysis as the minute books of the High Court and the three circuit courts.

To provide an extensive analysis of Scotland's capital punishment history, this study utilises the information available regarding those executed as well as those who were capitally convicted but subsequently received a pardon. In Scotland, as in England, the judges were often important in the decision-making process of who was executed and who was pardoned following a capital conviction. However, their importance took slightly different forms. In England and in Scotland the jury could return a partial verdict, meaning that they may have found only some of the charges against the accused proven. However, in England, if the accused was found guilty of a capital crime, the judge had to sentence the offender to death. They would then leave a list of offenders to be pardoned at the end of the assizes.[56] Comparatively, there has been no evidence found by this study to suggest that the judges left any correspondence dictating if any offenders would be automatically pardoned at the end of the circuit court sittings in Scotland. Instead, following their conviction an offender could petition the Home Office for a remission of their sentence. However, a reading of the available Home Office correspondence related to Scottish crime demonstrates that the judges' opinions were often crucial in deciding who would be pardoned as, in some cases, the Lord Advocate and the Home Secretary would seek their endorsements when deciding whether to extend the Royal mercy.

One of the stipulations of the 1725 Disarming Act (11 Geo I c.26) was that executions in Scotland could not be carried out within less than 30 days if the sentence was pronounced south of the River Forth or within less than 40 days if it was pronounced north of the Forth. Although the Murder Act stipulated that executions should be carried out on the day after sentencing, unless this happened to fall on a Sunday in which case the execution would happen the following Monday, it did not repeal the clause in the 1725 act. Therefore, all capitally convicted Scottish criminals had time to send petitions to London asking for the Royal mercy. Following the passing of the death sentence the criminals themselves, their relatives or people from their local area, such as magistrates and local clergy, could send letters of petition to London. There is also evidence of correspondence being sent via the Lord Advocate's

office in Edinburgh asking for an endorsement of these petitions. Furthermore, in some cases the judges were asked to send their trial reports and give their opinion on whether the condemned deserved to be extended the Royal mercy. If a pardon was to be granted it would be sent to Scotland stipulating any conditions such as transportation or imprisonment.[57] The records highlight the complex interplay between punishment and discretion or, to quote Hay, the pulling of the "levers of fear and mercy" in Scotland's use of capital punishment in this period.[58] Additionally, we can gain some insight into what King termed "a set of broadly held social ideals about how justice should work", namely the use of discretion based upon factors such as age, gender, character and nature of crime as well as geographical and chronological context.[59] The records can be found among the Home Office papers from the 1760s onwards but appear to have remained an untapped resource by historians of Scottish crime in this period. Therefore, a systematic reading of them offers a valuable and fresh insight into the pardoning process, especially during times of higher numbers of capital convictions.

This research has also utilised a range of sources rich with the potential for qualitative exploration. Scotland had no regular tradition of printing criminal trials in the early part of the period under investigation here. However, there is some printed material available for the most sensational cases in the eighteenth century and the National Library of Scotland holds a collection of broadsides related to crime and punishment in the early nineteenth century. In addition, extensive use has been made of the contemporary newspapers made available by the British Library Newspaper Archive, particularly the *Caledonian Mercury* and the *Scots Magazine*, but also other titles as they came into print in the late eighteenth century. However, the Scottish newspapers are not without some limitations as historical sources. When investigating crime, the courts and the press in the early eighteenth century, Lemmings demonstrated that the *Caledonian Mercury*'s reporting upon crime and the administration of justice was minimal.[60] In conducting a sampling of the *Caledonian Mercury* and the *Glasgow Journal* at five-yearly intervals between 1720 and 1790, Kilday similarly suggested that crime did not warrant any substantial attention until the late eighteenth century.[61] Although this research concurs with their findings in relation to the minimal reports of trials and executions prior to the more detailed reports from the late eighteenth century onwards, it has still been possible to use the newspapers as a valuable historical source. Furthermore, as

King stated, they offer an insight into how contemporaries were informed about the believed prevalence of certain crimes which was important, especially at times of increased use of capital punishment.[62]

A key aim of this study is to highlight the uses and treatment of the executed body within the criminal justice system and to question the capacity of post-mortem punishment to affect both the condemned and the spectator. Whilst an analysis of the court records provides information on who was sentenced to be dissected or hung in chains and where this was to take place, this study has also utilised a range of qualitative sources to gain an understanding of the infliction of these punishments in practice. From a reading of contemporary newspapers, it is possible to gauge crowd reactions to post-mortem punishments in a few cases. This includes their reporting upon instances where bodies had been stolen from their gibbet cages or where there was crowd unrest when the body was cut down to be taken to the surgeons. As criminal dissections in Scotland were predominantly conducted in the main universities, the study also uses archival material from the universities of Edinburgh and Glasgow. It has uncovered lecture notes of the university professors who carried out criminal dissections as part of their courses on anatomy as well as their correspondence with others in the medical field regarding the use of criminal bodies to carry out original research. In addition, the diary of Sylas Neville, a medical student in Edinburgh in the 1770s, helps to shed light upon how the bodies were used during lectures.[63] These sources allow for an exploration of dissection as a punitive measure whilst also questioning how the bodies yielded by the Murder Act, albeit relatively few in number, were used for pedagogical purposes and in the pursuit of anatomical knowledge in Scotland.

Conclusion

In introducing the study, this opening chapter has laid out the key themes and research enquires to be addressed. It has detailed the extensive gathering and analysis of the range of primary source materials utilised in constructing the work and, in consultation with a large body of secondary literature, has provided the crucial context into which the analyses provided in subsequent chapters will be situated. However, this chapter will conclude by offering some remarks on the author's approach to the construction and presentation of the research.

The focus of this study is intentionally broad to offer a national history of a complex subject area and spans almost a century to demonstrate long-term patterns in the use of the death sentence and the fundamental changes that occurred to the public execution spectacle. The adoption of such a broad chronological, geographical and thematic scope inherently means that there are areas where the analysis could be further developed and areas where the study identifies lines of enquiry as well as pursues them. Furthermore, the study qualitatively explores several cases studies throughout to offer valuable insight into the beliefs, practices and outcomes of capital punishment in Scotland across this period. It offers details about the lives of some capitally convicted offenders and the circumstances surrounding their commission of crime. However, others who suffered their fate at the scaffold have remained numbers within broader analyses. The study also offers information on how some crowds who gathered to watch the theatre of the gallows responded to public executions, but acknowledges that no single account can provide a homogeneous depiction of the scaffold scene. In short, the following chapters take the reader on a journey from the courtrooms to the scaffold and from thence to the dissection table and the gibbet foot. The study provides some reinforcement to the current historiography whilst also rethinking certain parts of the existing capital punishment narrative in Britain. However, it also hopes to demonstrate the potential for the expansion of scholarly interest in Scotland's unique capital punishment history.

Notes

1. The current study was developed from the author's doctoral research as part of the Wellcome Trust funded project, 'Harnessing the Power of the Criminal Corpse', grant number WT095904AIA. The project had multiple research strands that examined the punishment of the criminal body from a legal, medical, social, philosophical and folkloric perspective. For select publications that emerged from the project, see the works included in the Palgrave Historical Studies in the Criminal Corpse and its Afterlife series.
2. This chapter has neither the scope nor the intention to provide any substantial examination of the motivations for the passing of the Act of Union. However, for more thorough analyses, see William Ferguson, *Scotland's Relations with England: A Survey to 1707* (Edinburgh: John Donald Publishers, 1977); Colin Kidd, *Subverting Scotland's Past; Scottish Whig Historians and the Creation of an Anglo-British Identity 1689–c.1830* (Cambridge: Cambridge University Press, 1993);

John Robertson (ed.), *A Union for Empire; Political Thought and the Union of 1707* (Cambridge: Cambridge University Press, 1995); T. M. Devine, *The Scottish Nation 1700–2000* (London: Penguin Press, 1999); T. M. Devine and J. R. Young (eds.), *Eighteenth-Century Scotland; New Perspectives* (East Lothian: Tuckwell Press, 1999); David Allan, *Scotland in the Eighteenth Century; Union and Enlightenment* (London: Pearson Education, 2002); Christopher A. Whatley, *The Scots and the Union* (Edinburgh: Edinburgh University Press, 2006).

3. S. J. Connolly, "Albion's Fatal Twigs: Justice and Law in the Eighteenth Century", in *Economy and Society in Scotland and Ireland 1500–1939*, ed. by Rosalind Mitchison and Peter Roebuck, 117–125, 121, Edinburgh: John Donald Publishers, 1988.
4. Julian Hoppit (ed.), *Parliaments, Nations and Identities in Britain and Ireland 1660–1850* (Manchester: Manchester University Press, 2003), 3.
5. Joanna Innes, "Legislating for Three kingdoms: How the Westminster Parliament Legislated for England, Scotland and Ireland 1707–1830", in *Parliaments, Nations and Identities in Britain and Ireland 1660–1850*, ed. by Julian Hoppit, 15–47, 25, Manchester: Manchester University Press, 2003.
6. Lindsay Paterson, *The Autonomy of Modern Scotland* (Edinburgh: Edinburgh University Press, 1994), 31. For a further discussion of internal political management in Scotland, see John Stuart Shaw, *The Management of Scottish Society 1707–1764; Power, Nobles, Lawyers, Edinburgh Agents and English Influences* (Edinburgh: John Donald Publishers, 1983).
7. Michael Fry, *Patronage and Principle: A Political History of Modern Scotland* (Aberdeen: Aberdeen University Press, 1987), 79.
8. Devine, *Scottish Nation*, 21–22.
9. Allan, *Scotland in the Eighteenth Century*, 23.
10. See John Louthian, *The Form of Process Before the Court of Justiciary in Scotland* (Edinburgh: 1732); Henry Home, Lord Kames, *Statute Law of Scotland Abridged with Historical Notes* (Edinburgh: 1757); David Hume, *Commentaries on the Law of Scotland Respecting Crimes Volumes 1 and 2* (Edinburgh: Bell and Bradfute, 1819); Sir Archibald Alison, *Principles of the Criminal Law of Scotland* (Edinburgh: William Blackwood, 1832).
11. Stephen J. Davies, "The Courts and the Scottish Legal System 1600–1747: The Case of Stirlingshire", in *Crime and the Law: The Social History of Crime in Western Europe Since 1500*, ed. by V. A. C. Gatrell, Bruce Lenman and Geoffrey Parker, 120–154, London: Europa Publications, 1980; Stephen J. Davies "Law and Order in Stirlingshire, 1637–1747" (PhD Thesis, University of St Andrews, 1984).
12. Connolly, "Albion's Fatal Twigs"; Lindsay Farmer, *Criminal Law, Tradition and Legal Order: Crime and the Genius of Scots Law, 1747 to*

the Present (Cambridge: Cambridge University Press, 1997); M. Anne Crowther, "Crime, Prosecution and Mercy: English Influence and Scottish Practice in the Early Nineteenth Century", in *Kingdoms United? Great Britain and Ireland since 1500*, ed. by S. J. Connolly, 225–238, Dublin: Four Courts Press, 1999.

13. Anne-Marie Kilday, *Women and Violent Crime in Enlightenment Scotland* (Suffolk: Boydell Press, 2007).
14. W. W. J. Knox, with the assistance of L. Thomas, "Homicide in Eighteenth-Century Scotland: Numbers and Theories", *The Scottish Historical Review* 94 (2015): 48–73.
15. Ian Donnachie, "The Darker Side: A Speculative Survey of Scottish Crime during the First Half of the Nineteenth Century", *Journal of the Economic and Social History of Scotland* 15 (1995): 5–24; Peter King, "Urbanisation, Rising Homicide Rates and the Geography of Lethal Violence in Scotland 1800–1860", *History* 96 (2011): 231–259. In the second half of the nineteenth century the more thorough organisation of the police and the availability of summary modes of prosecution has allowed for more quantitative statistical analysis. See W. W. J. Knox and A. McKinlay, "Crime, Protest and Policing in Nineteenth-Century Scotland", in *A History of Everyday Life in Scotland 1800 to 1900*, ed. by Trevor Griffiths and Graeme Morton, 196–224, Edinburgh: Edinburgh University Press, 2010.
16. Peter King and Richard Ward, "Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery", *Past and Present* 228 (2015): 159–205.
17. See David G. Barrie and Susan Broomhall, "Public Men, Private Interests: The Origins, Structure and Practice of Police Courts in Scotland, c.1800–1833", *Continuity and Change* 27 (2012): 83–123. In addition, for a study that explores more recent Scottish penal culture using the biographical narrative accounts of retired judges see Fiona E. Jamieson "Narratives of Crime and Punishment: A Study of Scottish Judicial Culture" (PhD Thesis, University of Edinburgh, 2013).
18. Alex F. Young, *The Encyclopaedia of Scottish Executions 1750–1963* (Kent: Eric Dobby Publishing, 1998). See also *Scots Black Kalendar – 100 Years of Murder and Execution: Scottish Crime and Punishment* (Midlothian: Lang Syne Publishers, 1985). This source detailed executions in the nineteenth century but again is incomplete and missed out whole years of executions.
19. J. R. D. Falconer, *Crime and Community in Reformation Scotland* (Oxford: Routledge, 2016), 10–12.
20. The Tyburn ritual has been the subject of particularly rich analysis. For a recent monograph, see Andrea McKenzie, *Tyburn's Martyrs; Execution in England 1675–1775* (London: Hambledon Continuum, 2007).

21. V. A. C. Gatrell, *The Hanging Tree; Execution and the English People 1770–1868* (Oxford: Oxford University Press, 1994), 30.
22. J. A. Sharpe, *Judicial Punishment in England* (London: Faber and Faber, 1990), 31–32. See also J. A. Sharpe, "Civility, Civilising Processes and the End of Public Punishment in England", in *Civil Histories: Essays Presented to Sir Keith Thomas*, ed. by Peter Burke, Brian Harrison and Paul Slack, 215–230, 228, Oxford: Oxford University Press, 2000.
23. Richard J. Evans, *Rituals of Retribution; Capital Punishment in Germany 1600–1987* (Oxford: Oxford University Press, 1996), 50.
24. Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford: Oxford University Press, 2014), 119.
25. Stuart Banner, *The Death Penalty; An American History* (Cambridge, MA: Harvard University Press, 2002), 10.
26. David Garland, "Modes of Capital Punishment: The Death Penalty in Historical Perspective", in *America's Death Penalty: Between Past and Present*, ed. by David Garland, Randall McGowen and Michael Meranze, 30–71, 48, London: New York University Press, 2011. For more in-depth discussions of the toughening of the criminal law in Tudor England, see Sharpe, *Judicial Punishment*; Philip Jenkins, "From Gallows to Prison? The Execution Rate in Early Modern England", *Criminal Justice History* 7 (1986): 51–71.
27. Friedland, *Seeing Justice Done*, 46.
28. Pieter Spierenburg, *The Spectacle of Suffering; Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984), 71.
29. Lord John MacLaurin, *Arguments and Decisions in Remarkable Cases Before the High Court of Justiciary and Other Supreme Courts in Scotland* (Edinburgh: 1774), xxxviii; Hugo Arnot, *A Collection and Abridgement of Celebrated Criminal Trials in Scotland from 1536 to 1784* (Edinburgh: 1785), 129.
30. Garland, "Modes of Capital Punishment", 31–35.
31. Michel Foucault, *Discipline and Punish: The Birth of the Prison* (London: Allen Lane, 1977).
32. Pieter Spierenburg has recently criticised the pace attached to the change by Foucault, namely its taking place between 1760 and 1840, and has instead pointed to a longer-term process. See Pieter Spierenburg, *Violence and Punishment; Civilising the Body Through Time* (Cambridge: Polity Press, 2013), 82.
33. Evans, *Rituals of Retribution*, 48.
34. For a more thorough discussion of the eventual abolition of this form of execution in England, see Simon Devereaux, "The Abolition of the Burning of Women in England Reconsidered", *Crime, History and Societies* 9 (2005): 73–98.

35. Evans, *Rituals of Retribution*, 122.
36. His work was first published in two volumes in 1939. For an English translation including both volumes, see Norbert Elias, *The Civilising Process; The History of Manners and State Formation and Civilisation* (Oxford: Blackwell Publishers, 1994).
37. For an analysis of Elias' model in relation to punishment, see David Garland, *Punishment and Modern Society; A Study in Social Theory* (Oxford: Clarendon Press, 1990), 213–248. In addition, Spierenburg used Elias' argument that the changing sensibilities of the elites later permeated broader society to offer a potential explanation for the gradual retreat from public physical punishments. See *Spectacle of Suffering*, 183–199.
38. Sharpe, *Judicial Punishment*, 49.
39. J. S. Cockburn, "Punishment and Brutalisation in the English Enlightenment", *Law and History Review* 12 (1994): 155–179, 156.
40. Cockburn, "Punishment and Brutalisation", 172–179.
41. Edward Muir, *Ritual in Early Modern Europe* (Cambridge: Cambridge University Press, 1997), 138–139.
42. Foucault, *Discipline and Punish*, 9.
43. Randall McGowen, "Making Examples and the Crisis of Punishment in Mid-Eighteenth-Century England", in *The British and their Laws in the Eighteenth Century*, ed. by David Lemmings, 182–205, 202, Woodbridge: Boydell Press, 2005.
44. Gatrell, *Hanging Tree*, 250.
45. Gatrell, *Hanging Tree*, ix.
46. M. Anne Crowther, "Scotland; A Country with No Criminal Record", *Scottish Economic and Social History* 12 (1992): 82–85, 82.
47. McGowen, "Making Examples and the Crisis of Punishment", 204.
48. Davies, "The Courts and the Scottish Legal System", 153.
49. Kidd, *Subverting Scotland's Past*, 151.
50. See Louthian, *Form of Process before the Court of Justiciary*; MacLaurin, *Arguments and Decisions*; Hume, *Commentaries, Vol. 2*. For a more recent study, see Farmer, *Criminal Law, Tradition and Legal Order*, especially 65–69.
51. John Erskine, *Principles of the Law of Scotland* (Edinburgh: William Green and Sons, 1911), 33.
52. As it is beyond the scope of the current study to analyse the surviving sheriff court records, the details of these crimes and executions were gathered from contemporary newspapers and brief references to them in the state papers: see The National Archives, Kew [hereafter TNA] State Papers [hereafter SP] 54 Secretaries of State: State Papers Scotland Series II which has material relating to the period between 1688 and 1783. These executions are included in the figures presented in this study to provide the most accurate figures possible.

53. However, a reading of the court records demonstrated that the Sheriff Depute of Shetland and Orkney rarely attended and while this was reported to the High Court on several occasions the situation remained the same. Consequently, there were no executions in Shetland or Orkney following trials before the High Court or its circuits in the period under examination here.
54. This study is based upon a systematic gathering and analysis of the following Justiciary Court records held at the National Archives of Scotland [hereafter NAS]. Justiciary Court [hereafter JC] 7 High Court Minute Books Series D Folios 23–53, covering dates March 1740 to July 1799; JC8 High Court Minute Books Series E Folios 1–33, covering dates July 1799 to March 1835; JC11 North Circuit Minute Books Folios 10–82, covering dates September 1739 to April 1835; JC12 South Circuit Minute Books Folios 6–42, covering dates October 1748 to September 1834; JC13 West Circuit Minute Books Folios 7–74, covering dates May 1734 to April 1835. Note that, following the 1672 Courts Act, the Southern Circuit sat at Dumfries and Jedburgh and the Western Circuit sat at Stirling, Glasgow and Ayr. However, an Act of Adjournal in March 1748 modified the circuit court sittings so the Southern Circuit would sit at Ayr, Dumfries and Jedburgh and the Western Circuit would sit at Glasgow, Stirling and Inveraray. The act removed the heritable jurisdiction over the Shires of Argyle and Bute held by the Duke of Argyle and instead created a Western Circuit court sitting at Inveraray to cover criminal matters in these areas.
55. NAS series JC26 includes the court process papers. JC3 and JC4 are the Books of Adjournal and contain copies of the indictments against the criminals on trial. AD14, records that are part of the Lord Advocate's office, also contain some information on precognitions from the early nineteenth century.
56. J. M. Beattie, *Crime and the Courts in England 1660–1800* (Oxford: Oxford University Press, 1986), 409, 431. Note also that, in Scotland, the jury could return a "not proven" verdict which differed from a verdict of "not guilty" in that it did not necessarily mean that the accused were found to have been innocent of the crimes charged against them. However, in most cases in this period, the accused would have been released if a "not proven" verdict was returned by the jury.
57. TNA Home Office [hereafter HO] 102 series, particularly folios 50–58, contains the various petitions and judges' trial reports as well as their opinions on whether the condemned deserved a pardon. The HO104 series, folios 1–8, contains the pardons, or copies of them, that were sent to Scotland. For the earlier part of the period, prior to 1762, details of pardons were gathered from the state papers related to Scotland as well as from an index of remissions that has been printed and is available at the National Archives of Scotland. Note, however, that this record is incomplete and does not provide details of the conditions stipulated within the pardons.

58. Douglas Hay, "Property, Authority and the Criminal Law", in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. by Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thomson and Cal Winslow, 17–63, 51, London: Allen Lane, 1975.
59. Peter King, *Crime, Justice and Discretion in England 1740–1820* (Oxford: Oxford University Press, 2000), 332.
60. David Lemmings, "Negotiating Justice in the New Public Sphere: Crime, the Courts and the Press in Early Eighteenth-Century Britain", in *Crime, Courtrooms and the Public Sphere in Britain 1700–1850*, ed. by David Lemmings, 119–145, 128, Farnham: Ashgate, 2012.
61. Anne-Marie Kilday, "Contemplating the Evil Within: Examining Attitudes to Criminality in Scotland 1700–1840", in *Crime, Courtrooms and the Public Sphere in Britain 1700–1850*, ed. by David Lemmings, 147–166, 156, Farnham: Ashgate, 2012.
62. Peter King, "Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth- and Early-Nineteenth-Century London", *Continuity and Change* 22 (2007): 73–112, 76.
63. Basil Cozens-Hardy (ed.), *The Diary of Sylas Neville 1767–1788* (Oxford: Oxford University Press, 1950). See also, S. S. Kennedy, K. J. McLeod and S. W. McDonald, "And Afterwards Your Body to be given for Public Dissection: A History of the Murderers Dissected in Glasgow and the West of Scotland", *Scottish Medical Journal* 46 (2001): 20–24. They briefly recounted some of the details of the murder cases that sent offenders to the dissection table as opposed to the actual dissections themselves.

PART I

The Implementation of the Death Sentence in Scotland

CHAPTER 2

Capital Punishment and the Scottish Criminal Justice System

Capital punishment has a long and storied global history. However, the eighteenth and nineteenth centuries have received particularly rich and varied analyses as historians of Western Europe have explored how this period was one of discussion, debate and transition in how the death sentence was legislated for and carried out. Despite studies of capital punishment advancing our understanding of eighteenth- and nineteenth-century penal practices as well as having the potential to offer a unique perspective of the period's social and cultural history, examinations of Scotland's capital punishment history have remained limited. There have been acknowledgements of the country's lesser recourse to the death sentence, especially when compared to England, which perhaps also goes some way towards explaining this relative dearth in historical attention.[1] In addition, the lack of research into Scotland's criminal history has also been attributed to the difficulties in readily comparing its legal and court systems to practices in England.[2]

Chapter 3 will provide an in-depth exploration of three key periods in Scotland's use of the death sentence and will examine the importance of factors such as geography, unrest and public discourse in shaping judicial opinion and the punishment of certain crimes at certain times. However, this chapter will first examine the nuances of the Scottish legal system that impacted upon the use of the death sentence, and provide a crucial study of how geographical location and population growth and distribution impacted upon the long-term trends in Scotland's use of capital punishment between 1740 and 1834. Furthermore, it will explore the

R.E. Bennett, *Capital Punishment and the Criminal Corpse in Scotland, 1740–1834*, Palgrave Historical Studies in the Criminal Corpse and its Afterlife, https://doi.org/10.1007/978-3-319-62018-3_2

continuities and developments in the use of the death sentence for both murder and property offences over the century to contextualise the peak periods of execution to be discussed in Chap. 3.

The Death Sentence in Scots Law

Following the Union of 1707 Scotland maintained its own distinct legal system and a large degree of autonomy in its application of the criminal law, a fact acknowledged by historians but, thus far, not extensively explored in relation to the country's use of the death sentence.[3] A key theme running throughout the current study is that an examination of the Scottish experience of capital punishment can offer a unique, and previously unexplored, perspective of Britain's penal history in this period. Within this, a crucial distinction between England and Scotland was their adoption of capital statutes. The legislation that made up the infamous 'Bloody Code' has been an area of debate for English crime historians. Radzinowicz provided a pioneering and extensive study of the English criminal law in this period, including the legislation passed. However, subsequent historians have challenged his argument that the capital statutes that made up the 'Bloody Code' were created by a disinterested Parliament.[4] The authors of *Albion's Fatal Tree*, particularly Hay, focused upon the statutes related to property offences to argue that the authorities used the increased capital statutes as a means of controlling the population. Hay argued that the "decisions that moved the levers of fear and mercy were decisions of propertied men" from the initial prosecution stage to the decision on who to pardon and who to execute.[5] In his critique of Hay, Langbein instead inferred that the 'Bloody Code' had been passed almost by accident as the statutes lacked proper definition and thus Parliament added "particularity in order to compensate for generality."[6] More recently, King demonstrated that "the whole criminal justice system was shot through with discretion" and examined how the discretionary powers of the legal system were used by a much wider range of people than was argued by Hay, particularly the middle classes.[7]

During the eighteenth and early nineteenth centuries, Scottish writers produced a body of legal literature expounding the distinction of Scots law.[8] A reading of these commentaries serves to further highlight areas for comparison between the English and the Scottish legal systems and offers some explanations for Scotland's lesser use of capital

punishment, especially when compared to its southern counterpart. In 1681 Viscount Stair stated that "we are happy in so few and clear statutes."[9] Sir Archibald Alison argued that in England the powers of common law did not generally extend beyond a misdemeanour and that all serious offences were subject to legislative statutes. In consequence, he suggested, the capital statutes were characterised by severity and the judges had limited power to modify the penalties. Comparatively, in Scotland the powers of the common law were more extensive and thus there was less need for the adoption of several of the capital statutes created in the eighteenth century. Evidence of this lay in the fact that there were over 200 defined capital crimes in England when Alison was writing in the early nineteenth century but less than 50 in Scotland, and more than half of these had their origins with the British Parliament.[10]

The lack of a Scottish 'Bloody Code' is important to our understanding of Anglo-Scottish relations in the wake of 1707. The long-term importance of the common law as opposed to statute law and the Westminster Parliament's lack of determination to greatly impose upon Scottish legal autonomy, except at times of unrest notably in the post-1745 period, go some way towards explaining the country's lesser use of the death sentence. However, there were also crucial nuances in the Scottish court system that impacted upon their use of capital punishment, one example being the nature of the collection of evidence in potentially capital cases. In Scotland, since the sixteenth century the responsibility for prosecuting offenders was vested in the legal profession, from the Lord Advocate in Edinburgh to the procurator fiscals who would gather evidence, or precognitions, in their local areas and build up the case. In more serious cases the fiscals would send the precognitions to the Crown Office where the Lord Advocate, or in most cases one of his deputes, would decide whether to prosecute in the High Court or its circuit courts.[11] This system of public prosecution was perhaps more comparable to other Continental European practices than elements of the English system with its heavy reliance upon private prosecution.[12] Hume argued that Scottish practice was better suited for "repressing the growth of crime" than the English practice where, he stated, the burden of prosecution and conviction lay with the offended party.[13]

Due to the nature of the building up of evidence, Kilday proposed that Scottish criminal trials were only permitted to proceed when the authorities were confident that the case against the accused was "effectively incontrovertible."[14] The process of indicting an accused person also

garnered favourable comment in the courts. An Advocate Depute stated to the High Court in 1817 that a Scottish indictment "requires more precision, more accuracy and more minuteness than ever was required in any English indictment."[15] In addition, Hume stated that in England no prisoner, except in more modern treason trials, saw their indictment until they stood arraigned for trial. They also remained ignorant of the witnesses to be called against them. However, in Scotland the accused would be given this information at least 15 days before their trial commenced and even the poorest would be afforded defence counsel.[16] This was a key factor that allowed for defence counsels to argue successfully for a restriction of the charge prior to the commencement of a potentially capital trial and to offer any mitigation for the crime.

Davies argued that if someone was charged with a serious offence before the Court of Justiciary "their chances of survival were slim."[17] However, it is the argument here that, due to the nature of the building up of evidence, a relatively high proportion of people brought before the courts received some form of punishment, but not necessarily a death sentence, even for potentially capital crimes. This can largely be attributed to two main reasons. First, in Scotland offenders charged with potentially capital crimes could petition the court before the jury was sworn in. The court would hear the charges against them and the defence counsel would submit the petition for the consideration of the Advocate Depute, who would be acting as the prosecution. If the Advocate Depute consented to the petition, it was usually on the condition that the accused be either banished from Scotland or transported, thus evading the death penalty. This process had the greatest impact on cases where people had been charged with certain property offences, notably housebreaking and theft, and on cases where women had been charged with infanticide. Juries were sometimes reluctant to convict the accused in these kinds of cases, especially if it would result in a death sentence. Significantly, this process allowed for the use of judicial discretion whilst also guaranteeing that a punishment would be meted out.

Second, the court had the power to restrict the level of punishment to be meted out immediately prior to the start of the trial. This process requires some brief explanation. The accused person, who was referred to as the panel in the Scottish courts, would be brought into the court to hear the charges against them. At this point the Advocate Depute and the defence counsel would have the opportunity to debate these charges, in the Scottish court records this would be referred to as

their debating the relevancy of the libel. In cases that potentially carried a capital punishment the judges could decide to restrict the charges, or the libel, to what was termed an 'arbitrary punishment'. In effect this meant that if the person was found guilty after their trial they could be sentenced to anything short of the death sentence from a fine, corporal punishment, imprisonment, banishment or transportation. If the libel was not restricted to an 'arbitrary punishment' it would be found relevant to 'infer the pains of law', which could be any punishment including the death sentence. The jury would then be sworn in and the trial would begin.[18] There were also pre-trial processes in England as, at the start of the assizes, the Grand Jury would meet to hear the prosecutor verbally state the evidence to be presented against the accused. The Jury would then decide whether to find a 'true bill' which would send the accused to trial or to find a 'no true bill' or an 'ignoramus' verdict which would often see them discharged.[19] However, a key difference is that in Scotland the court's decision upon whether there were charges to be answered by the accused also potentially impacted upon the level of punishment the panel would face if convicted. The libel would be restricted predominantly for certain property offences and thus it is important to understand this process when discussing the fluctuations in Scotland's use of capital punishment.

Long-Term Trends in Scottish Capital Punishment

In Scotland between 1740 and 1834, 797 people were sentenced to death. A total of 505 offenders were executed and 292 were subsequently pardoned, usually on condition of transportation, imprisonment or banishment.[20] The relatively low number of executions in this period, when compared to England, goes some way towards explaining the limited historiography focused upon the use of capital punishment in Scotland, especially when compared to the vast field focused upon the subject south of the border. However, this study will demonstrate that these figures are by no means insignificant. Instead, they are statistically manageable and thus allow for an in-depth and systematic analysis of the malefactors who met their fate on the scaffolds of Scotland. In addition, this study demonstrates that the Scottish courts, while perhaps more discretionary in their use of the death sentence, were not averse to using the full weight of the law. A quantitative analysis of the criminals sent to the gallows by location and type of offence reveals long-term patterns

in Scotland's use of capital punishment between the mid-eighteenth and early nineteenth centuries. In addition, a qualitative study of the legal and public responses to criminality across this period bolsters these findings as it demonstrates not only how attitudes towards the use of the gallows were shaped but also how they impacted upon the sheer number of offenders who met their fate at the end of the hangman's rope.

Geography of Capital Punishment

The use of capital punishment in London and the Home Counties has been a focal point of investigation within the historiography focused upon England in the eighteenth and early nineteenth centuries. While lower execution rates in other provincial areas have been noted, this area of study has only recently been expanded upon using detailed quantitative analysis.[21] The current study is based upon an analysis of the whole of Scotland and provides a national history of capital punishment whilst also demonstrating the importance of regional variations. Table 2.1 provides a breakdown of the total number of executions by decade and by circuit and Table 2.2 highlights the percentage of executions accounted for by convictions before the High Court in Edinburgh and the three circuit courts. Edinburgh consistently accounted for a notable percentage of the total executions. In contrast, the Southern Circuit of Ayr, Dumfries and Jedburgh typically made up a low percentage of the total

Table 2.1 Total executions by circuit

	Edinburgh	*Northern*	*Western*	*Southern*	*Sheriff*	*Total*
1740–1749	9	19	5	0	5	38
1750–1759	14	38	3	7	4	66
1760–1769	7	14	6	4	0	31
1770–1779	16	11	4	4	0	35
1780–1789	29	14	20	14	2	79
1790–1799	13	8	10	1	0	32
1800–1809	17	6	9	5	0	37
1810–1819	31	9	22	11	0	73
1820–1829	29	10	35	7	0	81
1830–1834	11	5	16	1	0	33
Total	176	134	130	54	11	505

Source Figures compiled using the Justiciary Court records

Table 2.2 Percentage of total executions made up by each circuit

	Edinburgh	*Northern*	*Western*	*Southern*	*Sheriff*	*Total*
1740–1749	23.7	50	13.2	0	13.1	100
1750–1759	21.2	57.6	4.6	10.6	6	100
1760–1769	22.6	45.2	19.3	12.9	0	100
1770–1779	45.7	31.5	11.4	11.4	0	100
1780–1789	36.7	17.7	25.4	17.7	2.5	100
1790–1799	40.6	25	31.3	3.1	0	100
1800–1809	46	16.2	24.3	13.5	0	100
1810–1819	42.5	12.3	30.2	15	0	100
1820–1829	35.8	12.4	43.2	8.6	0	100
1830–1834	33.3	15.2	48.5	3	0	100

Source Figures compiled using the Justiciary Court records

number of executions across the period. In Ayr in April 1751, upon being informed that there was no criminal business for the district, "His Lordship expressed the pleasure it gave him to find so extensive an area in such quiet and peaceful disposition."[22] This continued to be the case and, while the second and third decades of the nineteenth century saw an increase in court business in line with the wider Scottish context, the number of capital punishments remained relatively low. However, there were evident fluctuations in the percentages made up by the Western and Northern Circuits at different intervals in this period that require deeper analysis.

In questioning the geography of capital punishment, we must first investigate Scotland's demographic history in this period, namely the increase in population and, more importantly, where this was most concentrated. To trace the population figures for as much of the period as possible the analysis draws upon figures taken from the following sources. For the earlier part of the period Alexander Webster's account of 1755 is used. He was a minister in Edinburgh who based his population figures upon information he collected from 909 parishes. James Kyd published Webster's account along with the population data that became available following the first census in 1801 and at subsequent ten-yearly intervals.[23] In addition, an enumeration of the census data taken in 1801, 1811 and 1821 was published in 1823 and is also useful.[24] Prior to Webster's account, Scottish population totals are largely subject to educated approximation. Houston and Whyte put the late

Table 2.3 Population of Scotland

	Total population	*Rate of increase %*
1755	1,265,380	–
1801	1,608,420	27.1
1811	1,805,864	12.3
1821	2,091,521	15.8
1831	2,364,386	13.0

Source Table compiled by the author using population statistics provided in Kyd, *Scottish Population Statistics*, p. xvii

sixteenth-century figure at around 800,000, rising to one million by 1700.[25] Table 2.3 presents Scotland's population increase between 1755 and 1831, generally cited as a period of great and sustained growth. The population increased in most areas but the percentage and rate of growth differed markedly. For example, while the population of northern Scotland did increase, it was not at the same intense scale found in the country's central belt.[26] For the purposes of this study we need to establish discernible links between population growth and distribution, urbanisation and the geography of capital punishment.

Investigations of Scotland have often pointed to the principal division, geographically but also culturally and linguistically, existing between the Highlands and the Lowlands. However, this is an oversimplified dichotomy when applied to Scottish population history. Geographically speaking the Lowlands included anything south of the Highland line, dividing the country from the Grampian Mountains to the south-east from the north-west Highlands. However, it was the central belt, including Scotland's largest cities of Glasgow to the west and Edinburgh to the east and their growing surrounding towns, rather than the southern border areas, that witnessed the greatest increase and concentration of population. During the eighteenth century, Scotland's urban growth was among the fastest in Europe. In 1750, it was ranked seventh in a table of Europe's most urbanised societies. By 1800 it was fourth and by 1850 it was second only to England and Wales.[27] Edinburgh's population more than doubled from around 57,000 in 1755 to 138,000 in 1821.[28] Tables 2.1 and 2.2 demonstrate that convictions before the High Court in Edinburgh consistently accounted for a sizeable proportion of executions throughout the period. However, Edinburgh did not contain as large a proportion of the urban population of Scotland as London

did for England. By the early nineteenth century, the central belt was increasingly densely populated, with a growing proportion concentrated in Glasgow. The rise in prominence of west-central Scotland in terms of trade and population has been termed a "classic story of Scotland's economic history."[29] A focal point of activity was the areas surrounding the Clyde, an extensive maritime inlet that was well connected with the western seaways. In the early decades of the nineteenth century the urban expansion of Glasgow, to a point where it matched and then superseded that of Edinburgh in terms of population, correlated with the growing proportion of the total executions occurring in the area.

Scotland's changing urban demographic in the first third of the nineteenth century contributed to strained industrial and social relations and cyclical high unemployment as urban economies could not absorb the thousands of migrants that poured into these areas seeking regular employment. There were outbreaks of popular protest as the living standards of the urban poor deteriorated.[30] In terms of contextualising the use of capital punishment, the impact of rapid urbanisation is clear in places like Glasgow. There was very little criminal business brought before the Western Circuit in the 1740s and 1750s when whole years passed with no cases at all. In 1764, the judge at Glasgow expressed satisfaction that there were no criminal cases for trial and praised "the civilised state of this part of the country."[31] However, in December 1828, provisions were made for an additional sitting of the court due to the sheer volume of cases being brought before it. By the 1820s and 1830s the Western Circuit, predominantly cases from Glasgow, sent more criminals to the scaffold than the High Court in Edinburgh, accounting for 43.2% of the total executions in the 1820s and 48.5% in the early 1830s. In combining Webster's 1755 account and the enumerated data for the first three censuses with the execution figures gathered for this study it is possible to calculate the number of executions per 100,000 head of Scotland's population across Edinburgh and the three circuits in 1755 and the early decades of the nineteenth century. The findings are provided in Table 2.4. The figure for Edinburgh consistently remained above 1.0 execution per 100,000 head of population. However, the figures for the Western Circuit present a different pattern which is linked to the area's rapidly increasing population and rising prominence as an urban centre. Glasgow's population in 1755 was about 32,000 and by 1801 it was 77,385 compared to Edinburgh's 82,560. By 1821 Glasgow had overtaken with over 147,000 inhabitants compared to Edinburgh's 138,000.[32] Chapter 3 will demonstrate that with

Table 2.4 Executions per 100,000 head of Scotland's population

	Scotland	*Edinburgh*	*Northern*	*Western*	*Southern*
1750–1759	5.2	1.1	3.0	0.2	0.6
1800–1809	2.3	1.1	0.4	0.6	0.3
1810–1819	4.0	1.7	0.5	1.2	0.6
1820–1829	3.9	1.4	0.5	1.7	0.3

Source Figures compiled from Justiciary Court records and the population statistics provided in Kyd, *Scottish Population Statistics*, p. xvii and the *Enumeration of the Inhabitants of Scotland* (Glasgow: 1823)

this increasingly dense urban population came an increase in the use of capital punishment, particularly for property offences, and more intense debates in the Scottish newspapers over how to rectify this problem.

Between the 1740s and the 1760s, the Northern Circuit accounted for the highest percentage of executions, with a peak of 57.6% in the 1750s, a period in which executions occurred at a rate of 3.0 per 100,000 head of Scotland's population (Table 2.4), an area to be further investigated in Chap. 3. However, despite covering a large geographical area, capital convictions following trials before the Northern Circuit had fallen by the 1770s, and by the early nineteenth century the figure was markedly lower still. In 1818 the *Scots Magazine* commented, to the credit of the city of Aberdeen and its surrounding counties, that there had been only three executions conducted there in the last 27 years. Although two people had forfeited their lives in 1818 alone, it was further remarked that the area was certainly not "the forerunner of that increase in crime, by which many parts of the United Kingdom are, at this period, lamentably disgusted."[33] One potential explanation for this may be that, despite experiencing a population increase, northern Scotland was not growing at anywhere near the rate experienced in the central belt. In addition, the increased numbers of executions in the late 1740s and 1750s can be placed within the wider context of the aftermath of the 1745 Jacobite Rebellion and government attempts to establish long-term stability. By the late eighteenth century, the area had ceased to be a concern regarding any potential serious uprising.

The quantitative analysis provided in this chapter includes all offenders who were convicted of a capital offence. However, we must note that not all offenders who were found guilty ended up facing the death sentence. Instead, the implementation of criminal justice in this period was

a multi-staged decision-making process that was subject to discretion. In addition, we must acknowledge that the low numbers of executions in Scotland, particularly when compared to England, may not be due solely to low crime rates and that the figures could also have been affected by more deliberate customary, and largely unrecorded, practices of crime control. In the late eighteenth century, MacLaurin recalled former times when the government and the monarch were too weak to impose central powers in areas of northern Scotland.[34] The abolition of Heritable Jurisdictions in 1747 was intended to combat this and to act as the conclusion to an already declining complex system in favour of vesting judicial power in the hands of the central criminal courts. However, the very low numbers of offenders brought before the circuit courts, particularly from certain areas in northern Scotland, suggest that extra-judicial practices persisted in this period to some extent. For example, the Northern Circuit court sitting at Inverness was attended by the sheriff deputies of Inverness, Ross, Elgin, Nairn, Cromarty, Sutherland, Caithness, Shetland and Orkney, although very few offenders from the latter four areas were among those capitally convicted. In addition, the Sheriff Depute of Shetland and Orkney rarely attended and, while the court instructed the clerk to write to him insisting that he attend, and reported his continued absence to the High Court in Edinburgh, the situation was not rectified.[35] Therefore, while this study has based its arguments upon a systematic gathering and analysis of the available records, it acknowledges that the true extent of the commission of potentially capital crimes that never made it before the courts cannot be quantified here.

Capital Punishment and the Scottish Murderer

Within the black catalogue of offences that carried a capital charge, the crime of murder had long since been chosen for exemplary punishment. Part II of this volume will demonstrate that historically murderers could be subjected to prolonged and sanguine execution spectacles involving both the pre-mortem and post-mortem evisceration of the body. Between 1740 and 1834 there were 160 executions for the crime of murder, 124 men and 36 women. Of the total 505 executions, murders accounted for 31.7%. Table 2.5 shows that the number of executions for murder did not fluctuate to the same extent as those for property offences. Throughout most of this period murder accounted for around one third of the total executions until the 1830s, when there was a lesser recourse

Table 2.5 Executions broken down by category of offence

	Murder		*Property*		*Other*		*Total*	
	No. of Ex	*(%)*	*No. of Ex*	*(%)*	*No. of Ex*	*(%)*	*No. of Ex*	*(%)*
1740–1749	20	52.6	16	42.1	2	5.3	38	100
1750–1759	22	33.4	43	65.1	1	1.5	66	100
1760–1769	17	54.9	13	41.9	1	3.2	31	100
1770–1779	11	31.4	24	68.6	0	0	35	100
1780–1789	6	7.6	73	92.4	0	0	79	100
1790–1799	10	31.3	21	65.6	1	3.1	32	100
1800–1809	14	37.8	22	59.5	1	2.7	37	100
1810–1819	13	17.8	59	80.8	1	1.4	73	100
1820–1829	25	30.9	52	64.2	4	4.9	81	100
1830–1834	22	66.7	9	27.3	2	6	33	100
Total	160		332		13		505	

Source Figures compiled using the Justiciary Court records

to the death sentence for some property offences, and the figure subsequently rose to over two thirds of the total executions. Table 2.6 shows the proportion of all capitally condemned offenders who were executed between 1740 and 1834. Apart from the figures for the 1820s, which were affected by remissions following the 1820 treason trials, the percentage throughout the period remained between 60 and 80%.[36] However, when the proportion of capitally convicted murderers who were subsequently executed is examined (Table 2.7), the figures are almost consistently higher in comparison to overall capital convictions. This demonstrates that a capital conviction for murder was the most likely to result in an execution.

When investigating the crime of murder, an analysis of the victims and their relationship to the perpetrator can offer a valuable insight into the circumstances surrounding the commission of the offence in Scotland. In his study of homicide in eighteenth-century Scotland, Knox based his findings upon evidence gathered from 433 indicted cases between 1700 and 1799. He found that intimate killings, the murdering of people known to the victim including relatives and workmates, consistently accounted for between 45 and 49% of the total cases.[37] While this conclusion is broadly reinforced here, the current study has identified a distinct gender difference in its examination of the relationship of capitally convicted murderers to their victims. In terms of male murderers, the

Table 2.6 Proportion of capitally convicted offenders executed

	Executions		*Remissions No. %*		*Total No. %*	
	No.	*(%)*	*No.*	*(%)*	*No.*	*(%)*
1740–1749	38	79.2	10	20.8	48	100
1750–1759	66	81.5	15	18.5	81	100
1760–1769	31	70.5	13	29.5	44	100
1770–1779	35	64.8	19	35.2	54	100
1780–1789	79	65.8	41	34.2	120	100
1790–1799	32	60.4	21	39.6	53	100
1800–1809	37	62.7	22	37.3	59	100
1810–1819	73	62.4	44	37.6	117	100
1820–1829	81	46.6	93	53.4	174	100
1830–1834	33	70.2	14	29.8	47	100
Total	505		292		797	

Source Figures compiled using Justiciary Court records and Home Office papers, series HO104, folios 1–8

Table 2.7 Proportion of offenders capitally convicted for murder executed

	Executions		*Remissions*		*Total*
	No.	*(%)*	*No.*	*(%)*	
1740–1749	20	87	3	13	23
1750–1759	22	81.5	5	18.5	27
1760–1769	17	74	6	26	23
1770–1779	11	61	7	39	18
1780–1789	6	85.7	1	14.3	7
1790–1799	10	77	3	23	13
1800–1809	14	93	1	7	15
1810–1819	13	81.3	3	18.7	16
1820–1829	25	83.3	5	16.7	30
1830–1834	22	78.6	6	21.4	28
Total	160		40		200

Source Figures compiled using Justiciary Court records and Home Office papers, series HO104, folios 1–8

victim was either a family member or a lover in 41% of the total 124 cases. In 31 of the cases the victim was their wife and most killings had occurred within the confines of the home. A further 18% of the total cases are accounted for by men who had murdered acquaintances or

people known to them, including work colleagues, and 41% of cases in which the victim was a stranger. Comparatively, of the total 36 women executed for murder between 1740 and 1834, in 30 (83%) of the cases the victim was a family member, most often their own child.

Chapter 4 will provide a more extensive analysis of the capital punishment of Scottish female murderers, including those convicted of infanticide. Women accounted for an overwhelming majority of the total perpetrators brought before the Scottish courts for the crime of child murder, as in other European countries, and there were discernible similarities in several cases, notably the fact that the victim was an illegitimate infant.[38] An interesting comparison can be drawn here with legal responses towards the handful of men charged with the crime. For example, seven men were executed for the murder of a lover and in most instances the woman had either recently given birth to an illegitimate child or had revealed a pregnancy, and in one case the child was also murdered. John MacMillan was convicted of the murder of Barbara McKinnel in 1810. She was six months pregnant with his child when he gave her muriate of mercury with the intention of aborting the child. Although in his defence he claimed that he had only tried to conceal her shame in procuring the poison for her, he was capitally convicted.[39] Despite the apparent lack of desire to kill Barbara, the intent to kill the child was proof enough of premeditation to send him to the gallows. Similar motivations can be found in the cases of the five men who were executed for the murder of their own child, all of whom appeared to have been illegitimate. Unlike in some of the cases examined in this study, where young, single women had killed their illegitimate child, there was no apparent sympathy for these men and their desire to conceal an affair or to avoid taking financial responsibility for their child served to further aggravate their guilt.

Chapter 4 will demonstrate that women were rarely capitally convicted for the murder of wider acquaintances or strangers and their crimes were almost exclusively committed against close relatives and their children. This is largely reflective of the predominantly domestic roles of women in this period, either as wives and mothers in their own homes, or as domestic servants. Comparatively, in 18% of male murder cases their victims were acquaintances or work colleagues and the crimes had been committed outside of the domestic setting; in a further 41% of the cases the victims were strangers. In over half of these cases the murders had been linked to or charged along with property offences such as theft and robbery which

served to aggravate their case in the eyes of the courts. In some, premeditation was evident due to the location of the crimes, being upon roads or less-frequented areas. William Doig had acquainted himself in Perth with fellow travelling chapman, 14-year-old Peter Maxton, with the intent of murdering him and stealing £9 worth of goods. The body was left in a mass of woodland and was not discovered for seven weeks due to the remoteness of the location.[40] The fear of murders that occurred during robberies became a potent theme in the courts and the press coverage of crime in the early nineteenth century, and will be expanded upon in Chap. 3. The remaining cases of male murderers were predominantly made up of drunken disputes or followed fights between the victim and the murderer who were, in some cases, work colleagues and friends.

In cases of murder, intent, often referred to as malice in the court records, had to be proven to achieve a murder conviction, rather than the lesser and non-capital crime of culpable homicide. In terms of murders committed by men where the victims were also men, especially those that occurred during fights, there were often debates surrounding the issue of provocation and the proving of premeditation. If it was proven that the accused had started the fight, the charge would be murder rather than culpable homicide. In 1802 George Lindsay was executed after he and John Allan had publicly argued and when Lindsay returned to the place where they both lived he picked up a knife and waited for Allan to return before stabbing him.[41] A similar case occurred in 1814 when John McManus had previously fought with Allan Hutton before returning to his lodgings to procure his gun and shoot Hutton dead.[42] These cases, and numerous others like them, resulted in murder charges, rather than the lesser charge of culpable homicide, as the accused had been the principal actor in the altercations and, in the cases of Lindsay and McManus, had not acted in the heat of the moment. Instead, their crime was proven to have been premeditated as they had left the initial fight to procure a lethal weapon. What is clear is that, although there were debates in the courts over proving murder, once an offender was convicted they would likely face the hangman's noose throughout this period. However, the use of capital punishment against property offenders was not subject to the same level of consistency. Indeed, there were notable fluctuations not only in the sheer number of offenders who suffered the death sentence for their crimes but also in the legal and public responses to certain types of property crime at different intervals.

Capital Punishment and Scottish Property Offenders

During the period 1740–1834 property offences accounted for 332 (65.7%) of the total 505 executions. The fluctuations in Scotland's use of capital punishment across this period were largely attributable to executions and pardons for property offences. It is worth noting here that, of the total 47 women executed in Scotland in this period, only 11 had been convicted of a property offence and thus women accounted for just 3% of the total 332 malefactors executed. Although the sheer numbers were less, the proportion of capitally convicted property offenders who were women was comparable to the figure found in England.[43] While their numbers are included in this analysis and in the examination of the fluctuations in capital punishment to be provided in Chap. 3, the legal and public responses to female property offenders are more extensively and qualitatively explored in Chap. 4 in order to highlight the factors that potentially impacted upon the use of the death sentence for these women.

As previously established, capital convictions for murder were statistically more likely to result in an execution (see Tables 2.6, 2.7), and the proportion of capitally convicted murderers who were executed was almost consistently higher than the figure for capitally convicted offenders overall. Comparatively, Table 2.8 shows that the proportion of capitally convicted property offenders who were subsequently executed fluctuated to a greater extent, and more closely mirrored the general figure. For example, 82.7% of capitally convicted property offenders were executed in the mid-eighteenth century, compared to only 44.4% in the 1820s.

Although this study focuses primarily upon the cases that made it before the central criminal courts and resulted in capital convictions, it also explores the role of discretion in deciding who faced a capital charge for property offences, particularly on the part of the judges and the prosecution. As the accused was able to petition the court prior to the start of potentially capital trials, and the judges could exercise discretion in restricting the libel before the jury was sworn in, offenders would not always face a capital punishment even if the jury returned a guilty verdict. In addition, Table 2.9 shows that, when broken down by decade and category of offence, pardons for property crimes accounted for two thirds or more of the total number of pardons given. The role of discretion in the decision-making process was more marked in cases of property offences

Table 2.8 Proportion of offenders capitally convicted for property offences executed

	Executions		*Remissions*		*Total*
	No.	*(%)*	*No.*	*(%)*	
1740–1749	16	72.7	6	27.3	22
1750–1759	43	82.7	9	17.3	52
1760–1769	13	68.4	6	31.6	19
1770–1779	24	68.6	11	31.4	35
1780–1789	73	65.2	39	34.8	112
1790–1799	21	61.8	13	38.2	34
1800–1809	22	53.7	19	46.3	41
1810–1819	59	60.2	39	39.8	98
1820–1829	52	44.4	65	55.6	117
1830–1834	9	64.3	5	35.7	14
Total	332		212		544

Source Figures compiled using Justiciary Court records and Home Office papers, series HO104, folios 1–8

than murder and could go some way to determining the level of capital punishment for certain property offences depending upon factors such as geographical context, the age and gender of offenders and the public discourse surrounding crime.

Scotland did not have the number of capital statutes that existed in England at this time and the list of thefts punishable by death in virtue of special statutes was very short in comparison. In addition, Hume argued that, as theft was not a crime of one invariable character, the Scottish judges had a great degree of discretion in deciding upon suitable punishments based upon individual circumstances.[44] Thefts related to the mail were crimes at common law but were also covered by a Scottish act passed in 1690 'Anent stealing of the packet'. The legislation passed in Westminster in 1767 (7 Geo III c.50) also included Scotland. Despite this, executions for the crime were still relatively low with only 12 in this period. However, in the case of Kenneth Leal in 1773, exemplary punishment was used as he was executed and hung in chains at the spot where he robbed a post boy.[45] Along with theft relating to the mail, Hume only cited one further specific category of theft covered by special statute passed in 1744 (18 Geo II c.27), namely theft of linen, cotton and calico to the value of 10 shillings from a bleaching field.[46] Another form of capital theft in Scotland was known as plagium, which involved the theft of a child. However, there were only three capital convictions

Table 2.9 Pardons broken down by category of offence

	Murder		*Property*		*Other*		*Total*	
	No.	*(%)*	*No.*	*(%)*	*No.*	*(%)*	*No.*	*(%)*
1740–1749	3	30	6	60	1	10	10	100
1750–1759	5	33.3	9	60	1	6.7	15	100
1760–1769	6	46.2	6	46.2	1	7.6	13	100
1770–1779	7	36.8	11	57.9	1	5.3	19	100
1780–1789	1	2.4	39	95.2	1	2.4	41	100
1790–1799	3	14.3	13	61.9	5	23.8	21	100
1800–1809	1	4.5	19	86.4	2	9.1	22	100
1810–1819	3	6.9	39	88.6	2	4.5	44	100
1820–1829	5	5.4	65	69.9	23	24.7	93	100
1830–1834	6	42.9	5	35.7	3	21.4	14	100
Total	40		212		40		292	

Source Figures compiled using Home Office papers, series HO104, folios 1–8

of women for the crime and they were all subsequently conditionally pardoned.

Housebreaking was the most frequent aggravation of theft and was capital regardless of the value of the items stolen throughout much of this period, unless the level of punishment had been restricted prior to the commencement of the trial. The crime of housebreaking and theft, as charged in the courts, made up about one fifth of the total executions in this period and almost one third of the total executions for property offences. However, due to the potential for judicial discretion in allowing the accused to petition the court or for the court to restrict the libel before the start of the trial, hundreds of offenders avoided facing a capital punishment. At times of increased executions, notably the 1780s, capital convictions for the crime of housebreaking and theft increased. The outbreak of the American War of Independence (1775–1783) ended the penal option of transporting offenders to America and the British government did not immediately decide upon Australia as an alternative destination.[47] Chapter **3** will argue that the increase in executions in the 1780s was due, in large part, to the lack of a sufficiently severe secondary penal option and thus the limiting of the courts' ability to restrict the level of punishment to be meted out to those convicted. The chapter will also demonstrate that there was not a desire to send unprecedented numbers to the scaffold and that the proportion of capitally convicted property offenders who were executed remained relatively consistent.

After housebreaking and theft, robbery made up the second largest proportion of executions for property offences, accounting for 34% of the total.[48] In England, robbery had been regarded as an indicator of the prevalence of crime more generally in the eighteenth century. In 1751 Henry Fielding warned of the frequency of the crime in London and stated that, if unchecked, the already flagrant increase in robberies would be liable to reach even greater heights.[49] However, in Scotland, with the exception of the Highlands, more pressing concerns over the prevalence of the crime of robbery were not as evident in the mid-eighteenth century. In February 1747 three men were indicted before the High Court in Edinburgh for violently assaulting His Majesty's subjects with lethal weapons and robbing them of money upon the public highways. Their defence counsel argued that the crime of highway robbery should be punished with less severity in Scotland than in England "where the punishment was always capital." He went on to argue that the crime rarely happened in Scotland and it was a just principle that the severity of the law should be proportional to how often the crime was committed. The men petitioned the court, which was consented to by the Advocate Depute, and they were banished to America for life instead of standing trial and facing a capital punishment.[50] This case not only demonstrates the discretionary powers of the courts, it also reveals how attitudes towards the perceived prevalence of the crime could affect legal responses to it in the decision-making process. The reluctance to pursue a capital charge for some offenders in Scotland is comparable to practices in Wales where both petty and grand juries made marked efforts to prevent offenders being found guilty of robbery indictments. Therefore, in the wider British context, Scottish responses to robbery in the mid-eighteenth century, with the notable caveat of the Highlands, reinforce the centre–periphery dichotomy established by King and Ward in their study of the capital punishment of property offences.[51]

The number of executions for robbery had been relatively low until the 1780s, especially when compared to England, and there was at least a degree of awareness of this, as evidenced in the above case. However, by the second decade of the nineteenth century, robbery had become a greater concern in the Scottish courts and the newspapers, a topic that will be further discussed in Chap. 3. In terms of the geography of the crime, the predominant number of capital convictions occurred in Scotland's central belt, a fact that was evident in the parliamentary returns for the years 1811–1814.[52] In gathering and analysing the data

presented in the 1819 *Report from the Select Committee on Criminal Laws*, Emsley demonstrated that for London and Middlesex, between 1775 and 1784, the percentage of people executed following a capital conviction for highway robbery was 38.9%. By the early nineteenth century this had fallen to 8.6%.[53] Comparatively, in Scotland in the 1780s, during a peak decade in the overall numbers sent to the scaffold, 58.3% of those capitally convicted for robbery were executed. While this subsequently declined slightly, by the second decade of the nineteenth century it had risen again and 84% of offenders capitally convicted for robbery or the crime of stouthrief, which was sometimes charged synonymously with robbery in the early nineteenth century and involved the use of violence in a dwelling place, were executed. Chapter **3** will examine this continued high proportion of executions to capital convictions in more detail and present some potential explanations for it.

There were 49 executions for theft of cattle, horses or sheep in this period. Fourteen of the cases occurred between 1746 and 1755 following trials before the Northern Circuit, this being the highest concentration of executions for the crime in any decade across this period. When breaking down the numbers of executions by decade, those for cattle, horse or sheep theft present almost a reverse pattern to the figures for other property offences, notably robbery, as there were only seven people executed for the crime following the turn of the nineteenth century. Towards the end of the eighteenth century the charges were often restricted to a lesser offence and thus not punished capitally. For example, in Inverness in May 1774, three men had been indicted for cattle theft but were found guilty only of slaughtering the cows in question.[54] By the nineteenth century it was only in cases of excessive theft, such as that of James Ritchie who had stolen 30 sheep from the parks of Gordon Castle, where a capital punishment was passed.[55] A return of the number of persons brought to trial for crimes of a potentially capital nature in Scotland between 1827 and 1832 was presented to Parliament in 1832. The total number of people charged with various forms of theft, including that of horses and cattle as well as theft aggravated by housebreaking, was 1076. However, in all but 24 of these cases, the charge was restricted so the criminal would not face a capital trial.[56] Of these 24 cases, there were 12 capital convictions but only three executions. This demonstrates that, by the 1830s, property offences were sending fewer criminals to the scaffold despite Alison's observation in 1832 that "probably a greater number of cases have been tried since the peace of 1815 than from the institution of the Court of Justiciary down to that time."[57]

A reading of the court records themselves also reflects the swell in the sheer volume of cases. An increase in criminality may have occurred, particularly in Scotland's rapidly industrialising central belt, or policing and prosecution methods may have become more efficient, thus bringing more offenders to justice. However, what is clear is that the figures demonstrate the importance of the discretionary power of the courts, particularly that of the judges, to limit the level of punishment meted out.

In England, upwards of 60 capital statutes were passed in the eighteenth century related to the crime of forgery.[58] Furthermore, McGowen stated that, along with murder, a capital conviction for the crime of forgery in the eighteenth century was the most likely to see an offender subsequently executed in England.[59] However, many of the capital statutes that made up the 'Bloody Code' were not extended to Scotland. In turn, there were only 26 men executed for the crime of forgery in Scotland in this period and a further 18 men and two women who had been capitally convicted for the crime but subsequently pardoned. Comparatively, in England between 1775 and 1815, Emsley gathered the figures for London and Middlesex as well as the Home Counties, Western and Norfolk circuits and found that 366 people were capitally convicted for forgery and, of these, 204 were executed.[60] During the trial of George McKerracher in 1788, despite the fact that he had forged and uttered (distributed) £48 and £49 bills of exchange, his defence argued that no damage had been sustained by any individual and thus asked for a restriction of the charge. However, this was refused and he was found guilty and sentenced to be executed in Stirling in March 1788.[61] When sending his report of the trial proceedings to the Home Office, the Lord Advocate, Ilay Campbell, stated that there were no favourable circumstances in McKerracher's case. He further asserted that forgery was as much a capital crime in Scotland as in England and called for an example to be made with his execution.[62] The belief that the crime would not be punished with death in Scotland was also apparent among others capitally convicted, even as they mounted the scaffold. At his execution in 1785 Neil Mclean was described as having "laboured under a misconception of the nature of his crime" and the severity of the punishment attached to it.[63] These cases are examples of the discretion exercised in the Scottish courts in response to the crime of forgery, perhaps due to their greater use of the common law as opposed to the statutes that made up the 'Bloody Code'.

There were two main aggravations evident in cases where offenders were capitally punished for the crime of forgery. The first was the

magnitude of the crime. David Reid had forged Bank of Scotland notes and uttered them in various areas including Edinburgh, Dumfries, Kirkcudbright and Wigtown in 1780.[64] Similarly, William Mackay had committed the crime in Ayr, Lanark and Renfrew. Although the jury only found him guilty of one of the charges, when passing the death sentence Lord Gillies stated that even if the prisoner had issued only one forged note, it was the same as if he had issued 50 of them.[65] The second aggravation in some of the cases was the status of the condemned. In cases of forgery, unlike in most other crimes, if a person was educated, a man of property, or held a position of trust their offence was aggravated. William Evans had been an overseer on the estate of the Duke of Portland before his execution in 1816 for forging bills of exchange.[66] Malcolm Gillespie was an excise officer in Aberdeen when he was convicted of forging in excess of £200 in bills of exchange.[67] Following his execution in 1800 for forging and uttering notes of Carrick, Brown and Company, bankers in Glasgow, Samuel Bell was described as having been an industrious man of property.[68] Following his conviction for forgery in 1797 Millesius Roderick Maccullan was reported to have been bred in polite life and to have had the manners of a gentleman. Despite petitions from various respectable quarters in Edinburgh he was executed.[69] An article in the *Chester Courant* cited similarities between his case and the heavily reported upon English case of Dr William Dodd, who had been executed at Tyburn for forgery in 1777, and stated that forgery was a dangerous crime and was not to be forgiven regardless of the status of the offender.[70]

By the late 1820s there were calls to abolish the death penalty for the crime of forgery due to the increasing difficulties in securing capital convictions.[71] In England and Wales between 1820 and 1829, Radzinowicz noted that of 733 people capitally convicted for forgery, only 64 were executed.[72] In Scotland in the 1820s there were six executions but nine pardons for the crime. The *Edinburgh Review*, a magazine edited by young Whig lawyers with support from men such as Francis Jeffrey and Henry Cockburn, argued for the promotion of Whig reforms to Scots law in the early nineteenth century. Despite sitting in an English seat in the Commons, Henry Brougham was one of the most prominent contributors to the *Review* and wrote in 1831 on the abolition of the death sentence for the crime of forgery. He argued that the death sentence was harder to secure for the crime and thus it was logical to legislate for a less

severe, but more certain, punishment.[73] In this sense the situation north and south of the border was comparable and thus the death sentence was abolished for the crime of forgery in England and Wales and Scotland by an act passed in 1832 (2 & 3 Will. IV c.123).

Conclusion

To conclude, although Scotland's lesser use of the gallows has been acknowledged by historians, the subject has thus far remained largely unexplored. To quote Crowther, Scotland is a country with "no criminal record."[74] This study seeks to provide this history through its examination of Scotland's use of capital punishment. The journey of an offender from the commission of their crimes to their suffering for them upon the scaffold was subject to a discretionary and multi-staged decision-making process. Although this chapter, and the book more widely, is focused upon those who were brought before the central criminal courts and capitally convicted, it has acknowledged the importance of pre-trial processes such as the building up of evidence and the decision of the courts to pursue capital charges or not. It has addressed the theme of judicial discretion in Scotland and questioned how these factors potentially impacted upon the number of people who were tried on a capital charge. Furthermore, it has explored crucial long-term patterns and trends in the use of capital punishment for certain crimes to contextualise the subsequent chapters of this book.

The chapter has demonstrated the importance of the nuances of the Scottish legal system and court procedures that impacted upon the country's use of the death sentence. It has offered notable comparisons between the Scottish and the English experience of capital punishment and has provided a fresh perspective from which to view relations between the two countries in the wake of the 1707 Union. What is clear is that, while there were discernible similarities in the use of the death sentence north and south of the border, the Scottish experience cannot be assimilated into the English historiography. Instead, it provides a unique perspective that both reinforces and yet challenges the broader eighteenth- and nineteenth-century penal narrative, particularly when we examine the drivers behind the use of the death sentence and the judicial responses to it during three focal periods in Scotland's capital punishment history.

Notes

1. V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770–1868* (Oxford: Oxford University Press, 1994), ix.
2. M. Anne Crowther, "Scotland; A Country with No Criminal Record", *Scottish Economic and Social History* 12 (1992): 82–85, 82.
3. See Lindsay Farmer, *Criminal Law, Tradition and Legal Order: Crime and the Genius of Scots Law, 1747 to the Present* (Cambridge: Cambridge University Press, 1997); M. Anne Crowther, "Crime, Prosecution and Mercy: English Influence and Scottish Practice in the Early Nineteenth Century", in *Kingdom's United? Great Britain and Ireland Since 1500*, ed. by S. J. Connolly, 225–238, Dublin: Four Courts Press, 1999.
4. Leon Radzinowicz, *A History of English Criminal Law Volume 1. The Movement for Reform* (London: Stevens and Sons, 1948), 35.
5. Douglas Hay, "Property, Authority and the Criminal Law", in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. by Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thomson and Cal Winslow, 17–63, 51, London: Allen Lane, 1975. Peter Linebaugh similarly stressed the importance of Tyburn hangings in protecting property in *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London: Allen Lane, 1991).
6. John H. Langbein, "Albion's Fatal Flaws", *Past and Present* 98 (1983): 96–120, 118.
7. Peter King, *Crime, Justice and Discretion in England 1740–1820* (Oxford: Oxford University Press, 2000), 1.
8. See John Louthian, *The Form of Process before the Court of Justiciary in Scotland* (Edinburgh: 1732); Henry Home, Lord Kames, *Statute Law of Scotland Abridged with Historical Notes* (Edinburgh: 1757); David Hume, *Commentaries on the Law of Scotland Respecting Crimes Volumes 1 and 2* (Edinburgh: Bell and Bradfute, 1819); Sir Archibald Alison, *Principles of the Criminal Law of Scotland* (Edinburgh: William Blackwood, 1832).
9. James Dalrymple, Viscount of Stair, *Institutions of the Law of Scotland* (Edinburgh: first published 1681, this edition 1832), vi.
10. Alison, *Principles of the Criminal Law of Scotland*, 625.
11. For a more detailed account of the role of the procurator fiscal in building up evidence, see Crowther, "Crime, Prosecution and Mercy", 225–238.
12. For example, in his study of the Netherlands, Spierenburg charted the development in the criminal law of a new procedure in criminal trials where the inquisitorial method of prosecution gradually superseded the older accusatory procedure. He added that, while the accusatory procedure had favoured the accused, the rules of the inquisitorial procedure

favoured those prosecuting them. In addition, the latter procedure meant that, in more serious crimes, the court could take the initiative and begin an investigation and the court's prosecutor could act as plaintiff. For more detail, see Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984), 8–10.

13. Hume, *Commentaries, Vol. 1*, 9.
14. Anne-Marie Kilday, "Contemplating the Evil Within: Examining Attitudes to Criminality in Scotland 1700–1840", in *Crime, Courtrooms and the Public Sphere in Britain 1700–1850*, ed. by David Lemmings, 147–166, 154, Surrey: Ashgate Publishing, 2012.
15. NAS JC8/12/129.
16. Hume, *Commentaries, Vol. 1*, 5.
17. Stephen J. Davies, "The Courts and the Scottish Legal System 1600–1747: The Case of Stirlingshire", in *Crime and the Law: The Social History of Crime in Western Europe since 1500*, ed. by V. A. C. Gatrell, Bruce Lenman and Geoffrey Parker, 120–154, 149, London: Europa Publications, 1980.
18. For a more detailed guide of the Justiciary Court trial process, see Louthian, *Form of Process before the Court of Justiciary.*
19. For more detail on the English pre-trial process see J. M. Beattie, *Crime and the Courts in England 1660–1800* (Oxford: Oxford University Press, 1986), 318.
20. The executions for treason following the 1745 Jacobite Rebellion were not included in these figures as the rebels were tried and executed by commissions of Oyer and Terminer in England. However, the convictions following unrest in Scotland in 1794 and 1820 were included in these figures as they were tried before commissions of Oyer and Terminer in Scotland.
21. For a study focused upon the North–East of England, see Gwenda Morgan and Peter Rushton, *Rogues, Thieves and the Rule of Law; The Problem of Law Enforcement in North–East England, 1718–1800* (London: UCL Press, 1998). For a more recent analysis of the differences in the use of capital punishment for property offences in England's south-eastern metropolis and on the peripheries, see Peter King and Richard Ward, "Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery", *Past and Present* 228 (2015): 159–205.
22. NAS JC12/7/3.
23. James Gray Kyd (ed.), *Scottish Population Statistics Including Webster's Analysis of Population 1755* (Edinburgh: T and A Constable, 1952).

24. *Enumeration of the Inhabitants of Scotland, Taken from the Government Abstracts of 1801, 1811, 1821* (Glasgow: 1823).
25. R. A. Houston and I. D. Whyte, "Scottish Society in Perspective", in *Scottish Society 1500–1800*, ed. by R. A. Houston and I. D. Whyte, 1–36, 3, Cambridge: Cambridge University Press, 1989.
26. For a more thorough and long-term analysis, see Michael Flinn et al. (eds.), *Scottish Population History from the Seventeenth Century to the 1930s* (Cambridge: Cambridge University Press, 1977).
27. T. M. Devine, *The Scottish Nation 1700–2000* (London: Penguin Press, 1999), 108.
28. T. M. Devine, *The Transformation of Rural Scotland; Social Change and the Agrarian Economy, 1660–1815* (Edinburgh: Edinburgh University Press, 1994), 40.
29. David Turnock, *The Historical Geography of Scotland since 1707* (Cambridge: Cambridge University Press, 1982), 153.
30. David G. Barrie and Susan Broomhall, "Public Men, Private Interests: The Origins, Structure and Practice of Police Courts in Scotland, c.1800–1833", *Continuity and Change* 27 (2012): 83–123, 96–97. See also W. W. J. Knox and A. McKinlay, "Crime, Protest and Policing in Nineteenth-Century Scotland", in *A History of Everyday Life in Scotland, 1800 to 1900*, ed. by Trevor Griffiths and Graeme Morton, 196–224, Edinburgh: Edinburgh University Press, 2010.
31. NAS JC13/14/93.
32. *Enumeration of the Inhabitants of Scotland*, 55.
33. *Scots Magazine*, Tuesday, 1 December 1818, 86.
34. Lord John MacLaurin, *Arguments and Decisions in Remarkable Cases before the High Court of Justiciary and Other Supreme Courts in Scotland* (Edinburgh: 1774), 705.
35. The attendance of the Sheriff Depute from each area was recorded in the circuit court minute books. A reading of the Northern Circuit records highlights the very infrequent attendance of successive Sheriff Deputes of Shetland and Orkney across this period. For examples of where the court made special note of this and instructed the clerk to write to them and to the High Court to report their non-attendance, see NAS JC11/13/11; JC11/23/73; JC11/49/44.
36. Following the insurrection in west-central Scotland in 1820, also referred to as the Radical War, 24 men were capitally convicted for treason which resulted in three executions and 21 remissions. Therefore, while Table 2.6 shows that 46.6% of capitally convicted offenders were executed in the 1820s, if we remove those condemned for treason, the figure would be 52%.

37. W. W. J. Knox, with the assistance of L. Thomas, "Homicide in Eighteenth-Century Scotland: Numbers and Theories", *The Scottish Historical Review* 94 (2015): 48–73, 69–70. Note that Knox did not include infanticide cases in his figures and thus, particularly in the case of women, intimate killings would have accounted for a much higher proportion of the total homicide indictments.
38. For a study of illegitimacy and infanticide in England, see Mark Jackson, *Newborn Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England* (Manchester: Manchester University Press, 1996), 29–51.
39. NAS JC12/26/103.
40. NAS JC11/20/92.
41. NAS JC8/2/109.
42. NAS JC12/28/73.
43. King, *Crime, Justice and Discretion*, 280.
44. Hume, *Commentaries, Vol. 1*, 85.
45. NAS JC11/29/97.
46. Hume, *Commentaries, Vol. 1*, 103.
47. For a recent discussion of the end of transportation to America, see Barry Godfrey and Paul Lawrence, *Crime and Justice Since 1750*, Second Edition (Oxford: Routledge, 2015), 75.
48. Note that this figure includes all offenders executed for robbery as well as those convicted of robberies that had been charged along with the crime of stouthrief which was sometimes charged synonymously with robbery in the early nineteenth century and involved the use of violence within a dwelling place, and a couple of cases of robbery charged with the crime of hamesucken which was a common law crime wherein it was essential that breaking into a dwelling house was combined with personal violence. It appears that these crimes were additionally charged in the more serious robbery cases.
49. Henry Fielding, *An Enquiry into the Causes of the Late Increase of Robbers, with Some Proposals for Remedying this Growing Evil* (London: 1751), 1. See also, *Hanging Not Punishment Enough for Murtherers, Highway Men and House-Breakers, Offered to the Consideration of the Two Houses of Parliament* (London: 1701); John Fielding, *A Plan for Preventing Robberies within Twenty Miles of London* (London: 1755).
50. NAS JC7/25/425.
51. King and Ward, "Rethinking the Bloody Code", 181.
52. *Parliamentary Papers*, Vol. XI (163) 1814–1815. A Return of Persons, Male and Female, Committed in the Years 1811, 1812, 1813 and 1814 to the Several Gaols in Scotland.

53. Clive Emsley, *Crime and Society in England 1750–1900* Fourth Edition (London: Routledge, 2013), 270.
54. NAS JC11/30/70.
55. The removal of many people from traditional land tenancies during the Highland Clearances to create space for sheep and cattle farms has received the attention of Scottish historians who have pointed towards not only the physical displacement of these people but also the further dislocation of traditional Highland society. Devine has highlighted at least 20 recorded major incidents of resistance to eviction between 1760 and 1855. See T. M. Devine, "Social Responses to Agrarian Improvement: The Highland and Lowland Clearances in Scotland", in *Scottish Society 1500–1800*, ed. by R. A. Houston and I. D. Whyte, 148–168, Cambridge: Cambridge University Press, 1989. However, it does not appear from the figures gathered for this research that the clearances led directly to an increase in the numbers of people capitally convicted for theft of sheep or cattle before the Justiciary courts.
56. *Parliamentary Papers*, Vol. XXXV (499) 1831–1832. Return of Number of Persons Brought for Trial for Capital Crimes before Justiciary Courts in Scotland, 1827–1831, 193–196.
57. Alison, *Principles of the Criminal Law of Scotland*, v.
58. Randall McGowen, "From Pillory to Gallows: The Punishment of Forgery in the Age of the Financial Revolution", *Past and Present* 165 (1999): 107–140, 107.
59. Randall McGowen, "Managing the Gallows: The Bank of England and the Death Penalty, 1797–1821", *Law and History Review* 25 (2007): 241–282, 243.
60. Emsley, *Crime and Society*, 271.
61. NAS JC7/45/15.
62. TNA HO102/51/234.
63. *Caledonian Mercury*, Saturday, 4 June 1785, 3.
64. NAS JC7/40/357.
65. NAS JC13/43/41; *Caledonian Mercury*, Monday, 28 April 1817, p. 3.
66. NAS JC12/29/98.
67. NAS JC11/73/94.
68. *Aberdeen Journal*, Monday, 28 July 1800, 3.
69. NAS JC7/52/15.
70. *Chester Courant*, Tuesday, 19 December 1797, 2.
71. This fact was noted by Paul Riggs in his investigation of the prosecution's decision to restrict the charges in potentially capital cases for property offences, including forgery, by the 1830s. See Paul T. Riggs, "Prosecutors, Juries, Judges and Punishment in Early Nineteenth-Century Scotland", *Journal of Scottish Historical Studies* 32 (2012): 166–189.

72. Radzinowicz, *History of English Criminal Law*, 594.
73. Jim Smyth and Alan McKinlay, "Whigs, Tories and Scottish Legal Reform c.1785–1832", *Crime, History and Societies* 15 (2011): 111–132, 128.
74. Crowther, "Scotland: A Country with No Criminal Record", 82–85.

CHAPTER 3

Contextualising the Punishment of Death

Legal writers of the late eighteenth and early nineteenth centuries recognised not only the differences between the legal systems north and south of the border, but also the differences in their use of capital punishment. An awareness of Scotland's lesser recourse to the death sentence was praised in the legal commentaries cited in Chap. 2 and Scots law was held up as a bastion of Scottish identity that had been maintained after the Union.[1] However, in conducting the first extensive examination of the court records, as well as sources rich with qualitative material such as newspapers, state papers and Home Office records, this study demonstrates that Scotland witnessed significant fluctuations in its execution rate and a more frequent recourse to the death sentence for particular crimes in certain decades.

This chapter will examine three key periods in Scotland's capital punishment history. It will demonstrate that, while there were discernible similarities north and south of the border in terms of an increase in the sheer number of executions as well as an intensification of debates over criminality, the drivers behind this and the responses to it in Scotland differed markedly. In turn, an investigation into the previously neglected Scottish experience offers a unique perspective of Britain's use of the death sentence at these three crucial junctures. The opening section of this chapter will demonstrate that the mid-eighteenth century was a focal period in Scotland's penal history. It was a time when the country, particularly the Highlands, was reeling from the events of the 1745 Jacobite Rebellion (the '45) and the British government was determined to penetrate the

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peripheral north and establish more centralised control. Legislative assaults were made upon Highland culture and dress, and both legal and popular attitudes towards the area went some way towards shaping the implementation of the death penalty in the decade following the rebellion. The second section will focus upon the 1780s. It will show that the peak number of executions in this decade can be placed within the wider crisis facing the British authorities in transporting their criminals abroad following the temporary removal of the penal option of transportation. The final section will examine the first third of the nineteenth century. It will demonstrate that this period was one of increased debate over the use of the death sentence in the face of rising numbers of capital convictions in Britain, but it will present a unique Scottish response to the problem. In addition, it will explore the increased space dedicated to crime reporting in the Scottish newspapers and how previous acknowledgements of Scotland's lesser recourse to the death sentence turned to lamentations of its increased use in this period.

Executions Following the 1745 Jacobite Rebellion

Mid-eighteenth-century Britain witnessed intense concerns over a perceived increase in crime and public debates over punishment. However, this chapter examines a distinct Scottish response to this British problem. Within the richer historiography dedicated to England's criminal history in this period, two of the key explanations presented for the spike in execution rates were the effects of demobilisation following major wars and the occurrence of moral panics over crime within printed public discourse. A recurring link has been developed between recorded levels of crime and the impact of times of war and peace. Beattie demonstrated an evident upturn in prosecutions for property offences in Surrey as major wars ended. Following the end of the War of the Austrian Succession (1740–1748) the period 1749 to 1756 saw 99 people capitally convicted and, of those, 50 (50.5%) were executed. In contrast, in the period 1757 to 1763, during the Seven Years War, of 44 people capitally convicted there were 10 (22.7%) executions.[2] Similar patterns have been discovered in works focused upon Staffordshire and Essex respectively in the same period.[3]

In addition to the threats to public order posed by demobilisation, mid-eighteenth-century England also witnessed moral panics over the feared prevalence of certain crimes, notably violent robberies in and around the metropolis of London. In the second half of 1744 the London

newspapers showed a growing interest in the crime of street robbery. They reported in great depth upon the apprehension of some notorious street robbers linked to known gangs. While this moral panic possibly resulted from growing criminality, it may also be attributed to an editorial need for sensational news due to a dearth in noteworthy foreign war reports.[4] In contrast, the same moral panic over crime was not evident in the Scottish newspapers. When reporting upon the conviction and execution of John Irving in Edinburgh, after he had robbed two different people upon the highways in September 1744, the *Caledonian Mercury* provided only the basic details of the case and neglected to include that he had also shot one of his victims.[5] Further anxieties over robbery in England were heightened in the aftermath of the War of the Austrian Succession and the early 1750s saw commentators proposing a variety of measures to stem the feared crime epidemic.[6] The House of Commons committee appointed in February 1751 to investigate the existing laws related to offences against the peace included the Prime Minister, Henry Pelham, and the Secretary of War, Henry Fox, but also all Members of Parliament for London and the counties of Middlesex and Surrey, perhaps reflecting that the problem was very much believed to be centred upon London.[7]

Comparatively, in mid-eighteenth-century Scotland the increased use of the death sentence and the more intense debates over capital punishment in public discourse were not associated with fears over crime in the more metropolitan centre. Instead, a crucial explanation for the increase in the sheer number of executions as well as a more marked determination to send offenders to the gallows was the aftermath of the 1745 Jacobite Rebellion and the desire to establish lasting stability in the peripheral north. Between 1746 and 1755 there were a total of 75 executions carried out in Scotland; 26 for murder, 46 for property offences and a further three for crimes categorised in Table 2.5 as 'other', namely rape and bestiality. Table 2.6 demonstrates that the 1740s and 1750s saw around 80% of those capitally convicted subsequently executed, a level not reached again even during the increased numbers of executions in the 1780s and the early nineteenth century. A large proportion, 43 of the total 75 executions, followed trials before the Northern Circuit compared with only 15 from the High Court in Edinburgh and even fewer numbers from the other circuits. Therefore, while acknowledging that Scotland was not alone in experiencing an increase in capital convictions in this period, the chapter will demonstrate that the reasons for this were different from the situation in England, being largely linked to the aftermath of the late 1745 Jacobite Rebellion.

In April 1746, the Jacobite army was decisively defeated at the Battle of Culloden and the circuit courts resumed business after some disruptions, particularly in the Northern Circuit. The government army, under the leadership of the Duke of Cumberland, sought to hunt down any remaining rebels and permanently suppress any potential future unrest. Key themes to emerge from a study of the '45 and the Hanoverian government's response to it are those concerning 'Britishness', 'savagery' and the quest to 'civilise' the Scottish Highlands. In his study of the suppression of the rebellion, Plank focused upon the use of the army as an agent for social progress in Britain and the colonies. In dissecting the concepts of 'rebellion' and 'savagery' he made the distinction that those engaged in a rebellion had a personal responsibility and were thus tried and convicted for it. By contrast, the term savagery was a characteristic applied to whole communities, in this case the Highlands, who could be 'corrected' through a policy of expulsion or punitive action.[8] These distinctions were significant in dictating the punishments meted out to the rebels, which will be briefly discussed in Chap. 5, and in gaining an understanding of the army's relations with the non-combatants in the Highlands immediately following Culloden. However, this chapter will demonstrate that the suspicion and disdain that had typified English and Lowland Scottish views of the Highlands during the rebellion continued in its wake. In turn, the desire to establish permanent stability in the area greatly impacted upon the Northern Circuit court's use of the death sentence.

The acknowledgement of the need for a tighter control of the Highlands was not new in the mid-eighteenth century. Following the 1715 Jacobite Rebellion there were some who believed that the state had not punished the disaffected areas harshly enough, which had led to further unrest in 1745.[9] Disarming acts in 1716 and 1725 had attempted to legislate against the possession of weapons such as broadswords and various guns in northern Scotland. Under the leadership of General Wade, 260 miles of roads had been constructed along the Great Glen linking Inverness to the western seaboard at Fort William and linking the Lowlands to the Great Glen.[10] Following the defeat of the '45, a further Disarming Act was passed in 1746 as well as legislation banning the wearing of Highland dress such as tartan and kilts (19 Geo II c.39). In addition, there was a contemporary belief that heritable judicial powers had been crucial in helping Highland Clan Chiefs to raise support for the rebellion and thus there was a need to curb these powers to secure future stability in the area.[11] The Heritable Jurisdictions (Scotland) Act was

duly passed in 1747. Davies has demonstrated that the act was not revolutionary in the sense that it was the conclusion to a longer-term decline of the old Scottish legal order and thus the heritable powers it abolished had already declined by the mid-eighteenth century.[12] However, for the purposes of this study, its passing can be contextualised within wider attempts to suppress the very Highland culture that was believed to have fostered unrest and encouraged rebellion.

In several of the 75 executions carried out in Scotland in the decade following the '45, including some of those following trials before the Northern Circuit, the circumstances surrounding the cases and the judicial responses to them were comparable to several others that occurred across the period between the mid-eighteenth and early nineteenth centuries. Among the malefactors sent to the gallows were infanticidal mothers, murderous husbands and property offenders found guilty of robberies, housebreakings and thefts. However, the focus here is to demonstrate that a marked proportion of the executions that followed trials before the Northern Circuit in this ten-year period can be explicitly linked to the aftermath of the '45 and the wider attempts to suppress the perceived lawlessness of the Highlands. For example, Alexander Cheyne's case in 1748 stood out from those of the other robbers who faced the hangman's noose in the mid-eighteenth century as the court heard how he was a person of 'bad repute' who was known to keep company with the worst kind of rogues and thieves in the area. He had also been outlawed for failing to appear to answer for previous crimes.[13] Similarly, in the same year James Davidson, along with unidentified accomplices, broke into the home of Robert Paton and threatened his family with broadswords and pistols, weapons banned by the recent legislation, and stole a quantity of money. He was executed and hung in chains on the road leading into Aberdeen.[14] His case is detailed further in Chap. 7 and was one of a number where it was deemed necessary to make an exemplary display of national justice at a local level.

Cattle theft by large groups in the Scottish Highlands had been a problem prior to the mid-eighteenth century and was particularly prominent in the western Highland area of Lochaber. Cattle were the main source of wealth in the area but, following the rebellion, herds were confiscated on a large scale, even from some of the people who had been loyal to the government. For a time, Fort Augustus became the largest cattle market in Scotland, partly due to a steady supply of confiscations.[15] In the period 1746 to 1755 there were 16 executions

for cattle or horse theft, only two of which occurred outside of the Northern Circuit. Although the trials were held in Inverness, Perth and Aberdeen the places where the thefts were stated to have taken place show that the crime was not only committed in the immediate vicinity of these larger cities but was apparent across various areas of northern Scotland, both east and west. Within the large body of correspondence between government and army officials in Scotland and authorities in London in the years immediately following the '45, the problem of cattle and horse theft was highlighted. In a letter to the Duke of Argyle, on behalf of several of his tenants in Morvern, John McDougall complained of the thefts. Morvern is a peninsula in south-west Lochaber but he claimed that the people there had no affiliation with Clan Cameron whose relations he accused of being principally concerned in the crime. He informed the Duke that several of the tenants had taken to guarding their livestock continually and needed more government protection.[16]

The aftermath of the '45, and the rigour with which instances of cattle theft were pursued by the authorities, is perhaps reflective of the fact that the crime had been a long-standing feature in parts of northern Scotland, and that the government believed it had not been adequately punished. This could, in part, have been due to the lack of sufficient central judicial power in the area. In his 1724 investigation of the Highlands, General Wade found the widespread practice of blackmailing for 'protection' which was largely centred upon the theft of black cattle.[17] Barrie and Broomhall argued that, with the exception of the larger burghs, many Scottish communities were isolated which made gaining access to fiscals, magistrates and legal courts difficult and potentially costly.[18] The perpetuation of the offence was therefore likely facilitated by wider issues surrounding crime detection, reporting and prosecution, especially in peripheral areas that were separated geographically, and perhaps ideologically and even, to some extent, linguistically, from the country's centre. For example, there were some instances where translation into Gaelic was required in the courts for the accused, the victim and/or the witnesses in some cases. However, consideration must also be given to the distinct and long-standing customary attitudes and responses to the crime that may have prevented those suspected being brought before the central criminal courts. In almost all the cases brought before the Northern Circuit between 1746 and 1755 the panel (the accused) was not only charged with a specific instance of theft/s. Instead, the charge would also state that they were 'habute' thieves as an aggravation to their crime. Kenneth Dow Kennedy was accused of having been a notorious

cattle thief for upwards of 20 years during his trial in 1750.[19] The fact that Kennedy and others had been able to carry on their crimes for years seemingly unchecked suggests that customary practices in certain areas of northern Scotland meant that there was either some reluctance or an inability for victims to prosecute the crimes in the central courts.

King and Ward have identified the "widespread reluctance of many areas on the periphery" to implement capital punishments for property offences in the eighteenth century.[20] In addition, Howard has demonstrated that legal officials took only a limited role in the investigation of theft in Wales and that it was often a matter of private initiative wherein some sort of restorative action, such as the returning of property or the paying of compensation, was preferred to the pursuing of punitive justice.[21] In the Scottish court records, a reading of some of the witness statements does highlight that in cases where the accused had been 'habute' thieves, the victims had previously taken it upon themselves to pursue the offender and take back their property without going through the courts. Therefore, in parts of northern Scotland it is likely that the reporting and pursuing of cattle thieves was subject to extra-judicial discretion but was also made more difficult as it was such a common feature of certain areas. When John Breck MacMillan mounted the scaffold in Inverlochy in 1755 the recorder of his speech observed that theft of cattle was "not reckoned too dishonourable by the commonality in that part of the world as in other places."[22] However, in the wake of the '45, the authorities sought to curb these practices. The decision to execute offenders at spatially significant locations reflected the need to emphasise the infamy of the criminal in addition to making the punishment highly visible at a local level.

Twelve people were sentenced to be executed either at the scene of their crime or within the town in which it was committed between 1740 and 1755. Ten of the cases were convicted before the Northern Circuit and eight of these were for property offences. This was an evident concentration of the punishment as between 1740 and 1799 there were only 21 people executed at the scene of their crime and it was not until the increasing numbers of executions at the beginning of the nineteenth century that a marked increase in crime scene executions would occur again. In five of the cases the criminals had been condemned at Inverness for cattle theft and were sentenced to be taken to Fort William to be confined before their execution in Inverlochy. Fort William is in Lochaber and in the eighteenth century was one of three Great Glen fortifications along with Fort Augustus and Fort George. During the '45 it was the only one of the three not to fall into the hands of the rebel

army and following the rebellion it remained a government army base. Donald McOiloig (alias Cameron), also commonly called 'the Officer', was described in court as a most notorious cattle thief who had been so for 20 years. He had been apprehended by a party of General Pultney's regiment and sent to Inverness for trial before the circuit court and was sentenced to be executed in Inverlochy in 1752.[23] He was executed at the Old Castle of Inverlochy, a mile north of Fort William, a location chosen as it was not only geographically close to the fort but also because the area was a centre of Clan Cameron, his relations and kinsmen, and thus had more potential punitive value than execution at the common place in Inverness. A report of his execution praised the pains taken by the troops in the Highlands to apprehend the "great numbers of these villains" in the area and hoped the success they achieved would finally put an end to the "wicked practice."[24] Crime scene executions for cattle theft were not only reserved for Inverlochy. Donald Bain was condemned at Perth for multiple instances of cattle and horse theft in the area surrounding Kinloch Rannoch. Witnesses told the court how he dressed in full Highland plaid when committing the crimes and had attempted to charge them for the return of their property. He was executed in the same village on a "conspicuous eminence" in August 1753, likely in front of several of those he had stolen from and intimidated, which again potentially added further punitive weight to the spectacle.[25]

Capital Punishment in the 1780s and the Crisis of Transportation in Scotland

Following the mid-eighteenth-century peak, the number of executions in Scotland declined in the late 1750s and remained relatively stable throughout the 1760s and 1770s. However, Table 2.1 demonstrates that the number of executions in the 1780s more than doubled compared to the previous decade, with 79 offenders suffering the death sentence. Although the mid-eighteenth century witnessed intensified concerns over crime both north and south of the border, the spike in the number of executions in Scotland had marked links to the aftermath of the 1745 Jacobite Rebellion and the desire to establish control over the peripheral north. This section will demonstrate that the cause of the peak number of executions in the 1780s can be placed more squarely within the wider British context due to Britain's involvement in the American War of Independence (1775–1783). First, the demobilisation of large numbers of the armed forces following major wars had been

cause for concern earlier in the eighteenth century in England, but had not been an evident concern in Scotland. However, following the War of Independence, a marked proportion of offenders were stated to have either been late soldiers and sailors or part of army regiments billeted in Edinburgh, Glasgow and Inverness. Second, the conflict caused severe disruption to, and the eventual removal of, the penal option for Britain to transport her criminals to the American colonies. In addition, the alternative destination of Botany Bay was not immediately established and the First Fleet did not embark until 1787. The temporary cessation of transportation greatly impacted upon the Scottish courts' ability to exercise discretion in potentially capital cases and is thus crucial to our understanding of the peak numbers of malefactors facing the death sentence in Scotland in this period.

This section focuses upon the period between 1780 and 1789. Although the outbreak of the War of Independence in 1775 had affected Britain's ability to transport its felons in the late 1770s, the impact on the levels of capital punishment in Scotland did not become more evident until the turn of the 1780s.[26] There were large numbers of offenders still awaiting sentences of transportation that had been passed after 1775 in the Scottish places of confinement and it became increasingly apparent in the courts that this form of punishment could not be sustained. The nuances of the Scottish system, detailed in Chap. 2, relied heavily upon the availability of suitably severe secondary punishments that fell short of death. Banishment from Scotland was still a frequently used punishment in this period and sentences of imprisonment increased in the late eighteenth century. However, the removal of the penal option of transportation posed a significant problem. This was of crucial importance to the punishment of property offences as it greatly impacted upon the courts' ability to restrict the level of punishment to be meted out to those brought before them. When breaking down the executions in this ten-year period into category of offence, Table 2.5 demonstrates that 92.4% of the total 79 convicted persons had committed a property crime. This represents the highest proportion of the total executions accounted for by property offences across the entire century under examination in this study.

Within studies of capital punishment in eighteenth-century England, the 1780s have been marked out as a focal period in the country's use of the death sentence. Beattie's figures showed that there was an increase in capital convictions and executions in England after 1782 and that in Surrey there were more offenders executed in the year 1785 than in any

other in the second half of the eighteenth century.[27] From September 1782 the government was determined that no one convicted at the Old Bailey of robberies or burglaries that included any degree of violence would be pardoned. In addition, Devereaux has shown that between 1775 and 1779 there was an average of 34 executions per year in London but the figure rose to 47 between 1780 and 1784 and to nearly 80 by the mid-1780s before dramatically retreating.[28] Comparatively, although the sheer number of executions in the 1780s had doubled compared to the previous decade, there was not the same evident desire in Scotland, as there had been in the mid-eighteenth century, to see a large proportion of capitally convicted offenders hang for their crimes. This is evidenced by the fact that 64.8% of the total capitally convicted criminals were executed in the 1770s and the figure rose only slightly to 65.8% in the 1780s.

In times of war, large numbers of young men were sent abroad, thus helping to drain some of the labour surplus in major cities and producing work for those who were left. However, as peace was achieved and armed forces returned home, levels of property crime increased. Hay stated that the greatest pressure on the poor could be expected when a dearth in food supply and demobilisation coincided. This occurred in England in 1783 and Hay estimated that 20% of the population were destitute and, at the same time, the second largest army of the eighteenth century was paid off. In turn, this year saw the greatest percentage increase in indictments for theft in Staffordshire and the Home Counties.[29] Similarly, Beattie demonstrated that, compared to the period 1776 to 1782, when 29 (31.2%) of 93 people sentenced to death were executed in Surrey, the period 1783 to 1787 saw 64 (49.2%) of 130 people capitally convicted executed. This was an average of 12.8 executions per year which fell to 5.3 after 1788, the year associated with recruitment for the French Revolutionary Wars.[30] Unlike the earlier fears of crime and demobilisation that had occurred in England in the mid-eighteenth century but were not as evident in Scotland, the drivers behind the 1780s increase in capital convictions were more comparable.

After the 1707 Union, the Scottish army and navy merged with those of England to form the new British Army. From the mid-eighteenth century, the army began to increasingly recruit for Scottish regiments such as the Scots Guards but also a newer regiment of Highlanders. During the major wars of the second half of the eighteenth century the Scots played an influential role in the British army.[31] In the 1780s, following

the American War of Independence, soldiers made up a notable proportion of the increased numbers of capital convictions, especially those billeted in Edinburgh and Glasgow. Of 120 capital convictions between 1780 and 1789, 19 offenders (15.8%) were stated to have been members of the army or the navy and 17 of these occurred after the war's end in 1783. The convictions were all for property offences; 12 robberies, six instances of house or shop breaking and theft, and one case of forgery. Following these convictions, there were ten executions and nine remissions. Interestingly, in three of the remissions the condition stipulated was that the pardoned person would enter the armed forces and in a further four they were to be set at liberty. Presumably, under both circumstances the men would have re-joined their regiment. An example of this was the case of James McMoin who had been condemned at Glasgow for robbery. He had committed the crime with three of his fellow soldiers but was believed to be the principal actor. He had already been taken before a court martial and received part of a sentence of 800 lashes. Following his capital conviction before the circuit court, mercy had been recommended.[32]

The outbreak of the War of Independence resulted in the end of the penal option of transporting criminals to the American colonies. Convict transportation to Australia did not immediately become an alternative destination as the First Fleet did not embark until 1787. Donnachie stated that, prior to the 1780s, transportation had been used relatively infrequently by the Scots. Even after the establishment of transportation to Australia he estimated that the Scots made up just over 5% of the convicts sent from Britain and Ireland.[33] However, this seemingly low proportion of offenders is arguably more reflective of the lower numbers tried by the Scottish courts for capital or transportable offences rather than an aversion to the use of the punishment. In Scotland, the temporary cessation of the penal option of transportation did have a marked effect upon levels of capital punishment which provides strong evidence of the centrality of the punishment within the arsenal of the Scottish courts. The courts continued to sentence the punishment even after the outbreak of the war in 1775, which meant that the places of confinement were filled with offenders waiting to be sent to London. However, by the turn of the 1780s there was an evident decrease of the sentence, perhaps due to the realisation that the places of confinement were already under pressure from offenders awaiting transportation. The courts' sentencing of transportation would not increase again until well into the 1790s.

Therefore, the need for alternative punishments that fell short of the severity of the death sentence in the 1780s led to an increase in banishment from Scotland as well as a less dramatic increase in prison sentences for some property offences that would have most likely carried a sentence of transportation previously. Similar problems were facing the authorities in England and in 1786 the *Gentleman's Magazine* included a petition sent to the king from the Lord Mayor and Aldermen of the City of London. They complained of the interruption to transportation and the fact that more convicts, who were supposed to be sent abroad, were either at large or confined in prisons. They blamed this "dreadful accumulation" for the increase in crime "so heavily felt and so justly complained of."[34]

In the 1780s there were 79 offenders executed in Scotland. In 73 (92.4%) of the cases they had been convicted of a property offence. This was the highest percentage of the total executions made up by property offenders across the period 1740 to 1834. Housebreaking and theft accounted for 34 of the total 79 executions. In the 1770s the crime made up only 17% of the total executions compared to 43% in this ten-year period before it fell to 12.5% in the 1790s. A reading of the petitions for mercy sent to London highlighted that there was some debate over the severity of the death sentence for certain property offences. In the case of James Grant, he was found guilty of housebreaking and theft but, on account of "several alleviating circumstances", he was recommended mercy.[35] These circumstances were that he had returned the stolen property and had made a full confession to the court. However, petitions from the judges Hallies and Erkgrove as well as from the magistrates of Aberdeen and members of Marischal College, failed to secure him a pardon.[36] In 1783 Alexander Mowat's defence claimed that he had committed a single act of housebreaking and theft with no aggravations and called for the charge to be restricted so he would not face the death sentence. However, the Advocate Depute answered that a single theft was capital in Scotland as in England.[37] It can be argued that, had the secondary punishment of transportation been a viable option, the charge would have been restricted prior to the start of the trial, as was the precedent in so many other cases of housebreaking and theft across this period, so he would have faced a sufficiently severe punishment that fell short of death.

In terms of other property offences, executions for cattle, horse or sheep theft witnessed a slight increase in the 1780s after they had gradually decreased in the 1760s and 1770s. In addition, executions for robbery increased from eight in the 1770s to 14 in the 1780s. However,

proportionately the percentage they made up of the total executions fell from 23% in the 1770s to 18% in the 1780s, arguably due to the increased executions for housebreaking and theft. As offenders accused of robbery were less likely to be able to petition the court or have their charge and punishment restricted prior to the start of their trial, the limited availability of transportation did not have the same effect of increasing the number of executions for the crime as it did for housebreaking and theft. However, in the case of James Andrew, it may have gone some way to preventing him obtaining a conditional pardon. He was condemned in Edinburgh in February 1784 for robbing John Dykes of a silver watch in Hope Park. The jury had strongly recommended mercy due to his relatively young age of 21 and possibly as the robbery had not involved any great degree of violence against the victim.[38] When reporting upon his execution the *Caledonian Mercury* stated that they could not fail to mention "to the honour of the magistrates, and as an instance of real humanity, that the execution was delayed considerably beyond the usual time in hopes of a reprieve being received."[39]

The desire for mercy to be shown, at least at a more local level, was also evident in various petitions sent to London in this period. William Tough was charged with housebreaking and theft before the circuit court in Aberdeen and despite the removal of part of the charge in the libel, in order to mitigate his case, he was sentenced to death in October 1788.[40] The subscribers of a petition sent from Aberdeen to London offered to pay the expenses of having him sent abroad instead.[41] Although this offer does not appear to have been taken up, his execution was delayed and he was pardoned in March 1789 on condition of transportation. Jean Craig was one of seven women capitally punished between 1780 and 1789. She had stolen from a bleaching field in 1784 and was executed in Aberdeen. A petition from John Grieve, an official in Aberdeen, had been sent to the Lord Advocate asking him to support it when it was sent to London. He emphasised that there was already another woman in Aberdeen under sentence of death, Elspeth Reid, for housebreaking and theft, and stated "I would fain hope that the execution of one might somewhat suffice the public."[42] As Chap. 4 will demonstrate, women across the entire period 1740 to 1834 were predominantly executed for murder. However, in the 1780s seven women were executed for property offences and, while most of their cases were aggravated by their being found to be 'habute' thieves, we can question if at least some of

them would have been remitted on condition of transportation if it had been an available option.

In addition to an analysis of those executed following the passing of the death sentence, it is now beneficial to turn to an investigation of the 41 people who received a pardon in the 1780s. Table 2.9 demonstrates that 39 (95.2%) of these remissions were for property offences. This figure presented the highest proportion of remissions for property offences across the entire period under investigation in this study. Of the total pardons, 24 were on condition of transportation, two on condition of banishment, seven were to be set at liberty and eight were pardoned on condition of entering either the army or the sea services; seven of these eight cases occurred in 1780–1781, during the latter years of the American War of Independence. A recurring argument for mercy was the youth of the condemned as the predominant age range of those condemned for property offences was between 20 and 24. In his investigation of the age of offenders charged with the crimes of burglary and housebreaking before the English Home Circuit between 1782 and 1800, King highlighted the similarly large proportion of offenders that were aged between 17 and 26.[43]

Robert Ligget, age 20, and John Carmichael, age 23, had been condemned in Dumfries for housebreaking and theft in which they stole six gallons of spirits. In a letter to the Home Office, one of the judges, who was also the Lord Justice Clerk, Robert Macqueen, Lord Braxfield, stated that the crime was certainly capital yet the jury had recommended them to mercy due to their age. He added that if His Majesty wanted to extend mercy it should only be to Ligget as the younger of the two.[44] Similarly, following the conviction of Henrietta Faulds in 1784, a petition sent from Glasgow stated that thousands of its inhabitants wished for the extension of mercy. A further petition had begged for the assistance of the Lord Advocate in securing a pardon and having it sent express to Glasgow at the town's expense.[45] She was eventually pardoned on condition of banishment. Furthermore, in at least six cases where the condemned had been remitted on condition of transportation they subsequently received further remissions of this sentence between 1787 and 1789 and instead were banished or set at liberty. It is evident that there were similar drivers behind the increased use of the death sentence north and south of the border in the 1780s. However, again, an exploration of the Scottish response adds a further dynamic to our understanding of the period as, despite an increase in the sheer number of capital convictions, there was not the same desire, especially within local areas, to

send a large proportion of capitally convicted offenders to the scaffold as appeared to be the case in London and the Home Counties.

Executions in Early Nineteenth-Century Scotland

The first third of the nineteenth century was a period of discussion and debate over the use of the death sentence and the merits of public punishment. As in the previous peak periods of execution discussed above, we can draw notable comparisons between the use of capital punishment in Scotland and in England. Numbers of capital convictions increased both north and south of the border, in Scotland to unprecedented levels, and, in both countries, debates over the use of the scaffold permeated public discourse. In turn, by the 1830s the number of executions decreased and in both countries the death sentence was predominantly only used for the crime of murder as property offenders were increasingly sentenced to the secondary punishments of transportation or imprisonment. What is clear is that the early nineteenth century was a focal period in Britain's capital punishment history. While England's use of the death sentence has been subject to rich historical analysis, there is a relative dearth in studies examining the Scottish experience of capital punishment in this period.[46] There have been quantitative surveys of Scottish crime using the parliamentary returns, which are more regularly available for the period after 1836, that have highlighted an increase in recorded and prosecuted crime.[47] However, the current study is the first to provide an extensive examination of Scotland's capital punishment history in this period, including an analysis of the factors that impacted upon the use of the death sentence. While a study of the Scottish experience offers notable comparisons and reinforcements to studies of England, it cannot simply be assimilated into this more developed historical field. Instead, a study of Scotland's distinct response to the increase in the number of offenders facing the hangman's noose provides a rethinking of the wider British capital punishment narrative in the early nineteenth century.

Table 2.1 demonstrates that in the second decade of the nineteenth century the number of executions in Scotland doubled compared to the previous decade. Furthermore, unlike the subsequent reduction in the number that was evident following earlier peak decades of executions, the 1820s saw a further increase. When demonstrating the pattern of capital convictions and executions in England, Emsley showed that for London and Middlesex capital convictions markedly increased following

the end of the Napoleonic Wars but the number of executions did not drastically increase. He argued that this widening gap between capital convictions and executions, while coming at a time when the 'Bloody Code' faced increasing criticism by reformers, may also have been recognition, on the part of the authorities, that it would not be acceptable to execute so many individuals.[48] In a similar vein, Gatrell highlighted that in 1785, during the crime wave of the 1780s, of the 153 criminals capitally convicted at the Old Bailey, 85 were executed. He argued that, while it may have been plausible to execute 56% of the total offenders capitally convicted in 1785, by the 1820s this proportion could not be sustained.[49] Thus he cited the rising death sentences of the early nineteenth century as a primary reason why "the system unravelled itself and became unworkable."[50]

Comparatively, Table 2.6 shows that in Scotland the proportion of offenders capitally convicted who were subsequently executed was consistently 60% or more by the 1770s and, if we remove the numbers of those executed and remitted for treason, the figure was still 52% in the 1820s.[51] A potential explanation for this proportional continuity may be found in a reading of judicial opinion when sentencing offenders. The current study provides a reinforcement of the argument briefly made by Crowther, namely that in Scotland, rather than keeping executions to a socially acceptable level in the early nineteenth century, as Gatrell's argument suggested, the unprecedented number of capital convictions meant that it was believed to be necessary to keep up the level of exemplary punishments.[52] To advance this argument, this chapter will now turn to investigate the factors that contributed to both the increased levels of capital convictions and the continuity in the proportion executed.

The increase and density of population growth across Scotland's central belt was a key factor that contributed to the increased proportion of capital convictions and resulting executions in the area. However, it will be demonstrated that, while the numbers of people executed increased in Edinburgh, the number per 100,000 head of Scotland's population did not witness the same increase evident in the figure for the Western Circuit which covered an area that had experienced rapid population growth. As an example, Table 2.4 shows that in Edinburgh executions per 100,000 head of Scotland's population remained between 1.1 and 1.7 across the period from the mid-eighteenth century to the late 1820s. It was similarly the case in the Southern and Northern Circuits, after the mid-eighteenth-century peak, with both having consistently low figures

below 1.0. However, the figure for the Western Circuit rose from 0.2 in the mid-eighteenth century to 1.7 by the 1820s, with an increase of 0.5 occurring between 1810 and 1829. When we break down the figures for the Western Circuit it is evident that property offences accounted for much of this increase.

Glasgow's population had risen from 32,000 in 1755 to 147,000 in 1821 and the accompanying industrial growth and urbanisation has been described as a "cumulative and self-reinforcing growth that produced the greatest of Britain's provincial cities."[53] When investigating the industrialisation and demographic change in Glasgow in the first half of the nineteenth century, Gibb pointed towards rapid urbanisation due to population growth and migration from other areas of Scotland as well as from Ireland. Furthermore, he highlighted that between 1814 and 1830 the living standards of the unskilled workforce fell markedly in the face of over-crowding and inadequate nourishment.[54] Lenman noted that the Napoleonic wartime levels of income for handloom weavers, particularly those working on the plainer fabrics that accounted for the majority of their production, fell sharply after 1815 and did not recover.[55] In addition, Barrie and Broomhall argued that it was in expanding towns such as Glasgow that discontent was expressed by the middling ranks over the level of protection offered to property and that these concerns were key in the push for the establishment of police courts.[56] Although the jurisdiction of police courts was limited to minor offences, and the punishments they meted out were limited to short-term prison sentences and fines, the desire for more speed and efficiency in prosecuting offenders is perhaps reflective of broader concerns over the believed prevalence of property crime.

In terms of the infliction of capital punishment, the number of people executed for property offences in Glasgow equalled and then surpassed the figure for Edinburgh. In their recent study of the regional variations in the implementation of capital punishment for property offences in the third quarter of the eighteenth century, King and Ward argued that executions for property offences were markedly higher in and around the central urban areas than on the peripheries in Britain.[57] The mid-eighteenth-century peak in executions provides a caveat to their findings, as capital punishment was used to further punish the peripheral north. However, an analysis of the early nineteenth century provides a reinforcement of their centre–periphery dichotomy. Despite covering roughly one seventh of the geographical area of Scotland, the central belt

contained the highest density of population and industry and the area accounted for the highest proportion of executions for property offences.

Of the total capital convictions following trials before the Western Circuit between 1810 and 1819, 36 (92%) were for property offences and between 1820 and 1829 the figure was 46 (88.5%). Table 2.8 shows the proportion of those capitally convicted for property offences executed in Scotland. The 1820s evidently witnessed the lowest percentage of convicted property offenders sent to the gallows despite the decade having the highest number of capital convictions. In Edinburgh, of 36 capital convictions for property offences between 1810 and 1819, 26 (72.2%) were executed. However, of 42 capital convictions in the 1820s only 14 (33.3%) were executed. This pattern fits with the arguments of Gatrell and Emsley discussed above, namely that in the face of rising capital convictions, the proportion of offenders who were executed fell, particularly for certain property offences. However, the figures for the Western Circuit do not support this argument and provide a notable caveat as they were markedly higher with 55.6% of capitally convicted property offenders executed between 1810 and 1819 and 63% in the 1820s. Table 3.1, showing executions for property offences per 100,000 head of Scotland's population by circuit, shows that by the early nineteenth century the figure for the Western Circuit, notably Glasgow, equalled and then surpassed that for Edinburgh. In contrast, the figures presented in

Table 3.1 Executions for property offences per 100,000 head of Scotland's population

	Total		*Edinburgh*		*Northern*		*Western*		*Southern*	
	Ex.	*Per head of pop.*	*Ex.*	*Per head of pop.*	*Ex.*	*Per head of pop.*	*Ex.*	*Per head of pop.*	*Ex.*	*Per head of pop.*
1750–1759	39[a]	3.1	6	0.5	27	2.1	2	0.2	4	0.3
1800–1809	22	1.7	10	0.6	3	0.2	6	0.4	3	0.2
1810–1819	59	3.7	26	1.4	5	0.3	20	1.1	8	0.4
1820–1829	52	2.5	14	0.7	4	0.2	29	1.4	5	0.2

[a]Note there were an additional four executions as a result of trials before the sheriffs in the 1750s which makes the total Fig. 43. However, these additional cases are not included here as they were conducted in various areas.

Source Figures compiled using Justiciary Court records and population statistics provided in Kyd, *Scottish Population Statistics*, p. xvii and the *Enumeration of the Inhabitants of Scotland* (Glasgow: 1823).

Table 3.2 for murder in the Western Circuit remained very low at 0.1, behind that of Edinburgh and the Northern Circuit.

A key source utilised to gain a degree of understanding of crime, or more specifically the believed prevalence of crime, in this period is the newspapers. Until the late eighteenth century, with the exception of reporting upon certain executions in northern Scotland in the post-1745 decade, crime reporting in the Scottish newspapers often only contained the basic facts of the offence with little of the journalistic opinion that can be found in the London newspapers. However, by the early nineteenth century, the newspapers offered a greater volume of opinion regarding the need for exemplary punishment in the face of a believed rise in crime. Kilday argued that in this period the newspapers gave an alarming impression regarding the nature and frequency of crime, even though the sheer number of indictments remained lower than in other countries. She suggested that this distortion played a key part in the "burgeoning misconception surrounding Scottish crime."[58] From a reading of the newspapers it is evident that, despite the reporting of increased numbers sent to the scaffold, there was an acknowledgement that Scotland was not the forerunner in this trend. However, crucially, it is also evident that certain crimes were portrayed as being committed on an unprecedented level due to the numbers being sent to the gallows. Reporting on the case of two men executed for robbery in 1815 the *Scots Magazine* echoed the sentiment of the Lord Justice Clerk in passing the death sentence, namely that the most vigorous administration of justice was required to curb the crime which was "unknown formerly in this part of the United Kingdom."[59]

Table 3.2 Executions for murder per 100,000 head of Scotland's population

	Total		*Edinburgh*		*Northern*		*Western*		*Southern*	
	Ex.	*Per head of pop.*	*Ex.*	*Per head of pop.*	*Ex.*	*Per head of pop.*	*Ex.*	*Per head of pop.*	*Ex.*	*Per head of pop.*
1750–1759	22	1.7	8	0.6	10	0.8	1	0.08	3	0.2
1800–1809	14	0.9	7	0.4	3	0.2	3	0.2	1	0.06
1810–1819	13	0.7	5	0.3	3	0.2	2	0.1	3	0.2
1820–1829	25	1.2	14	0.7	6	0.3	3	0.1	2	0.09

Source Figures compiled using Justiciary Court records and population statistics provided in Kyd, *Scottish Population Statistics*, p. xvii and the *Enumeration of the Inhabitants of Scotland* (Glasgow: 1823)

A recurring theme and contemporary fear expressed in the court records, but even more so in the newspapers, was the youth of many of those receiving capital punishments. In October 1817 the *Scots Magazine* commented that it was a remarkable circumstance and a deep regret that in one month it had been necessary to execute 11 people and most were under the age of 30.[60] Using the enumeration statistics available for 1821 it is possible to calculate that in most areas, including the main cities of Edinburgh, Inverness and Aberdeen, the industrial areas in and around Lanark, which included Glasgow, and large areas of northern Scotland including Caithness, Ross and Cromarty, about a quarter of the male population was aged between 15 and 30 with a further 9–13% aged between 30 and 40.[61] Of the 154 people executed in Scotland between 1810 and 1829, it is possible to calculate from the ages provided that at least 60% were aged between 15 and 25 and a further 12% were aged between 26 and 30. In March 1812 Hugh MacDonald, Neil Sutherland and Hugh Mackintosh were indicted for several robberies, with Mackintosh additionally charged with murder. The crimes were part of riots that had occurred in Edinburgh in December 1811, in which "idle apprentice boys … knocked down, robbed and wantonly abused almost every person who had the misfortune to fall in their way." Amidst attempts to quell the unrest Dugald Campbell, a police watchman, was beaten to death. The magistrates of the city offered monetary rewards for the apprehension of the culprits, especially the murderer. Of the arrests made, five men were brought to trial with others acting as prosecution witnesses.

The youth of the prisoners, especially MacDonald who was just 15, created a strong sensation in the court. All three were sentenced to be executed on 22 April 1812 on the High Street in Edinburgh opposite the stamp office, close to where the murder had occurred, with the body of Mackintosh to be delivered to Alexander Monro, the Professor of Anatomy at Edinburgh University, for dissection.[62] George Napier and John Grotto were brought before the court a couple of days later but pleaded guilty to one robbery each. The Advocate Depute restricted the charge so they would face a punishment short of the death sentence and they were to be transported for 14 years.[63] However, in a report sent to the Secretary of State, David Boyle, the Lord Justice Clerk, stated that, due to the alarming nature of the crime and the fact that it had occurred on the heavily frequented streets of Edinburgh, he could see no reason for the law not to take its course for the three boys facing the noose.[64] Following their execution it was reported that there had been

evident sympathy for them but the article added that their execution was intended as a dreadful and lasting example and that this motivation was "the only justification of so strong a measure."[65] Following this case the category of 'murder and robbery' was added to the return of persons committed to trial in Scotland for the years 1811–1814 presented to Parliament, again demonstrating the widespread attention the circumstances of the crime and its aftermath had attracted.[66]

In his work on the first half of the nineteenth century, Donnachie demonstrated that crimes were committed overwhelmingly by males, the vast majority of whom were under 30 years of age.[67] The current chapter supports this arguement and has found that, instead of serving as the lasting and dreadful example intended, the above case was one of several in the early nineteenth century where not only the fears over the prevalence of the crime but also the youth of the offenders would be dwelled upon. In the following year, the death sentence was handed down to John McDonald, age 20, and James Williamson Black, age 18, for murder and robbery, and the judges delivered their opinions of the case at length. They expressed astonishment that in a country "so long distinguished for knowledge and virtuous conduct" so many instances of youthful depravity should have lately occurred. As in the case discussed above, the judges lamented that they were obliged to "recur to those more striking and awful punishments which our law enjoins."[68] As well as an increase in the number of executions, this period also witnessed cases where three or even four criminals were executed for the same property offence. The fact that there were no similar cases in the second half of the eighteenth century serves to further demonstrate that there was a determination in the early years of the nineteenth century to make more stark examples of those engaged in criminality.

Richard Smith, age 16, was found guilty of housebreaking and theft and, despite the jury's recommendation to mercy on account of his young age, he was executed in May 1820.[69] Similarly, James Ritchie, age 17, was condemned in Aberdeen for stealing 30 sheep from the parks of Gordon Castle. Despite a recommendation to mercy and zealous endeavours on the part of the local clergy, university professors and the Duke of Gordon to obtain a remission, Lord Sidmouth, the Secretary of State, refused on account of the magnitude of the crime.[70] There are numerous other examples of the jury recommending an offender to mercy where the judges or the Lord Justice Clerk, in correspondence with the Home Office, declined to support the recommendation, believing that severe examples needed to be made. In 1817 John Larg and James Mitchell

were charged with having broken into the house of William McRitchie and as having stolen two papers that they believed to be bank notes, although it was later discovered that they were worthless papers of no value. When their defence attempted to object to the charge the prosecutor answered that in cases such as theirs the value of the item stolen was irrelevant. Despite finding them guilty of the crime, the jury had recommended mercy as no personal violence had been used against the occupants of the house. However, the judges were not prepared to support the recommendation as they reiterated that the offenders had been in possession of a pistol which constituted a threat of personal violence against the home owner. They added that any hopes of a pardon were "precarious indeed."[71] The two men were subsequently executed.

The important balance between the need to make strong punitive statements at times of increased capital convictions and the exercising of judicial discretion was also evident in the following case tried by the High Court in Edinburgh in February 1823. Charles McLaren and James McEwan, both age 14, and Thomas Grierson, age 13, were capitally convicted for housebreaking and theft.[72] They had unanimously been recommended mercy by the jury due to their youth and a few days before their scheduled execution date on 12 February the Lord Justice Clerk reported to the High Court that the full details of the case had been sent directly to the Home Secretary, Robert Peel. He added that he had no doubt that remissions of the death sentences would arrive for the young offenders but, owing to the state of the roads due to the weather, six London mails were running late. Therefore, it was believed to be absolutely necessary for the court to use its authority to stay the execution until 26 February to allow time for the remissions to arrive.[73] They finally did so, and the boys were sentenced to be transported for life.[74] This confidence that they would be pardoned goes some way towards explaining why they were capitally convicted in the first place, when a restriction of the punishment earlier in the proceedings could have been exercised as in other cases of a similar nature. In sentencing these young boys to death, the court wanted to make a poignant statement, but they also clearly intended their subsequent remission. The handling of their case from conviction to pardoning was a prime example of the pulling of Hay's levers of fear and mercy in the punishment of property offences in this period.[75]

When breaking down the total number of executions across the period into category of offence, it becomes clear that the sheer number of property offenders who suffered at the scaffold was subject to a

greater degree of chronological fluctuation than the figures for murder. The 1820s saw an increase in the number of executed murderers which continued into the 1830s. In addition, in his study of Scottish homicide rates, King demonstrated that between 1805 and 1814 there was an average of 1.0 recorded murder per 100,000 head of Scotland's population. By the 1830s this had risen to 1.75 and by the 1840s the figure was 2.6.[76] However, the marked upturn in the number of executions in early nineteenth-century Scotland was primarily due to an increase in the number of executions for property offences which doubled between 1810 and 1819 compared to the previous decade and remained at a similar level in the 1820s. Donnachie stated that, within the overall number of criminal investigations, property offences rose from making up slightly more than half the total number in 1810 to 75% by 1830.[77] The parliamentary returns for Scotland available for this period also demonstrate how the overwhelming majority of those committed for trials had carried out property offences.[78] Furthermore, this study has found that property offences made up 60% of the total number of executions between 1800 and 1809, rising to 80% between 1810 and 1819. It is important to note here that while the rise in the number of executions for property offences may be, in part, attributable to an increase in crimes committed, it is likely that a more efficient standard of policing and apprehension was also significant.[79] In addition, this study argues that judicial opinion and public discourse were crucial in dictating Scotland's increased use of capital punishment in the early nineteenth century and that nowhere was this more evident than in the use of capital punishment for the crime of robbery.

The crime of robbery accounted for 34% of the total property offenders sent to the gallows in Scotland across this period. In terms of property crimes, only capital convictions for housebreaking and theft sent more malefactors to their death. Chapter 2 demonstrated that, although robbery had been used as an indicator of the prevalence of crime in England since at least the mid-eighteenth century, in Scotland the offence did not appear to cause the same level of concern within the central criminal courts until the early nineteenth century. In addition, it was not until the second and third decades of the nineteenth century that the offence began to permeate crime reporting in the Scottish newspapers. The pattern for the capital conviction and execution of Scottish robbers can be linked to wider trends in the country's use of the death sentence to some extent. For example, the number of executions for robbery almost doubled between

the late 1770s and 1780s and there were discernible links to the wider difficulties facing the authorities in finding a suitably harsh alternative in lieu of the penal option of transportation. In addition, 60 of a total 114 (53%) of all executions for robbery occurred between 1810 and 1829, and correlated with the increase in the number of executions overall. Of these, 50 of the 60 executions occurred following trials before either the High Court in Edinburgh or the Western Circuit sitting at Glasgow. Again, this reinforces the centre–periphery dichotomy in the punishment of property offences highlighted by King and Ward.[80] Although nineteenth-century Scottish crime has not received the same level of historical attention as experiences south of the border, Kilday highlighted that fears over a robbery epidemic were similarly evident in Scotland as in England despite the much lower number of prosecuted cases north of the border.[81] In turn, the editorial rhetoric employed when reporting upon robbery cases that resulted in an execution in various ways epitomised judicial and press responses to the perceived rise in serious crime in Scotland in the early nineteenth century and goes some way towards explaining the high proportion of capitally convicted robbers who were subsequently executed.

When the Lord Justice Clerk sentenced William McGhee and Charles Britton to death for the crimes of robbery and stouthrief in 1820 he noted the frequency of this type of crime. They had broken into the house of James Drennan, threatened him and had stolen several items. He added that, while the offence had been a long-standing problem in a sister kingdom, it had been a rare occurrence in Scotland until recently.[82] Although stouthrief was not new to the Scottish records, charges relating to this crime were somewhat sporadic until the early nineteenth century. In addition, there were several cases of robbery tried in the eighteenth century where stouthrief was not additionally charged. Therefore, this study argues that, in charging the offence synonymously with robbery, the courts were seeking to mark out certain cases, and perhaps secure capital convictions and justify the subsequent executions in the face of rising numbers of capital convictions for property offences more generally.

Similar lamentations over Scotland's increased recourse to the death sentence, and comparisons with practices in England, were evident in several other cases in this period. As noted above, most executions for robbery followed trials in Scotland's central belt cities of Edinburgh and Glasgow. Although Edinburgh had consistently accounted for a sizeable proportion of the total number of executions across the century under examination, in the early nineteenth century the Western Circuit sitting

at Glasgow was sending as many, and in some years more, offenders to the gallows. This fact was noted, and lamented, by contemporaries. In 1824 John McCrevie was capitally convicted by the Glasgow court for two different acts of robbery and stouthrief that had involved forcible entry into houses, and in one case the beating of the owner with a poker, and the theft of various items. Two of his accomplices had fled and were outlawed for failing to appear in court. The judge, Lord Meadowbank, stated that he had no hope of a pardon as the perpetration of these crimes of late in the area threatened the security of the inhabitants and thus required a severe response.[83] Similarly strong sentiments had been expressed during the trial of Thomas Kelly and Henry O'Neil for three acts of highway robbery in 1814. The Lord Justice Clerk stated that the High Court was determined, by the most prompt and vigorous administration of justice, to punish offences of that kind to correct the "loose manners of the time."[84] The *Caledonian Mercury* added that it was due to the frequency of this offence "formerly little known in Scotland" that the court was induced to execute the men at the scene of the last robbery.[85]

Chapter 5 will demonstrate that the period between the mid-eighteenth and early nineteenth century was one of transition in terms of the staging of the public execution spectacle, including the locations at which it was carried out. The chapter will show that executions across this period were predominantly carried out at an established common place in each circuit city. However, between 1740 and 1834, there were 53 malefactors sentenced to be executed at, or very near, the scene of their crime with 32 of these cases having occurred between 1801 and 1834. This chapter has already noted the concentrated use of crime scene executions in northern Scotland during the decade following the defeat of the 1745 Jacobite Rebellion. In addition, an in-depth examination of the drivers behind Scotland's use of crime scene executions between 1801 and 1841 has been provided elsewhere and has demonstrated that their increased and concentrated usage in the early nineteenth century provides a reverse pattern to practices in England.[86] However, it is beneficial to contextualise the deviation from the established common places of execution within this chapter's investigation of the increased use of capital punishment more widely in the first third of the nineteenth century. There were discernible similarities in some cases to justify hanging an offender at the scene of their crime, such as the youth of the offenders or the perceived prevalence of the crime they had committed. In addition, within the increased space dedicated to crime reporting in the newspapers, there

were calls for some further severity to quell the unprecedented numbers facing the hangman's noose. A reading of judicial opinion when ordering that an offender be executed at the scene of their crime reveals similar attitudes to those previously discussed in this chapter, namely a lamentable dismay at the necessity to resort to more striking and severe punishments. These executions were yet another distinct Scottish response to the rising numbers of capitally convicted offenders in Britain and serve to further demonstrate that, although there were similar attitudes and practices discernible north and south of the border, Scotland's capital punishment history in this period cannot be readily assimilated into the more Anglo-centric British narrative.

Conclusion

To conclude, despite the rich historiography that has explored the storied history of capital punishment in eighteenth and early nineteenth-century Western Europe, studies of the Scottish experience have been relatively limited. However, a key argument running throughout the current study is that this period was one of discussion and debate over the use of the death sentence and the merits of public punishment in Scotland. Chapter 2 explored the relative autonomy of the Scottish legal system in the wake of the 1707 Union which meant that many of the capital statutes that made up the 'Bloody Code' were not extended north of the border. In addition, it detailed some of the nuances of the Scottish court system that impacted upon their use of the death sentence. To advance our understanding of Scotland's use of capital punishment, the current chapter provided an examination of three key periods in the country's execution history. It has demonstrated that an exploration of the drivers behind the use of the death sentence at each of these junctures can reinforce some of the arguments within the broader capital punishment narrative primarily focused upon England. However, the motivations for the meting out of the death sentence for specific crimes at certain times were rooted in a unique Scottish context.

The mid-eighteenth century was a period of debate and concern over criminality and various parts of Britain witnessed an increase in capital convictions. However, while studies of England have shown that concerns over criminality were very much a problem facing the authorities of London and its surrounding areas, the current chapter has demonstrated that in Scotland the use of capital punishment was explicitly linked to the aftermath of the 1745 Jacobite Rebellion. The death sentence was

employed as part of wider attempts to permanently stabilise the peripheral north, an area which, in parts, had been largely impenetrable to the central government authorities. Certain crimes, such as cattle theft, had been a long-standing problem in the Highlands due to a combination of the lack of strong central legal authority and embedded local customs, and offences of this kind were especially targeted for severe punishment. In the ten-year period between 1746 and 1755 executions following trials before the Northern Circuit accounted for over half the total number in Scotland. In addition, this period saw the highest proportion of capitally convicted offenders subsequently executed and the highest number of executions per 100,000 head of Scotland's population. This further demonstrates the determination of the authorities to be seen to be enacting vigorous, and centrally driven, justice at a more local level. In this sense, this chapter's examination of mid-eighteenth-century northern Scotland provides some reinforcement to Garland's argument for the Early Modern period, namely that the death penalty was afforded a central role in the task of state security.[87] In addition, although this study broadly reinforces King and Ward's argument that capital punishment for property offences was more frequently deployed in central areas than in the peripheries, particularly in the early nineteenth century, it has shown that the mid-eighteenth century provides something of a caveat.[88]

Following the mid-eighteenth century, capital convictions decreased and remained relatively stable in Scotland until the 1780s when they doubled compared to the previous decade. The drivers behind this marked increase can be more readily situated within the wider British context than the earlier peak as both the English and Scottish authorities faced difficulties due to the temporary cessation of the penal option of transportation. In addition, while levels of capital punishment had been impacted by demobilisation since at least the mid-eighteenth century in England, it was not until the 1780s that members of the armed forces notably littered the Scottish court records. Despite these similarities, this chapter has again identified a unique Scottish response to this British problem. In England, historians have shown that there was not only an increase in the proportion of capitally convicted offenders executed, there was also a determination not to extend the Royal mercy for certain property offences.[89] Comparatively, building upon Chap. 2, the current chapter has demonstrated that the nuances of the Scottish court system, particularly the practice of allowing the courts to restrict the level of punishment to be meted out before the commencement of potentially capital

trials, required the availability of a suitably harsh secondary punishment in transportation. When it was temporarily unavailable, the courts were unable to exercise this discretion as frequently and thus passed the death sentence in cases of property crime where previously they would likely have restricted the punishment, something they would do so again when transportation to Australia was established. However, while the sheer number of death sentences and executions increased, particularly for property offences, there was not the same determination to send all capitally convicted offenders to the scaffold. In fact, the proportion of capitally convicted property offenders who were executed fell slightly in the 1780s compared to the previous decade.

As in the previous periods, Scotland was not alone in witnessing an increase in capital punishment in the early nineteenth century. However, again, this chapter has identified unique Scottish responses to the problem. For example, historians have shown that the increasing gap between the numbers of capital convictions and executions in England in the second and third decades of the nineteenth century meant that the capital code became unworkable.[90] Comparatively, this chapter has demonstrated more proportional continuity in the number of capitally convicted offenders who were executed between the 1770s and 1820s in Scotland. A potential explanation for this may be found in the fact that there were far lower numbers of malefactors who faced the death sentence north of the border throughout the period under examination in this study. In addition, a reading of judicial opinion when sentencing offenders demonstrates that previous acknowledgements of Scotland's lesser recourse to the death sentence in the newspapers turned to lamentations over its increased use in the early nineteenth century. In turn, the perceived need for some further severity to quell the rising number of people facing the hangman's noose was used in the courts and in the press to justify the use of crime scene executions, a penal option not used to a similar extent in Scotland since the mid-eighteenth century.

To conclude this chapter, it is important to note that by 1834, the end of the period under examination in this study, the use of capital punishment in Britain had undergone major changes judicially, ideologically and practically. The number of offenders executed in Scotland, which had doubled between the first and second decades of the nineteenth century and had risen further in the 1820s, halved in the 1830s. Furthermore, similar to the situation in England, by the 1830s murder was the predominant crime sending offenders to the scaffold as property

offenders increasingly received the non-capital punishments of transportation and prison sentences, a fact also noted by Riggs in his investigation of prosecution decisions and the restriction of the charges in cases of property crime.[91] Compared to the figure for murder, which had remained steady in the three decades between the 1810s and the 1830s, the proportion of capitally convicted property offenders decreased in the 1820s compared to the decade between 1810 and 1819. Thus, the late 1820s and 1830s in Scotland would provide some reinforcement to Gatrell's argument that the authorities could not feasibly execute large proportions of property offenders.[92] By 1841 Lord Cockburn, a Justiciary Court judge, noted an aversion to capital punishment on the part of the courts, even for crimes such as rape and robbery, the latter of which had been a particular concern in Scotland two decades earlier.[93] Furthermore, while there were still discussions over the believed prevalence of certain crimes within the newspapers, their attention increasingly turned towards debates over the reform of the capital code. For example, Chap. 2 demonstrated that the crime of forgery ceased to result in offenders being sent to the gallows, a fact noted by contemporary reformers, and that the English legislation passed relating to the offence was extended to Scotland.

Notes

1. See John Louthian, *The Form of Process before the Court of Justiciary in Scotland* (Edinburgh: 1732); David Hume, *Commentaries on the Law of Scotland Respecting Crimes, Volumes 1 and 2* (Edinburgh: 1819); Sir Archibald Alison, *Principles of the Criminal Law of Scotland* (Edinburgh: William Blackwood, 1832).
2. J. M. Beattie, *Crime and the Courts in England 1660–1800* (Oxford: Oxford University Press, 1986), 532–533.
3. For an analysis of the increase in committals for theft in Staffordshire, see Douglas Hay, "War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts", *Past and Present* 95 (1982): 117–160. For an analysis of Essex see Peter King, *Crime, Justice and Discretion in England 1740–1820* (Oxford: Oxford University Press, 2000), 153–168.
4. Richard Ward, "Print Culture, Moral Panic, and the Administration of the Law: The London Crime Wave of 1744", *Crime, History and Societies* 16 (2012): 5–24, 10.
5. *Caledonian Mercury*, Thursday, 8 November 1744, 4; NAS JC7/24/497.
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11. *The Rise of the Present Unnatural Rebellion Discover'd; and the Extraordinary Power and Oppression of the Highland Chiefs Fully Display'd* (London: 1745), 13.
12. Stephen J. Davies "Law and Order in Stirlingshire, 1637–1747" (PhD Thesis, University of St Andrews, 1984). For his discussion of the demise of the old legal order between 1690 and 1747, see 443–493.
13. NAS JC11/13/19–28; *Derby Mercury*, Friday, 16 September 1748, 4.
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15. Devine, *Scottish Nation*, 46.
16. TNA SP54/37/1. Letter dated 3 October 1747.
17. Colin Kidd, *Subverting Scotland's Past: Scottish Whig Historians and the Creation of an Anglo-British Identity 1689–c.1830* (Cambridge: Cambridge University Press, 1993), 155.
18. David G. Barrie and Susan Broomhall, "Public Men, Private Interests: The Origins, Structure and Practice of Police Courts in Scotland, c.1800–1833", *Continuity and Change* 27 (2012): 83–123, 88.
19. NAS JC11/14/321.
20. Peter King and Richard Ward, "Rethinking the Bloody code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery", *Past and Present* 228 (2015): 159–205, 160.
21. Sharon Howard, "Investigating Responses to Theft in Early Modern Wales: Communities, Thieves and Courts", *Continuity and Change* XIX (2004): 409–430, 411–414.
22. *Scots Magazine*, Monday, 7 July 1755, 39.
23. NAS JC11/16/247.
24. *Derby Mercury*, Friday, 17 July 1752, 1.
25. NAS JC11/17/239.
26. This is evidenced by the fact that, of the total 35 executions in the 1770s, 25 had occurred between 1770 and 1774, before the outbreak of the war. Therefore, there was not an immediate increase in capital convictions or executions in Scotland.

27. Beattie, *Crime and the Courts*, 584.
28. Simon Devereaux, "Imposing the Royal Pardon: Execution, Transportation and Convict Resistance in London, 1789", *Law and History Review* 25 (2007): 101–138, 120.
29. Hay, "War, Dearth and Theft in the Eighteenth Century", 145.
30. Beattie, *Crime and the Courts*, 532–533.
31. For a more extensive study of Scottish soldiers in the British army, see Steve Murdoch and A. Mackillop (eds.), *Fighting for Identity; Scottish Military Experience c.1550–1900* (Leiden: Brill, 2002).
32. NAS JC13/24/67.
33. Ian Donnachie, "Scottish Criminals and Transportation to Australia, 1786–1852", *Scottish Economic and Social History* 4 (1984): 21–38, 22.
34. *Gentleman's Magazine and Historical Chronicle*, Vol. 56 (London: 1786), 264.
35. NAS JC11/38/27.
36. TNA HO102/51/267; HO102/51/365.
37. NAS JC7/41/411.
38. NAS JC7/42/67. Note that in Scotland there were 15 jury members and a majority decision was sufficient to return a verdict. Within the court records it would be stated whether the jury had unanimously found the accused guilty or not guilty, or if they had reached their decision by a "plurality of voices", but, in most of these cases, the ratio would not be stated.
39. *Caledonian Mercury*, Wednesday, 4 February 1784, 3.
40. NAS JC11/38/63.
41. TNA HO102/51/497.
42. TNA HO102/50/11.
43. King, *Crime, Justice and Discretion*, 291.
44. TNA HO102/52/15.
45. TNA HO102/50/126; HO102/50/131.
46. For select studies of the English experience, see V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770–1868* (Oxford: Oxford University Press, 1994); Clive Emsley, *Crime and Society in England 1750–1900* (London: Routledge, 2013); King, *Crime, Justice and Discretion*.
47. See Ian Donnachie, "The Darker Side: A Speculative Survey of Scottish Crime During the First Half of the Nineteenth Century", *Journal of the Economic and Social History of Scotland* 15 (1995): 5–24; Peter King, "Urbanisation, Rising Homicide Rates and the Geography of Lethal Violence in Scotland 1800–1860", *History* 96 (2011): 231–259. For a study of the subsequent reduction of capital punishment in favour of sentencing the punishments of imprisonment or transportation,

see Paul T. Riggs, "Prosecutors, Juries, Judges and Punishment in Early Nineteenth-Century Scotland", *Journal of Scottish Historical Studies* 32 (2012): 166–189.

48. Emsley, *Crime and Society in England*, 265–267.
49. Gatrell, *Hanging Tree*, 544.
50. Gatrell, *Hanging Tree*, 103.
51. The figures for the 1820s differ as there were three executions for treason and 21 remissions. If we remove these figures from the totals the percentage of executions rises to 52%. In addition, the period 1830–1834 saw 70% of those convicted executed. This was arguably because, by this time, more capital convictions were for murder and thus were less likely to be pardoned.
52. M. Anne Crowther, "Crime, Prosecution and Mercy: English and Scottish Practice in the Early Nineteenth Century", in *Kingdom's United? Great Britain and Ireland since 1500*, ed. by S. J. Connolly, 225–238, 233, Dublin: Four Courts Press, 1999.
53. David Turnock, *The Historical Geography of Scotland since 1707* (Cambridge: Cambridge University Press, 1982), 166.
54. Andrew Gibb, "Industrialisation and Demographic Change: A Case Study of Glasgow 1801–1914", in *Population and Society in Western European Port Cities c. 1650–1939*, ed. by Richard Lawton and Robert Lee, 37–73, 46, Liverpool: Liverpool University Press, 2002.
55. Bruce Lenman, *Integration and Enlightenment Scotland 1746–1832* (Edinburgh: Edinburgh University Press, 1981), 152.
56. Barrie and Broomhall, "Public Men, Private Interests", 91, 104.
57. King and Ward, "Rethinking the Bloody Code".
58. Anne-Marie Kilday, "Contemplating the Evil Within: Examining Attitudes to Criminality in Scotland 1700–1840", in *Crime, Courtrooms and the Public Sphere in Britain 1700–1850*, ed. by David Lemmings, 147–166, 159, Surrey: Ashgate, 2012.
59. *Scots Magazine*, Sunday, 1 January 1815, 31.
60. *Scots Magazine*, Saturday, 1 November 1817, 88.
61. *Enumeration of the Inhabitants of Scotland, taken from the Government Abstracts of 1801, 1811, 1821* (Glasgow: 1823), 52.
62. NAS JC8/8/266.
63. NAS JC8/9/1.
64. TNA HO102/55/66.
65. *Aberdeen Journal*, Wednesday, 29 April 1812, 3.
66. *Parliamentary Papers*, Vol. XI (163) 1814–1815. A Return of Persons, Male and Female, Committed in the Years 1811, 1812, 1813 and 1814 to the Several Gaols in Scotland.
67. Donnachie, "The Darker Side", 20.

68. NAS JC8/9/232; *Scots Magazine*, Monday, 7 June 1813, 36.
69. NAS JC13/48/33.
70. *Scots Magazine*, Monday, 1 June 1818, 85.
71. NAS JC8/11/269; *Caledonian Mercury*, Thursday, 23 January 1817, 4.
72. NAS JC8/17/7.
73. NAS JC8/17/21.
74. TNA HO104/6/180.
75. Douglas Hay, "Property, Authority and the Criminal Law", in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. by Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thomson and Cal Winslow, 17–63, 51, London: Allen Lane, 1975.
76. King, "Urbanisation, Rising Homicide Rates and the Geography of Lethal Violence", 237.
77. Donnachie, "The Darker Side", 9–10.
78. *Parliamentary Papers*, Vol. XI (163) 1814–1815; *Parliamentary Papers*, Vol. XXXV (499) 1831–1832. Return of Number of Persons Brought for Trial for Capital Crimes before Justiciary Courts in Scotland, 1827–1831.
79. This is a fact noted by Donnachie in "The Darker Side", 6.
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CHAPTER 4

Scottish Women and the Hangman's Noose

This study has thus far provided chapters examining the place of capital punishment within the Scottish criminal justice system and has explored three key periods in Scotland's use of the death sentence between 1740 and 1834. Although Scottish women were among the numbers sent to the scaffold in each of these periods, they accounted for less than one in ten of the total offenders executed overall. However, this chapter will demonstrate that a study of the Scottish women who did receive a capital punishment can enhance not only the field of eighteenth and nineteenth-century Scottish criminal history but can also provide a fresh perspective from which to view the Scottish female experience in this period.

Within the historiography focused upon women in Scotland in this period, some studies have highlighted their crucial contribution to Scotland's industrial development.[1] In addition, Mitchison and Leneman provided studies of sexuality and social control, in rural and urban Scotland respectively, between the mid-seventeenth and late eighteenth centuries that have included analyses of attitudes towards illegitimacy.[2] More recently, the edited collection *Gender in Scottish History since 1700* offered an analysis of key aspects of Scottish history, including identity, employment, religion and culture from a previously limited female perspective.[3] In terms of women and Scotland's penal history, there have been numerous works dedicated to the witch-hunt in Scotland that have described the distinct Scottish experience of this European phenomenon.[4] In addition, despite the dearth in studies of capital punishment, Kilday provided a pioneering work focused upon women and the

R.E. Bennett, *Capital Punishment and the Criminal Corpse in Scotland, 1740–1834*, Palgrave Historical Studies in the Criminal Corpse and its Afterlife, https://doi.org/10.1007/978-3-319-62018-3_4

commission of violent crimes in Lowland Scotland between 1750 and 1815.[5] Infanticide has also been examined, with Kilday in particular having worked extensively upon the crime in Scotland and its place within the wider British narrative.[6] However, the current chapter will provide the first study dedicated to examining the implementation of capital punishment against women in Scotland, including an analysis of the types of offences that led women to the scaffold and an exploration of the varied responses to female perpetrators in the courts and in public discourse.

There were a range of penal options available to the Justiciary Court judges in eighteenth- and nineteenth-century Scotland to punish convicted female offenders. Like Scottish men, women could face the most serious punishment, the death sentence, as well as punishments that removed them from the realm, namely transportation and banishment from Scotland, as well as prison sentences and corporal punishments. Between 1740 and 1834, a total of 79 women were capitally convicted in Scotland, of whom 47 (59%) were executed and 32 (41%) were subsequently pardoned. Of the total number of 505 executions in Scotland between 1740 and 1834, these 47 condemned women made up 9.3% of the total offenders who met their fate upon the scaffold. This figure is comparable to those presented for England and thus it reinforces the broad argument that women made up a low proportion of the total offenders who suffered a capital punishment in Britain.[7] Therefore, it is not surprising that several years could separate the executions of women in Scotland. For example, there were no women executed in Scotland for 15 years between 1793 and 1808. In some circuit cities, the occurrence was even rarer, a fact that was often noted by contemporary newspapers.

This book dedicates a chapter to examining the women who faced the hangman's noose for two key reasons. First, the structure adopted thus far has allowed for an expansive survey of the use of capital punishment in Scotland and a closer examination of three key periods in the use of the death sentence. Although women were among those sent to the gallows, their low numbers and the fact that the executions were relatively spread out over the period provided limited scope for any substantial analysis of their experience. Second, a specific investigation of the cases of the women who received a death sentence provides an opportunity to glean details about wider responses to female criminality. As Walker suggested, the concept of gender can be employed as an analytical tool to provide historians with an insight into the role of women in both the domestic setting and in the wider community.[8] Through a close reading of the available material on individual cases, the chapter will adopt a primarily qualitative analytical

approach when examining the types of offences that sent women to the scaffold, and the legal and lay responses to them across the period.

The central argument to be made here is that, like the treatment of male criminals, the Scottish criminal justice system exercised a large degree of discretion when deciding upon the punishments to be meted out to the women brought before their main judicial courts. Scottish women were not given "escalated and aggravated punishments for their crimes in comparison to their male criminal counterparts" as has been suggested.[9] Instead, the death sentence accounted for about 4% of all punishments meted out to women by the High Court and the three circuit courts in Scotland in this period.[10] However, despite the low overall number of executions, the chapter will demonstrate that the Scottish courts were prepared to exercise the full weight of the law where it was deemed necessary due to the circumstances surrounding individual cases.

To enhance this argument the chapter will be structured as follows. It will first investigate the women capitally convicted for the crime of homicide. From a reading of the valuable information offered in the court records and in the newspapers, it will examine the importance of the victim, and the motive and method of killing in shaping responses to these women. The second section will provide an in-depth exploration of the crime of infanticide as, in over two thirds of the total homicide cases that resulted in a capital conviction, the victim was the woman's own child. Again, the crime has gender-specific resonances and an exploration of these cases can be used as a lens into wider issues surrounding motherhood and illegitimacy. The third and final section of the chapter will provide an examination of the punishment of women convicted for property offences in this period. It will highlight that the Scottish courts exercised a great degree of discretion when deciding upon the types of punishments to be handed down and that only a small proportion of the women who were charged and convicted by the courts of a potentially capital property crime were subsequently given the death sentence. However, in the small number of cases that did result in an execution, it is possible to discern particular factors that led certain women to the scaffold, notably if they were repeat offenders.

Homicide

The crime of homicide has long been set apart within the annals of penal history. Among the black catalogue of crimes that led criminals to the scaffold in the eighteenth and nineteenth centuries, homicide required an exemplary judicial response due to the fear and revulsion surrounding

the commission of the offence. An examination of the legal responses to those found guilty of the crime is crucial to this study of capital punishment as vital information can be gleaned about not only the implementation of the death sentence, but also how the courts viewed the role of the public execution in providing a stark and exemplary demonstration of the criminal justice system's response to homicide. It is the intention here to question these things in relation to the murderous Scottish women who met their fate at the end of the hangman's rope. Of the total 47 women executed across this period, 36 had been convicted of murder. In 23 of these cases the victim had been their own child. The crime of child murder, often also referred to as infanticide, whilst a form of homicide punishable by death, was treated with some distinction and is thus extensively analysed in the next section. However, the chapter will first examine the cases of the remaining 13 women executed for murder, including an investigation of their victims and the method of killing and how these things impacted upon their treatment in the courts. Contemporary responses to these crimes were often shaped by the fact that the perpetrators were female and, in some instances, it was not solely the motives or violence employed in the murders that caused the greatest consternation, but shock at the fact that a woman had been capable of such a crime at all.

Kilday highlighted that in 88% of cases where women were indicted for homicide, the victim was a relation or someone close to the accused, compared with a figure of only 27% for men.[11] The figures for those capitally convicted and executed for murder broadly reinforce this finding, as in 41% of male murder cases the victim was a family member, predominantly their wife or a lover, and the remaining 59% of cases were made up of murders that occurred during the commission of property offences or disputes, often drunken ones, between work colleagues and strangers. Comparatively, of the 36 women executed for murder, there were only five cases where the victim was a stranger to them. Of the remaining cases, 23 women had been convicted of infanticide, or child murder, four had murdered their husbands and four had murdered other family members including siblings and in-laws. An in-depth exploration of these women, including their motivations for murder and their chosen methods of killing, highlights a fresh and valuable perspective of the domestic life of some Scottish women across this period. It provides a different angle from which to view the eighteenth- and nineteenth-century wife and mother and, crucially, reveals the varied responses to women who violated these roles through murder.

In 1754 Nicholas Cockburn was executed in Edinburgh for the murder of her husband James Kid and her step-mother Susan Craig after she laced their porridge with arsenic. Neighbours had told the court that Nicholas and her husband "did not live well together as man and wife ought to" and on the day of his death she had shown no "natural concern." Similarly, Nicholas was described as harbouring ill feeling towards Susan due to her belief that she would obtain her father's money upon his death. Although she had not initially been suspected of her husband's murder, when the cause of Susan's death was discovered her neighbours raised their suspicions due to the couple's strained relationship and a quantity of arsenic was discovered in her home.[12] When addressing Nicholas to sentence her to death and order that her body would be sent for dissection as per the stipulations of the Murder Act, the Lord Justice Clerk lamented the shocking nature of the crime. He noted that the punishment she received was a mild one in comparison to those inflicted upon offenders in other countries.[13] He was likely referring to the fact that in England the crime of a wife murdering her husband was categorised as a form of petty treason punishable by burning at the stake. The executions were often mitigated in practice by the second half of the eighteenth century as the executioner could strangle the women before they were burnt, although there were examples where this did not happen. This form of punishment was not formally abolished until 1790.[14] Despite the extension of the English laws regarding full treason to Scotland in 1708 (7 Ann c.21), the crime of petty treason was not extended north of the border. However, a reading of the responses to Scottish women who murdered their husbands, such as that above, reveals a specific abhorrence for the offence, even compared to other forms of homicide.

Margaret Shuttleworth and her husband Henry had been married for 15 years and ran the Hope Inn in Montrose but accounts of their volatile relationship offered to the court during her trial for his murder highlighted Margaret's neglect of her expected duties as a wife. She was accused of being regularly drunk and "outrageous with her tongue", often cursing and swearing at her husband. On the night of Henry's death, Margaret had rushed to a neighbour's house crying that he had been murdered. He was found to have been struck on the head with a poker. In the court, Margaret maintained her plea of innocence and claimed that any number of people could have committed the crime as it was a market day and there were many people passing through the inn. When the Advocate Depute addressed the

jury he acknowledged the circumstantial nature of some of the evidence but stated that he considered the charge clearly proven due to the proof offered of her previous "outrageous conduct."[15] Despite the lack of the same premeditation to murder that was more prominently apparent in several other cases, in Margaret's case it was upon her deficiencies as an obedient wife that the prosecution had built its strongest case for her conviction of the murder.

In the case of Margaret Cunningham, it was her motive for the crime that the court found the most abhorrent. She had poisoned her husband John Mason with arsenic in their home in Fife so she could continue her extra-marital relationship with a man named John Skinner. Although her execution had to be delayed because she was pregnant, within a month of the birth she appeared at the bar with the new-born child in her arms to hear the judge pass the death sentence. He recommended that she make her peace with God as she had no hope of a reprieve due to her motive for the murder and the premeditation she had employed when carrying it out.[16] The court's determination to use her case as an example of the reward for murder was made more emphatic because the city of Edinburgh had not witnessed the execution of a woman for 30 years and thus the crowd gathered was immense.[17]

Of the 36 women executed for murder in this period, their victim was a stranger to them in only five (13.8%) of the cases. Comparatively, of the 124 men executed for murder, their victim was a stranger to them in at least 50 (41%) of the cases. Despite the evident proportional difference in these figures, when comparing the circumstances in these male and female homicide cases there is a discernible area of comparison: the motive of financial gain. In around half of the cases where men murdered strangers they were also indicted for a property offence such as theft or robbery, and in several others they had owed the deceased money which had been the cause of a fatal fight. In four of the five cases where women were executed for the murder of a stranger the crimes had been financially motivated. The case of Helen Torrance and Jean Waldie in 1752 pre-dated the shocking and now infamous Burke and Hare murders of the early nineteenth century but was similarly motivated. They abducted and murdered John Dallas, a boy of eight who lived in their neighbourhood, and sold his body to some medical students. Their defence pointed towards John's previous ill health and the fact that there were no marks of violence on the body, but their attempts to cast doubt on whether he had been murdered or had died of natural causes failed. The prosecution's case, that they had stolen a living child

and sold a dead body to the medical students, was enough to remove any doubts over their guilt and to capitally convict the two women.[18]

The case of Mary McKinnon is noteworthy here as it was the only one, of the total five women executed for the murder of a stranger, that was not financially motivated, nor was there evidence of any premeditation. However, the circumstances surrounding both her profession and her place within the wider community were key factors that prompted the court to pass the death sentence. She was a brothel keeper on South Bridge Street in Edinburgh and on the night in question the deceased had visited with a group of men when a scuffle broke out. Mary had attempted to intervene between one of the girls and William Howatt when he grabbed her by the hair and she reached for a nearby knife and stabbed him, inflicting what proved to be a fatal injury. On the day of her trial the courtroom was full and, outside, Parliament Square and the High Street were thronged with people waiting to hear the details of the case which lasted for over 18 hours.[19] She was found guilty by a plurality of voices by the jury but recommended mercy. However, in pronouncing the death sentence, the judge advised her to prepare for the day of her execution as he could see no reason why mercy would prevail.[20]

Mary's case is interesting as there was clearly an argument to be made for self-defence or a restriction of the murder charge to the lesser, and non-capital, charge of culpable homicide. This had been the case in numerous similar instances; for example, in cases brought before the Justiciary Court where fatal wounds had been inflicted during fights between male perpetrators and their victims. In addition, she was not unanimously found guilty but, due to the Scottish practice where only a majority verdict was required by the jury, she was convicted. Furthermore, although she had been recommended mercy by the jury, there is no correspondence within the Home Office pardoning records to suggest that the judges endorsed this recommendation and, as has previously been argued, the opinion of the judges was often taken into serious consideration when deciding whether to pardon capitally convicted offenders. Evidence of the determination to send her to the scaffold is also clear if we consider that, in the period between 1740 and 1834, a total of 26 men were pardoned for murder and 16 of the cases had similarities with Mary's in that the deaths had occurred because of wounds inflicted during fights and lacked the premeditation to murder. However, the fact that the same pardon was not extended to Mary was likely more related to her position as a brothel keeper and the public interest in the case this had caused, rather than the circumstances surrounding the murder itself.

When analysing female criminality, Kilday argued that the Scottish women who used violence in the commission of their crime were subject to greater censure by the courts due to their straying from their more traditional and domestic contemporary roles.[21] This chapter will now seek to enhance our understanding of the legal and press responses to women and the commission of violent crime through an analysis of the methods of killing utilised by the 13 women executed for murder in this period. In seven of the cases the women had poisoned their victims, arsenic was used on four occasions. It was a relatively accessible substance as it was regularly used in households to combat vermin. In the case of Nicholas Cockburn, her use of arsenic to poison both her husband and her step-mother had prompted a national debate over the availability of the substance. When lamenting the case the judges at the Southern Circuit ordered the local sheriffs to implement the stricter sale of arsenic in order to combat its use for poisoning which was referred to as a "major public concern."[22] When Catherine Davidson poisoned her husband, an article detailing the murder in the *Caledonian Mercury* found particular concern in the fact that she had mixed sulphuric acid with whisky in order to pour it down her husband's throat while he slept.[23] In cases of poisoning, the women had not only committed a murder but they had also tapped into the recurring contemporary fear that poisoning was a difficult crime to guard against, particularly in the domestic space, and it fundamentally violated the trust, or at least wifely deference, in a marital relationship.

Of the remaining six cases, two women had suffocated their victim and another had stabbed the deceased, but there were three in which more overt violence was used. In the case of Margaret Shuttleworth, discussed above, she had hit her husband on the head with a poker, perhaps during an altercation. However, the cases of Margaret Adams and Christian McKenzie respectively provide a reinforcement of Kilday's assessment that "fatally violent women in Scotland were not to be forgiven, understood or sympathised with."[24] Indeed, due to the rarity of such violent cases involving women, they were believed to be almost beyond comprehension. When Christian McKenzie was indicted at the Inverness Circuit Court in September 1764 for the murder of her brother-in-law and her mother-in-law her defence stated to the court that "the crimes are so shocking in nature that it would be impossible for any person, especially the panel who is but a woman of 19, to commit such barbarity."[25] She had often quarrelled with Mary Taylor, her mother-in-law, and one day she violently attacked her on the road

outside Inverness. Mary had cuts to her face and several other wounds when her body was discovered. Christian had also smothered 13-year-old Kenneth, her brother-in-law, as he had discovered her crime and intended to raise the alarm.[26]

Margaret Adams, age 22, had been convicted along with her sister Agnes, age 16, for the murder of shopkeeper Janet McIntyre. In the court their defence labelled the crime as too horrid in nature and the details of the murder as being too incredible to have been committed by women.[27] The sisters had entered Janet's shop on Argyle Street in Glasgow and violently beat her about the face and head with a brickbat and strangled her with a handkerchief, after which they plundered the shop for money. Although they were both capitally convicted, Margaret, as the principal offender, was executed while Agnes was conditionally pardoned.[28] Due to the violence involved in the case it was extensively detailed in the Scottish newspapers and received substantially more coverage in several English newspapers than other Scottish murders. Therefore, the case supports King's argument that female murderers were often given around double the average coverage afforded to other offenders in the late eighteenth-century press.[29]

Infanticide

Within the annals of female criminality in the eighteenth and nineteenth centuries the crime of child murder, or infanticide, has featured prominently due to its gender-specific connotations as, in most cases, the perpetrator was the mother.[30] The current chapter will further this body of work by situating a study of infanticide within its broader analysis of Scotland's use of capital punishment. It will explore the motives of the women who committed the crime and the methods they employed to carry it out and how these things impacted upon their treatment in the courts. In addition, as child murder accounted for an overwhelming majority of the total number of women tried for murder before the courts, this study offers a unique insight into the punishment of women in this period. In terms of the wider aim of this book, namely to chart the changing use and implementation of capital punishment in Scotland between 1740 and 1834, the crime of infanticide is an important area of analysis as this period witnessed a gradual shift in judicial responses towards it. The central argument here is that, although the crime of child murder sent more Scottish women to the scaffold than any other

offence, the Scottish courts exercised a great degree of discretion when sentencing offenders and, of the total number of women who received some form of punishment for the crime, in only 13% of cases was a capital punishment handed down.

The theme of illegitimacy as a motive is pervasive in studies of infanticide and this is reflected in the fact that, of the 23 women executed for the crime, their victim was an illegitimate child in all but one of the cases. The 1690 Scottish 'Act Anent Murthering of Children' directed juries to capitally convict women who had concealed their pregnancy and the birth of an illegitimate infant that had subsequently died, with or without direct evidence of murder. Its provisions mirrored those of the 1624 statute in England, namely that the onus was upon the mother to prove her innocence of the crime and that the child had been born dead. Symonds advised that the statute "marked both public awareness of infanticide and a new will to govern resolutely, for it forced jurors to presume guilt…even when they were shown no direct evidence of murder."[31] While illegitimacy itself carried a social stigma, a reading of the motives of the women who murdered their infants reveals that it had broader implications.

Examining the biographical information offered to the courts, it is evident that at least 14 of the 22 women executed for the murder of their illegitimate child worked in some form of domestic service. Young and unmarried domestic servants fit the archetypal profile of many of the women brought before Britain's criminal courts for the crime of child murder.[32] They were of childbearing age, often lived in close proximity to men and, crucially, their employment required that they remain single and childless and thus an illegitimate infant could mean a loss of reputation for an employer and a dismissal without a reference for the mother.[33] The prominence of these women in the court records may be explained by the fact that they were more likely to be caught due to the close proximity of their living quarters to their employer or other members of staff and the general difficulty of concealing the birth and the death of an infant. In some cases the statute was considered particularly relevant as the women concerned were suspected of being with child but had denied it. One example is Katharine Ross, whose repeated denials of being pregnant to both her employer and fellow servants and her giving birth in a dunghill near her place of employment without calling for assistance removed any doubt in the minds of the court that she had intended to murder her child.[34]

Despite its negative implications for the unmarried domestic servant in this period, the bearing of an illegitimate child did not drive all women to commit the crime of infanticide. Symonds estimated that illegitimate births accounted for at least 5%, likely more, of the total births in Scotland between the late seventeenth and eighteenth centuries.[35] At the start of civil registration in 1855, illegitimate births accounted for 9.1% of the total.[36] Although in 22 of the total 23 child murder cases women had murdered their illegitimate children, in some cases it was not necessarily the status of having an illegitimate child that was their primary motive, but the financial implications. Anne Mackie was a widow with four children from her marriage when she began a relationship with a younger man named James Gray. However, when she revealed her pregnancy to him he refused to marry her and she strangled the child at birth.[37] Agnes McCallum had given birth to an illegitimate infant at the age of 16 but the child was left in the care of the father in Greenock when she moved to Paisley to work as a bleacher. At the age of 30 she had given birth to another child but in this case the father was a married man. When the infant was five months old she had asked him for more money to pay for a nurse and when he refused she poisoned the child with vitriol. The *Caledonian Mercury* observed that, prior to the murder, Agnes had showed "all the tender feelings of a mother" until circumstances had driven her to commit the crime.[38] Combined with the fact that Agnes had another living illegitimate child, this is further evidence that, in some of these cases, illegitimacy alone was not a motive for murder if arrangements could be made to adequately care for the child. In Agnes' case the financial implications of having no male support were crucial in her motive for the murder.

Despite their capital conviction before the courts, there was some evident consideration of, if not sympathy for, the circumstances that had led the women who murdered their children to the scaffold. Reporting on the case of Margaret Gillespie in 1749, the *Scots Magazine* recounted her version of events in which she had been ravished against her will and deserted by a married man.[39] The coverage afforded to the case was extensive compared to other murder cases in the Scottish press in the mid-eighteenth century, perhaps demonstrating how her case had captured the public's interest, if not even sympathy. Barbara Malcolm was executed in Edinburgh in 1808 for the murder of her 18-month old daughter Margaret and was the last woman executed for child murder in Scotland in the period under investigation here. A reading of the

press coverage of her case can enhance our understanding of the varied responses to women who murdered their children as, despite an evident abhorrence for the method in which she had murdered the child, there was also some consideration given to the circumstances that had forced her to it. Following the birth of her illegitimate daughter, Barbara had paid another woman to nurse the child. However, when the woman's own child was fully weaned she could no longer care for Margaret and Barbara found herself unable to work to support herself and the infant. After two unsuccessful appeals to Margaret's father she poisoned the child with vitriol and medical witnesses attested to the court that she would have died "in excruciating torture."[40] Despite strongly condemning the murder itself, one article described how Barbara was a mild tempered and caring mother until the rejection of the child's father had driven her to commit the awful crime through desperation.[41] In addition, a report of her execution described a solemn scene in which she was so feeble with grief that she needed support to mount the scaffold.[42] These accounts highlight that, although the case had been clearly proven and there were no questions raised over the justice of her sentence, there was at least some contemporary awareness, or even understanding, of the circumstances that had conspired to force Barbara to kill her child.

Among the black catalogue of murders that had sent Scottish criminals, both men and women, to the scaffold, the case of Agnes Dugald stands out in terms of both motive and method. Of the 23 women executed for the murder of their children, 18 involved a new-born infant and in a further four the child was aged between one month and 18 months old.[43] However, Agnes Dugald was indicted for the murder of her 8-year-old daughter Joanna. In addition, her case provides the only example of a mother being executed for the murder of her legitimate child in this period as Joanna was the daughter of Agnes' late husband who had died a few years earlier.[44] She had previously cared for the child but became resolved to murder her when she began cohabiting with a man who had promised that he would marry her if Joanna was removed from their lives. On the day of the murder Agnes concealed a knife under her apron when she took Joanna out for a walk by the river. When they approached a dense woodland area, she seized her and threw her to the ground. There were defence wounds on the child's hands where she had attempted to defend herself from the blade but Agnes succeeded in cutting her throat so violently that she almost severed the head from the body entirely.[45] The case attracted national attention and, in his 1829

edition of *The Annals of Glasgow*, James Cleland captured the public's revulsion when he described Agnes as an "atrocious woman [who] had lived a very lewd and wicked life" to the detriment of her unfortunate child.[46]

The case of Agnes Dugald certainly provides a reinforcement of Kilday's assessment that some Scottish women employed "unusually bloodthirsty methods" when committing the crime of murder.[47] Furthermore, this study has found that in eight of the 23 cases where women were executed for infanticide they had employed violent methods to carry out the crime including strangulation, stabbing and beating. This figure is higher if we also include the three women who suffocated their infants, the two cases where the child died in agony due to the use of poison and the four cases of drowning. Therefore, the study reinforces the argument that some Scottish child murderers were not averse to the use of violence.[48] However, a closer reading of the details in individual cases highlights that there were different degrees of violence used that we need to examine. For example, in 1759 surgeons attested that Ann Morrison's child met a violent death due to the multiple cuts and bruises found upon the body.[49] In 1761 Christian Munro cut her child's body into pieces and it was only when one hand was discovered on her employer's land that she was apprehended for the crime.[50] Comparatively, despite the fact that a knife wound had been discovered on the neck of Janet Clerk's infant in 1754, the defence argued that she had been trying to cut the navel cord wrapped around the child's neck and had accidentally inflicted the wound. However, the fact that she had concealed the birth and disposed of the body in a dyke convinced the jury of her guilt.[51]

As many of the women executed for child murder in this period were either domestic servants or lived in close proximity to others in lodging houses, the concealment of their pregnancy and the birth of the child could be quite difficult and this study has found that these factors impacted upon the methods of killing used. For example, Christian Fren had feigned illness to her mistress and retired to her bedroom but when she later went to check on her she could smell a "nauseous burning." Christian had given birth in secret and had thrown the child into the hearth. Although she claimed the child was born dead she was convicted due to her attempts to conceal all evidence that she had given birth.[52] In previous studies of child murder, historians have pointed towards suffocation or exposure as primary methods of killing.[53] This analysis provides some support for these findings as three women

suffocated their infants and there were six cases in which there were no marks of violence upon the bodies and no clear indication of the cause of death beyond neglect following birth. In these cases, the methods of killing were explicitly linked to the primary motive of concealment. The locations at which the women had given birth, and at which the bodies were later found, including a park, a field and even a dunghill, were key as they afforded privacy. They also provided a means to either expose the child to the elements or to conceal the bodies of infants who had perhaps died during birth which would explain the lack of any discernible marks of violence.[54] Despite the obvious motive of concealing the birth, these women did not show the same level of pre-meditated malice that was believed to be evident in cases such as Agnes Dugald's or in poisoning cases.

In an examination of illegitimacy rates in Scotland, Mitchison and Leneman showed that, although there were small fluctuations including a slight peak in the 1740s, the level of illegitimacy in Scotland was no higher in the 1770s than it had been in the 1730s.[55] However, when charting the indictment and conviction rates for infanticide in Scotland between 1700 and 1799, Kilday demonstrated that there was an increase in the number of indictments beginning in the mid-eighteenth century which peaked in the late 1760s before declining. She added that the increase may be attributed to a combination of an increased sensitivity to illegitimacy and a reaction to a perceived increase in the commission of the crime of child murder.[56] This rise in the sheer number of women brought before the central criminal courts in the mid-eighteenth century may also be linked to an increase in the control exercised by the central courts in the wake of the 1747 Heritable Jurisdictions Act, particularly in northern Scotland. This study has shown that the volume of business brought before the Northern Circuit was greater than elsewhere in the country in the mid-eighteenth century, even the High Court in Edinburgh, although punishing the crime of child murder did not prompt the same urgency evident in the suppression of the other offences discussed in Chap. 3. However, contextually, the wider determination to impose centrally driven justice in the area was perhaps symptomatic in the Northern Circuit accounting for a sizeable proportion of executions for child murder in this period.

The chronology of the 23 executions for child murder reflects this pattern as 19 of the cases occurred between 1740 and 1767, with ten following trials before the Northern Circuit. Again, the victims in all

but one of these cases were illegitimate infants and the perpetrators were predominantly young, single women often employed in some form of domestic service. However, rather than reflecting an increase in illegitimacy rates and thus the increased need for concealment of birth through murder, this study contends that this concentration of female executions can be placed within the wider context of the peak numbers of executions being carried out in the mid-eighteenth century, particularly in northern Scotland. Despite this, there was also a distinct response to the crime. In May 1762, reporting on the fact that five women had suffered a capital punishment for infanticide since April 1761, the *Scots Magazine* commented on the "lamentable frequency of child murder and the consequent necessity of endeavouring to put a stop to it."[57] Following this concentration in cases between the 1740s and 1760s, there were only a further four women executed for child murder in the period under investigation here and these cases occurred sporadically, averaging about one per decade, until the final execution in 1808. It is the argument here that, despite the fact that women who committed infanticide made up an overwhelming majority of the total cases of female homicide brought before the courts, the period between the mid-eighteenth and the early nineteenth century was one of transition and development in sentencing practices and punishment for the crime.

Between 1740 and 1809, approximately 250 women received some form of punishment for the crime of child murder. The Concealment of Birth (Scotland) Act (49 Geo III c.14) of 1809 repealed the 1690 statute and stipulated that concealment of birth was an alternative charge to child murder and carried a maximum sentence of two years in prison. Of the 250 women brought before the courts for the offence before 1809, only 33 (13%) received a capital conviction which resulted in 23 executions and 10 pardons. Of the total 292 Scottish criminals who had been capitally convicted but pardoned, only 40 (14%) were convicted murderers. However, when broken down by gender, it is apparent that of the total 50 women capitally convicted for murder, 36 (72%) were executed and 14 (28%) were pardoned. Comparatively, 124 (83%) of the total 150 men capitally convicted for murder were executed and 26 (17%) were pardoned. Therefore, Kilday's argument that Scottish women in the eighteenth century were given "escalated and aggravated punishments for their crimes in comparison to their male criminal counterparts and were unlikely to be pardoned" is not substantiated by this research, particularly in relation to the crime of child murder.[58]

In the majority of the remaining 250 cases where women had received some form of punishment for the crime of child murder, the Scottish legal system had allowed them to petition the courts before the start of their trials. This resulted in most of them being banished from Scotland, and a few being transported, for varying lengths of time including for seven years, 14 years and for life.[59] In the 20 years immediately before the passing of the 1809 act, 79 women accused of child murder petitioned the court and were banished from Scotland and an additional two were transported. Comparatively, in the same period, there were only three women capitally convicted for the crime with two of them, Agnes McCallum and Barbara Malcolm, subsequently executed. Their cases are detailed above and stand out from other examples of infanticide as their children were months old at the time of the murders and these women were belived to have acted with premeditation rather than through panic or mistake during the birth, as in some other cases.

When Margaret Stewart was brought to trial for the murder of her illegitimate infant in Edinburgh in 1743 the libel described "a chain of circumstances which, when put together, are strong evidence of the actual murder" in line with the provisions of the 1690 statute, namely that she had concealed her pregnancy and the birth of the infant.[60] However, by the mid-eighteenth century, while the statute was still charged, it increasingly required more justification than concealment of birth alone due to an evident ambivalence on the part of some juries to convict these women of a capital charge. For example, in 1754 Isobel Kilgown was found guilty only of exposure after the body of her dead infant was discovered, even though she had concealed her pregnancy and the birth. She was sentenced to be whipped and banished from Scotland.[61] Murdo Downie was found guilty of exposure as opposed to murder and received a prison sentence of nine months in 1800.[62] It was also increasingly apparent that witnesses who examined the bodies of suspected murder victims were questioned more closely on whether the child had come to full term and whether they appeared healthy. Similarly, in 1777 it was commented that the severe law in England regarding child murder was becoming more mildly interpreted and that some form of presumptive evidence was required to prove that the child was born alive.[63] Through an analysis of the punishments meted out to women for the crime of infanticide between the mid-eighteenth and the early nineteenth century, this study has identified a gradual shift in judicial responses to women accused of child murder in practice years before the introduction of the Concealment of Birth Act in 1809 that provided

for alternative charges. It has offered a reinforcement of the wider British experience in terms of the shift in attitudes towards the evidence required to convict these women, whilst also demonstrating the importance of the distinct Scottish pre-trial practice of petitioning in providing the courts with an alternative punishment to the death sentence.

Property Offences

Of the total 544 Scottish criminals capitally convicted for a property offence in the period under investigation here, only 28 (5% of the total) were women. Although the numbers were smaller in Scotland, the proportion of capitally convicted female property offenders was comparable to the figures presented for parts of England.[64] However, this is not to say that Scottish women did not commit property offences. They did. Instead, the argument here is that, an analysis of the punishments meted out to offenders alongside a consideration of the arguments presented in Chap. 2, demonstrates that there was a great degree of discretion exercised by the Scottish courts when dealing with those convicted. As stated above, the death sentence accounted for around 4% of the total punishments meted out to Scottish women. Transportation accounted for around 49% of the total and in many of these cases the offenders had been convicted for a property crime which could have potentially carried a capital charge. Other punishments handed down to female property offenders included banishment from Scotland and prison sentences as well as corporal punishments such as whipping and standing upon the pillory prior to the turn of the nineteenth century. Of the total 28 women capitally convicted for a property offence, 11 (39%) were executed and 17 (61%) subsequently pardoned. This compares to 321 men executed (62%) of the total 516 men capitally convicted. These figures reinforce the argument that there was not a great contemporary desire to see women hanged for property offences in Scotland.

Of the 11 women executed for a property offence between 1740 and 1834, six were convicted for theft, three for housebreaking and theft, one for wilful fire-raising and one for robbery. In the case of Margaret Crossan, who was executed in Ayr in 1817 for wilful fire-raising, the extent of the damage caused was a deciding factor in the court's decision to pass a capital sentence. She had deliberately set three separate fires on a farm in Wigtown which had the desired effect of completely consuming the farm in flames and killing valuable livestock. The motive was a dispute she had with the tenant farmer.[65] She was the first woman to be executed following a trial before the Southern Circuit Court since

Katherine McKinnel had been executed for child murder in Dumfries in 1758. The *Caledonian Mercury* observed that the unusual circumstance of the execution of a female in this part of Scotland excited the public's curiosity and attracted an immense crowd.[66]

Compared to other property offences, the crime of robbery stood out in that, by its very definition, it included either the use or threat of violence. In terms of female involvement in the commission of the crime, King and Beattie have respectively demonstrated that English women were rarely brought before the courts for property offences that involved the use of violence.[67] In comparison, Kilday found that, of the total indictments relating to the crime of robbery brought before the Justiciary Court in Lowland Scotland, women were involved in 35% of the cases.[68] This would suggest that they would make up a sizeable proportion of the offenders capitally convicted for the crime. However, this was not the case. The reason for this likely lies in the fact that Kilday found that around half of the women were also indicted as 'resetters', who would pass on the stolen goods, and in three quarters of the total cases they were also charged with assault.[69] Therefore, it is probable that most of these women were convicted of either assault or reset of theft which were lesser crimes than robbery itself and did not carry a capital punishment.

Isabella McMenemy was the only Scottish woman executed for robbery throughout the period under investigation here. Indeed, hers was the only example of a women executed for a property offence that involved any real degree of violence against the person. She suffered the last punishment of the law along with her husband Thomas Connor in Glasgow. The court heard how she acted as a decoy to lure a boatman on the banks of Paisley canal by the name of Mckinnon into a secluded area so Thomas could beat him with a stone "to the great effusion of his blood." They then proceeded to rob him of 40 shillings in silver. When passing the death sentence for both, Lord Meadowbank stated with consternation that the female offender had been the principal actor in devising the robbery.[70] Beattie argued that when women did engage in robberies it was often with male accomplices, for whom they acted as decoys and for this reason there may have been numerous women never taken or prosecuted for their part in the crime.[71] In Isabella's case it was her role as the decoy, and apparent deviser of the robbery, that the presiding judge found to be of deepest concern and arguably sealed her fate and prevented her from receiving the Royal mercy. An article in the

Aberdeen Journal lamented that it had been "necessary to inflict the punishment of death on a woman" but added that it was fortunately a rare occurrence.[72]

In the period between 1740 and 1834, over 1,000 Scottish women received some form of punishment for a property crime by the central criminal courts. Of this number, some of the women had committed petty thefts but many had committed thefts or theft with housebreaking that could have potentially led to a capital conviction. However, as previous chapters have demonstrated, the distinct practice of the Scottish courts in allowing the libel to be restricted to an 'arbitrary punishment' in potentially capital cases was crucial in offering the courts different penal options to punish property offenders. The overwhelming majority of women convicted for a property offence were either transported, banished from Scotland, or imprisoned and a small number were given corporal punishments such as whipping or standing upon the pillory. In the second half of the eighteenth century, there were a few cases where the courts wanted to inflict a harsher punishment and thus they ordered that the criminals be whipped or pilloried prior to being banished or transported. However, the eighteenth- and early nineteenth-century Scottish central court judges passed the death sentence in less than 1% of the total number of cases where women received some form of punishment for a property offence. In the cases of Margaret Crossan and Isabella McMenemy there were evident aggravations that led them to the gallows. However, when attempting to gain an understanding of the factors that led the remaining nine Scottish women to the scaffold for theft or theft and housebreaking, two key areas must be explored: the importance of repeat offences and the chronology of the executions.

In six of the nine cases the courts heard how the women were repeat offenders. In four of these cases the women had illegally returned from previous sentences of banishment from Scotland for earlier property crimes. For example, Elizabeth Paul was first tried in Glasgow in 1778 for theft from a bleachfield. She had petitioned the court and was banished from Scotland for life.[73] She was apprehended for the same crime and again brought before the Glasgow Circuit Court in 1782. This time she was sentenced to be whipped through the streets of the city before she was again banished from Scotland for life.[74] On her third appearance before the court for the crime she had stolen four pieces of cloth valued at £6 6*s*. This time the judges ordered that she be executed in October 1786.[75] Within the Scottish court records, if an offender was described

as a 'habute' or 'repute' thief, this could prompt the courts to make an example of them, as in cases where women had returned from banishment and had continued in their criminal ways. However, it is the argument here that this alone did not always send them to the scaffold. Instead, the chronology of the cases was a crucial factor in sealing their fate.

Of the total 11 cases of women executed for a property offence, six had occurred between 1780 and 1786. Chapter 3 demonstrated that the period between the outbreak of the American War of Independence and the establishment of Botany Bay as an alternative destination for British convicts was a peak period in Scotland's use of capital punishment. The removal of the penal option of transportation was a key factor that led the courts to pass the death sentence against a greater number of criminals, including women. A total of 18 women were capitally convicted for a property offence in the 1780s, of whom six were executed and 12 were pardoned. In this respect, Scotland's use of the death sentence against women was comparable to the situation in England. Beattie stated that between 1783 and 1787, 12 women were capitally convicted in Surrey, of whom eight were executed. This rate of execution was striking as no women had been executed in Surrey in the previous 20 years.[76]

Following the capital conviction of Jean Lindsay and Henrietta Faulds for theft in 1784, petitions sent from Glasgow stated that thousands of its inhabitants wished for the extension of mercy and begged for the assistance of the Lord Advocate in securing a pardon.[77] Despite their efforts Jean was executed. As Henrietta claimed she was pregnant her sentence was delayed for a sufficient time to secure her a pardon on condition of banishment. Similar efforts were made, but failed, to secure a pardon for Jean Craig, whose case was detailed in the discussion of the 1780s as a peak period of executions in Chap. 3. Therefore, this study of the women capitally convicted in the 1780s supports the argument made in Chap. 3, namely that there was not a great public desire, especially at a local level, to send all criminals convicted of capital crimes to the scaffold. Those that did meet their end on the gallows arrived there, for the most part, due to a combination of the difficulties facing the courts in sentencing suitably harsh alternatives and the fact that four of the six women were repeat offenders.

Conclusion

To conclude, this chapter has demonstrated that there were a range of penal options available to the eighteenth- and early nineteenth-century Scottish courts when dealing with female criminals. The courts exercised

a great degree of discretion when responding to the women brought before them as they did with male criminals. Across the period under investigation here, the death sentence accounted for only 4% of the punishments meted out to women. Although the figure fluctuated slightly and was higher in the mid-eighteenth century but lower in the early nineteenth century, there was very little appetite for sending women to the scaffold in Scotland. In this sense a study of the Scottish experience reinforces previous arguments made in relation to female criminality elsewhere in Britain.[78] Despite this, the chapter has also explored the importance of Scotland's distinct court procedures when shaping its analysis of the implementation of capital punishment against women.

The crime of infanticide was a form of homicide punishable by death. However, only around 13% of the total offenders who were punished for the crime faced the death sentence. Therefore, this study does not support the argument that women received aggravated punishments.[79] Instead, it has shown that murderous women were subject to the stipulations of the Murder Act, as were men, but there was less appetite to see women mount the scaffold for infanticide, particularly after the concentration of cases in the mid-eighteenth century. Despite the provisions of the 1690 statute not being formally repealed until 1809, in practice judicial responses to infanticide and its punishment had undergone long and gradual processes of change. The courts increasingly utilised other penal options that fell short of the death sentence to punish the women convicted of child murder, notably banishment. The distinct Scottish practice of allowing offenders to petition the courts for banishment or transportation had a profound effect upon the country's use of capital punishment for child murder and for serious property offences. As discussed in Chap. 2, this meant that a large proportion of offenders brought before Scotland's central criminal courts faced a punishment, but ensured that the death sentence accounted for only a small proportion of cases. In terms of child murder, this penal option ensured that women faced some form of punishment at a time when juries often required more than the provisions of the statute to convict. In addition, only a very small proportion of the total women convicted of potentially capital property offences faced the hangman's noose. This chapter has demonstrated that, when women did suffer the last punishment of the law as a reward for their commission of crime, there were often discernible factors that had sealed their fate.

In the cases of women who had murdered someone other than their child, the motive and method of killing were crucial in sending them to the gallows. In addition, an analysis of the 23 cases of child murder demonstrates that we must not view all the women as victims of circumstance who had acted solely through neglect. Instead, some of them showed as much premeditation and malice in their commission of the murders as in other male and female homicide cases, thus providing some reinforcement to Kilday's work.[80] However, an overarching factor in many of the cases was the desire to conceal both their pregnancy and the birth of their infants. The locations at which the bodies were found as well as the methods of killing were heavily determined by these factors. In turn, these motivations were dwelled upon in the courts to secure convictions although, as the period progressed, these issues were more heavily debated upon. What is clear is that a study of the use of the death sentence against women enhances our understanding of how the Scottish experience can reinforce patterns evident in the wider British historiography. However, it cannot simply be assimilated into this body of work due to the distinctions of both the Scottish legal system and their judicial and popular responses to female criminality.

Notes

1. See Christopher A. Whatley, "Women and the Economic Transformation of Scotland c.1740–1830", *Scottish Economic and Social History* 14 (1994): 19–40; E. C. Sanderson, *Women and Work in Eighteenth-Century Edinburgh* (London: Palgrave, 1996).
2. Rosalind Mitchison and Leah Leneman, *Sexuality and Social Control: Scotland 1660–1780* (Oxford: Blackwell, 1989); Rosalind Mitchison and Lean Leneman, *Sin in the City: Sexuality and Social Control in Urban Scotland, 1660–1780* (Edinburgh: Scottish Cultural Press, 1998).
3. Lynn Abrams, Eleanor Gordon, Deborah Simonton and Eileen Janes Yeo (eds.), *Gender in Scottish History since 1700* (Edinburgh: Edinburgh University Press, 2006).
4. For select publications offering substantial surveys of the Scottish experience of the witch trials, see Christina Larner, *Enemies of God: The Witch-Hunt in Scotland* (London: Chatto & Windus, 1981); Julian Goodare, *The Scottish Witch-Hunt in Context* (Manchester: Manchester University Press, 2002); Brian P. Levack, *Witch-Hunting in Scotland: Law, Politics and Religion* (London: Routledge, 2007).

5. Anne-Marie Kilday, *Women and Violent Crime in Enlightenment Scotland* (Suffolk: Boydell Press, 2007).
6. For a study of infanticide in the Early Modern period, see Deborah A. Symonds, *Weep not for me: Women, Ballads, and Infanticide in Early Modern Scotland* (University Park: Pennsylvania State University Press, 1997). For studies of eighteenth- and early nineteenth-century Scotland, see Anne-Marie Kilday, "Maternal Monsters: Murdering Mothers in South-West Scotland 1750–1815", in *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, ed. by Yvonne Galloway Brown and Rona Ferguson, 156–179, East Lothian: Tuckwell Press, 2002. For a more recent extensive study of the crime, see Anne-Marie Kilday, *A History of Infanticide in Britain c.1600 to the Present* (Basingstoke: Palgrave Macmillan, 2013).
7. For the English figures, see J. M. Beattie, *Crime and the Courts in England 1660–1800* (Oxford: Oxford University Press, 1986), 514; Peter King, *Crime, Justice and Discretion in England 1740–1820* (Oxford: Oxford University Press, 2000), 280.
8. Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), 8.
9. Anne-Marie Kilday, "Contemplating the Evil Within: Examining Attitudes to Criminality in Scotland 1700–1840", in *Crime, Courtrooms and the Public Sphere in Britain 1700–1850,* ed. by David Lemmings, 147–166, 150, Farnham: Ashgate, 2012.
10. Note that this percentage is based upon the figures for the whole of Scotland across the period between 1740 and 1834. When broken down further, the death sentence accounted for around 15% of the total punishments between 1740 and the 1780s, but less than 2% between 1815 and 1834 when sentences of transportation and imprisonment increased significantly.
11. Kilday, *Women and Violent Crime*, 51.
12. The case is detailed in NAS JC7/30/30–67. Despite often being traditionally thought of as a male name, Nicholas was a fairly common Scottish female name, particularly in the lowlands, in the eighteenth and nineteenth centuries.
13. *Caledonian Mercury*, Thursday, 15 August, 1754, 3.
14. See Ruth Campbell, "The Sentence of Death by Burning for Women", *The Journal of Legal History* 5 (1984): 44–59; Simon Devereaux, "The Abolition of the Burning of Women in England Reconsidered", *Crime, History and Societies* 9 (2005): 73–98.
15. NAS JC11/63/52.
16. NAS JC8/5/70–90.

17. *Scots Magazine*, Thursday, 1 January 1807, 75.
18. NAS JC7/28/413–449. Note that surgeons told the court that the likely cause of death was suffocation.
19. *Durham County Advertiser*, Saturday, 22 March 1823, 2.
20. NAS JC8/17/49.
21. Kilday, *Women and Violent Crime*, 33, 56.
22. NAS JC12/8/5.
23. *Caledonian Mercury*, Monday, 11 October 1830, 3.
24. Kilday, *Women and Violent Crime*, 56.
25. NAS JC11/24/328.
26. NAS JC11/24/328–351.
27. NAS JC7/38/219.
28. NAS JC7/38/219–43.
29. Peter King, "Making Crime News: Newspapers, Violent Crime and the Selective Reporting of Old Bailey Trials in the Late Eighteenth Century", *Crime, History and Societies* 13 (2009): 91–116, 107.
30. For select examples, see R. W. Malcolmson, "Infanticide in the Eighteenth Century", in *Crime in England 1550–1800*, ed. by J. S. Cockburn, 187–209, London: Methven, 1977; Lionel Rose, *Massacre of the Innocents: Infanticide in Great Britain 1800–1939* (London: Routledge, 1986). For more recent studies see Mark Jackson (ed), *Infanticide: Historical Perspectives on Child Murder and Concealment 1550–2000* (Aldershot: Ashgate, 2002); Josephine McDonagh, *Child Murder and British Culture 1720–1900* (Cambridge: Cambridge University Press, 2003); Kilday, *A History of Infanticide*. For specific Scottish examples see Symonds, *Weep not for me*; Kilday, *Women and Violent crime*, 59–79.
31. Symonds, *Weep not for me*, 5.
32. Mark Jackson, *Newborn Child Murder: Women, Illegitimacy, and the Courts in Eighteenth-Century England* (Manchester: Manchester University Press, 1996), 29–51.
33. Anne-Marie Kilday, "Desperate Measures or Cruel Intentions? Infanticide in Britain since 1600", in *Histories of Crime: Britain 1600–2000*, ed. by Anne-Marie Kilday and David Nash, 60–79, 69, Basingstoke: Palgrave, 2010.
34. NAS JC11/23/220–222.
35. Symonds, *Weep not for me*, 2.
36. Lean Leneman and Rosalind Mitchison, "Scottish Illegitimacy in the Early Modern Period", *Economic History Review* 40 (1987): 41–63, 41.
37. NAS JC7/39/327–351.
38. *Caledonian Mercury*, Thursday, 23 May 1793, 3.
39. *Scots Magazine*, Sunday, 1 October 1749, 45.
40. NAS JC8/5/177.

41. *Saunders News-Letter*, Wednesday, 13 January 1808, 2.
42. *Scots Magazine*, Monday, 1 February 1808, 77.
43. In his recent study of homicide in eighteenth-century Scotland, Knox similarly found that an overwhelming proportion of victims in child murder cases were newborns. See W. W. J. Knox, with the assistance of L. Thomas, "Homicide in Eighteenth-Century Scotland: Numbers and Theories", *The Scottish Historical Review* 94 (2015): 48–73, 54.
44. Across this period there were very few married women charged with the murder of their children. This is not to say that married women did not murder their children, but their absence in the court records was likely due to the removal of concealment as a motive, due to contemporary beliefs that married women would have no need to conceal their pregnancy or the birth. Thus, the death of legitimate children would have more likely been deemed of natural, as opposed to suspicious, causes. In addition, of the very small number of married women who were charged with the crime, in the few cases where they were found guilty, they were often determined to have been suffering temporary insanity at the time and released into the care of their husbands.
45. NAS JC13/16/55–65.
46. James Cleland, *The Annals of Glasgow, Comprising an Account of the Public Buildings, Charities and the Rise and Progress of the City* (Glasgow: John Smith and Son, 1829), 513.
47. Kilday, *Women and Violent Crime*, 60.
48. Kilday, *Women and Violent Crime*, 67. In her analysis of 140 indictments for infanticide, Kilday found that in 63% of the cases blood was shed, namely through stabbing and/or battering to death.
49. NAS JC7/32/217.
50. NAS JC11/23/76–88.
51. NAS JC11/18/258–259.
52. NAS JC11/17/143.
53. See Malcolmson, "Infanticide in the Eighteenth Century", 188, 195; James Kelly, "Infanticide in Eighteenth-Century Ireland", *Irish Economic and Social History* 18 (1992): 5–26, 18.
54. In some cases where women had claimed that their infants had been born dead, a surgeon removed the lungs to conduct tests to see if they would float. It was believed that this would indicate if the child had taken a breath.
55. Lean Leneman and Rosalind Mitchison, "Scottish Illegitimacy Ratios in the Early Modern Period", *The Economic History Review* 40 (1987): 41–63, 53, 58.
56. Kilday, *A History of Infanticide*, 29–30.
57. *Scots Magazine*, Monday, 3 May 1762, 52.

58. Kilday, "Contemplating the Evil Within", 150.
59. In her study of infanticide, Kilday found a similar increase in petitions for banishment alongside a decline in capital convictions for the crime. See Kilday, *A History of Infanticide*, 30.
60. NAS JC7/23/341.
61. NAS JC7/30/23.
62. NAS JC11/44/76.
63. *The Laws Respecting Women, as they Regard their Natural Rights, or their Connections and Conduct* (London: 1777), 307.
64. King, *Crime, Justice and Discretion*, 280.
65. NAS JC12/31/1–6.
66. *Caledonian Mercury*, Monday, 20 October 1817, 3.
67. King, *Crime, Justice and Discretion,* 196; Beattie, *Crime and the Courts*, 238.
68. Kilday, *Women and Violent Crime*, 132.
69. Kilday, *Women and Violent Crime*, 132–139. Kilday's suggestion that female robbers could suffer dismemberment of limbs prior to execution, gibbeting and post-mortem dissection is not substantiated by this research. Four men had a hand severed prior to execution, all for the crime of murder, and their cases are discussed in Chap. 5. In addition, this study has found that the only offence for which women received any form of post-mortem punishment was murder, as per the stipulations of the Murder Act.
70. NAS JC13/56/12; *Morning Chronicle*, Monday, 22 September 1828, 4.
71. J. M. Beattie, "The Criminality of Women in Eighteenth-Century England", *Journal of Social History* 8 (1975): 80–116, 90.
72. *Aberdeen Journal*, Wednesday, 29 October 1828, 4.
73. NAS JC13/22/31.
74. NAS JC13/23/115.
75. NAS JC13/26/85.
76. Beattie, *Crime and the Courts*, 584.
77. TNA HO102/50/126; HO102/50/131.
78. Beattie, *Crime and the Courts*, 514; King, *Crime, Justice and Discretion,* 280.
79. Kilday, "Contemplating the Evil Within", 150.
80. Kilday, *Women and Violent Crime*. For Kilday's analysis of the women who committed homicide and infanticide, see Chaps. 3 and 4 of the work.

PART II

The Theatre of the Gallows in Scotland

CHAPTER 5

The Spectacle of the Scaffold

The focus of Part I of this volume was to gain an understanding of the implementation of the death sentence in Scotland. It provided an exploration of the contextual and judicial drivers that impacted upon its use and quantitative analyses of focal periods to enhance our knowledge of Scotland's capital punishment history between 1740 and 1834. Part II will now turn to present a qualitative exploration of public executions in Scotland and an investigation into the changing nature of capital punishment and execution practices across the period. It will also examine the implementation of the post-mortem punishments of dissection and hanging in chains, and situate their usage within the broader bodily punishment narrative.

The current chapter will provide some insight into the spectacle of the scaffold in Scotland between the mid-eighteenth and early nineteenth century by drawing upon the extensive source materials gathered, including newspapers and execution broadsides, which offer rich qualitative details of the scene at the public execution. The opening section will begin by questioning the role of the key actors of the event, namely the condemned criminals and the concourse of spectators gathered to witness them suffer their lamentable fate. The multitude of behaviours and responses that the execution spectacle could generate will also be considered. Following this exploration of the scene at the gallows, the chapter will examine the changes made to the logistics of the public execution including those related to its location. In Edinburgh, between 1660 and 1784, executions were conducted at the Grassmarket following a procession

R.E. Bennett, *Capital Punishment and the Criminal Corpse in Scotland, 1740–1834*, Palgrave Historical Studies in the Criminal Corpse and its Afterlife, https://doi.org/10.1007/978-3-319-62018-3_5

from the Tolbooth through the Old Town. However, in 1785 they were moved closer to the Tolbooth itself. At around the same time, and continuing into the early nineteenth century, Scotland's circuit cities and towns began to follow suit, relocating their common place of execution from urban peripheries to locations closer to their places of confinement. In addition, other traditional elements of the scaffold ritual were subject to adaptation. Notably there was a decline in the need for a lengthy procession to the place of execution which had historically been a focal part of the proceedings. Despite these changes, the public execution continued to hold a pervasive attraction and drew large crowds throughout the period under investigation here.

The chapter will then move on to examine the changes made to execution practices. Although there is currently limited work that focuses upon Scottish execution practices, the discussion will draw upon the wider historiography discussed in Chap. 1 and combine this with the previously unexplored primary material utilised here. By the mid-eighteenth century, it was evident that the courts almost exclusively sentenced offenders to be hanged by the neck until dead, and aggravated executions that inflicted prolonged pre-mortem suffering upon the condemned, that were more characteristic of the Early Modern period, had declined significantly. However, the current study has identified the last examples of older execution practices in Scotland in the mid-eighteenth century. For example, one man was sentenced to be burnt to death and there were four cases where offenders were sentenced to have a hand severed as a prelude to their execution. The precedent for these punishments can be found in earlier centuries and sporadic decisions to use them in the mid-eighteenth century require further analysis when they are situated within a discussion of the long-term decline of aggravated executions. Furthermore, the chapter will provide a brief discussion of the broad changes that occurred to executions for treason in the 'Long Eighteenth Century'. It will demonstrate that the perceived heinousness of the crime had long prompted distinct and severe judicial responses and, throughout much of this period, the sentence passed against those convicted remained largely unchanged in that they were to be hung, drawn and quartered. However, in practice, the executions were increasingly subject to discretionary implementation which blurred the line between an aggravated execution and a post-mortem punishment.

The post-mortem punishment of the criminal corpse had been a penal option prior to the mid-eighteenth century, but it was subject to discretionary implementation. However, the 1752 Murder Act placed it at

the centre of the criminal justice system's response to homicide. Despite this, the subject has been largely ignored by crime historians until recent pioneering research into the uses and treatment of the criminal corpse highlighted that the execution narrative extended beyond the end of the hangman's rope.[1] Chapters 6 and 7 will offer in-depth investigations into the use of dissection and hanging in chains in Scotland. However, this chapter will first situate the post-mortem punishment of the criminal corpse within the broader historiography of capital punishment in this period, particularly the meta-narrative pointing towards the changing nature of execution practices. In addition, it will highlight that there was a concentration of gibbeting in the mid-eighteenth century, on the eve of the Murder Act, that occurred at around the same time as older execution practices were disappearing. In examining the use of post-mortem punishment to enact additional infamies to the death sentence, even before 1752, the chapter will identify an intermediate stage in the long-term decline of public bodily punishments in Britain.

The Gallows Protagonists

In eighteenth- and early nineteenth-century Scotland, the theatre of the gallows involved numerous actors, from the authorities responsible for carrying out the death sentence including the sheriffs, magistrates and executioners, to the condemned criminals themselves and the vast number of people who attended to see the spectacle unfold. This study has already acknowledged that, prior to the final quarter of the eighteenth century, reports of crime and punishment were rather limited in the Scottish newspapers, especially when compared to their English counterparts. However, from an extensive search and accumulation of the information available regarding public executions, it is possible to build up a picture of the scene at the gallows, including key elements such as the procession to the scaffold, the delivery of final speeches and the multitude of crowd reactions that executions could provoke.

The procession of the criminal to the scaffold was of great importance to the execution ritual. On the morning of their execution they would be brought out of the prison and placed in a cart, or in some cases would walk, to make their final journey to the scaffold. Often crowds would gather to see the criminals brought out and to join the procession which consisted of the condemned, local authorities including the sheriffs and the magistrates, the executioner and ministers who would offer religious instruction.

When lamenting against the abolition of the procession to Tyburn, Samuel Johnson stated that "the old method was most satisfactory to all parties; the public was gratified by a procession, the criminal supported by it."[2] As processions to the gallows and the executions themselves attracted large crowds, which often contained relatives of the condemned, security was required. This was organised by local sheriffs and magistrates and drawn from military regiments, local militia and, as in the case of the execution of Margaret Minna in Jedburgh in 1753, a guard formed of the town's principal inhabitants.[3] The procession to the scaffold would often begin hours before the execution itself and in many cases the businesses and shops in the area would be closed making the execution spectacle a whole day event. In other cases, people would travel for days to attend an execution. For example, friends and relatives of Patrick Wallace had travelled as a large group for two days from Glasgow to Edinburgh to witness his execution in 1747.[4] In addition, in some cases the procession crossed through more than one jurisdiction and thus the sheriffs of each area ceremoniously exchanged responsibility for the condemned. In 1770 Alexander McDonald and Charles Jamieson were taken on a cart by the Sheriff of Edinburgh to be received by the Sheriff of Linlithgow for execution near the scene of their crime.[5] Thus the procession was not only a necessary part of the execution, it was often a focal element of the spectacle and, in some cases, even a legal and ceremonious procedure of passing on responsibility for the execution from one local jurisdiction to another.

An additional key actor in the theatre of the gallows was the executioner. In Scotland, the death sentence would, under the direction of the judges, be read out in the court by the 'dempster'. In the records this was referred to as their "pronouncing of doom." The dempster was an officer of the court who was often also the local executioner in the larger cities. John Dow Cameron had been convicted for murder and cattle theft in Perth in 1753. The *Caledonian Mercury* noted that "when the dempster or hangman came in order to pronounce the sentence against him, he struck at him with hands and feet, and would not allow him to come near him at any rate."[6] Hume argued that this practice was a "rude ceremony" that "savoured barbarity."[7] However, it certainly served to demonstrate the centrality of the executioner from the moment the death sentence was pronounced and perhaps even began the process of the condemned person's legal and social death. The practice was abolished by an Act of Adjournal in 1773 and thereafter the death sentence would be pronounced by the presiding judge and read out by the court

clerk. Across this period, executioners occupied an ambiguous position in the execution proceedings. They were certainly a focal part of the event and the criminal often took the time, in their last dying speeches, to publicly forgive them for the fateful task they had to carry out. However, there were examples of crowds reacting negatively towards the executioner, particularly in cases where criminals suffered a slow death by strangulation due to their perceived ineptitude, an example of which will be discussed later in this chapter.

Despite the importance of the scaffold authorities in staging the public execution spectacle, the central actors in the theatre of the gallows were the condemned themselves. A reading of reports detailing the behaviour of malefactors upon the scaffold reveals a multitude of reactions to their fate. Some faced the noose with outward confidence, bolstered by the presence of their friends and relatives. John Breck MacMillan used his execution in Inverlochy in 1755 as an opportunity to toast the health of Charles Stuart, the 'Young Pretender', with the watching crowd. The *Scots Magazine* lamented that it was a "pity the criminal's friends are allowed to carry off his body from the gallows in triumph…burying it at the gallows-foot would be looked upon as more disgraceful than hanging."[8] For his execution in 1788 William Brodie was elaborately dressed in satin breeches and silk stockings and entered into "easy conversation with his acquaintances in attendance."[9] There were others, such as Randall Courtney who was executed in Fettercairn in 1743, who remained seemingly undaunted until they came in sight of the fatal apparatus upon which they would be hanged.[10]

There were also some criminals who believed that their lamentable death had been somehow forecast due to their own previous attendance at the execution spectacle. When Catherine Davidson was executed in Aberdeen in 1830 for the murder of her husband the *Caledonian Mercury* commented upon the vast concourse of spectators gathered to witness the event due to the rarity of the occasion, namely the execution of a woman. The article noted that the last woman executed in Aberdeen was Jean Craig in 1784. Catherine would have been five years old at the time but had attended the execution. Following her own condemnation, she recalled that when Jean's body had been cut down and the rope thrown among the crowd, as was customary, the knot had struck her on the breast. She descried having recoiled in horror at the time but stated that she had not thought of it again until she received the death sentence herself.[11] Similarly, when Thomas Rogers was executed in front of

Jedburgh Castle in October 1831 for a murder he had committed during a drunken brawl, he recalled that he had previously been confined in the castle in May 1822 when William Robison was executed in the same place. After witnessing the execution Rogers had purchased the rope used to hang Robison from the executioner.[12] In this period, certain props of the theatre of the gallows, including the hangman's rope and even pieces of the scaffold, could be coveted mementoes of the occasion. In these cases, the rope was also believed to have held superstitious meaning which adds yet another layer to our understanding of the scaffold scene.

In Scotland, as in England, after they had mounted the scaffold, condemned criminals were given the opportunity to deliver their last dying speeches in the presence of the watching crowd. The authorities intended for them to attest to the justice of their sentence and to warn others from the commission of the crimes that had led them to such a lamentable fate. However, some offenders refused to speak and others continued to deny their crimes to the last. In 1774 John Reid's last words were "mine is an unjust sentence."[13] While we must be cautious when taking newspaper reports entirely at face value due to their repeated use of the words penitent and resigned to describe the behaviour of the condemned, many Scottish criminals in this period did use their last dying speeches to confess their guilt of the crimes for which they were to suffer, with some recounting details of their actions. Others took the opportunity to confess to crimes they had never even been suspected of, such as Margaret Douglas in 1764 who confessed to having murdered her previous employer's son whose death was believed to have been accidental.[14]

Several criminals also gave speeches that were replete with warnings against crimes but were also cautionary tales of the moral degeneracy caused by drinking, Sabbath-breaking and the keeping of bad company that had ultimately led them on a path to criminality. They claimed to take comfort in the religious instruction they received between sentencing and execution and thanked the minsters in attendance at the scaffold before partaking in a final prayer. In addition, the condemned sometimes even praised the magistrates for the humane treatment they had been afforded and publicly forgave the executioner. The behaviour of the condemned is of vital importance to building up a picture of the scene at the gallows in this period. However, by their very nature, executions were public events and thus to gain a fuller understanding of them we must

also investigate the behaviours and reactions of those who gathered to witness them.

Scottish executions in the eighteenth and early nineteenth centuries attracted large crowds that included people of various ages, gender and social rank. Crowther stated that the Scots attended a public hanging as enthusiastically as the English. They just did not get the chance to do so as often due to the lower numbers sent to the gallows north of the border.[15] Historians of crime and punishment have cited the deterrent value of the scaffold as both a motive for, and a recurring justification of, the public execution in the minds of contemporaries. It is important to note here that this study is not arguing that executions were a successful deterrent from crime. The fact that they were a long-standing cornerstone of Britain's penal history demonstrates that they were not. However, the punitive aims attached to their use by contemporary legal authorities, whether this was deterrence or not, is crucial to our understanding of the message they were intended to convey. Within this, Gatrell advised that we must engage more closely with what happened upon the scaffold to gain a degree of understanding of how people felt about it.[16]

While it is difficult to know exactly what individual spectators took away from an execution, attention has been given to the roles and reactions of the crowd. Early crime historiography argued that attendance at the public execution "could only flourish amidst a callous people."[17] However, subsequent historians have demonstrated that the subject requires deeper analysis. Laqueur wrote of a "buoyant, holiday crowd wholly unconcerned with serious state theatre and unaffected by its efforts."[18] In addition, McKenzie investigated the early eighteenth-century "criminal celebrities" such as highwaymen and robbers who gained infamy for "dying game" at the scaffold.[19] An often cited criticism of executions was the concern that they encouraged drunken revelry mixed with immoral behaviour which undermined the solemn carrying out of justice.[20] However, the work of McGowen provided a further dynamic to our understanding of the criticisms of the public execution by the late eighteenth century. Drawing upon the idea that executions were not only susceptible to disorderly behaviour, but that they could also have lasting negative effects on the spectator, he highlighted contemporary fears that attending an execution and witnessing violence could lead to a desire to emulate "the hero of the spectacle."[21] If witnessing state-sanctioned violence encouraged people to commit crimes, this again undermined the deterrent value of the scaffold.

The motivation behind attendance at a public execution and what, if anything, a person took away from the experience, while impossible to ascertain for every individual, is a key part of this investigation into the spectacle of the gallows between the mid-eighteenth and early nineteenth century. Despite the desire for the scaffold to act as a reminder of the punishment for crime, there were those within the crowds who were unconcerned with this piece of state theatre. For example, when William Webster was hanged in Aberdeen in 1787 for theft, the *Caledonian Mercury* was dismayed by the numerous cases of pick-pocketing that had occurred. The article stated that the spectacle had little effect upon the perpetrators of the offence as they were "so hardened as to persist in theft with the gibbet staring them in the face."[22] Similarly, when a woman was caught stealing a man's watch at an execution in Glasgow in 1819, a fight ensued among members of the crowd which again detracted from the solemn scene of punishment the authorities had intended.[23]

One of the primary motivations in sentencing offenders to be executed at the scene of their crime was to send out a stark reminder of the long arm of the law, especially in the more remote areas of Scotland. In some cases, the executions were the first to occur in the area in decades or even within living memory and they had the potential to produce a range of reactions from the local inhabitants including curiosity to partake in the whole event from the procession to the gallows.[24] Executions at the common place could also be driven by a morbid curiosity to witness the spectacle. In 1787 the desire to get the best possible view of an execution at the Lawnmarket in Edinburgh meant the large crowd was in danger of being crushed and led to one man walking across the heads of those around him in order to get closer to the scaffold.[25] Prior to the execution of John Worthington at the scene of his crime in 1815 the executioner, Thomas Young, was practicing pulling the "vile trigger" of the scaffold drop mechanism and a cheer went up from the large crowd that had gathered to watch each practice 'drop'.[26] When 16-year-old Richard Smith was executed in Glasgow in 1820 Dr Muir, who had attended him in jail, spoke to the gathered crowd and reminded them that their attendance at the spectacle should not be driven by idle curiosity and instead he encouraged them to join him in fervent prayer.[27]

Despite the curiosity and even excitement that the prospect of a public execution could generate, in some areas chosen to host a crime scene hanging which were often less accustomed to the execution spectacle, there was evidence of the locals petitioning against their towns being sullied by association with the gallows. Following the conviction of

Moses McDonald for housebreaking and theft in 1812 he was sentenced to be hanged near the scene of the crime in Greenock. The magistrates of the town sent a petition to London stating their firm conviction that "every beneficial consequence to that community [Greenock] which could be contemplated by the result of a public execution…will be equally, nay preferably, prompted by a commutation of his punishment from death to transportation."[28] This rhetoric demonstrates that the petitions were not necessarily driven by a desire for mercy to be extended to the criminal himself. Instead they were directed against the prospect of the town having to host the public execution spectacle.[29]

During other executions across the period the fateful scaffold scene could not fail to strike a chord with members of the large crowds gathered. When Margaret Gillespie was hanged in Stirling in 1749 for drowning her illegitimate infant the *Scots Magazine* reported that the story she recounted upon the scaffold, of having been ravished against her will by a man who refused to acknowledge the child, could not fail to create an atmosphere of deep sympathy for her plight.[30] The execution of Andrew Low in Forfar in 1785 was held on a market day and the town was filled almost to capacity. However, when the steeple bell commenced its death toll at midday and the cart pulled up outside the prison to take him to the scaffold, a solemn silence fell over the town.[31] Similarly, the case of three young men in Edinburgh in 1812 had generated massive public interest in the lead up to their execution at the scene of the crime which was replete with a lengthy gallows procession and a large concourse of spectators who had been gathering from very early in the morning. However, the tolling of the great bell as the drop fell struck an "inconceivable awe into the minds of the spectators, many of whom took off their hats and remained uncovered" for the whole hour that the bodies hung for.[32]

At the execution of Francis Cain and George Laidlaw for robbery in Glasgow in 1823 the large crowd, which included many women, were described as crying through compassion.[33] Gatrell argued that, while older curiosities surrounding scaffold horrors were not wholly retracted after the mid-eighteenth century, this curiosity came to be justified as a "valued element in the sympathetic sensibility" that was still evident in the early nineteenth century.[34] Similarly, Friedland traced two largely incompatible trends in France in this period, namely a fascination with the spectacle of the scaffold and a revolution in sensibilities which meant that any pleasure taken from the suffering of others came to be seen as inhuman.[35] Even in cases such as that of brothel-keeper

Mary McKinnon, who was hanged for the murder of a patron, the bitter feelings of the 30,000 people gathered were subdued by feelings of sympathy as she mounted the scaffold.[36]

The chapter will now progress to investigate the changes that were gradually made to the format and logistics of public executions, and highlight that, regardless of people's motivations for attending, the event continued to offer a widespread attraction throughout the period.

Staging the Public Execution

Public executions were planned events intended as a staged lesson in morality and legality in which orderliness was a prerequisite. However, they were also potentially susceptible to disorderly behaviour during the administration of justice. The period between the mid-eighteenth and the early nineteenth century was one of fundamental discussion and change in the carrying out of the public execution. There were adaptations made to the logistical staging of the spectacle, including its location, as well as ideological shifts in legal and popular responses to the gallows. However, these changes were not centrally driven, nor do they present an entirely linear trajectory, and certain elements of traditional gallows culture persisted throughout the period.

By the eighteenth century public executions were predominantly conducted at an established location, often referred to as the common place. The Grassmarket, a busy area in Edinburgh's Old Town, was used for executions between 1660 and 1784. Today the site continues to commemorate its historically central importance to Scotland's criminal past through the aptly named 'Last Drop' pub. However, in 1785 the Grassmarket ceased to be a desirable location for the hosting of the public execution spectacle. Archibald Stewart was condemned to death for two instances of housebreaking and theft and was sentenced to be executed there in April 1785. However, between his sentencing and the scheduled date of execution, the location was changed to the west end of the Luckenbooths, closer to the place of confinement in the Tolbooth. The *Caledonian Mercury* remarked that "the disagreeable ceremony of walking from the prison to the former place of execution was avoided." Furthermore, most of his religious devotions were also conducted in the prison, as was to gradually become customary, and only a brief prayer was said on the scaffold.[37] In addition to the change in location, alterations were also made to the scaffold's construction. Following an observation that the previous scaffold was too diminutive in size for the

execution of William Mills in September 1785, the *Caledonian Mercury* reported that "it has very properly been enlarged by which means not only the criminal and executioner, but also the magistrates, clergymen and officers can appear in view of the spectators." It was believed that this gave the scene a solemn atmosphere which had previously been wanting and had a stronger effect upon the spectators as, the article reminded its readers, the intention of the public execution was to deter people from a path of crime rather than to solely punish the offender.[38]

Similar alterations to the location of the common place were gradually occurring elsewhere in Scotland as well as in England. Devereaux investigated the abolition of Tyburn in 1783 in favour of staging London's executions outside Newgate prison. He highlighted similar moves from urban peripheries to sites nearer the jail in other English towns, including Chelmsford in 1785, Oxford in 1787 and Liverpool in 1788.[39] While executions in Edinburgh had been carried out at the Grassmarket until 1784, a central urban location, those in Scotland's circuit towns and cities had often been conducted at locations which were outside of urban centres. However, they gradually moved closer to the places of confinement by the late eighteenth century. In Aberdeen executions were held at Gallows Hill until 1783 when they moved nearer the Tolbooth. In Perth the common place of execution was to the west of the town on the Burgh Muir, now known as 'Old Gallows Road', until the late 1780s when they moved to the foot of the High Street, a more central urban location.

Executions in Glasgow moved from the Gallowmuir to the Howgatehead in 1765, just north of the infirmary and near to the industry developing around the canal. However, the development of the Monkland Canal in 1776 necessitated another change of location. By the final quarter of the eighteenth century, executions were being conducted first at the Castleyard and then at the Cross before moving to a location outside the jail by the second decade of the nineteenth century. In some circuit cities executions continued in urban peripheries into the early nineteenth century. For example, executions in Ayr were conducted upon a common south of the town before moving outside the Tolbooth in 1809. Similarly, John Hume's 1774 map of Inverness showed the scaffold as part of the landscape, situated on the town's common near the main road which led towards Edinburgh. Executions persisted there until the early nineteenth century.[40] The situating of the gallows on a main route towards Edinburgh would have served as a lasting and ever present warning against crime to both the inhabitants of Inverness and any potential visitors.

In addition to the changes made to the location of public executions in the late eighteenth century, there were also accompanying alterations to other aspects of the execution ritual. The procession of the condemned to the gallows was of great importance to the whole proceedings, but attracted increasing criticism. In 1751 Henry Fielding proposed conducting executions more privately as he argued that it would remove any semblence of support the condemned could gain from the procession crowd and would thus make the whole experience more shocking.[41] With the move of execution locations closer to the places of confinement there was a decline in the need for lengthy processions which was sometimes viewed as a beneficial development, as in the above case of Archibald Stewart in 1785. However, the shift of the common place of execution was a gradual one. This, coupled with an increased use of crime scene executions in the early nineteenth century, meant that the reduced need for the procession to the scaffold in Scotland was not a pattern of uniform and uninterrupted decline.

From reports of executions at the Castleyard in Glasgow it appears that it was just under half a mile between the prison and the place of execution, so a procession was still required. During the execution of three men in 1787 this had taken an hour as they had received wine from the "commiserating multitude of spectators."[42] Poole demonstrated that the standardisation of execution practices in England after 1783 was by no means driven by one central policy and that the processional culture persisted for some time thereafter, even on the doorstep of the capital.[43] Furthermore, from a reading of reports detailing crime scene executions in the early nineteenth century, it is evident that, rather than solely being a necessary part of the execution, the procession was a focal part of the whole spectacle and the desire for more severity in the face of increased levels of capital punishment outweighed more modern concerns for efficiency. For example, when John Henderson was executed in Cupar in 1830, 15,000 people travelled from all over the county of Fife for the event. The town's shops and businesses were closed for the day and the harvest was at a standstill for miles around.[44]

The relocation of execution sites and shorter processions led to gradual changes to the timing of executions. In Scotland, the courts specified that executions should take place between two and four in the afternoon. However, in Edinburgh in 1819, followed by Glasgow in the 1820s, the time was altered to between eight and ten in the morning. This represented an attempt by the authorities to exercise greater control over the execution crowd as earlier executions limited the opportunity for excessive drinking, which had previously been facilitated by the closure of

local businesses and people having the day off to partake in the spectacle. Additionally, whether intentional or not, in some cases the earlier timings reduced the size of the crowd. Following the change in time in Edinburgh, the crowd witnessing the execution of Brine Judd and Thomas Clapperton in January 1820 was described as not as great in number as on former occasions. A report of the execution of John Dempsey in December 1820 also pointed to the relatively small crowd. An explanation offered in both instances was the cold weather and the early morning timings.[45] However, these cases proved to be the exception rather than the rule as most public executions continued to attract very large crowds.

The decline in the time taken to transport the criminal from the place of confinement to the scaffold meant that there were arrangements increasingly made for parts of the traditional execution ritual to be conducted inside the court house. Immediately prior to the execution offenders would often be taken into a nearby court house to receive much of their religious instruction and to address the magistrates and acknowledge the justice of their sentence. While these proceedings were still open to the public, space inside was limited. To some extent, the Scottish experience had parallels with Continental European practice. In an examination of jurisdictions in the Netherlands, Spierenburg highlighted the practice of the magistrates meeting with the condemned, usually in the town hall, before they proceeded to the scaffold.[46] In Paris, the condemned were not permitted to address the crowd with the last dying speeches that were central to the execution ritual in Britain. Instead, Bastien found that the exchanges between the condemned person, the confessor, the Parliament clerk and sometimes the judges took place before more limited audiences in the halls of the Palais de Justice before the execution was carried out at the Place de Grève.[47]

In Scotland, although prayers would still be said and the condemned could still give their last speech to the watching crowd, the time spent on the scaffold was shortened in some cases. During the execution of three men in Glasgow in 1817, they spent 70 minutes in the court hall being received by the magistrates and partaking in most of their religious devotion. However, the time taken to proceed to the scaffold, say a prayer and for 'the drop' to fall was only 20 minutes.[48] When William Noble was executed in Elgin in 1834 for murder, the gallows were erected on the west side of the gaol level with the court house and a window was taken out so that he could walk to the scaffold without leaving the building. His body was then buried within the old guard house, as was stipulated following the removal of the penal option of dissection for murderers in 1832.[49]

Therefore, the whole proceedings, from the religious devotions to the deliverance of his last speech, the procession to the scaffold and even the post-mortem punishment of the body, were conducted with a degree of distance from the crowd gathered below.

The final part of the scaffold ritual to be discussed in this chapter is the hanging of the condemned person. Following the move from Tyburn to Newgate in 1783, the drop system was used in London to hang offenders and was gradually adopted elsewhere in England and Scotland. When three offenders were executed in Glasgow in 1784 it was reported that the scaffold was constructed "on the plan of the London scaffold with springs and it sunk down with ease" which was intended to launch the criminals into eternity more swiftly.[50] Similarly, the *Caledonian Mercury* observed in Aberdeen in 1788 that James Grant was executed in the same way, "a scaffold being erected in front of the prison, over which the gibbet projected; the place on which the criminal stood was made to fall down and leave him suspended."[51] Prior to the use of the drop in Scotland, as elsewhere, the condemned were hung from the 'fatal tree' and from rudimentary gallows where they would have the rope tied around their neck and they would be pushed from a ladder or have a cart driven out from under them. In 1774 Alexander Monro, Professor of Anatomy at Edinburgh University, told James Boswell that "the man who is hanged suffers a great deal; that he is not at once stupefied by the shock…for some time after a man is thrown over he is sensible and is conscious that he is hanging."[52] In earlier periods, before executions upon raised scaffolds presented slightly more distance from the crowd, a condemned person's relatives could pull on their legs in the hope of occasioning a quicker death. Even after the adoption of the drop, Gatrell stated that the condemned continued to suffer slow deaths by suffocation and choking through the ineptitude of the executioner and the relatively insignificant advancements of scaffold construction.[53] Subsequently, Hurren has provided more thorough details about the experience of the body during execution from a medical perspective, including the sight and smell produced by the body at the end of the hangman's rope.[54]

By the early nineteenth century there was a degree of awareness that the length of the rope could be an important factor in quickening death. There were reports of criminals themselves asking that the executioner give them 'more rope' and thus a longer drop which, it was believed, would be more likely to break the neck. While successful dislocation of the neck did not necessarily mean that a person died instantly,

as discussed further in Chap. 6, it could paralyse them and provide a quicker, if not easier, death to the watching crowd. However, the sight of someone being strangled slowly could potentially trigger unrest among the crowd. At the execution of Alexander Gillan in 1810, he was described as being detained in an "awful suspense" due to the incompetence of the hangman. In this case the executioner, William Taylor, would pay with his own life. He was passing through the town of Elgin when he was identified as the executioner who had bungled Gillan's execution and a considerable mob gathered and beat him to death.[55]

The execution of Robert Johnston in Edinburgh in December 1818 received mass press attention both in Scotland and in England due to the actions of the crowd. In this case the rope was too long and Johnston was able to rest his toes on the platform but still struggled and slowly began to choke. The scene was met with "a loud shout of horror with cries of murder bursting from the immense multitude assembled" and a shower of stones were thrown at the executioner, the magistrates and other authority figures who had to retreat into the church. Cries of "cut him down—he is alive" ensued and someone jumped up and obliged and the criminal was taken on a furious ride towards the High Street before being retaken by the authorities. The spectacle at the scaffold was described as "a disgraceful scene of outrage and riot" with people breaking his waiting coffin to pieces and trying unsuccessfully to tear the whole scaffold down. However, the authorities finally managed to clear the scaffold and he was brought back and hanged.[56] The case again demonstrates the knife edge on which the crowd's reaction to public executions could sit as, had Johnston's death not been prolonged, it is most likely that the crowd would have dispersed peacefully whether they sympathised with his plight or not.

Scottish Execution Practices

Chapter 1 examined the varied execution practices, some of which involved extensive pre-mortem suffering on the part of the condemned, that were characteristic of the Early Modern period. By the mid-eighteenth century, capitally convicted criminals were almost exclusively sentenced to be hanged by the neck until dead, with the penal option of enacting some further post-mortem infamies upon the corpse. However, within this broad narrative of the decline in aggravated executions, the current chapter will identify the final examples of older execution practices that had not entirely disappeared in Scotland by the mid-eighteenth century.

It will question the potential reasons why the courts chose to sentence one man to be burnt and a further four to have a hand severed from their bodies immediately prior to their execution. In addition, it will explore where to situate these punishments within a discussion of the changing nature of capital punishment between the mid-eighteenth and the early nineteenth century.

Alexander Geddes was indicted at Aberdeen in 1751 for the crime of bestiality, with witnesses attesting that he had been committing the crime for over a decade. He was sentenced to be taken on 21 June between three and five in the morning to Gallows Hill in Aberdeen and strangled by the neck upon the gallows but "not until he be dead." He was then to be cut down and burnt at the gallows foot until his body was consumed to ashes.[57] It has been suggested that the punishment of burning in Scotland had deeply religious connotations due to its links with judicial responses to condemned heretics and witches.[58] In his study of Early Modern Europe, Muir argued that the witch craze led to the enacting of the most extreme forms of judicial ritual wherein scenes of utter bodily degradation and "purifying pain" were intended to eliminate corrupted bodies.[59] Bestiality, a crime deemed to be particularly immoral and unnatural, had historically been punished by burning in Scotland with recorded cases in the late seventeenth century and in 1702 and 1719.[60] In 1732 John Louthian stated that those condemned for the crime of bestiality "are generally stifled with a rope and then burnt in the morning before sun rise; as are also witches."[61] In 1570 a brother and sister were burnt for incest as was another man for incest with his sister-in-law at the Cross in Edinburgh in 1613.[62]

In each of these crimes there was an element of moral revulsion and even superstition that required them to be marked out for exemplary punishment. The fact that the sentence stipulated that Geddes' body was to be burnt to ashes also suggests a desire to not only end his life, but to also obliterate his body in the process. His case therefore supports the argument that for offences of a particularly aggravating nature, in this instance the unnatural crime of bestiality, the courts would resort to the punishment of burning, a practice almost obsolete in Scotland by this period. In addition, as his sentence stipulated that he was to be strangled, but not until he was dead, the burning part of the sentence was intended as an aggravated execution that would also cross the line into a post-mortem punishment, with his body to be burnt to ashes. However, it is unclear from the brief details provided of his execution if he was alive during the latter part of the sentence. Reports of his execution provide only the basic details that he confessed to the unnatural crime and died penitently.[63]

There are a few potential explanations for the disappearance of executions by burning in Scotland after Geddes' case. First, the persecution of witches in Scotland had been more sanguine than in England, and had been particularly concentrated in the east-central Lowlands, with approximately ten times the number of executions per head of population.[64] However, the last recorded burning of an accused witch in Scotland occurred in Sutherland in 1727.[65] Thereafter, the Witchcraft Act passed in 1735 (9 Geo II c.5) repealed former statutes relating to the crime. Second, in England the punishment of burning at the stake was attached to the crime of a wife murdering her husband as per the existing laws of petty treason until their repeal in 1790. However, the 1708 Treason Act, which brought Scotland's treason laws in line with those of England, did not extend the crime of petty treason to Scotland. As discussed in Chap. 4, women who murdered their husbands were instead sentenced to be hanged and their bodies dissected as was the case for other murderers. A final explanation for the end of executions by burning can be linked to the disappearance of the crime of bestiality from the court records. After Geddes' case there were only a further few bestiality cases found in the High Court or circuit court minute books and no one else received a capital sentence. In the case of Thomas Kirkland in 1765, the jury found him guilty only of attempting the crime and he was transported for life despite similar details in the witness statements that were found in Geddes' case.[66] The *Scots Magazine* believed that "a corporal punishment would probably have been inflicted, but it was thought such an odious crime should not be made a subject of conversation among the populace."[67] This demonstrates that it was not only the punishment of burning that was to become extinct in Scotland, the exemplary marking out of the crime of bestiality was also to become less desirable as evidenced by the fact that Geddes was the last person to suffer a capital punishment for the offence.

Cameron cited a range of punishments in medieval Scotland that fell short of death but left an offender permanently marked out. These included having their cheek branded, scourging with branding, cutting out tongues and cutting off ears and hands.[68] The mutilation or disfiguring of an offender in the Early Modern period was intended to incite shame and to mark out their criminality when they were attempting to reintegrate into society. Edward Johnston had both of his hands cut off and displayed for sedition in 1597, possibly a symbolic punishment targeting the source of his criminality.[69] However, mutilation as a punishment in itself fell into disuse by the late seventeenth century and was

only considered acceptable if it was inflicted as a prelude to execution.[70] In Scotland there were examples in the seventeenth century where men who had committed particularly heinous murders were to have their hand struck off prior to execution.[71] As offenders were to be executed anyway, this pre-mortem aggravation held a different meaning to mutilation as a punishment in itself. It can be argued that the motivation in sentencing the punishment was not only to add further infamy to the death sentence but to also inflict an additional degree of physical pain due to the egregious nature of the cases.[72]

In the early part of the period under investigation here there were four male murderers sentenced to suffer the aggravation of having a hand severed from their body immediately prior to execution. One case occured in Perth in 1750, one in Edinburgh in 1752, one in Inverness in 1754 and one in Glasgow in 1765. A similarity shared by the three earlier instances was the judges in the cases. Five Lords of Justiciary sat in the High Court in Edinburgh and twice a year two of their number would attend each of the circuit courts. In the 1750 case of Alexander McCowan, judges Fergusson of Kilkerren and Grant of Elchies had attended and passed judgement at the Northern Circuit. They were also two of the five Lords of Justiciary who sat in the High Court in Edinburgh when Normand Ross received the sentence in 1751. In addition, Fergusson was one of the two judges to attend the Northern Circuit when John Shirvel was sentenced in 1754. While these judges would have presided over numerous other murder cases during these years it can be argued that they chose to sentence the additional punishment of having a hand severed prior to execution due to the atrocious nature of the cases. In addition, the first three cases were relatively close together and presented the first examples of the punishment since at least as far back as 1740, when this study commences. Incidentally, Fergusson of Kilkerren had been made a Lord of Justiciary in 1749 and was described as one of the "ablest" lawmen of his time.[73]

An additional similarity in each of the four cases was that there were particularly aggravating circumstances evident in the murders. Alexander McCowan murdered Margaret McLean and their 3-year-old child in Perth so that he could "carry on the filthy intrigue more easily with another woman." The *Scots Magazine* emphasised the image of how "his bloody hand thrust the dirk into her belly" in order to be rid of Margaret.[74] He was sentenced to have his hand severed, then to be hanged until dead and his body hung in chains with the hand fixed to the top of the gibbet.[75] John Shirvel received the same punishment in Inverness in 1754,

again for the murder of his wife and child through beating them with his bayonet. He was described as a drunk who systematically beat his wife excessively. A witness in the case recalled how John had predicted "some time or other he would be hanged on her account."[76] The manner in which Alexander Provan had committed the crime of murder was also especially brutal, even compared to the above cases. The *Scots Magazine* called the crime so atrocious "that the devil could not have exceeded it in wanton cruelty."[77] He had suspected that his wife was with child by another man, although the surgeons who examined her body found this not to be the case. From the depositions given by the surgeons to the court it appeared that he had literally attempted to pull the non-existent child from her body and had made several lacerations in his attempt to do so. There was also evidence of suffocation. The Glasgow Circuit Court ordered that his right hand was to be struck off prior to his execution near the scene of the murder in Paisley.[78]

The final case is that of Normand Ross who was tried in Edinburgh for the murder of his employer Margaret Home, Lady Billie. On the night of the murder another servant heard a loud shriek and when she entered Margaret's room she found a man standing, his hand poignantly described as dripping with blood, over the victim before escaping out of the window. He had been attempting to steal a key from under her pillow to open the nearby drawers which contained a large sum of money when she awoke and, in the ensuing struggle, she was stabbed in the throat with a kitchen knife. She survived for a further two days, long enough to identify Ross as the perpetrator. He was sentenced to be executed at the Gallowlee between Edinburgh and Leith in January 1752, with his hand to be struck off first and then his body hung in chains with the severed hand fixed on top of the gibbet.[79] In England, a servant murdering their master or mistress was stipulated to be petty treason and thus could be punished distinctly, even when compared to other forms of homicide. Although the crime of petty treason was not extended to Scotland, in this case the judges made the conscious decision to add a further degree of punishment to the execution. This was likely due to the relationship of the accused to the victim and perhaps demonstrates some similarity in attitudes towards offences of this kind north and south of the border, despite the legislative difference.

At the place of execution John Shirvel showed a relative degree of calmness as he bade the executioner not to be afraid and not to mangle his arm.[80] Similarly, Normand Ross was described as suffering the severing of his hand from his body with great resolution.[81] While the

newspapers at the time provided only brief details it is possible to learn more from other sources. Thomas Taylor, who was charged with gaining a confession from Alexander Provan during his confinement, published a short account of his case following the execution. From Taylor's account of the execution it appeared that Provan's hand was bound with cords around a block and at the same time a rope was placed around his neck. His hand was struck off with one stroke and he was immediately drawn up, with the whole process being conducted in only three minutes.[82] However, Robert Brown, in his 1886 *History of Paisley*, provided a slightly different account of the event. The executioner had apparently struck Provan's palm rather than his wrist causing him to cry out "cut and pull" repeatedly until the rope was brought to hang him immediately. He added that the axe used had since been kept as a relic and was shown to those curious in these matters.[83] Despite the vague details regarding the severing of the hands, it is reasonable to assume that the condemned suffered a great degree of pain, even if only momentarily, and this was likely the intention of the courts in sentencing this type of execution. However, for the scaffold authorities, there is evidence to suggest that they conducted the process quickly and without too much deliberate elaboration as the condemned men appeared to have been hanged within minutes of their hands being cut off.

As there has been no systematic analysis of Scottish execution practices, it is difficult to quantify the use of mutilation as a prelude to execution prior to the start of this study in 1740. A reading of the available printed sources suggests that, like burning, the punishment was used relatively sporadically and had all but disappeared by the mid-eighteenth century. The fact that there are only four cases among the records analysed for this study also supports this assessment. As with the cessation of the punishment of burning following Geddes' case, after 1765 no more criminals were sentenced to this form of pre-mortem aggravation to the death sentence. One potential reason for this could be due to the difficulties faced in cutting off Provan's hand in 1765 and the seeming desire to conduct the execution as quickly as possible on the part of the scaffold authorities. However, the disappearance of the punishment can also be linked to the wider context of the time and the long-term decline in prolonged execution spectacles discussed in Chap. 1. In addition, by the mid-eighteenth century the post-mortem punishment of hanging in chains was used as a means of enacting some further infamy to the punishment of death in particularly heinous cases. There was a concentration

of cases in the late 1740s and early 1750s, on the eve of the Murder Act, and thus, this study argues, gibbeting had already largely replaced aggravated executions as the main exacerbation to the punishment of death.

The Punishment for Treason

When discussing the long-term changes that occurred to Scottish execution practices in this period, the analysis can be bolstered by a brief examination of the changes that occurred to the punishment for treason. Within the annals of penal history, the distinction attached to treason by legal statute had been matched by the nature of the punishment for the crime upon the scaffold with malefactors sentenced to be hung, drawn and quartered. This traditional traitor's death was deliberately ignominious and steeped in the symbolism of state power and justice. Although this study does not have the scope to provide an extensive analysis of treason, it can provide a brief excerpt of the long-term adaptations that occurred to executions for the crime during the 'Long Eighteenth Century'.

The Early Modern period has been labelled as the heyday of capital punishment due to the need to maintain control in a time of few practical alternatives with "richly symbolic rituals and representations…silencing all questions about its [the state's] legitimacy."[84] Royer emphasised the historic importance of theatricality as well as brutality in the punishment for treason.[85] During the repression and punishment of the Covenanters, who opposed the interference of the Stuart King in the Presbyterian Church of Scotland in the 1680s, a period in Scotland known as the "killing times", there were numerous examples of the state's use of sanguine execution spectacles and the symbolic post-mortem display of body parts.[86] Similarity can be found in England with the aftermath of Monmouth's Rebellion, the failed attempt in 1685 to overthrow James II in favour of the late Charles II's illegitimate son, the Protestant Duke of Monmouth. The Western 'Bloody' Assizes that followed, presided over by the infamous Lord Jeffries, resulted in over 250 people being hung, drawn and quartered and many of their bodies being widely displayed. However, in the wake of the Glorious Revolution of 1688, the Hanoverian monarchs and the Whig government pointed to a departure from the despotic practices of the former regime.[87] While the symbolism of the traitor's death remained important in the eighteenth century, there were acknowledgements that excessive cruelty could have

potentially threatened the legitimacy of those inflicting the punishment. In turn, while the death sentence passed by the courts remained largely unchanged, the executions of convicted traitors, whilst still set apart due to the heinous nature of their offence, were subject to discretionary implementation as the century progressed. In addition, due to the multiple stages of the traitor's death sentence, legal death could extend beyond physical death, and thus the point at which their execution became a post-mortem punishment was often indeterminate.

The Jacobite Rebellions of 1715 and 1745 were direct challenges to the Hanoverian monarchy by the rebel armies of the son, and later grandson, of the deposed King James Stuart II. While this chapter has neither the scope nor the space to detail the motivations, major events and outcomes of the respective rebellions, it is beneficial to briefly offer some details of the executions that followed in their wake.[88] Although the trials and executions following both the '15 and the '45 occurred in England, the rebel armies had been primarily comprised of Scottish Highlanders and the aftermath of the rebellions reverberated throughout Scotland, but particularly in the Highlands, even impacting upon capital punishment levels, as detailed in Chap. 3. There were 40 rebels executed following the '15 and 79 executed after the '45. In most cases, with the exception of those of the handful of peers who were to be beheaded as was customary due to their status, the condemned rebels were sentenced to suffer the traditional traitor's death of being hung, drawn and quartered and their bodies to be at the disposal of the king. However, a reading of sources offering details of the executions demonstrates that the disembowelling, beheading and quartering were carried out in varying orders and, in some cases, were post-mortem punishments rather than aggravated executions.[89] What is clear is that, while the state needed these executions to act as a stark reminder of the reward for treachery, as the eighteenth century progressed this perceived justice had to be balanced with the risk of delegitimising the proceedings with excessive cruelty.

Following the extension of England's treason laws to Scotland by the Treason Act of 1708, Robert Watt was the first person to be tried for the crime on Scottish soil. He was a prominent member of the Society of the Friends of the People and was convicted in 1794 of conspiring to raise insurrection, seize Edinburgh Castle, attack the city's banks and imprison some of the city's top legal officials to levy money for the Society's cause, all to compel the king to end the war with France and

change his ministers in government.[90] He was sentenced to be hung, drawn and quartered but, prior to the scheduled date of execution, the sentence was amended to order that he be hanged and his head severed from his body.[91] During his execution, the body was left to hang for 32 minutes before being cut down and laid upon a purpose-built table. It was reported that his body was "completely lifeless" before the executioner struck off his head with an axe in two blows. He then held the head up briefly to the watching crowd before placing it in the waiting coffin with the rest of the body.[92] Contextually, Watt's execution occurred at a time when events in France permeated the British press. The Revolutionary Tribunal had sentenced people of all ranks to death, including King Louis XVI and Marie Antoinette, by the guillotine. A report of Watt's execution described the crowd's shock reaction to the appearance of the axe and noted that several people had rushed away from the scene to avoid the sight of the executioner severing the head from the body. The article lamented, "how unlike is this behaviour to that of the blood-thirsty savages of France" who exulted in sanguine spectacles of suffering.[93] This again demonstrates the balance the authorities had to achieve between making a stark example of a convicted traitor without resorting to the same bloodthirsty scenes in France they so deplored.

The final executions to be briefly detailed here are those of Andrew Hardie, John Baird and James Wilson. All three men had been convicted for treason for their parts in the Scottish insurrection of 1820, often referred to as the 'Radical War'. It had occurred at a time of an economic downturn in the wake of the Napoleonic Wars with artisan workers, especially Scottish weavers, seeking parliamentary reform, Scottish independence and universal male suffrage. In areas of western Scotland including Glasgow, Dumbarton, Stirling, Renfrew, Lanark and Ayr, especially in weaving communities, work had ceased and there were skirmishes between the radicals and the authorities which resulted in several arrests and trials, following which Hardie, Baird and Wilson were executed.[94] Executions for treason had been amended by the Treason Act of 1814 (54 Geo III c. 146) which meant that those convicted would be hanged until they were dead and their heads severed post-mortem. Reports of the executions, Wilson's being conducted in Glasgow and Hardie's and Baird's in Stirling, were met with cries of murder and were carried out swiftly in contrast to some of the more drawn-out spectacles following the Jacobite Rebellions.[95] Furthermore, although they were

very briefly held up to the watching crowd, the severed heads of the men executed in 1794 and 1820 were not put upon spikes and publicly displayed, as several heads of prominent Jacobite rebels had been.

The punishment for treason in the 'Long Eighteenth Century' cannot be entirely separated from the broader adaptations that were occurring to the public execution ritual. However, the break with older execution practices was more complex and did not follow exactly the same trajectory. The Jacobite rebellions were direct challenges to the stability of the country, yet the state had to balance justice with the potential revulsion of its citizens at overt cruelty when punishing the rebels. In this sense, Elias' model of a "civilising process" is applicable to a discussion of the punishment of treason to an extent.[96] During both rebellions the government had argued that the despotic rule of the Stuart monarchy and, in particular, the bloodthirsty punishments meted out following Monmouth's Rebellion in the late seventeenth century, had legitimised the events of the Glorious Revolution.[97] Therefore, the state could not punish the Jacobite rebels with the very same prolonged and sanguine execution spectacles they argued had delegitimised the Stuart monarchy. Furthermore, by the late eighteenth century Scotland was internally stable and the use of capital punishment as an "instrument of rule, essential to state security", more characteristic of the Early Modern period, was less justifiable at the times of the executions for treason in 1794 and 1820.[98] This was particularly the case at the time of Watt's execution, as reports took great pains to disassociate his execution from the bloodthirsty scenes in France. In briefly situating these theoretical and practical changes within the wider capital punishment narrative, a shift from the pre-mortem evisceration to the post-mortem punishment of the traitor's body can be discerned. Furthermore, our understanding of the 'Long Eighteenth Century' as a focal period of transition in Britain's public execution history is enhanced.

Post-Mortem Punishment

When investigating the post-mortem infamies that were enacted upon the corpse, a key question is 'why punish the dead?' In this period, there were various religious, legal and medical discourses as well as popular beliefs about the dead criminal body, including its potency. Tarlow highlighted that in Denmark, Germany and Switzerland the blood of decapitated criminals was taken as a form of medicine well into

the nineteenth century.[99] Similarly, Davies and Matteoni investigated the belief in the healing properties of the hanged man's hand if it was rubbed against bodily swellings, a practice that achieved prominence in England in the second half of the eighteenth century.[100] In addition, the essays within a recent edited volume examining the global history of execution and the criminal corpse respectively explored the interplay between power, belief and display in the punishment of the criminal body.[101] McGowen stated that the punishment of a criminal's body was as much to do with the "language of community" as with the "mechanics of pain."[102] This would certainly fit with the aims outlined in the Murder Act, namely to make an impression on the minds of both the condemned and the spectator through the use of post-mortem punishment.

In his investigation of the punishing of the suicide body in England and Scotland, Houston distinguished between the forfeiture of goods and the more obvious punitive punishing of the body. He included examples in the sixteenth and early seventeenth centuries where suicide corpses were dragged through the streets before they were buried, or where they were hung upon the gallows. Although the displaying of suicide bodies in Scotland disappeared in the late seventeenth century, the bodies were still dragged through the streets in the eighteenth century in what Houston termed an "extra-judicial punishment."[103] Between 1740 and 1834, six capitally condemned criminals committed suicide between their sentencing and scheduled date of execution and there were a few others who attempted suicide but were revived and executed as planned, further demonstrating the importance of the public nature of executions rather than just their capacity to end the criminal's mortal life. In the case of condemned murderers who committed suicide, there was some contention over the fate of their bodies as they had been sentenced to additional post-mortem punishments.

Following his conviction for the murder of his wife in 1755, Andrew Wilson's executed body was ordered to be hung in chains, but he committed suicide in prison before the execution and instead his corpse was handed over to a group of surgeons.[104] However, the fate of Mungo Campbell's suicide corpse proved to be more contentious. His executed body was supposed to be handed over to Alexander Monro for dissection at Edinburgh University. As he had hanged himself in prison, this was argued to be sufficient cause for his body to be at the disposal of the magistrates. However, perhaps due to the contentious nature of his capital conviction in the first place and his previous respected position

as an excise officer, his family were given the body for interment.[105] This suggests some progression from the earlier public punitive practices identified by Houston but also demonstrates the continued importance attached to the fate of the dead body and, in the case of murderers whose bodies were marked out for post-mortem infamy, the desire to see the punishment enacted even though the first part of the sentence, the public execution, had not taken place.

The additional punishment of an offender's body following execution had been a penal option before the passing of the Murder Act in 1752, but was subject to discretionary implementation. However, the act made it explicit that all murderers must be sentenced to either public dissection or hanging in chains. Chapters 6 and 7 provide more in-depth analyses of these punishments, but the final section of this chapter seeks to contextualise the infliction of post-mortem infamies within the changing nature of capital punishment in this period. The first half of the eighteenth century witnessed the publication of several commentaries calling for more severity to be added to the death sentence. A notable example is the 1701 pamphlet *Hanging Not Punishment Enough* which advocated hanging in chains alive and breaking on the wheel for certain crimes.[106] From a reading of these commentaries, McGowen highlighted the recurring argument that the punishment should be more proportionate to the crime committed. For example, in 1752 Charles Jones lamented that "almost all nations but ours adopt their punishments to the nature of the offence…we make no difference in the sentence of our laws between a poor sheep stealer and the most inhuman and blood mangling highwaymen or murderer."[107] McGowen additionally argued that there were some who advocated more severe death sentences due to a belief that stark examples would lead to a reduction in the sheer numbers capitally punished.[108]

Rogers argued that the Murder Act was one of the measures added to the statute books to counteract the crime wave happening in London between 1749 and 1753.[109] At the time of its passing, violent robberies that had the potential to lead to murder had become an established "theme of crime reporting" within the London newspapers.[110] Furthermore, Beattie argued that the passing of the act was not prompted by fears over domestic or neighbourhood quarrels. Instead, fears were rooted in the committing of murders and the threat of violence involved during street and highway robberies in and around the capital.[111] The preamble to the act stated that "the horrid crime of

murder has of late been more frequently perpetrated than formerly, and particularly in and near the metropolis of the kingdom", again showing specific concerns over the situation in London. Despite this, the act covered all of Britain and thus placed the post-mortem punishment of the criminal corpse squarely within the criminal justice system. While it did not enact any physical pre-mortem suffering upon the condemned, it sought to add the severity to the death sentence advocated within public debates of the time and, as subsequent chapters will demonstrate, had the potential to psychologically affect the condemned criminal between sentencing and scheduled date of execution.

Chapter 7 will provide a more in-depth discussion of hanging in chains, including an analysis of the chronology of the punishment. It will demonstrate how the mid-eighteenth century in Scotland, even before the passing of the Murder Act, witnessed a concentration of gibbeting at a time of peak numbers of executions and will draw comparisons with the use of the punishment in England around the same time. However, it is useful here to place the concentration of hanging in chains within this discussion of the changing nature of capital punishment. It has already been noted how the penal option of severing a hand immediately prior to execution remained, yet it was used only sporadically by the mid-eighteenth century. Furthermore, Chap. 3 demonstrated that, following the defeat of the 1745 Jacobite Rebellion, there was a marked increase in the number of offenders sent to the gallows following trials before the Northern Circuit. In several cases the decision was taken to hang the bodies of some offenders in chains at the scene of their crime to add further severity to the punishment of death. Comparatively, the late 1740s and early 1750s in south-east England witnessed a similar increase in gibbeting for the crimes of murder, robbery and smuggling.[112] By the mid-eighteenth century, post-mortem punishment was gradually becoming the main aggravation added to the death sentence before being placed more centrally within the criminal justice system in 1752.

In conducting this research, it has been difficult to gauge exactly how contemporaries in the eighteenth and early nineteenth centuries viewed post-mortem punishment, from those administering the punishments to those receiving and witnessing them. However, using the available sources, it is possible to situate its use within a discussion of the changing nature of capital punishment in this period. Francis Hutcheson read at Glasgow University from 1710 to 1716 and was later appointed the Chair of Philosophy in 1729. He warned, in his

posthumously published *System of Moral Philosophy*, that horrid execution spectacles, especially if frequently presented, would harden the hearts of those present and abate their natural sense of compassion by overstraining it. Instead he advised that an "easy death" of the condemned but with subsequent infamy upon the corpse would still affect the spectators and answer its judicial purpose, but without inflicting greater misery upon the criminal and thus hardening the hearts of the spectators.[113] In 1832 Sir Archibald Alison remarked that in Scotland, in the most atrocious cases, the only peculiarities that could be added to the death sentence were executions at the scene of the crime or hanging the body in chains as opposed to the earlier practices of quartering limbs and affixing them to public places.[114] This again reinforces this study's argument that, by this period, the post-mortem punishment of the body had replaced pre-mortem evisceration as the main aggravation added to the death sentence for the crime of murder.

Conclusion

To conclude, the purpose of this chapter was to build up a picture of the staging and scene at the scaffold across this period before exploring the changes that were made to the implementation of public executions. It has demonstrated that the theatre of the gallows was a public spectacle that could generate a diverse range of behaviours and reactions on the part of the central actors, the condemned criminals themselves, and the large concourse of spectators who gathered to witness the event. Whether the scenes were characterised by obstinate or penitent criminals and a raucous or a solemn crowd, they continued to offer a widespread attraction even though this period witnessed gradual but crucial changes to the public execution spectacle.

From an examination of the different locations and times of executions as well as the adaptations to certain elements of the execution ritual, it becomes clear that this period was one of transition in the carrying out of the death sentence. However, this was a pattern of gradual progression rather than an instant break with older practices. For example, after most of Scotland's circuit cities and towns had moved their common place of execution closer to the place of confinement there was a reduced need for certain parts of the scaffold ritual such as the procession. However, the lack of uniformity or central policy dictating these changes throughout the country, combined with the reintroduction of crime scene executions in the early nineteenth century, meant that

the processional culture continued to be of central importance in several cases and could attract a large crowd. Some executions were all-day events and disrupted local areas that may not have witnessed a similar spectacle in living memory.

By the mid-eighteenth century, capitally convicted offenders were almost exclusively sentenced to be hanged by the neck until dead. However, this chapter has identified the last vestiges of older execution practices with one man sentenced to be burnt and another four to have their hands severed from their bodies immediately prior to execution. While there has been a relative dearth in studies of Scottish execution practices, it appears that the sentence of burning had been used in the Early Modern period to punish the crime of bestiality and, of course, this punishment was also characteristic of the witch trials. Similarly, the pre-mortem aggravation of hand-severing had been used to add severity to the death sentence for the commission of particularly heinous murders. However, from a reading of the available details of Scottish execution practices within legal commentaries, it certainly appears that these punishments had declined and that decisions to use them were sporadic by the mid-eighteenth century. The apparent difficulties in the carrying out of the punishment in Alexander Provan's case in 1765, where his hand was not cleanly severed at the wrist and he was hastily hanged crying out in pain, may have also deterred the authorities from using this punishment again. This chapter has also explored the various contemporary legal distinctions attached to the crime of treason and the ideological ramifications of the need to suppress and prevent unrest. It has shown how the offence required swift and exemplary public responses that were steeped in the symbolism of state power. However, it has also demonstrated that the adaptations to public executions for treason across the 'Long Eighteenth Century' need to be situated within the broader contextual capital punishment narrative.

This study has thus far focused primarily upon the journey of the criminal from the courtroom to the gallows. It has set the scaffold scene and has examined the various hallmarks of the public execution spectacle in Scotland. However, it will now demonstrate that the journey of many capitally convicted offenders extended beyond the hangman's noose. The criminal corpse was harnessed by the authorities as a means of inflicting further infamy to the punishment of death. In turn, the Murder Act's prescription of the post-mortem practices of dissection and hanging in chains presents an intermediate stage in the long-term disappearance

of public bodily punishment. The post-mortem evisceration of the criminal corpse, whether on the dissection table or in the gibbet cage, acted as a more exemplary form of punishment instead of the pre-mortem aggravations to the public execution found in previous centuries, a fact that has, until recently, been largely ignored by crime historians.

Notes

1. The current research was conducted as part of the Wellcome Trust funded project 'Harnessing the Power of the Criminal Corpse'. It provides examinations of the post-mortem punishments of dissection and hanging in chains and situates their usage within its exploration of Scotland's capital punishment history. For further pioneering research focused upon the punishment of the criminal corpse, including extensive analyses of the implementation of, and responses to, these punishments in England, see the Palgrave Historical Studies in the Criminal Corpse and its Afterlife series.
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CHAPTER 6

A Fate Worse than Death? Dissection and the Criminal Corpse

The anatomy of the human body has a long history in the annals of science and medicine. An area that had long been the subject of debate prior to the mid-eighteenth century, and would continue to be, was the dissection of the human body. The practice was defended in terms of the pursuit of knowledge for the long-term benefit of the living but faced difficulties in the form of superstition and fear regarding the fate of the corpse. Historians have placed their investigations of dissection within wider beliefs about the body and the disposal of it in death to shed light upon fears over its use for anatomical study. Attention has also been given to the difficulties faced by the medical profession in obtaining cadavers and the problem of body-snatching, which reached its pinnacle in the early nineteenth century.[1] Richardson's *Death, Dissection and the Destitute* placed the anatomical corpse and popular beliefs about the dead body within an extensive study of the passing of the 1832 Anatomy Act.[2] More recently, Hurren has provided a rereading of the act in order to investigate more thoroughly the trade in the dead poor in its wake.[3] However, the sentencing of a murderer to the post-mortem punishment of dissection between the 1752 Murder Act and the Anatomy Act has received relatively little in-depth investigation until recently.[4]

Due to the medical demand for the supply of dead bodies, legislation was passed in 1505 that granted the Incorporation of Surgeons and Barbers in Edinburgh the body of one executed criminal per year. Similar provisions were made in London in 1540 to allow the newly united Companies of Barbers and Surgeons the bodies of four executed felons.

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In 1636 William Gordon of King's College, Aberdeen, successfully petitioned the Privy Council for the bodies of two executed men or those dying in hospitals with "few friends or acquaintances that can take exception."[5] However, it was with the passing of the Murder Act that post-mortem dissection took a more central place in the criminal justice system. The act stated that the bodies of criminals executed anywhere in Britain other than London, where they were to be given to Surgeon's Hall, would be given to a surgeon as directed by the judge and provided a clause to protect against attempts to reclaim the bodies. Although it provided much needed cadavers at a time of increased demand, the act was primarily intended as a punitive measure and made no explicit mention that the criminal corpses were to be used in the pursuit of medical advancement. This is further evidenced by the fact that the act also gave hanging in chains as another penal option. Its preamble pointed to the necessity for some "further terror and peculiar mark of infamy" to be added to the punishment of death.[6] This chapter will investigate the use of post-mortem dissection and question its capacity to act as the effective punishment sought by the Murder Act.

The first half of this chapter will explore some of the various beliefs and fears surrounding the dead body in this period, particularly those over its disposal. Furthermore, it will highlight instances where criminals and their relatives were more preoccupied with the fate of their body than with the execution itself. In 1829 Sir Walter Scott commented that dissection as a punishment was certainly not without effect as "criminals have been known to shrink from that part of the sentence which seems to affect them more than the doom of death itself."[7] Alongside popular beliefs about the dead body and dissection we must also question those of the men within the medical profession who carried out the dissections. An interior knowledge of the human body, and practical experience of dissecting it, was deemed to be a vital part of medical education for the ultimate benefit of the living. Within this, it is evident that, for the professors of anatomy receiving the criminal corpses, and their students, the dissections were largely a means to an end in the acquisition of knowledge rather than the punitive measure sought by the Murder Act.

The second half of this chapter will explore the conjunction between medicine and punishment, and the preservation of life with the ending of it. A reading of the available university records shows that, often, criminal corpses were used as subjects for investigation and demonstration as part of courses on anatomy. Cunningham argued that, by the late

eighteenth century, the discipline had undergone several changes constituting what he called "the end of old anatomy." Within this transition, the practice of dissection was increasingly used as a means to learn and teach about the interior workings of the body.[8] Rather than solely serving to provide the retributive justice sought by the Murder Act, some criminal dissections, and the findings taken from them, contributed to medical knowledge more widely and offered the opportunity for original research. The final part of this chapter will provide a more in-depth study of the dissection of the infamous William Burke. His case is a fitting conclusion to the chapter as it embodied popular fears over dissection, especially heightened due to the prevalence of body-snatching at the time. However, the excitement generated by the whole case reached fever pitch by the time of Burke's dissection and the very abhorrence felt for the practice contributed to the creation of a mass public desire to see his corpse laid out in Monro's anatomy theatre. His dissection, perhaps more than any of the others performed in Scotland, served to add the infamy sought by the Murder Act.

Belief, Anxiety and the Dead Body

In questioning the capacity of dissection to act as a post-mortem punishment, it is first useful to explore contemporary beliefs and anxieties over the disposal of the dead body. Richardson argued that confusion and ambiguity concerning the definition of death meant an uncertain balance existed in the eighteenth century between solicitude and fear towards the corpse.[9] In stipulating that the bodies of executed murderers were to be subject to post-mortem punishment the Murder Act prevented the bodies from receiving a conventional Christian burial. Sawday highlighted that in the Early Modern period, in popular belief, the denial of a Christian burial was thought to affect the deceased person's soul, despite the fact that neither the Protestant nor Catholic religion stated that "intact burial was a prerequisite for posthumous grace."[10] Indeed, a central element of Protestant doctrine was that the soul was beyond earthly control. Similarly, beliefs about the importance of the body for the Resurrection were contradictory but there is little documentary evidence to suggest that people believed dissection would compromise future Resurrection.[11] Wilf argued that popular fears of dissection were rooted more in visceral, rather than ideological, trepidation whereby the conjuring up of images of "sharpened knives and lacerated flesh" served

to centre fears upon the body rather than the soul.[12] Between sentencing and execution, condemned Scottish criminals had up to a month to contemplate their death, and the fate of their body was evidently a cause for concern in some cases.

Following his capital conviction for murder in 1820, David Dobie shouted to the presiding judge, "my Lord it is a grand thing that you cannot dissect the soul."[13] However, this seeming lack of fear over the disposal of his body was far from typical among convicted criminals. Kenneth Dow Kennedy, executed in Inverness in 1750 for cattle theft, called out from the scaffold for any MacDonalds or Camerons present to take hold of his body and see it buried in the churchyard. Four came forward and he was placed in a remote corner "appointed for such malefactors."[14] In addition, some criminals and their relatives feared that their executed bodies would end up in the surgeon's dissection room. Linebaugh described the dealings between criminals, scaffold authorities and the surgeons at Tyburn in the first half of the eighteenth century which often resulted in scuffles over the possession of bodies.[15] A similar situation existed in Scotland in this period. The body of Alexander Cheyne, executed in Aberdeen in 1748 for robbery, was finally given over to his relatives after an altercation with the surgeons at the scaffold.[16] There are other examples of executed criminal bodies being handed over to sailors to be disposed of at sea to prevent their falling into the hands of the surgeons. This was the case with James Millar's corpse in 1753, despite the Aberdeen authorities ordering it to be buried at the foot of Gallows Hill.[17] Following the execution of John Worthington in 1815 for robbery, his body was lowered into a coffin and carried to Kilmarnock for burial. Prior to interment his friends, "anxious to accelerate the consumption of the corpse", had poured a quantity of vitriol on it which had caused "a fume to rise in volumes from the grave."[18] The motive behind this was to make the corpse an unsuitable candidate for resurrection men.

The sentencing of a criminal to post-mortem dissection was not only intended to provide a further mark of infamy to the punishment of death, as made explicit in the wording of the Murder Act, it was also intended to act as a deterrent from crime. However, again this study acknowledges that the issue of deterrence is complex. It is not the argument here that executions or post-mortem punishments served as a successful deterrent to the commission of crime. If someone was intent on committing a premeditated murder or had acted out of extreme anger,

it is unlikely that the possibility of dissection was a sufficient deterrent if the prospect of the death sentence was not. However, in stipulating this post-mortem punishment, and positing it as a means of deterrence, the authorities were clearly attempting to harness some of the contemporary anxieties of the disposal of the dead body. In the early eighteenth century, Bernard de Mandeville defended the dissection of criminals and argued that the strong aversion against the practice was based upon vulgar superstition. He added that dissection "can never be a greater scandal than hanging."[19] However, while it is more difficult to ascertain whether dissection was a deterrent, it is possible to argue that for some condemned murderers the prospect of dissection caused them greater apprehension than the death sentence itself. The Murder Act did not alter an act that had been passed in 1725 (11 Geo I c.26) which stipulated that executions in Scotland could not be carried out within less than 30 days if the sentence was pronounced south of the River Forth and within less than 40 days if pronounced north of the Forth. While this allowed all capitally convicted criminals adequate time to send petitions to London, it also meant that the murderers sentenced to dissection would have had plenty of time to contemplate the fate of their body. When Robert McIntosh was convicted of murder in Aberdeen in 1822 his father travelled to London to petition for a remission of the part of the sentence that stipulated that his body would be sent for dissection. However, he returned unsuccessful the day before the scheduled execution and took leave of his son in a "truly affecting scene."[20] Following her capital conviction for murder in 1823 Mary McKinnon had beseeched the visitors she received in jail to see that her body was decently buried. The *Caledonian Mercury* reported that, when the part of the sentence ordering her body to be sent for dissection was read out, "she was in a state of insensibility." It added that her attendants had "very humanely kept her ignorant of the circumstance."[21] This would suggest that a key part of the capacity of dissection to act as an effective punishment was the psychological torment that the prospect caused the condemned criminal.

As well as investigating how criminals viewed the punishment, it is also beneficial to question its effects upon the execution crowd more generally. John McDonald and James Williamson Black were executed in 1813 on the spot where they had robbed and murdered 73-year-old William Muirhead on the highway between Coltbridge and Corstorphine near Edinburgh. The *Scots Magazine* observed that "with the view of impressing the minds of the spectators with more awe" their

bodies remained uncovered in the cart that delivered them to Edinburgh University for dissection.[22] Similarly, the bodies of William Gordon and Robert McIntosh were escorted to Marischal College by the constables following their execution in Aberdeen which created a spectacle that "could not fail to make a deep impression in the hearts of the thousands gathered."[23] The execution of James Glen in Glasgow in 1827 seemingly passed without incident, with the crowd described as maintaining the utmost order. However, when the body was lowered into a coffin to be immediately conveyed to the Professor of Anatomy at the university, the mood shifted. The driver of the cart that had delivered the body was severely beaten by a great crowd who had followed in procession from the place of execution to the university.[24] Again, the newspapers did not, and could not, accurately report upon whether these scenes were an effective deterrent from crime. However, the fact that people followed the carts and, in the case of Glen, reacted angrily when faced with the delivery of the body for dissection, demonstrates that the punishment did prompt a negative reaction from the crowd in some instances.

The case of Patrick Ogilvie in 1765 raised the question of social class and dissection. He was a Lieutenant in the 89th Regiment of Foot and had recently returned from the East Indies to stay with his elder brother Thomas and his young wife Katherine Nairn, the niece of Lord Dunsinnan. Thomas was poisoned soon after and both Patrick and Katherine were subsequently tried and convicted for incest and murder. The case garnered great attention and debate over their guilt and the trial proceedings were among only a few sensational Scottish cases in the mid-eighteenth century to be printed in Edinburgh, Glasgow and London. Both were found guilty and sentenced to be executed and their bodies delivered to Alexander Monro on 25 September. However, Katherine successfully pled pregnancy and Patrick received four respites of his sentence. The *Caledonian Mercury* reported that "crimes of so black a dye, charged on persons who, until that time, had preserved unblemished characters" required the most evident proof and pointed towards the circumstantial nature of much of the evidence.[25] However, Patrick was eventually executed on 13 November and his body delivered to Monro at the university.[26] He was dissected over the course of three days as part of Monro's anatomy lectures. Medical student Sylas Neville noted in his diary that, due to the great attention the case garnered, many believed "the prejudice of the people of this country would have prevented them from dissecting the body of a murderer of superior rank."[27]

Similarities can be drawn here with the English case of Laurence Shirley, Earl Ferrers, who was convicted of murdering his steward and following his execution his body was dissected at Surgeon's Hall in London in 1760. His body was exposed to public view for three days before being taken for burial. When reporting upon the punishment, the *Manchester Mercury* assured its readers that "even a nobleman of the first rank could not be exempted from the fatal consequences" of murder.[28]

The importance of the punishment of dissection and its potential effects upon the relatives of the condemned, more so than the criminal themselves, was evident in the 1804 case of Duncan MacArthur. He was convicted of the murder of his wife before the circuit court at Inveraray but was sentenced to be executed where the body had been found, on the banks of Crinan Canal in South Knap, Argyle. He was described as having acknowledged the justice of his sentence upon the scaffold and there were no reported incidents involving the crowd. However, following the execution, his body was, by an order of the sheriff, handed over to his relatives for interment as John Anderson, the surgeon named in the court's sentencing, declined to accept it.[29] Anderson was seemingly not against dissecting the body of a criminal as he later accepted the corpse of Peter McDougall in 1807 following his execution at the common place in Inveraray.[30] We can question if his refusal to accept the body was due to the fact that MacArthur was executed in the immediate vicinity of his home, in front of family and friends who might have become less acquiescent if his body had been cut down and handed over to the surgeon rather than to them. It can be argued that those within the criminal justice system understood both the symbolic and material value of dissection, and the potential effects upon both the condemned and their relatives, and thus how it could be harnessed in further punishing the criminal corpse.

Medical Beliefs About the Dead Body

An understanding of the human body was a cornerstone of medical education. A crucial element of the process was the study of anatomy through dissection. In the period between 1700 and 1800 historians have cited a progression from "infrequent, ritualised and moralising dissections" to those more scientifically based and morally neutral, at least on the part of those performing them.[31] The Scottish universities had established the positions of Professor of Anatomy in the early eighteenth

century with Alexander Monro *primus* in Edinburgh and John Gordon in Glasgow credited with raising teaching standards within the medical schools.[32] In this period Edinburgh University was fast becoming a renowned centre of medical instruction with Alexander Monro *primus* and subsequently his son and grandson (both also named Alexander), occupying the position of Professor of Anatomy well into the early nineteenth century. As the eighteenth century progressed, a student's first-hand experience of dissecting a human body was believed to be crucial to their medical training. By the early nineteenth century, it was an indispensable requirement. However, Guerrini argued that the use of dissection to punish criminal bodies "intruded into the anatomy theatre."[33] This chapter will now turn to question how the practice of dissection was viewed by the people performing it. It will demonstrate that Scottish criminal corpses were used in the teaching of anatomy and to conduct original research, and thus the dissection of these bodies went beyond the enacting of retributive justice.

In the first lecture of his course on anatomy entitled 'How to open a dead body', Monro *primus* instructed the class that in this "you are to observe to do everything with the greatest decency."[34] His son, Monro *secundus*, echoed this sentiment and added that dissection should always be "conducted in a skilful manner."[35] This scene of clinical precision, decency and even respect for the body presents a stark contrast to the punitive and retributive justice intended by the Murder Act. In 1775 James Johnston, a student of Monro *secundus*, commented with apparent elation that the class were now moving on to a more accurate examination of the interior of the body having already studied the basic structure through text. He commented particularly upon the opportunity to examine the organs in "a more entertaining light…as several parts conspiring to form a machine."[36] To those within the medical profession the dead body was a subject for investigation or indeed a machine, the mechanics of which were to be studied as a means of advancing knowledge. In 1795 William Rowley argued that an in-depth knowledge of anatomy was vital to the successful performance of surgery to all classes of society, including His Majesty's army and navy, as well as during childbirth.[37] A recurring justification of the use of the dead for the benefit of the living was, and continued to be, characteristic of the arguments of those defending dissection.

Andrew Duncan, a Professor of Medicine in Edinburgh, exalted the benefits of morbid anatomy, the opening of the body to investigate the

cause of death. He detailed cases where he had opened the corpses of those who had died of certain diseases, sometimes in the presence of their relatives who had given their consent.[38] Similarly, Risse highlighted that the Royal Edinburgh Infirmary regulations meant that autopsies could be performed upon the bodies of patients with permission from relatives and the consent of hospital managers.[39] In terms of the medical profession and its links with the criminal justice system, there are numerous examples throughout this period where surgeons attested to the cause of death in murder cases. In many of these cases the victims' bodies had been examined internally as well as externally. In suspected poisoning cases the stomach was subject to more detailed examination and removed from the body. Similarly, in suspected infanticide cases the infant's lungs were removed to conduct a test to see if they would float as it was believed that this would indicate whether the child had taken a breath. There were some instances where the surgeon's evidence was pivotal in securing a conviction. Upon the scaffold, Edward Moore claimed the surgeons had "swore his life away" after they confirmed to the court that his wife had died of a severe and deliberate beating rather than by accident as he had claimed.[40] In these cases the inspection of the body was a necessary and useful practice and, perhaps crucially, was viewed primarily as an investigation into the cause of death through autopsy. However, dissection was distinct from autopsy and involved the cutting open of the body for examination and was both a research and a pedagogical process.[41] Although the line between the two was not always clear, it was the practice of dissection which seemed to cause greater anxieties. Despite this, it is the argument here that it was often the case that the body of the murderer, unless it belonged to someone of great infamy such as William Burke, was treated in a similar manner to many others upon the dissection table. Therefore, the punitive aims of the Murder Act were largely met due to public anxiety over the thought of dissection rather than any distinctive manner in which the process was conducted in Scotland.

Throughout this period, particularly in the early nineteenth century during widespread concern over grave-robbing, men of science continually defended and justified the need for dissection, showing contempt for the ignorance and superstition thought to be characteristic of popular beliefs surrounding the fate of the dead body. Incidentally, it was these beliefs that prompted a fear of dissection, thus aiding in its capacity to act as an effective punishment. In defence of dissection in 1819, Dr Barclay addressed the issue of burial. He stated that many thought it

unchristian not to decently bury the body. However, in making a comparison with the Egyptian belief that is was profane not to embalm the body, or the necessity of burning in Far Eastern practice, he argued that in any of these methods of disposal the body was reduced to atoms.[42] When reporting upon the prospective legislation as a result of Henry Warburton's Select Committee on the supply of bodies for the anatomy schools in 1829 an article in the *Caledonian Mercury* discussed the opposition to the use of the unclaimed bodies of those dying in hospitals, workhouses and penitentiaries. It described a "great clamour" raised by "foolish and ignorant people" on the issue and defended the proposal by stating that these people had no kin to care what became of their bodies or to have their "feelings wounded" by the dissection.[43] It was their disconnection from the living that made these people ideal candidates, again demonstrating that the disposal of the corpse was just as much a concern for the living as the dead.

The study of anatomy had long faced popular contempt and, despite receiving a supply of bodies as per the stipulations of the Murder Act, Monro *tertius* summed up the position of the surgeons when he stated, "in this country anatomists teach rather by the forbearance than by the countenance of the government."[44] The legal supply of criminal corpses was not sufficient to sustain the growing demand for cadavers and thus the medical schools obtained bodies from other sources. In 1742, the raising of the dead from their graves for profit was formally made a criminal offence in Scotland to tackle the problem of grave-robbing.[45] In addition, the early nineteenth century has been called the 'Golden Age of Bodysnatching' due to the increased use of professional grave-robbers by the medical schools. Monro *tertius* obtained cadavers in this manner and his supply extended beyond Scotland alone. At least one of his shipments of bodies from Dublin had been confiscated and buried by customs officials. However, the Lord Advocate, Sir William Rae, sent a letter to the head of the Scottish customs hoping to direct against any future "unnecessary impediments being thrown in the way of the conveyance of dead subjects."[46] This suggests that the practice, although unsavoury, was an acknowledged necessity. Dr Robert Knox, infamous for his part in the sensational Burke and Hare case of the late 1820s, received around 15 cadavers per year from body-snatchers in Edinburgh and his surviving accounts show that he also had agents in Glasgow, Manchester and Ireland from whom he collectively obtained up to a further 20 corpses annually.[47]

The problem of bodysnatching and its explicit links to the medical schools meant that the main driver behind the eventual passing of the 1832 Anatomy Act (2 & 3 Will. IV c.75) was a desire to end the practice by providing a more adequate supply of cadavers for dissection. The Lord Advocate, Sir William Rae, gave evidence in support of Henry Warburton's 'Bill for Preventing the Unlawful Disinterment of Human Bodies, and for Regulating Schools of Anatomy' in March 1829.[48] His involvement in the bill was likely driven by the fact that William Burke had been executed in January 1829 and his case was still very much a cause for national public concern. Charles Bell, a future Professor of Surgery at Edinburgh University, was a member of an early nineteenth-century anatomical society formed to call for changes to the law regarding the legal supply of bodies to the medical schools. Granville Sharp Pattison, a Glasgow anatomy lecturer, also reported upon the difficulties in obtaining first-hand experience of dissecting a human body to Warburton's Select Committee. He admitted that when he was a student himself, groups of around eight would take part in grave-robbing to gain the valuable experience of dissection.[49] Thus, the recommendation of the Select Committee, namely that the bodies of those who died and were unclaimed in public institutions such as hospitals and workhouses should be given over for dissection, received the support of the medical profession.

The *Caledonian Mercury* reported upon the findings of the Select Committee in great depth. In April 1828, the newspaper estimated that the number of unclaimed bodies in public institutions in Edinburgh alone numbered around 400 annually.[50] An article in November 1828 focused upon the difficulties faced when attempting to "abate the dislike of the public to dissection." It argued especially for the removal of the clause within the Murder Act directing bodies to be dissected. The article pointed to the insufficient number of bodies yielded but also stated that the act had failed to adequately prevent the crime of murder. It further claimed that those within the medical field were unanimous in wanting the act repealed as the use of criminal corpses had heaped disdain upon the practice of dissection.[51] The following section will demonstrate that, for those carrying out the criminal dissections, the practice served as a means to an end in the acquisition of knowledge and no reference was made to its capacity to act as a judicial punishment as per the stipulations of the Murder Act.

Dissection and the Criminal Corpse

The Murder Act stipulated that the bodies of those executed in London or within the county of Middlesex would be conveyed to Surgeon's Hall to be publicly dissected. In all other parts of Britain, the judges appointed the surgeon who would receive the corpse. Hurren has shown that criminal corpses were highly sought after, as they could serve as a lucrative means for medical men to practice dissection before paying audiences made up of both those within the medical profession and also the wider public.[52] However, in Scotland the bodies of executed murderers were predominantly sentenced to be dissected within one of the country's biggest universities before a predominantly medical audience. Table 6.1 demonstrates that, between the passing of the Murder Act in 1752 and the Anatomy Act in 1832, a total of 110 murderers were sentenced to the post-mortem punishment of dissection in Scotland: 85 men and 25 women.[53] It is evident that in any given decade there were no more than 25 cadavers made available to the medical schools, with the number in some decades falling below ten. The eighteenth century witnessed a marked increase in the numbers of medical students and, as discussed above, an increasing demand for bodies to be dissected as part of anatomy courses. The numbers provided through the legal channel of convicted murderers were not nearly enough to sustain this demand and many corpses were procured, often through illegal or illicit means, elsewhere. However, the focus here is upon the criminal corpses yielded for dissection and the first question to be investigated is where the bodies were sentenced to be dissected.

Table 6.1 Breakdown by decade of murderers sentenced to dissection between 1752 and 1832

	Men	*Women*	*Total*
1752–1759	2	6	8
1760–1769	4	6	10
1770–1779	7	2	9
1780–1789	5	1	6
1790–1799	9	1	10
1800–1809	12	2	14
1810–1819	11	1	12
1820–1829	21	4	25
1830–1832	14	2	16
Total	85	25	110

Source Figures compiled using the Justiciary Court records

If a murderer had been executed in Edinburgh or Glasgow, their bodies were delivered to the Professor of Anatomy at the respective city's university. Similarly, by the late eighteenth century, those executed in Aberdeen were sentenced to be dissected within Marischal College. Therefore, in over 76% of the total cases the criminal corpses were sentenced by the courts to be dissected at one of the three universities. In terms of those executed elsewhere in Scotland, in the early part of the period their bodies would be delivered to a local physician or surgeon named in the court's sentencing. However, as the period progressed, the bodies of those executed outside of Scotland's biggest cities were largely sentenced to be conveyed to either Edinburgh or Glasgow Universities as opposed to being given over to a local medical man. In the 1760s, following executions in Paisley and Lanark, the court ordered the bodies to be delivered to Glasgow University. Similarly, despite being executed in Perth in 1775, Alexander Husband's corpse was to become the first of a few sentenced to be dissected over 50 miles away by Monro *secundus* in Edinburgh. There are also examples where bodies were sentenced to be handed over to local surgeons following execution, but ended up in Edinburgh or Glasgow instead. For example, Robert Keith was executed in Jedburgh in 1772 and instead of being delivered to Dr Thomas Rutherford as sentenced, he became a subject in the anatomy lectures of Monro in Edinburgh.[54] Following her execution in 1784 in Stirling, Sarah Cameron's body was cut down from the scaffold, put in a coffin and immediately conveyed to Glasgow University despite having been sentenced to be handed over to Thomas Lucas, a surgeon in Stirling.[55]

The decision to send bodies executed elsewhere in Scotland to Edinburgh became even more frequent in the early nineteenth century. Following executions in areas of northern Scotland such as Dundee, Montrose, Cupar, Kinghorn, Forfar and Inverness, some of which were closer to Aberdeen, as well as areas in the west of Scotland that were geographically closer to Glasgow, such as Stirling and Ayr, the bodies were conveyed to Edinburgh for dissection by Monro *tertius*. This further attested to the monopoly that the main universities, particularly Edinburgh, had over the supply of criminal corpses. Often, the bodies had to be conveyed miles from the place of execution and we can question the condition of the cadavers upon arrival, particularly in the summer months. Similarly, the Professor of Anatomy at Glasgow University would sometimes receive the bodies of those executed in its surrounding areas. However, a case in 1823 caused contention. James Anderson

and David Glen were tried in Edinburgh for murder but sentenced to be executed in Ayr before their bodies would then be delivered back to Edinburgh. Duncan MacFarlane, the Principal of Glasgow University, wrote to the Lord Justice Clerk, David Boyle, to petition against the decision as, despite trial in Edinburgh, the practice had previously been that the bodies of those executed in the west of Scotland were directed to go to Glasgow. He called the decision of the court to send Anderson and Glen to Edinburgh a mistake and asked that Boyle intervene to prevent this becoming a precedent.[56] By the early nineteenth century, although the number of students continually increased in Edinburgh, the percentage who attended Monro *tertius*' anatomy class had fallen since the time of his father. Rosner attributed this, at least in part, to competition from private anatomy lecturers such as John Barclay and John Bell, but also to the increasing prominence of anatomy teaching under James Jeffray at Glasgow University.[57] In turn, this would have increased competition for cadavers and possibly explains the above petition.

As noted above, criminal corpses had been used for anatomical demonstration prior to the passing of the Murder Act. In 1702, as per the agreement made in the late seventeenth century regarding the procuring of bodies in Edinburgh, the body of David Myles, executed for incest, was publicly dissected over the course of a week. Different medical men from the Royal College of Surgeons demonstrated upon it each day. They began with a general discourse of the body before moving on to an inspection of key organs such as the stomach, intestines, liver, kidneys, parts of generation, the brain and finally the muscles of the extremities and the resulting skeleton. A vote was subsequently taken to determine if the assembled College masters were satisfied with the standard of the dissection.[58] To use a contemporary term, the body had been 'cut to its extremities' yet it was to conduct an in-depth demonstration rather than solely to serve the ends of criminal justice.

In consulting the available records of criminal dissections conducted within the universities following 1752 it is evident that the bodies were often used as subjects during anatomy lectures and to educate those witnessing the dissection rather than merely acting as a post-mortem punishment. Following his execution in 1772, Robert Keith became a subject for Monro *secundus*. He was used particularly to conduct demonstrations on parts of the eye.[59] Monro had, for several years, devoted much attention to the anatomy of the eyeball and published a treatise on the subject. Similarly, when dissenting from the views of others regarding

the effects of sudden death upon the stomach, namely that it caused a dissolving of the mucous coat, Monro argued that, from his own examinations of executed criminals, he had found no uniformity of appearance of the mucous membrane.[60] When Margaret Shuttleworth was executed in Montrose in 1821 her body was subsequently delivered to Monro *tertius*. Her dissection formed part of his lectures on the congestion of blood in the brain. Upon removing the membranes, it was found to be of a paler colour than usual and so soft that he could not demonstrate more internally. As this was something he had not previously encountered he sent notes of the dissection to Dr Kellie, who had experience in dissecting the brain.[61]

Monro *secundus* primarily conducted his anatomy course using only the titles of lectures, as he taught from memory and experience. However, it is possible to ascertain the contents and structure of the course from some of his notes, now catalogued at the university, and a volume of his lectures based upon his essays and correspondence with others in the medical field published by his son, Monro *tertius*. A specific area of interest here is his accounts of the dissections of criminals, more specifically his attempts to ascertain the primary cause of their death, which he placed within wider subject areas of his anatomy course. Different opinions were offered in this period as to the cause of death by hanging with some citing dislocation of the cervical vertebrae and others the effusion of blood within the brain as the primary cause of death. From his examinations of the criminal corpses delivered to him, Monro claimed that he never detected a dislocation of the neck nor internal congestion alone to be the main cause of death. Instead he argued that death was to be imputed to a stoppage of respiration.[62]

Hurren argued that the wording of the Murder Act sentencing the criminal corpse to be anatomised and dissected was carefully chosen as each practice presented a distinct medico-penal stage. She stated that the hanging of a criminal was their legal death, the anatomisation performed by the surgeon was their medical death, and the dissection was the post-mortem part of the sentence. Hurren identified cases where it was the surgeon, and not necessarily the hangman, who was the final executioner of the law. Upon receiving the bodies there were cases where the surgeons found the heart still beating and removed it from the body, thus committing euthanasia.[63] In the early eighteenth century there were spectacular tales of criminals experiencing a complete revival hours after their execution. The most famous Scottish case was that of ‘Half Hangit Maggie’

who was executed for the murder of her illegitimate infant in 1724 but woke up in her coffin en route to her burial. She was pardoned and lived for another forty years. The Scottish records consulted here do not explicitly detail instances of surgeons finding criminals alive on the dissection table. However, in cases where the bodies were conveyed directly to the universities, as opposed to being held for a short time in a lock-up house as was sometimes the case, it is evident that the effect of hanging on the body and the eventual cause and timing of death was an area of debate.

In this period apoplexy referred to death that was caused by a sudden loss of consciousness, but it could also refer to certain forms of internal bleeding. Monro *secundus* argued that in some cases of executed criminals, though sensation and voluntary motion may have been suspended, secretion, the process by which substances were produced from organs such as the heart, was not necessarily affected.[64] During his demonstrations on blood circulation and observations on the causes of sanguineous apoplexy on the brain, Monro demonstrated that, while the carotid arteries and jugular veins of hanged criminals were compressed by the rope, the vertebral arteries, being less obstructed, could continue to transmit blood to the brain if the action of the heart continued. Therefore, for minutes after suspension and loss of consciousness, the blood could flow to the brain via the vertebral arteries but its return was interrupted by the pressure on the jugular vein.[65] When lecturing upon the inflation caused by the momentum of the blood flow, and attempts to alleviate this in the living patient, Monro cited the possibility of opening a large vein or artery. In terms of the use of criminal corpses to demonstrate this, if they were immediately conveyed to the dissection theatre from the scaffold, as were John Brown and James Wilson in 1773, incisions were made to the jugular to show the blood flow.[66] This was similarly the case in 1829 when husband and wife John Stuart and Catherine Wright were dissected side by side. Incisions to both of their jugular veins caused profuse bleeding and their bloodshot eyes, locked jaws and clenched fists attested to the manner of their death.[67]

Galvanism, when performed upon the dead human body in the early nineteenth century, was used as an attempt to stimulate the body with an electric current. Professor Giovanni Aldini, a famous proponent of galvanism, claimed that, for the experiment to work, he needed access to the bodies of those who had died very recently, although not of any disease. Thus, the executed criminal was an ideal test subject. In 1803, he performed a demonstration on the body of an executed murderer in

London which lasted over seven hours and produced a quivering of the jaw and convulsions of the face.[68] Experiments in galvanism were also carried out on a few Scottish criminals immediately following execution in the early nineteenth century, the most spectacular of which was that performed upon the body of Matthew Clydesdale in 1818. Clydesdale's body was left to hang upon the scaffold for the usual hour before it was cut down and conveyed immediately to James Jeffray, the Professor of Anatomy at Glasgow University. Jeffray had invited Dr Andrew Ure to assist in the demonstrations and five minutes prior to the arrival of the body he charged the galvanic battery in preparation. The success of the experiments was believed to depend upon the speedy transmission of the body from the scaffold to the commencing of the demonstration.[69] Various incisions were made to apply the galvanic power. Strong convulsions caused Clydesdale's limbs to be thrown in every direction. Furthermore, after connecting rods to the left phrenic nerve and the diaphragm, his chest heaved and fell as if breathing. The scene caused several of those present to turn away and one man to faint.[70] Dr Ure wrote up an account of the experiment and delivered it in a lecture to the Glasgow Literary Society, demonstrating the wide dissemination of his findings.[71]

In 1771, medical student Sylas Neville recorded that "the melancholy nature of my present studies increases the lowness of my spirits." His evident trepidation at commencing his studies was to be further exacerbated by the dissection of the first female subject before the class in Monro's lecture theatre.[72] Medical knowledge of the female body, particularly the internal anatomy of the reproductive system, was still an ambiguous and difficult field within the profession, as the primary source of practical investigation was the dead female body. As discussed in Chap. 4, the capital punishment of women was quite a rare event and, in terms of the supply of their bodies for dissection, there were only 25 murderous women given the sentence. In addition, Table 6.1 shows that the highest number of female criminals dissected in any one decade was six and, after the mid-eighteenth century, the figures could be as low as one per decade. The situation was similar south of the border as, of the bodies received by the College of Surgeons in London between 1800 and 1832, only seven were women. Of these, five left the College in relatively pristine condition having only received an incision over the sternum labelled a "theatrical cut."[73] Their bodies were then gifted to surgeons in London's hospitals or private anatomy schools and, as four of these

women were deemed to be of reproductive age, their bodies were valuable subjects for dissection.[74] In terms of female criminals dissected within Scottish universities, it is to the dissection of Barbara Malcolm in 1808 that we now turn in order to demonstrate how her body was utilised by Monro *tertius* for the acquisition of knowledge of the female anatomy.

Monro *tertius* began taking his father's anatomy lectures in 1808 and thus Barbara Malcolm would have been the first female criminal to arrive on his dissection table and, due to the rarity of the occasion, he would not have another until 1813. From a reading of the lecture notes from the time, it is evident that special preparations were made in anticipation of her dissection. She had been sentenced on 5 January but, as with all capitally convicted criminals in Scotland, waited over a month before her scheduled execution on 10 February. In the first week of February, prior to Barbara's dissection, several lectures took place. Those on the first four days looked in-depth at the anatomy of the organs of urine and generation in the female. Interestingly, a lecture on the fifth day changed track to focus more upon the structure of the neck and throat. The dissection of Barbara's body took place the day following her execution and Monro focused particularly upon the naval arch and abdomen, providing an examination of the crural hernia, a cellular substance larger in women than men. He then moved on to an examination of the kidneys, liver and stomach.[75] Within the records the lecture was entitled 'Dissection of a Criminal' and Barbara was not named. Additionally, despite the court having sentenced her to dissection as a form of punishment, the fact that the anatomy course was almost certainly adapted so an examination of gender-specific parts happened at the same time supports the argument that, for the medical men at least, her dissected body was a valuable means to an end in the acquisition of knowledge.

Despite the above cases demonstrating that dissection was used within the universities in the pursuit of anatomical knowledge, the theme of notoriety was often the subject of public debates over the supply of cadavers in the years immediately prior to the Anatomy Act. The discussion now turns to investigate a case that embodied this notoriety and heaped further public disdain upon the practice of dissection.

The Case of William Burke

The case of William Burke and William Hare has been detailed extensively in print and on screen and subject to elaboration and speculation. Although they were murderers their case has come to epitomise the

'Golden Age of Bodysnatching' in the early nineteenth century. Over roughly a 12-month period they murdered 16 people to sell their bodies to Dr Robert Knox, an independent lecturer of anatomy in Edinburgh's Surgeon's Square. They lured their victims into the Hares' lodging house in Tanners Close and then waited until they were in a sufficient state of alcohol-fuelled stupor before laying across their chests, covering their mouth and nostrils and effectively suffocating them, a method of killing subsequently known as 'Burking'. Following their apprehension for the crimes, Hare turned evidence for the Crown and thus escaped standing trial. Burke was found guilty and sentenced to be hanged on 28 January 1829 at the Lawnmarket in Edinburgh and his body, in an ironic instance of poetic justice, was given to Monro for dissection.[76] This case, more so than any other Scottish criminal in this period, captivated the public and received mass press attention with newspapers and pamphlets before, during and after the trial claiming to provide the most authentic account of the murders. This contemporary thirst for extensive details of the case has also facilitated and informed the large body of more recent popular and academic literature and thus it is not the intention here to reiterate the story at length.[77] Instead, this chapter demonstrates the significance of the case within a discussion of public dissection as a post-mortem punishment.

Commenting upon Burke's execution and dissection, Sir Walter Scott lamented "the strange means by which the wretch made money are scarce more disgusting than the eager curiosity with which the public have licked up all the carrion details of the business."[78] Burke's crimes were described as standing out even amongst "the long and black catalogue" of all those before him. They were attributed, not to passion or revenge as others were, but to a "base and sordid love of gain." As the gallows were erected on the day before the scheduled date of execution the crowds gathered to cheer. The joiners in the shop of tradesmen who were often employed for the task of scaffold-building usually considered the work hateful and cast lots to decide who would have to undertake it. In Burke's case, many had actively solicited the job. On the morning of the execution Burke was met with shouting and jeering from a crowd that exceeded 20,000 people. When the drop fell, the rope appeared to move and thus he died struggling, with the crowd appearing to "gloat over the dying agonies." His body was suspended for 45 minutes, then cut down and taken to the lock-up house.[79] It was conveyed to Monro's anatomy theatre early the next day. On the first day of Burke's dissection, Monro stated that he would lecture on the brain. It was described

as unusually soft but he acknowledged that this was not uncommon in criminals who had suffered the last punishment of the law.[80] His lecture lasted from the early morning until two in the afternoon. The anxiety to obtain a sight of the "vile carcase of the murderer" was great. Although Monro had attempted to accommodate as many as he could, a body of medical students, "conceiving themselves to have a preferable title to admission", began to break the glass windows of the anatomy theatre and the police were sent for. The disturbance lasted until four in the afternoon when it was announced that the young men could go in 50 at a time.[81]

The wider public were admitted to the lecture theatre the following day and security appears to have been better managed. They entered one side of the theatre, passed the table where the body lay and exited by another set of stairs. By these means no reported inconvenience was felt. A newspaper correspondent counted the numbers who visited and found it to be approximately 68 people per minute and 4080 by the hour. The theatre was open for six hours so the author estimated that the number of visitors was upwards of 24,000.[82] The top of Burke's skull had been removed to expose the brain during Monro's lecture the previous day, but it was replaced for the public viewing. His naked corpse was stretched out on the dissection table with his eyes still half open and instantly recognisable to those who had known him. The whole scene was described as being far from agreeable but justified by the view that it may be "plausibly maintained that the exhibition will be more efficacious in preventing crime than the common spectacle on the gallows."[83] Following this display, the rest of the dissection was closed to the public. Monro arranged for the final dismemberment of the body, including the removal of the skin. He dipped a quill into Burke's blood to record "this is written with the blood of Wm Burke…the blood was taken from his head 1 February 1829."[84]

Following dissection there were cases where parts of the criminal corpse were kept and displayed, such as their bleached skeleton or pieces of skin. Following his execution for murder in Glasgow in 1797 James McKean was given to James Jeffray for dissection after which some local gentlemen, anxious to preserve part of the murderer, successfully obtained the skin taken from his back from Jeffray. They sent it to be tanned and Robert Reid, a merchant in the city, recalled that it was then cut into small circles and distributed as a memento.[85] Similarly, a police information centre in Edinburgh obtained and displayed a pocket

book made from Burke's skin. In addition, his skeleton continues to be displayed at Edinburgh University's Anatomy Museum. In William Hogarth's *Four Stages of Cruelty* (1751), there are two skeletons belonging to previously dissected murderers hung up as a backdrop to the main dissection tableau. In the 1813 case of Black and Macdonald, when sentencing them to dissection the judges stated that their skeletons would be "preserved to future ages as monuments of youthful depravity."[86] A pamphlet published in Edinburgh in the early nineteenth century talked of the medical schools acquiring human skeletons to further the interests of science, but compared the practice to hanging in chains.[87] These examples of continued display, beyond dissection, raise questions over the point of the legal and social death of these criminals. Whether they were kept as mementos or as reminders of the heinousness of their crimes, we can question if these criminals, particularly Burke, are ever truly socially dead.

Conclusion

Historically, the dissection of the human body occupied an ambiguous position within the medical field and garnered fear and suspicion due to popular anxieties. Despite earlier legislation offering a limited supply of cadavers, 1752 saw dissection as a punishment placed squarely within the criminal justice system. The Murder Act was intended to add a further mark of infamy to executions for the crime. However, this chapter has demonstrated the complexity surrounding the capacity of dissection to act as an effective punishment. For the condemned, the prospect of dissection had not deterred them from committing murder, although there were some cases where they appeared to fear this part of the punishment more than the death sentence itself. It was also evident that the use of criminal corpses brought the practice of dissection into public disrepute due to its links with punishment and this was a criticism levelled at the Murder Act during debates over the Anatomy Act.

The study of anatomy had become more established within the Scottish universities in the early eighteenth century with permanent appointments of Professors of Anatomy. As the century progressed, acquiring knowledge of the interior of the human body was defended by those within the medical profession due to its long-term benefit for the living. However, more generally, dissection continued to be viewed with suspicion and sometimes outright contempt. The incidents that occurred

at the scaffold, such as criminals calling out for someone to take possession of their bodies rather than allow it to fall into the hands of surgeons, or, in the case of murderers, showing more trepidation regarding the dissection rather than the execution itself, further attested to the potential effect of dissection as a post-mortem punishment. However, in practice, most criminal dissections in Scotland took place within a university setting as part of lectures on anatomy and most cases were seemingly not open for general viewing by the public.

In the case of William Burke, despite Monro lecturing on his brain and replacing the top of the skull for the public viewing, the great interest attracted by the case reached a climax with his dissection. The motivation for the murders, namely selling the bodies to the surgeon Robert Knox, was a focal point around which much of the press and the crowd's abhorrence centred. Although he was labelled a most atrocious murderer, we cannot fail to draw the patent link between contemporary fears about bodysnatching and selling cadavers for dissection which reached fever pitch in the late 1820s. Yet, despite the contempt faced by the medical profession, particularly those practicing dissection, the numbers who visited Monro's anatomy theatre to see Burke's body were estimated to equal, if not surpass, those who had attended his execution. His body was viewed with fascination, curiosity and horror, with the capacity of dissection to act as an effective post-mortem punishment significantly increased due to the very abhorrence felt towards the motive for his crimes. Burke's dissection, perhaps more than any other, served the ends of the Murder Act, namely to provide a further mark of infamy to Scotland's most notorious killer.

Notes

1. See Martin Fido, *Bodysnatchers; A History of the Resurrectionists 1742–1832* (London: Weidenfeld and Nicolson, 1988); Jonathan Sawday, *The Body Emblazoned: Dissection and the Human Body in Renaissance Culture* (London: Routledge, 1995); Helen MacDonald, *Human Remains; Dissection and its Histories* (London: Yale University Press, 2006).
2. Ruth Richardson, *Death, Dissection and the Destitute* (London: Routledge, 1978).
3. Elizabeth T. Hurren, *Dying for Victorian Medicine; English Anatomy and its Trade in the Dead Poor, c. 1834–1929* (Basingstoke: Palgrave, 2012).

4. The post-mortem punishment of dissection following the Murder Act was a key strand of the Wellcome Trust funded project 'Harnessing the Power of the Criminal Corpse'. See the work of project member Elizabeth T. Hurren, *Dissecting the Criminal Corpse: Staging Post-Execution Punishment in Early Modern England* (Basingstoke: Palgrave MacMillan, 2016).
5. G. A. G. Mitchell, "Anatomical and Resurrectionist Activities in Northern Scotland", *Journal of the History of Medicine and Allied Sciences* IV (1949): 417–430, 418.
6. *House of Commons Parliamentary Papers* [accessed 25 April 2015] House of Lords Papers, *A Bill intituled an Act for better preventing the horrid Crime of Murder* (5 March 1752).
7. David Douglas (ed.), *The Journal of Sir Walter Scott, Vol. 2* (Cambridge: Cambridge University Press, 1890), 219.
8. Andrew Cunningham, *The Anatomist Anatomiz'd; An Experimental Discipline in Enlightenment Europe* (Farnham: Ashgate, 2010), 384.
9. Richardson, *Death, Dissection and the Destitute*, 7.
10. Sawday, *The Body Emblazoned*, 280.
11. Sarah Tarlow, *Ritual, Belief and the Dead in Early Modern Britain and Ireland* (Cambridge: Cambridge University Press, 2011), 36.
12. Steven Wilf, "Anatomy and Punishment in Late Eighteenth-Century New York", *Journal of Social History* 22 (1989): 507–530, 510.
13. NAS JC8/25/59; *Fife Herald*, Thursday, 15 July 1820, 2.
14. *Derby Mercury*, Friday, 20 July 1750, 1.
15. Peter Linebaugh, "The Tyburn Riot Against the Surgeons", in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England,* ed. by Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thomson and Cal Winslow, 65–117, London: Allen Lane, 1975.
16. *Derby Mercury*, Friday, 16 September 1748, 4.
17. *Caledonian Mercury*, Monday, 26 November 1753, 3.
18. *Caledonian Mercury*, Monday, 20 February 1815, 3.
19. Bernard de Mandeville, *An Enquiry into the Causes of the Frequent Executions at Tyburn* (London: 1725), 26–27.
20. *Aberdeen Journal*, Wednesday, 5 June 1822, 3.
21. *Caledonian Mercury*, Thursday, 17 April 1823, 3.
22. *Scots Magazine*, Thursday, 1 July 1813, 44.
23. *Aberdeen Journal*, Wednesday, 5 June 1822, 3.
24. *Caledonian Mercury*, Saturday, 15 December 1827, 4.
25. *Caledonian Mercury*, Wednesday, 9 October 1765, 1.
26. The lengthy trial proceedings can be found in NAS JC7/33–4. It was reported to the High Court that Katherine Nairn gave birth to a baby girl.

However, she failed to appear in court and in March 1766 it was reported that she had escaped and was never apprehended.

27. Basil Cozens-Hardy, *The Diary of Sylas Neville 1767–1788* (Oxford: Oxford University Press, 1950), 147.
28. *Manchester Mercury*, Tuesday, 13 May 1760, 2.
29. *Caledonian Mercury*, Saturday, 10 November 1804, 3.
30. NAS JC13/35/46.
31. Johanna Geyer-Kordesch and Fiona Macdonald, *Physicians and Surgeons in Glasgow; The History of the Royal College of Physicians and Surgeons of Glasgow 1599–1858* (London: Hambledon Press, 1999), 172.
32. Helen Dingwall, *A History of Scottish Medicine* (Edinburgh: Edinburgh University Press, 2003), 117.
33. Anita Guerrini, "Alexander Munro *Primus* and the Moral Theatre of Anatomy", *The Eighteenth Century* 47 (2006): 1–18, 3.
34. Edinburgh University Centre for Research Collections [hereafter ED CRC] Lectures of Professor Alexander Munro *primus*, DC.5.129, 56.
35. ED CRC Papers of Alexander Munro *secundus*, Gen 579, 1.
36. ED CRC Papers of Alexander Munro *secundus*, Gen 570, 1.
37. William Rowley, *On the Absolute Necessity of Encouraging Instead of Preventing or Embarrassing the Study of Anatomy* (London: 1795), 5.
38. ED CRC Andrew Duncan, Contributions to Morbid Anatomy, p. 46, X:1, 11.
39. Guenter B. Risse, *Hospital Life in Enlightenment Scotland; Care and Teaching at the Royal Infirmary of Edinburgh* (Cambridge: Cambridge University Press, 1986), 263. In 1993, human bones were discovered following excavations in Edinburgh. They showed signs of post-mortem dissection and were identified as belonging to 'unclaimed' bodies of patients who had died in the Royal Infirmary. See David Henderson, Mark Collard and Daniel Johnston, "Archaeological Evidence for Eighteenth-Century Medical Practice in the Old Town of Edinburgh: Excavations at 13 Infirmary Street and Surgeon's Square", *Proceedings of the Society of Antiquities of Scotland* 126 (1996): 929–941.
40. *Caledonian Mercury*, Saturday, 23 May 1829, 3.
41. Tarlow, *Ritual, Belief and the Dead*, 78.
42. ED CRC Dr Barclay, *The Medical School of Edinburgh* (Edinburgh: 1819), p. 46, X: 1, 11.
43. *Caledonian Mercury*, Monday, 12 January 1829, 3.
44. Glasgow University Archives Special Collections [hereafter GUA] MS Murray 663/5.
45. R. A. Houston, *Punishing the Dead? Suicide, Lordship and Community in Britain, 1500–1830* (Oxford: Oxford University Press, 2010), 246.

46. Lisa Rosner, *Anatomy Murders: Being the True and Spectacular History of Edinburgh's Notorious Burke and Hare and the Man of Science who Abetted Them in the Commission of Their Most Heinous Crimes* (Philadelphia: University of Pennsylvania, 2010), 42.
47. Rosner, *Anatomy Murders*, 37.
48. Richardson, *Death, Dissection and the Destitute*, 146.
49. Rosner, *Anatomy Murders*, 37.
50. *Caledonian Mercury*, Saturday, 26 April 1828, 3.
51. *Caledonian Mercury*, Saturday, 15 November 1828, 3.
52. Hurren, *Dissecting the Criminal Corpse*. See also 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. Ward discussed an attempt made by William Wilberforce in 1786 to extend the punishment of dissection for a wider range of crimes. The bill, he argued, originated with Wilberforce's close friend William Hey, a senior surgeon at Leeds Infirmary, who made considerable monetary gains from charging the public for tickets to the criminal dissections he carried out.
53. There were five women convicted of the murder of their infants who did not receive any post-mortem punishment within the courts' sentencing. The cases occurred in the 1750s and 1760s and it is unclear what happened to their bodies after execution as there were no reports of them being conveyed to the place of dissection as was normally the case.
54. Cozens-Hardy, *Diary of Sylas Neville*, 191.
55. *Caledonian Mercury*, Saturday, 30 October 1784, 3.
56. GUA Special Collections MS Gen 1717/3/1/26.
57. Lisa Rosner, *Medical Education in the Age of Improvement: Edinburgh Students and Apprentices 1760–1826* (Edinburgh: Edinburgh University Press, 1991), 49.
58. Helen Dingwall, *Physicians, Surgeons and Apothecaries: Medical Practice in Seventeenth-Century Edinburgh* (East Lothian: Tuckwell Press, 1995), 75–76.
59. Cozens-Hardy, *Diary of Sylas Neville*, 191.
60. Alexander Monro *tertius* (ed.), *Essays and Heads of Lectures on Anatomy, Physiology, Pathology and Surgery by the Late Alexander Monro secundus* (Edinburgh; 1840), 28.
61. Monro, *Essays and Heads of Lectures on Anatomy*, 97.
62. Monro, *Essays and Heads of Lectures on Anatomy*, 97.
63. Hurren, *Dissecting the Criminal Corpse*, 16.
64. Monro, *Essays and Heads of Lectures on Anatomy*, x1vii.
65. Monro, *Essays and Heads of Lectures on Anatomy*, x1v.
66. Cozens-Hardy, *Diary of Sylas Neville*, 205.

67. *Aberdeen Journal*, Wednesday, 26 August 1829, 4.
68. MacDonald, *Human Remains*, 17.
69. Experiments in galvanism were carried out on at least two further executed criminals in Aberdeen and Glasgow respectively, but with mixed success due to the dropping of the body temperature. In 1824 Jeffray blamed the failed experiments conducted on the body of William Diven on the placement of the rope for his hanging which, he claimed, had destroyed the nerves in the neck and thus defeated the purpose of galvanism. See *Morning Post*, Tuesday, 27 July 1824, 2. In addition, when John Campbell's executed body was cut down from the scaffold in Stirling in 1824, his father rushed it to a surgeon in St Ninian's in the hopes of restoring life. Experiments in galvanism were attempted, but they failed. However, the surgeon stated that he was confident that, if the body had been delivered to him ten minutes earlier, he could have restored life. See *Coventry Herald*, Friday, 4 June 1824, 4. In this case the body had been hung for about 30 minutes but there were varying times reported across this period which, combined with knowledge of experiments that had been conducted elsewhere, perhaps explains the belief, on the part of Campbell's father and the surgeon, that his body could be delivered in enough time for galvanism to work.
70. *Caledonian Mercury*, Saturday, 7 November 1818, 3.
71. *Northampton Mercury*, Saturday, 16 January 1819, 4.
72. Cozens-Hardy, *Diary of Sylas Neville*, 143.
73. MacDonald, *Human Remains*, 12.
74. MacDonald, *Human Remains*, 20.
75. ED CRC Lectures and Letters of Professor Alexander Monro *tertius*, Coll 441, D.C.7.120, 234–247.
76. NAS JC8/23/29.
77. For a recent in-depth investigation of the case, see Rosner, *Anatomy Murders.*
78. MacDonald, *Human Remains*, 46.
79. *Caledonian Mercury*, Thursday, 29 January 1829, 3.
80. In the early nineteenth century proponents of the science of phrenology argued that the brain was not a single organ but instead made up of 35 organs each representing a specific aspect of someone's personality. Phrenological observations were carried out on at least 17 Scottish criminals, including murderers such as Burke, to attempt to determine why they had committed their crimes. Examinations, drawings and casts could be done prior to execution and then reflected upon following dissection in the case of murderers. See George Combe, *A System of Phrenology*, Third Edition (Edinburgh: 1830). During the dissection of John Stuart, who was executed in August 1829, Monro noted that the great breadth

across his cheeks, his sunken eyes and the acute angle of his chin were as remarkable as in the cases of other infamous murderers including Burke, which again led to debates as to whether a person's facial features and head structure could be used as an indication of their propensity to commit crime. See *Aberdeen Journal*, Wednesday, 26 August 1829, 4.

81. *Caledonian Mercury*, Saturday, 31 January 1829, 3.
82. *Caledonian Mercury*, Saturday, 31 January 1829, 3.
83. *The Scotsman*, Saturday, 31 January 1829, 6.
84. See Rosner, *Anatomy Murders*, 244.
85. David Murray, *Memories of the Old College of Glasgow, Vol. 1* (Glasgow: 1927), 180.
86. NAS JC8/9/232; *Scots Magazine*, Thursday, 1 July 1813, 44.
87. ED CRC *The Haddington Cobbler Defended or the Doctors Dissected*, p. 46, X: 8.

CHAPTER 7

Hanging in Chains: The Criminal Corpse on Display

The enacting of additional punishments upon the criminal corpse, such as the displaying of the body, whether whole or in pieces, had been a penal option prior to the mid-eighteenth century. However, the 1752 Murder Act made explicit that the bodies of executed murderers were to be either dissected or hung in chains "in the same manner as is now practiced for the most atrocious offences."[1] A total of 22 men were hung in chains, or gibbeted, in Scotland between 1746 and the final case in 1810. In 19 of the cases the condemned had been convicted of murder and the other three had committed serious property offences. In Scotland, the death sentence pronounced by the judge stipulated the logistics of the public execution, such as the time, date and location at which it would be carried out as well as the details of any post-mortem punishments to be enacted. Throughout this period, if an offender was to be gibbeted in Scotland, it was invariably stipulated by the judges that this would take place at the same location as the execution itself. This contrasted with practices in England, where it was common for executions to occur in one location but the bodies to be gibbeted at another, with more discretionary power afforded to local authorities, namely the sheriffs. Comparatively, while local authorities in Scotland, for example sheriffs and magistrates, were tasked with enacting the death sentences and thus possessed some discretion in how the spectacle was carried out, Scottish judges, perhaps more so than their English counterparts, played a crucial role in shaping post-mortem practices.

The first half of this chapter will investigate the implementation of gibbeting, questioning who was sentenced to it, the chronology of the

R.E. Bennett, *Capital Punishment and the Criminal Corpse in Scotland, 1740–1834*, Palgrave Historical Studies in the Criminal Corpse and its Afterlife, https://doi.org/10.1007/978-3-319-62018-3_7

punishment and the locations at which it was carried out. The Murder Act did not distinguish between dissection and hanging in chains for certain offenders and thus the decision was left to the discretion of the judges. This chapter will examine these cases to offer potential explanations why some murderers were sentenced to be hung in chains and will argue that there were often particular aggravations that led to an offender being gibbeted. Table 7.1 provides a breakdown of everyone sentenced to the punishment by decade and circuit. It is evident that over half of the total cases occurred in the 1740s and 1750s and thus correlated with the peak numbers of executions at the time, particularly following trials before the Northern Circuit. A handful of cases occurred in the 1760s and 1770s before the punishment disappeared apart from one final case in 1810. The chapter will offer explanations for the decline and subsequent cessation of the practice of hanging in chains, despite its remaining a penal option until it was abolished by an act passed in 1834 (4 & 5 Will. IV c.26). One potential explanation can be found by linking the chronology of the punishment with the locations at which it was carried out as, in Scotland, offenders were always gibbeted at the same place they had been executed. Therefore, the bodies were either gibbeted at the common place of execution or at the scene of the crime. In the early part of the period under investigation here neither of these locations were typically urban centres. However, Chap. 5 explored the gradual changes made to the common place of execution across Scotland by the final quarter of the eighteenth century and demonstrated a shift

Table 7.1 Chronology of hanging in chains in Scotland

	Edinburgh	*Northern*	*Western*	*Southern*	*Total*
1740–1749	2	1	0	0	3
1750–1759	3	6	1	1	11
1760–1769	0	2	1	0	3
1770–1779	0	3	0	1	4
1780–1789	0	0	0	0	0
1790–1799	0	0	0	0	0
1800–1809	0	0	0	0	0
1810–1819	0	1	0	0	1
1820–1829	0	0	0	0	0
1830–1834	0	0	0	0	0
Total	5	13	2	2	22

Source Figures compiled using the Justiciary Court records

from urban peripheries to locations closer to the place of confinement in town and city centres which were unsuitable gibbet locations.

The second half of this chapter will investigate the potential impact the body in chains could have upon the condemned criminal and the spectator at the gibbet foot. When passing a gibbeted body in Bawtry, England, an early nineteenth-century diarist commented that he regretted the "barbarity of a practice which wounds only the living."[2] The punishments of dissection and hanging in chains were comparable in that both involved the dismembering of the criminal corpse but, in Scotland, during dissection this was carried out before a predominantly medical audience. For the offender hung in chains the body was left to slowly rot in the gibbet cage in full public view. Like the punishment of dissection and public executions more broadly, it is not the intention to argue here that the corpse in chains acted as a successful deterrent to crime as this is almost impossible to accurately determine. In addition, the fact people continued to commit heinous murders would suggest that it was not. However, the sight and smell of the gibbeted body was certainly intended as a stark example of the reward for crime to those who encountered it. In turn, from a reading of the available qualitative sources, this study will offer details of some of the outward responses to the gibbet in this period. Through an analysis of the potential longevity of the punishment, this chapter will highlight cases where the bodies were stolen from their gibbets for various reasons, ranging from a desire to see them buried, to the offence their sight and smell caused to local inhabitants. The final section of this chapter will provide an in-depth investigation into the case of James Stewart who was executed and hung in chains in 1752. His case occurred at a time when post-rebellion tensions were still evident in parts of Scotland and provides a stark example of the desire of the Scottish courts and the legal authorities in London to make a poignant spectacle of the criminal. In addition, the gibbeting of his body embodied various themes that are presented here, namely the importance of location and potential threats to the security of the gibbet.

Hanging in Chains as a Punishment

Historically, the displaying of the criminal corpse was used as the final part of either an aggravated execution or a post-mortem punishment in the most atrocious criminal cases. In Scotland, prior to the mid-eighteenth century, it was used for heinous murders. Hugo Arnot cited the 1601 case of Thomas Armstrong, tried for the murder of

Sir John Carmichael, the warden of the west marches, as the first instance in Scotland of a malefactor hung in chains.[3] Lord MacLaurin also highlighted the case of John Dow Macgregor, hung in chains in 1637 for theft, robbery and slaughter.[4] Chapter 5 argued that executions causing prolonged pre-mortem suffering were waning by the mid-eighteenth century. Instead, in murder cases, the condemned were to be executed more swiftly but their bodies subject to post-mortem punishment. While there was no single belief system regarding how far post-mortem punishments affected the dead body or the fate of the soul, there is evidence of concerns, in this chapter and others, regarding the disposal of criminal corpses. The hanging of an offender's body in chains potentially had a multiplicity of impact, as it not only denied the corpse a burial but also placed the body in full public view to gradually rot.

If a criminal was to be hung in chains, the body would be cut down from the scaffold after hanging for the usual time of between 30 and 60 minutes so that it could be hung up again inside the gibbet cage. The words gallows and gibbet have often been used interchangeably to describe the apparatus on which the criminal was to be executed. However, this study refers to the gallows as the apparatus from which criminals were hanged by the neck during their execution, and the gibbet describes the structure used for the exposure of criminal corpses: an upright post with a projecting arm from which the cage would hang. Tarlow has conducted an extensive search for surviving details of gibbets used in England in this period. She has demonstrated that gibbet cages were made for individual offenders as they were required. This appears to have also been the practice in Scotland as, in some cases, the bodies remained on display for several years making reuse impractical. In terms of the cost of gibbeting offenders, Tarlow demonstrated that it was potentially very expensive. For example, the execution and hanging in chains of Edward Miles in England in 1793 amounted to over £67.[5] The most detailed description of a Scottish gibbet found by the current study is the one used for Kenneth Leal in 1773. His body was stolen and buried at the gibbet foot but was discovered in 1829 with the cage relatively intact. It consisted of a ring around each ankle, from which a chain passed up each leg fastened to a band of strong iron hooped around the body. Four straps passed from the hoop, up the body, to a ring at the neck. The neck ring was attached to the head cap by four straps passing on each side of the head to meet at the top. The assembly was attached to a strongly riveted swivel-link which allowed the contraption to rotate. The cage was

then suspended from a two-foot chain and all the metalwork was made of iron.[6] Certainly, this was a visually impressive form of punishment intended to leave a marked impression upon those who encountered it.

The Gibbeted Malefactor

There were 22 men sentenced to the post-mortem punishment of hanging in chains between 1746 and the final gibbeting in Scotland in 1810.[7] Women were not subjected to the punishment in either Scotland or England due to the historic belief that it was indecent to display their corpses. This was similarly the case when women were executed by strangulation and burning as opposed to being hung, drawn and quartered for treason. Following the Murder Act they were exclusively sent for dissection. The Murder Act did not direct who was to be dissected and who was to be hung in chains and thus the decision was left in the hands of the judges. Therefore, this chapter will examine discernible explanations, based upon the circumstances surrounding the cases, why certain murderers were hung in chains in Scotland.

One contributory factor was the manner in which the murder was carried out. In six of the total 19 murder cases the men had murdered their wives. Nicol Brown had previously beaten his wife with a horsewhip to take her ring to sell. He would later kill her by throwing her into a fire.[8] In a few of these cases the men were also sentenced to have a hand severed immediately prior to execution, an aggravation to the execution spectacle discussed in Chap. 5. John Shirvel had correctly predicted that "some time or other he would be hanged on his wife's account" following one of their arguments.[9] In all of the cases, except one instance of poisoning, the wife killers had used excessive and seemingly unprovoked violence in committing the crimes. This was often attested to in the evidence provided in the court cases and the condition of the victim's body. Alexander McCowan stabbed Margaret McLean repeatedly and cut his child's throat and, as a result of the violence used, only parts of their mangled bodies were ever found.[10] There were other cases of particularly violent murders, such as Robert Keith, who beat and stabbed his stepdaughter to death in 1760 or Alexander Provan, discussed in Chap. 5, whose case was deemed severe enough for him to lose a hand prior to execution. Yet, these men were sent for dissection rather than being hung in chains. This attests to the discretionary implementation of post-mortem punishment in Scotland.

In addition to the method of killing used in the murders, a degree of importance can also be attached to the victim or the particular circumstances surrounding it. As discussed in Chap. 5, Normand Ross' victim was his employer, Lady Billie. He cut her throat in a botched robbery attempt and, despite an apparent lack of premeditation to murder, he was sentenced to have a hand severed and his body to be hung in chains.[11] Donald McIlroy was convicted of the murder of Kenneth Happy in Urquhart in 1756. On the day of the murder, McIlroy was met by two armed constables who had been employed by the commission for executing the late act for recruiting His Majesty's forces in the county of Ross and his name was on their list. When the constables attempted to take McIlroy, he drew a weapon and a struggle ensued. Kenneth had been passing and attempted to take the knife from McIlroy when he was stabbed.[12] Again, McIlroy had no prior malice towards the deceased. However, it was his resistance while being apprehended that led to a capital conviction and to his body being ordered to be hung in chains.

A further factor that explained why an offender was sentenced to be hung in chains was if the murder was financially motivated. In over half of the cases where the victim was not a family member, the murders had occurred with a property offence. In some, the premeditation to rob and murder was believed to be evident in the perpetrator's choice of location to commit the crime. This prompted the courts to use the gibbet as a reminder of the long arm of the law, especially in more remote areas. Soldiers John Chappell and Duncan Campbell mortally stabbed James Imrie on a road just south of Perth so they could rob him.[13] In 1779 James McLachlan was convicted of robbing and murdering Jean Anderson. She had been travelling from Glasgow to Kilmarnock when McLachlan offered to personally escort her on the final leg of her journey from Kilmarnock to her brother's house in Irvine. Her body was later found with marks of violence on the throat and chest with blood coming from her mouth. In addition, she had been stripped of her cloak, stockings, silver buckled shoes and all her possessions.[14] The fact that his victim was a woman, that she had trusted him to escort her, and that he had left her dead body half exposed, were all factors that led to his body being hung in chains.

However, other murders were committed with property offences that did not result in the offenders being hung in chains. John Brown and James Wilson robbed and murdered Adam Thomson in his own home in 1773 but the High Court in Edinburgh sentenced them to dissection.[15]

A potential explanation for this could be the location at which they were tried as the High Court had not sentenced anyone to be hung in chains since the 1750s (see Table 7.1). In addition, as discussed in Chap. 6, Edinburgh University had become a centre for medical education by the second half of the eighteenth century and, within this, received a sizeable proportion of all offenders executed for murder and sentenced to be dissected. This may explain why, after an initial concentration of hanging in chains in the 1750s, the punishment of dissection was more favoured in the capital. An additional explanation can be found when providing an analysis of the locations where offenders were gibbeted. This chapter will argue that the gradual changes made to the locations of executions more generally was a crucial factor in the decline of gibbeting in practice decades before it was removed as a penal option by legislation.

Of the 22 men hung in chains in this period, only three were gibbeted for property offences. In comparison, research investigating gibbeting in England indicated that more offenders were hung in chains for property crimes, although not as many as for the crime of murder, and many of the cases were concentrated in the mid-eighteenth century.[16] In Scotland, James Davidson was tried in Aberdeen in May 1748 for robbery and housebreaking and his case was explicitly linked to the government's efforts to purge the north of the country of its Jacobite sympathisers. The court heard how he was the captain of a notorious gang of robbers. Davidson, along with at least two accomplices who were not apprehended, forcibly entered the house of Robert Paton armed with broadswords and pistols, weapons that had been banned by legislation in the wake of the recent rebellion. They threatened his life, shot his daughter in the arm and stole over £5 in silver as well as a quantity of gold and bank notes. He was sentenced to be executed in Ruthrieston. The magistrates chose to erect the gibbet at the most convenient place near to the road leading to Aberdeen, perhaps to serve as a visible reminder to local residents as well as those travelling upon the public road.[17] At his execution he wore a tartan vest and breeches, both banned pieces of Highland dress, along with white stockings and blue ribbons to pay homage to the Jacobite cause. In committing the crimes he claimed he was "revenging himself upon the enemies of the cause he espoused."[18] In contrast, Alexander Cheyne was capitally convicted by the same circuit for breaking into the house of William Smart, terrorising his family and stealing a quantity of money and clothing.[19] However, he was not sentenced to be hung in chains, demonstrating that gibbeting was not a central part

of the punishment for property offences in Scotland and that it was likely used against Davidson as he was part of a gang armed with banned weapons and had likely been involved in the 1745 rebellion.

In 1773 Alexander MacIntosh was indicted at the circuit court for entering an association to rob coach passengers on the highway in Inverness. At least four other men were called to stand trial, all of whom failed to appear and were subsequently outlawed. In effect this meant their names would be called in the court and when they did not appear it would be ordered that any goods could be seized and their names would be publicly denounced, in Scots law this was referred to as their being "put to the horn." The group were all part of a gang who had committed several robberies, terrorised the area and gained a degree of notoriety. Prior to the beginning of the trial the Advocate Depute was informed that two principal prosecution witnesses had been kidnapped to prevent their attendance in court. It was strongly believed that Lady Borlum, the wife of one of the men outlawed, had orchestrated the abduction and a military party was required to retrieve the witnesses in time for the trial. MacIntosh was convicted and sentenced to be executed at the common place in Inverness, situated very near to the Edinburgh Road, and his body hung in chains upon the same spot.[20] It is clear that MacIntosh and his accomplices were well known in the area and, whether they were revered or feared, his gibbeted body would provide a stark and, due to the nature and locations of his crimes, a very poignant example, especially as he was the ony one of the group the authorities were able to successfully apprehend and punish.

The final property offender hung in chains following his execution was Kenneth Leal. He was convicted for assaulting and robbing 16-year-old post boy John Smith between Elgin and Fochabers. Several letters were stolen, including one that contained 50 guineas.[21] Theft from the mail was a crime made capital by special statute in the eighteenth century and was one of only a few types of theft where specific legislation was extended to Scotland. In England, 17 men were hung in chains between 1752 and 1834 for robbing the mail, usually at the scene of the crime.[22] However, the fact that hanging in chains was rare in Scotland, especially for property offences, suggests that the decision to gibbet Leal's body can, in part, be attributed to the fact that he was tried by the Northern Circuit at Inverness in May 1773, at the same sitting as Alexander MacIntosh. The crimes, both believed to be atrocious in their own right, taken at the same time called for a stark example to be made in the area.

In England, the sheriff's 'cravings' and their associated assize calendars provide information on the claims they made to the Treasury to cover trial costs and carrying out capital punishments and the gibbeting of offenders in the eighteenth century. Although a similar source does not appear to have survived for Scotland, or perhaps it is yet to be located, it is still possible to discern the role of the various legal authorities involved in shaping execution practices from other sources such as court records and newspapers. It was the judges who decided upon the location of gibbeting, but the death sentence tasked sheriffs and magistrates with carrying out the actual executions and subsequent post-mortem punishments within their jurisdictions. In the case of Leal, the court had ordered that he be executed and hung in chains between Elgin and Fochabers, as it was on this road that he had committed the crime. However, the exact location was chosen by the magistrates. The spot they selected was among a large cairn of stones on the left side of the road leading from Elgin to Fochabers, known locally as 'Janet Innes' Cairn' as she had been the last witch to be burnt in the area a number of years previously.[23] Thus the location was spatially significant due to the crime committed, as was intended by the courts, but the choice of this specific, celebrated spot by the local authorities imbued the spectacle with added significance due to its association with the area's historical criminal past.

Chronology of Hanging in Chains

Table 7.1 provides a breakdown by decade of Scottish offenders hung in chains across this period. There was a concentration of cases between 1746 and the late 1750s, with some evident links to ongoing attempts to establish control and sustained stability in parts of northern Scotland. The concentrated use of the punishment between 1746 and 1758 correlates with the increase in executions more generally. However, there were only a handful of cases in the 1760s and 1770s before the punishment disappeared, apart from one particularly atrocious case in 1810. The chapter will now provide an analysis of the chronology of the punishment in Scotland, offering comparisons with its use in England. It will then offer some potential explanations for its disappearance in practice by the late 1770s, despite its remaining a penal option until 1834.

As discussed in previous chapters, the mid-eighteenth century is an important period of investigation for historians of capital punishment in both Scotland and England. The drivers behind the increased

use of the death sentence north and south of the border are informative to a discussion of the punishment of hanging in chains. Rogers made the argument that the mid-eighteenth-century crime wave did not compromise the use of capital punishment in England. Instead it gave rise to calls for more severity in its implementation. He highlighted that between 1748 and 1752, forty criminals were hung in chains for the crimes of highway robbery, smuggling and murder in the southern counties of England, twice as many as in the previous four years combined.[24] Dyndor provided a more thorough examination of the punishments meted out to the Hawhurst gang in the late 1740s for smuggling, robbery and murder and argued that their gibbeted bodies held specific temporal and spatial significance. She highlighted cases where offenders were executed at Tyburn and other execution locations but gibbeted miles away in East Sussex due to its links with the activities of the gang.[25] In Scotland, 14 of the 22 cases occurred in the 12-year period between 1746 and 1758, seven of which were prior to the passing of the Murder Act. Again, the geography of the punishment was important, as seven of the 14 cases occurred following trials before the Northern Circuit. Thus, the chronological pattern of gibbeting was broadly consistent with wider capital punishment practices in the mid-eighteenth century, as the Northern Circuit was also sending the most offenders to the scaffold in an evident determination to make stark and lasting examples of certain malefactors. However, as the eighteenth century progressed, there was less of a correlation between the use of gibbeting and periods of increased capital punishment levels.

Following a concentration of gibbeting in the late 1740s and 1750s, three of the remaining cases occurred in the 1760s, four in the 1770s and one final case in 1810. In terms of comparing the use of the punishment north and south of the border, Tarlow highlighted that in England and Wales, of 1394 offenders capitally convicted under the terms of the Murder Act, 134 were hung in chains.[26] The proportions found in Scotland are relatively similar as, of 104 convicted male murderers between the passing of the act and the repeal of gibbeting in 1834, thirteen were sentenced to be hung in chains. Of the remaining cases that made up the total 22 in Scotland, six murders had occurred prior to 1752 and three offenders were gibbeted for property offences. However, the chronology of hanging in chains in Scotland needs to be examined further. Despite occupying a similarly central role in the criminal justice system as dissection in the two decades following 1752, gibbeting disappeared in

Scotland after 1779, apart from one isolated case in 1810. Comparatively, although gibbeting in England was used to a lesser extent than dissection, the collapse of the punishment south of the border occurred later, in the early nineteenth century.[27] In Scotland, following the case of James MacLauchlan in 1779, another 31 years would pass before the next offender was hung in chains. The chapter will now provide an in-depth examination of the final gibbeting in 1810 before offering some explanations for the disappearance of the punishment in practice.

Alexander Gillan, a farmer's servant in the parish of Speymouth, Elgin, was convicted at the Inverness Circuit Court in September 1810 for the rape and murder of 11-year-old Elspeth Lamb. She had been herding her father's cattle when Gillan barbarously assaulted her and beat her about the head with a large oak stick. Her mangled body was found concealed in the nearby woods. When addressing Gillan, the Lord Justice Clerk stated: "I look upon any punishment which you can receive in this world as mercy." He added that the enormity of the crime called for the most severe and lasting punishment. Gillan was to be executed on the moor, near to where the body had been found, and hung in chains on the same spot. The Lord Justice Clerk stated that it was his duty to make the area of vast woods, well-calculated for the perpetration and concealment of crimes such as Gillan's, as safe as the streets of the biggest cities. Therefore, his gibbeted body would hang "until the fowls of the air pick the flesh off your body and your bones bleach and whiten in the winds of Heaven" to serve as a constant warning of the fatal consequences of murder.[28] Gillan's case provides an interesting exception to an otherwise uninterrupted pattern of the decline in gibbeting. Although his crime stood out for its atrocity, what is crucial to our understanding of why the courts ordered that his body be hung in chains is its correlation with the increased use of crime scene executions in the first third of the nineteenth century.

The reintroduction of crime scene executions, which had been used sporadically following a concentration of cases in the mid-eighteenth century, and the remote location Gillan had chosen for the perpetration of his offence offered a suitable location for the gibbeting of a criminal corpse. Both were crucial factors in the decision-making process. The court was not only willing to forgo the concerns that had previously prevented the use of hanging in chains, they were also willing to pay the additional costs of having the gibbet and the iron cage in which the body would be encased custom-made to provide a stark reminder of the reward for murder.

Gillan's execution potentially held additional punitive currency as the area in which it occurred was unaccustomed to hosting public executions. A broadside of the execution described how the body had been lowered from the gallows and placed into irons and how it was hoped the example would "strike deep into the minds of the rising generation and tend to prevent the recurrence of such terrifying spectacles."[29] From a reading of this evidence one gets the impression that when the author wrote of a desire to prevent the reoccurrence of such a terrifying spectacle, they were referring to the nature of the crime as well as to the nature of the punishment. By the last decades of the eighteenth century, hanging in chains increasingly came to be viewed as an unsuitable penal option in Scotland. Even in the most atrocious cases, where previously the punishment would likely have been gibbeting rather than dissection, the judges had refrained from using this sentence due to a belief that it was potentially harmful, and thus counter-productive, to the public good.

In Scotland, apart from Gillan's case, hanging in chains had ceased as a punishment by the end of the 1770s. There were notable examples when the punishment appeared to have been considered by the courts but was not sentenced due to both practical and ideological concerns. In 1770 Mungo Campbell, an excise officer in Ayr, was condemned before the High Court for the murder of Alexander, Earl of Eglinton. On the night of the murder the deceased had been informed that there were two men on his lands who were suspected to be poaching. He rode along the sands and came upon Campbell. He demanded that Campbell give up his gun but Campbell had refused, stating that he was an excise officer looking for smugglers in the area. The Earl then went to get his own gun before advancing upon him. Campbell told the court that, as he was backing away, he tripped over a stone and his gun went off, mortally wounding the Earl.[30] Following a guilty verdict, one of the judges stated that, due to the circumstances of the case, he did not want to hang Campbell in chains or go further in the post-mortem punishment of the body than was obliged by the Murder Act.[31] Campbell was therefore sentenced to be executed and his body sent for public dissection in April 1770, although he committed suicide in prison and his body was handed over to his relatives.[32] His case had garnered much debate during the court proceedings, especially over the charge of murder as opposed to the non-capital option of culpable homicide. However, the status of the victim, in large part, swayed the decision against him. The fact that the judge did not want to hang his body in chains demonstrates a belief at the time that, of the two

available post-mortem punishments, hanging in chains was the harsher and was to be reverted to only in the most atrocious cases.

In England, the last instances of hanging in chains occurred in 1832. Convicted murderers William Jobling and James Cook were gibbeted in Jarrow and Leicestershire respectively. However, the removal of Jobling's body by his fellow colliers for burial and the order to preemptively remove Cook's by the Home Secretary signalled the end of the punishment. During parliamentary debates to abolish the punishment, it was labelled an "odious practice", with Lord Suffield adding that it was "unsuited to the present state of public feeling."[33] In Scotland, similar attitudes towards hanging in chains had already gone some way to its prevention several years prior to the 1830s. When addressing the court following the conviction of McDonald and Black for a heinous murder committed just outside Edinburgh in 1813, the judges expressed at length their abhorrence for the nature of the crime. They stated that they had intended to order their bodies to be hung in chains so they could "wither in the winds." However, due to a "consideration of the uneasiness it must occasion to the innocent neighbourhood", they instead sentenced them to be executed at the scene of their crime and their bodies were to be sent for dissection.[34] Spierenburg highlighted a similar argument made in 1770 in Amersfoort, a city in the province of Utrecht in the Netherlands. Although the practice of gibbeting did not stop completely, the council decided to relocate the standing gallows, which was also used for the exposure of criminal corpses, away from the Utrecht main road. It was stated that the sight of the corpses "cannot be but horrible for travelling persons." Previously, criminal bodies had been displayed upon main roads to act as a stark warning for people travelling into the city.[35]

Following the conviction of William Burke in 1829, the Lord Justice Clerk, David Boyle, stated that the only doubt in his mind was, whether to satisfy the violated laws of the country and the voice of public indignation, his body ought to be exhibited in chains. However, in taking into consideration "that the public eye would be offended by so dismal a spectacle", he stated that he was "willing to accede to a more lenient execution of your sentence, and that your body should be publicly dissected." He added that he hoped Burke's "skeleton will be preserved in order that posterity may keep in remembrance your atrocious crimes."[36] While the sentence of dissection for Burke was apt in poetic justice, the fact that Boyle had appeared to consider, yet dismiss, the prospect of hanging his body in chains due to the enormity of his crime is important

for two reasons. First, it supports the argument that in Scotland hanging in chains was a post-mortem punishment largely reserved for the most heinous murderers and by Boyle's own admission was apparently more severe than dissection. Second, despite Burke's status as perhaps Scotland's most notorious murderer in living memory, by the 1820s there was a belief that the punishment would cause more damage and offence to the public than good, thus undermining and even threatening its punitive value. Again, this attitude was perhaps reflective of a wider ideological shift in attitudes towards public and punitive bodily display. However, this must be measured alongside the more practical and logistical considerations that impacted upon the disappearance of the gibbeted body in Scotland.

Locating the Gibbet

Throughout this period in Scotland, if an offender was sentenced to be hung in chains following execution it was invariably stated, within the judges' sentencing, that this would occur at the same location as the execution. This provides a contrast to practices in England where executions could occur in one location but the bodies could be gibbeted in another, which may have been spatially specific due to the crimes committed. Therefore, in Scotland, the implementation of gibbeting was more explicitly linked to the public execution and, crucially, to the changes that occurred to its location as this period progressed. Taking into consideration the chronology of hanging in chains, this chapter will now turn to question how far the decline, and eventual end, of the punishment correlated with changes made to the locations of executions more generally, namely their gradual move to more central urban areas which were perhaps unsuitable places to gibbet dead bodies.

In Edinburgh, the common place of execution between 1660 and 1784 was the Grassmarket, a central area within the city's Old Town. However, the four men sentenced to be hung in chains following trials before the High Court in Edinburgh between 1746 and 1755 were instead executed at the Gallowlee between Edinburgh and Leith. The historical port of Leith had become a more populated thoroughfare during Cromwell's invasion of Scotland in the mid-seventeenth century. The Gallowlee was situated in Shrubhill, the halfway point of Leith Walk where Edinburgh and Leith met. An 1865 history of the town cited the existence of a permanent gibbet at the site. Prior to the mid-eighteenth

century, it appears to have been used predominantly for hanging bodies in chains rather than executions. When Philip Stanfield was executed in 1668 for the murder of his father Sir James Stanfield, he was hanged at the Cross in Edinburgh. However, his body was taken to be hung in chains at the Gallowlee.[37] By the mid-eighteenth century the gibbeting of a rotting corpse in Edinburgh's busy centre remained an impractical penal option and thus the Gallowlee was still viewed as a more appropriate location. There had also been a shift in practice, perhaps due to an acknowledgement that it was more expedient to also conduct the executions there following a procession from the place of confinement in Edinburgh.

In demonstrating adaptations to the staging of public executions in this period, Chap. 5 highlighted the importance of location within the whole proceedings and noted the changes made to the place of execution towards the end of the eighteenth century. When investigating both the chronology of gibbeting and the location chosen for it in various parts of Scotland, it becomes apparent that gibbet sites were not within city centres. In terms of the exposure of criminal corpses outside the town walls, Spierenburg argued that this added to the dread experienced by the condemned as their body was to be eternally banished.[38] Locations in England were usually chosen due to their proximity to the crime scene and visibility from public roads, thus away from densely populated areas.[39] In Scotland, while the motivations behind the choice of location were not always discernible, in the five cases where the punishment was to occur at the scene of the crime it was explicitly stated that this was to add a further degree of severity to the punishment. In the remaining cases the condemned were to be executed between Edinburgh and Leith, if tried in Edinburgh, or at the common place of the circuit city. The common place of execution in Perth was upon the permanent gallows situated on the Burgh Muir to the west of the town. Executions persisted there until they were moved to the High Street in the 1780s. Incidentally, the cases of the five men hung in chains at the common place in Perth occurred between 1750 and 1767, prior to the move. Similarly, in Aberdeen, two men were hung in chains at Gallows Hill in 1752 and 1776 respectively. The latter, Alexander Morison, would be the last criminal executed there before the common place was relocated to the more central location of Castle Street. A comparable pattern is discernible when chronicling the punishment in other cities such as Ayr, Inverness and Glasgow.

Longevity of the Gibbet

The post-mortem punishment of the body was intended to add a further degree of infamy to the sentence of death for both the condemned and the spectator. However, as has already been acknowledged, the theme of deterrence and the gibbeted body was complex. For the offenders, the prospect of their bodies being hung in chains had not prevented them from committing their crimes. However, the enacting of post-mortem punishment upon the corpse evoked various reactions from the spectator. By its very nature, the hanging of a criminal's body in chains was intended to be a lasting example. The mechanics of the gibbet, such as its height and the fact that the cage was made from iron and the additional measures regarding security that were sometimes taken to prevent any interference with it, aimed to ensure its longevity. David Edwards was executed and hung in chains on the common muir of Ayr in 1758 for the crimes of murder and robbery. Figure 7.1 is 'A Map of the Common Grounds Belonging to Ayr' by J. Gregg from 1768. It included the gibbeted body of Edwards, demonstrating that it had become a noted part of the local landscape. A diarist recorded that his body was still hanging in the gibbet in 1778.[40] While Edwards' case provides an example of the potential longevity of the punishment, there are numerous others where the bodies were removed for varying reasons.

Andrew Marshall was executed in 1769 for murder and robbery and was the only criminal to be hung in chains in Glasgow in the period under examination here. On the night following the execution his body was stolen from the gibbet and was not recovered. In 1841 the removal of the body was attributed to the Glasgow market gardeners' fear of the decomposing body and its adverse effects due to its proximity to their garden nurseries.[41] Similarly, James McLachlan's body was stolen from the gibbet in Ayr only 36 hours after it was hung up in June 1779. The suspicion at the time was that it had been removed in order to protect the kailyards from the flies it would attract, a problem which would likely have been exacerbated by the fact that it was summertime.[42] In the earlier case of David Edwards, surviving records detailing the cost of gibbeting his body include two carts of lime being delivered to the place of execution.[43] Lime can be used in the disposal of human remains, especially when the bodies cannot be afforded proper burial. It aids in preventing the strong smell caused by the putrefaction of the body.[44] The use of lime when gibbeting the body of Edwards suggests that the

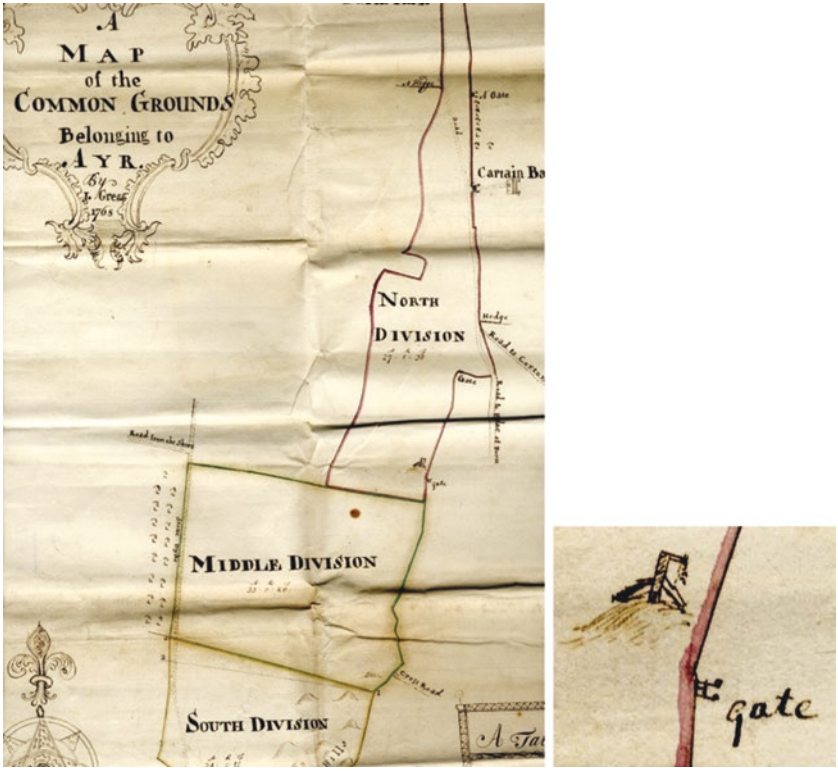

Fig. 7.1 A map of the common grounds belonging to Ayr, J. Gregg, 1768. *Source* Reproduced with the permission of Ayrshire Archives, a joint initiative by East Ayrshire Council, North Ayrshire Council and South Ayrshire Council

authorities were aware of the potential difficulties caused by the putrefying body and thus took preventative measures to ensure the longevity of the punishment.[45]

The above cases suggest that the removal of the bodies from their gibbet cages was not due to a belief in the injustice of the punishment or any real concern for the condemned person. Rather, the presence of the gibbeted body was an inconvenience and was thus removed. However, an evident motivation for the removal of criminal corpses from their gibbets that recurs in the following cases was the desire to see the body buried. In some instances, this appears to have been more premeditated,

and thus more successful, than in others. Nicol Brown was executed and his body hung in chains in April 1755 between Edinburgh and Leith at the Gallowlee for the murder of his wife. During the night between 7 and 8 June his body was taken down and carried off but was soon found again in the Quarry-holes near the Gallowlee. The following day it was hung up again.[46] However, during the night between 19 and 20 June the body was carried off for a second time and, though a diligent search was made, it was not found.[47] In stealing the body the first time it appeared that the perpetrators may have attempted to give Brown a makeshift burial in a shallow grave in the Quarry. However, what is also likely is that they just did not want the sight or presence of a dead body gradually decaying where they would see it daily and so they stole it a second time and successfully disposed of it.

Unlike in Brown's case, there are examples where bodies were taken from their gibbets and remained successfully buried for up to a century. The *Dundee Courier* reported on the life of Robert Bain, a man who had died in 1865 at the age of 107, and included his reminiscences of the case of Kenneth Leal. Bain would have been aged 15 at the time of Leal's execution in 1773 and stated that "according to the barbarous laws of the times he was sentenced to be hung in chains on the spot the deed was committed." He recalled the body hanging from July to mid-winter, with the place of execution coming to be known as 'Kenny's Hillock', and how the "clanking of the chains at night terrified the surrounding inhabitants." One morning it was discovered that the body had been removed.[48] In 1829, during cultivation of overgrown land by John Sellar, it was reported that flooding had uncovered the body buried about three feet under the surface. The bones and the gibbet cage had been buried wholesale and were reinterred in the same manner except for the head and the chain, which were hung up outside Sellar's workshop and exhibited as morbid mementos.[49]

When Alexander Gillan was executed in 1810 he garnered no sympathy from the execution crowd due to the horrific nature of his crimes. Despite this, and the fact that the authorities had ordered his gibbet to be set at a great height to act as a stark illustration of the reward for murder, his body was removed. However, the location was still easy to find as part of the ironwork of the cage had been hung in a tree when the wooden gibbet post had been cut down. In 1911, the *Aberdeen Journal* reported that the cage was ordered to be removed by the Duke of Richmond and in its place a slab put to mark "Gillan's grave—November 1810."

When carrying out the job workers found the skeleton of Gillan buried about two feet eight inches deep, with part of the chains still encasing the body. It was ordered that no further investigation be done on the grave and the remains were reburied along with the chain.[50]

There are some notable similarities in these cases that can shed light upon the motivations behind the removal of the bodies from the gibbet. In both instances the bodies were buried at the foot of the gibbet. While it may have increased the risk of detection to attempt to transport the bodies to a more desirable location, it may also suggest a simple desire to have them out of sight without regard for the condemned criminal. In addition, both were buried sufficiently deep to conceal them, unlike in Brown's case. However, they remained encased, or at least partly so, in the gibbet cage. Again, the fact that the cage was made of iron may have prevented the removal of the body. But it may also have been the case that the perpetrators had no further desire to interfere with the body other than to have it removed from sight. Furthermore, as argued above, by the time of Leal's execution in 1773, and especially by Gillan's in 1810, the punishment was a rarity and, as Bain commented, believed to be a barbarous practice of an earlier age, despite the offence committed. Attendance at public executions was one thing, and could draw large crowds, including in areas unaccustomed to the spectacle of the gallows, but witnessing this prolonged punishment and having it entrenched within the landscape indefinitely was clearly a step too far.

The Case of James Stewart

The case of James Stewart in 1752 embodied various themes running throughout this chapter, including the importance of the crime committed, the location of the gibbet and the risks to its security. His case occurred during the post-rebellion tensions still evident in the political management of parts of Scotland. The highest legal authorities in the country, as well as those in London, monitored its progress, from his apprehension for murder to his trial and subsequent execution. Despite deficiencies in the case against him there was an evident determination to see him receive swift and exemplary punishment. James had been active for the rebels during the 1745 Jacobite Rebellion and was the illegitimate brother of Charles Stewart of Ardshiel, the exiled leader of the Lochaber and Appin Stewarts. Prior to the murder, James was employed by Colin Campbell of Glenure, also known as the 'Red Fox', as his assistant.

Campbell was the Crown Factor on the forfeited estates of Ardshiel, Callert and a portion of Lochiel and Stewart helped to oversee the properties which had once belonged to members of his clan. When investigating the government's relationship with the Highlands prior to 1745, Mitchison cited the non-cooperation rife among the Appin Stewarts but argued that their Jacobitism was motivated more by their disdain for the typically pro-government Campbells than by any personal affection for the deposed Stuart king.[51] The determination of the authorities, and powerful members of Clan Campbell, to prosecute and convict James Stewart, despite the deficiencies in the evidence against him, demonstrated this continued tension in the area even after the Jacobite cause was soundly defeated in 1746.

On 14 May 1752, Colin Campbell was en route to Lochaber to carry out evictions of Stewart tenants in the area. One of his travelling companions and kinsman, Mungo Campbell, provided an account of the events that led to his murder to the court. They were travelling through Lettermore Wood, on the south side of Loch Linnhe. As the road was too narrow to accommodate two horses riding abreast Colin rode behind him. Mungo heard two gunshots and turned to find Colin had been shot in the back. Although Mungo told the court that he caught a brief glimpse of the assailant he was only able to recall his dark coat. Despite attempts to get him medical attention, Colin died shortly after.[52] The events that followed led to perhaps one of the most well-known, yet still contentious, cases in Scottish legal history. Immediately following the murder the case attracted widespread attention. On 18 May Charles Areskine, the Lord Justice Clerk, wrote to the Earl of Holderness, the Secretary of State, in London to assure him that a vigorous enquiry would be made in order that the "barbarous wretches, actors and accomplices of this assassination may be discovered and exemplarily punished."[53] In reply Holderness warned Areskine of the dangerous consequences should this "notorious attack" on the government go unpunished.[54] James Stewart was accused as he and the deceased had previously engaged in public disputes despite working together. Stewart had claimed Campbell was "no friend of his" and had accused him of carrying out his business with a "high hand."[55]

From the beginning of the legal proceedings the odds were stacked against Stewart as he was to be tried before the Western Circuit at Inveraray, a Campbell stronghold, as opposed to the High Court in Edinburgh which may have been more appropriate for such a high-profile case.

In addition, 11 of the 15 jurors in the case had the last name Campbell and the presiding judge was Archibald Campbell, the Duke of Argyll and Chief of Clan Campbell. Stewart was indicted and convicted of being guilty "art and part" of the murder. This in itself demonstrated the determination of the authorities to see someone capitally punished for the crime as another man, one Allen Breck Stewart, suspected of being a principal actor, was never found nor tried for the murder. During debates over the reform of Scots law in the 1820s, a specific critique expressed by Whigs such as Henry Cockburn centred upon the Scottish system of jury selection. Forty-five persons would be gathered from the surrounding areas and named in the circuit court as potential jurors. From these, the presiding judge would choose the 15 to hear the case. In his critique of the system in 1822, Cockburn used Stewart's case to highlight the defects of the system as he claimed there were several qualified jurors who had no affiliation to either side and could have been balloted to be on the jury, but instead a Campbell judge had been allowed to appoint a Campbell jury in what Cockburn called a "mockery of justice."[56]

Following a lengthy trial, James was sentenced to be taken back to the prison of Inveraray until 5 October when he was to begin the journey through Argyleshire to Inverness and then on to Fort William. On 7 November, he was to be escorted by three companies of soldiers on the ferry to Ballachullish in Appin, on the south side of Loch Linnhe and there to be executed upon a gibbet to be erected on a "conspicuous eminence" on 8 November. His body was to be subsequently hung in chains on the same spot.[57] The location was chosen due to its proximity to the murder scene and as the nearby Ballachullish was Stewart's home. Due to the political tensions surrounding the case, largely attributable to the doubts over his guilt, his gibbeted body was to be guarded by 16 men from the military command at Appin. A guard built a hut at the scene and it was continually manned until April 1754. In January 1755, it was reported to the High Court that the body had blown down but the Lord Justice Clerk ordered it to be speedily hung up again before the news spread and attempts could be made to bury the body.[58]

The case of James Stewart provides a further layer to this chapter's investigation of hanging in chains as a post-mortem punishment in Scotland. His trial occurred just prior to the time when the Murder Act came into effect, yet he was sentenced to be hung in chains, as were others at the time, due to the perceived heinous nature of his crime and the need to make a stark example. Immediately following the murder,

correspondence between the highest legal authorities in Scotland and London demonstrated the widespread concern over finding the perpetrator, or at least finding a potential perpetrator to make an example of. Shortly after the capital conviction was returned, reports of the trial were sent to London. Holderness wrote to the Lord Advocate to commend how the affair had been conducted and stated that "nothing could be more material to the future wellbeing and governing of distant parts of Scotland." Furthermore, he hoped the exemplary punishment of this notorious criminal would convince those "previously misled that hitherto the only true and solid happiness was founded on His Majesty's authority and protection."[59] From this correspondence we can discern undertones that Stewart's case was being billed as almost treasonous in nature. Despite standing trial, and facing death and hanging in chains, for murder his execution was to make a lasting political statement. The case continues to garner debate today with the general belief that neither James Stewart, nor even Allen Breck Stewart, committed the murder. Some years following his execution and gibbeting, the body was taken down and secretly buried in the chapel of Keil, situated on the shore of Loch Linnhe. Today, Stewart's case continues to attract visitors to the scene of the execution and the believed location of his burial. A memorial monument, built in 1911, poignantly states that Stewart was executed "for a crime of which he was not guilty."

Conclusion

To conclude, this chapter has provided an in-depth study of the post-mortem punishment of hanging in chains in Scotland. It has examined its administration and implementation and has explored the punishment's potential effects upon both the condemned and the spectator between the mid-eighteenth and early nineteenth centuries. In charting the chronology of the punishment, it is evident that there was a concentration of cases on the eve of the Murder Act in the wake of the 1745 Jacobite Rebellion. The fact that the Northern Circuit accounted for half of the total offenders hung in chains in the late 1740s and 1750s demonstrates a correlation with the increased numbers being sent to the scaffold following trials there. However, despite the broad consistency in practices in the mid-eighteenth century, the sentencing of hanging in chains and peak periods of executions did not follow the same trajectory as the century progressed. In the 1760s and 1770s there were a handful

of cases before the punishment all but disappeared, apart from one final atrocious case in 1810. Despite the relatively low number of offenders hung in chains, this chapter has shown that, between the passing of the Murder Act and the late 1770s, gibbeting occupied an equally central role in the criminal justice system as the other post-mortem option of dissection. Between 1752 and 1779, a total of 25 men were capitally convicted for murder. Of these, 12 were sentenced to be hung in chains and 13 to be dissected. This suggests that there did not appear to be any aversion on the part of the Scottish authorities to sentence the punishment of gibbeting. Thus, its disappearance after the 1770s required further exploration.

Chapter 5 cited a gradual shift in Scotland's common places of execution from urban peripheries to more central locations closer to the places of confinement in the final quarter of the eighteenth century. This chapter has shown that, following these moves, in circuit cities such as Aberdeen, Inverness, Perth, Ayr and Glasgow, no further offenders were sentenced to be hung in chains and instead murderers were exclusively sent for dissection. Furthermore, the removal of the penal option of dissection following the passing of the Anatomy Act in 1832 was to ensure the better supply of cadavers to the medical profession. While the dissection of criminals was criticised during debates over the act, it was not the practice itself that was targeted; instead, it was the inadequate number of bodies it yielded. However, the punishment of hanging in chains differed from dissection in that it had all but disappeared in Scotland half a century before it was formally repealed by legal statute. The act of 1834 had been largely prompted by the difficulties the English authorities faced in gibbeting the bodies of Jobling and Cook in 1832. In the wake of the cases the *Leicester Journal* summed up the debates over the punishment of hanging in chains in the newspapers, calling it an "old practice… worthy of an era of profound barbarity" and questioned how justice could continue to "disgrace herself by acts which public decency repudiates."[60] In Scotland, while the rhetoric was not quite as strong, similar sentiments can be found in the previously cited cases where the punishment of gibbeting appeared to have been considered yet was dismissed by the courts.

The preamble to the Murder Act stipulated that the post-mortem punishment of the criminal corpse was intended to add a further mark of infamy to the punishment of death. This chapter has shown that a key variable of this was the spectator at the gibbet foot. While it is difficult to

gauge exactly how people felt about the gibbeted body, it is evident that it did evoke some reaction, although not necessarily the deterrent desired by the authorities. A couple of bodies were apparently removed for the simple reason that they might disturb the local agriculture. Others were taken and afforded a kind of burial, even if this was makeshift at best. In the case of James Stewart, the correspondence between key Scottish legal figures with authorities in London reveals a large degree of satisfaction at his conviction and execution. Although a constant guard being required at the gibbet for 18 months does not necessarily suggest that his gibbeted body answered the purpose of deterrence. It was rich in punitive, and even political, currency as the staging of the death sentence and subsequent post-mortem punishment near the crime scene, but also in an area populated by many who sympathised with his plight, acted as a marked example of justice being seen to be done.

Notes

1. *House of Commons Parliamentary Papers* [accessed 25 April 2015] House of Lords Papers, *A Bill intituled an Act for better preventing the horrid Crime of Murder*, (5 March 1752).
2. Joseph Mawman, *An Excursion to the Highlands of Scotland and the English Lakes* (London: 1805), 29.
3. Hugo Arnot, *A Collection and Abridgement of Celebrated Criminal Trials in Scotland from 1536 to 1784* (Edinburgh: 1785), 132.
4. Lord John MacLaurin, *Arguments and Decisions in Remarkable Cases before the High Court of Justiciary and Other Supreme Courts in Scotland* (Edinburgh: 1774), xi.
5. Sarah Tarlow, "The Technology of the Gibbet", *International Journal of Historical Archaeology* 18 (2014): 668–699, 675–680.
6. Norman Adams, *Hangman's Brae: True Crime and Punishment in Aberdeen and the North-East* (Edinburgh: Black and White Publishing, 2013), 20.
7. Although sentenced to be hung in chains following execution in 1755, Andrew Wilson committed suicide in prison and his body was instead handed over to the surgeons.
8. NAS JC7/30/345.
9. NAS JC11/19/81.
10. NAS JC11/14/168.
11. NAS JC7/28/319.
12. NAS JC11/21/30.
13. NAS JC11/26/23.

14. NAS JC12/16/51.
15. NAS JC7/38/193.
16. Zoe Dyndor, "The Gibbet in the Landscape: Locating the Criminal Corpse in Mid-Eighteenth-Century England", in *A Global History of Execution and the Criminal Corpse*, ed. by Richard Ward, 102–125, Basingstoke: Palgrave MacMillan, 2015; Nicholas Rogers, *Mayhem: Post-War Crime and Violence in Britain, 1748–1753* (London: Yale University Press, 2012), 60.
17. NAS JC11/13/15.
18. *Caledonian Mercury*, Thursday, 7 July 1748, 2.
19. NAS JC11/13/28.
20. NAS JC11/29/97.
21. NAS JC11/29/97.
22. Dyndor, "The Gibbet in the Landscape", 122.
23. *Caledonian Mercury*, Monday, 24 May 1773, 2.
24. Rogers, *Mayhem*, 60.
25. Dyndor, "The Gibbet in the Landscape".
26. Tarlow, "The Technology of the Gibbet", 670.
27. Tarlow, "The Technology of the Gibbet", 670.
28. NAS JC11/51/38; *Exeter Flying Post*, Thursday, 1 November 1810, 3.
29. National Library of Scotland, *A Broadside of Gillan's Execution*, 6.314 (23).
30. NAS JC7/35/405–447.
31. MacLaurin, *Arguments and Decisions*, 530.
32. NAS JC7/36/225. Although Campbell was given a funeral and his body was interred near Arthur's Seat, the highest point of Holyrood Park in Edinburgh, this was not to be his final resting place. Instead, his grave was discovered and desecrated, and his body dug up and left exposed. His friends therefore took the body and sunk it at sea. See MacLaurin, *Arguments and Decisions*, 532.
33. V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770–1868* (Oxford: Oxford University Press, 1994), 269.
34. NAS JC8/9/232; *Scots Magazine*, Monday, 7 June 1813, 36–39.
35. Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984), 191.
36. *Morning Post*, Tuesday, 30 December 1828, 2.
37. *Tales, Traditions and Antiquities of Leith* (Edinburgh: 1865), 296.
38. Spierenburg, *Spectacle of Suffering*, 90.
39. Tarlow, "The Technology of the Gibbet", 681.
40. Alex F. Young, *The Encyclopaedia of Scottish Executions 1750–1963* (Tunbridge Wells: Eric Dobby Publishing, 1998), 47.
41. *Morning Post*, Thursday, 29 April 1841, 7.

42. Young, *Encyclopaedia of Scottish Executions*, 53.
43. Young, *Encyclopaedia of Scottish Executions*, 47.
44. Lime was listed among the Red Cross Emergency Relief Items Catalogue for 2002 for the disposal of corpses that could not be given a sufficiently deep burial. See www.procurement.ifrc.org.
45. It is interesting to note here that when reporting upon the execution and hanging in chains of Francis Anderson at the Gallowlee in Edinburgh in September 1746, the *Caledonian Mercury* stated that he was hanged, then his entrails were taken out before the body was hung up in chains. See *Caledonian Mercury*, Tuesday, 11 September 1746, 4. The article does not give a reason why this was done, and it was not stipulated within the original court's sentencing (for details of the trial and the death sentence, see NAS JC7/25/347–349). In addition, this study has found no other reports to suggest that the removal of the entrails of the executed criminal before the body was put in the gibbet cage was the common practice. However, if the report of 1746 is accurate it may have been the case that the scaffold authorities had taken it upon themselves to inflict a further stage of punishment to the execution. Alternatively, and perhaps more likely, there may have been a contemporary belief that the removal of the entrails may have prevented the rapid putrefaction of the body and ensured its longevity.
46. *Caledonian Mercury*, Monday, 9 June 1755, 3.
47. *Caledonian Mercury*, Monday, 23 June 1755, 3.
48. *Dundee Courier*, Tuesday, 5 December 1868, 2.
49. Adams, *Hangman's Brae*, 20.
50. *Aberdeen Journal*, Friday, 16 June 1911, 5.
51. Rosalind Mitchison, "The Government and the Highlands 1707–1745", in *Scotland in the Age of Improvement; Essays in Scottish History in the Eighteenth Century*, ed. by N. T. Phillipson and Rosalind Mitchison, 24–46, 25, Edinburgh: Edinburgh University Press, 1970.
52. NAS JC13/10/25.
53. TNA SP54/42/9A.
54. TNA SP54/42/12.
55. NAS JC13/10/61.
56. Henry Cockburn, *Observations on the Mode of Choosing Juries in Scotland* (Edinburgh: 1822), 90–92. Note that in 1825 the criminal law was reformed to permit the balloting of juries in Scotland.
57. NAS JC13/10/165.
58. *Scots Magazine*, Monday, 6 October 1755, 48.
59. TNA SP54/42/34.
60. *Leicester Journal*, Friday, 24 August 1832, 2.

CHAPTER 8

Conclusion

This study has provided the most extensive examination of Scotland's capital punishment history between the mid-eighteenth and early nineteenth centuries to date. It has detailed the journey of capitally condemned criminals from the courtroom to the gallows and sometimes to the dissection table or the gibbet cage. It has demonstrated that this period was one of discussion and debate over the use of the death sentence and the merits of public punishment and one of fundamental change in the staging of the execution spectacle. Furthermore, in providing an innovate investigation into the post-mortem punishment of the criminal corpse, this study has identified an intermediate stage in the long-term disappearance of public bodily punishment. The aim of this final chapter is to synthesise the key findings and conclusions generated throughout the study. It will adopt a dual approach to addressing these conclusions. First, it will explore how this study of previously neglected Scottish public execution practices can be situated, and reinforce some of the broad trends, within the established Western European historiography. However, it will also highlight areas where the unique Scottish experience provides a rethinking of the narrative. Second, it will explore how the study has demonstrated Scotland's distinctive use of the death sentence and post-mortem punishment. Within this, it will offer notable comparisons with practices in England and, in doing so, will provide a fresh perspective from which to view key periods in Britain's capital punishment history.

Within the historiography focused upon capital punishment in Western Europe, the Early Modern period has been characterised by

R.E. Bennett, *Capital Punishment and the Criminal Corpse in Scotland, 1740–1834*, Palgrave Historical Studies in the Criminal Corpse and its Afterlife, https://doi.org/10.1007/978-3-319-62018-3_8

spectacles of suffering upon the scaffold with executions such as burning, boiling alive and breaking on/with the wheel used to further punish heinous crimes.[1] However, by the eighteenth century, Evans argued that "similar changes in penal practice happened virtually everywhere at roughly the same epoch" with the "banishing of the more baroque cruelties from the scene of the scaffold."[2] Executions that inflicted prolonged pre-mortem suffering were declining or were adapted in order to bring about the quicker death of the condemned, for example by breaking an offender 'from above' or strangling women before they were burned.[3] While the Scottish experience broadly reinforces this argument of a gradual decline, this study has also identified the last vestiges of older execution practices as late as the mid-eighteenth century in Scotland. Executions by burning had been used in Scotland in the sixteenth and seventeenth centuries but were very rare by the turn of the eighteenth century.[4] The decision to sentence Alexander Geddes to the punishment in 1751 was due to the heinous and unnatural nature of his crime of bestiality, but was the final instance of a declining practice.

In addition, while mutilation as a punishment had fallen into disuse, it was still employed as an execution prelude in mid-eighteenth-century Scotland. Four men were sentenced to have a hand severed from their bodies immediately prior to being hanged by their necks until dead. As was similarly the case with executions by burning, this type of punishment was used sporadically in the eighteenth century and, by the time of the final case in 1765, there was an evident ambivalence on the part of the scaffold authorities, demonstrated by the desire to sever Alexander Provan's hand and hang him as quickly as possible. The disappearance of these aggravated forms of execution demonstrates that the Scottish experience reinforces the wider European narrative of a gradual move away from scaffold cruelties that were more characteristic of the Early Modern period. However, this disappearance was not an entirely linear pattern of decline and the survival of these practices in the mid-eighteenth century demonstrates the later timing of the final break with certain older execution practices in Scotland. It also further serves to highlight Scotland's distinction when compared to England and Wales, where there were no cases of offenders having a hand severed prior to execution in the same period.

The punishment of treason in the eighteenth and nineteenth centuries has remained relatively peripheral within the wider execution narrative. Historically, the distinction afforded to the crime of treason in legal

statute was matched by the most severe punishment upon the scaffold. Throughout the eighteenth century the death sentence passed against the convicted traitor remained the same as it had been since the fourteenth century. They were to be hung, drawn and quartered. However, in briefly situating a discussion of treason within an examination of execution practices more generally, Chap. 5 highlighted that following the Jacobite Rebellions of 1715 and 1745, while there were some examples of the full sentence being carried out, in several others the executions were subject to discretionary implementation. For example, in some cases the heads were severed immediately following the hanging which effectively made the disembowelling part of the sentence a post-mortem punishment. By the time of the executions in 1794 and 1820 in Scotland, the men were hanged until they were dead and the severing of their heads was made a definitive post-mortem punishment. The holding up of the heads to the crowd was done quickly and without great ceremony rather than being characterised by deliberate elaboration. In greatly adapting the traditional traitor's death sentence, the authorities carried out exemplary punishments but avoided inflicting excessive pre-mortem suffering which may have called into question the very legitimacy of the whole proceedings.

Garland provided a three-stage model of capital punishment in the West between the Late Middle Ages and the present day. In his Early Modern period, he argued that newly emergent states afforded the death penalty a central role in the task of state-building and security. His model is not only applicable to a discussion of treason as it also supports the broader argument in the historiography, namely that Early Modern executions were intended to be very public spectacles of physical suffering. He argued that the gradual disappearance of these aggravated executions, with the transition into his Modern period, was due to an alteration of the primary purpose of capital punishment, that is, from an instrument of rule to a penal practice with the narrower goals of "doing justice and controlling crime."[5] Within this change, executions were not aimed at terrorising onlookers with spectacles of suffering and the body in prolonged pain ceased to be a desired part of the process.[6] This new restraint in bodily punishment resonates with the earlier argument made by Foucault, namely that, by the early nineteenth century, the theatrical elements of public executions were downgraded and instead they were focused more upon the taking away of life as opposed to the physical punishment of the body.[7] This study's discussion of the disappearance of

punishments such as burning and pre-mortem mutilation provides some reinforcement of Foucault's work and broadly fits Garland's framework of analysis. However, in situating the post-mortem punishment of the criminal corpse into Scotland's execution narrative, this study has identified an intermediate stage in the long-term changing nature of capital punishment, and within this the disappearance of the publicly punished and displayed criminal body between the mid-eighteenth and the early nineteenth century.

The post-mortem punishment of the criminal body had been a penal option prior to the mid-eighteenth century but it was subject to discretionary implementation. However, in passing the Murder Act in 1752, Britain was unique in placing post-mortem punishment at the centre of the criminal justice system's response to homicide. Yet, this fact has been largely ignored within the historiography until recently. In both Scotland and England, the late 1740s and early 1750s witnessed an increase in the use of gibbeting to add further severity to the death sentence. In Scotland, the punishment was used during the peak numbers of executions in the wake of the 1745 Jacobite Rebellion. In England, it was intended to act as an exemplary punishment for the crimes of smuggling and violent robberies that were believed to be endemic in London and south-east England.[8] Interestingly, the increased use of gibbeting and the subsequent passing of the Murder Act occurred at around the same time as the final instances of aggravated executions in Scotland. This again serves to highlight the existence of an intermediate stage, where the infliction of pre-mortem suffering upon the condemned may have been declining in favour of a quicker death. However, the punishment of the body continued to be a cornerstone of the criminal justice system as both dissection and hanging in chains placed the criminal corpse on display and they each involved the public dismemberment of the body, whether this was under the surgeon's lancet or rotting in the gibbet cage.

The Murder Act stipulated that the post-mortem punishments of dissection and hanging in chains were intended to "impress a just horror in the mind of the offender and on the minds of such as shall be present of the heinous crime of murder."[9] This study has shown that contemporary fears over the disposal of the dead body could be rooted in religious or theological questions over the fate of the soul and questions of whether earthly intervention with the body could affect the afterlife. They could also stem from the anxiety felt towards the visceral dismemberment of the body. In the eighteenth century, Francis Hutcheson

made the argument that an "easy death" of the condemned with subsequent infamies enacted upon the corpse would have a greater effect upon the crowd than horrid execution spectacles.[10] Similarly, in the early nineteenth century, Sir Walter Scott argued that the post-mortem punishment of the body had the potential to affect the criminal more than the death sentence itself.[11] Chapter 6 highlighted examples where this appeared to be the case, as the knowledge that their body was destined for the dissection table seemed to cause the criminal greater psychological torment than the execution itself.

Furthermore, there were some adverse crowd reactions to post-mortem punishments as those responsible for delivering bodies to the universities for dissection were sometimes attacked and bodies were illegally removed from their gibbet cages. As historical sources provide only limited evidence 'from below', we cannot assume that all offenders or spectators were similarly affected. Therefore, it is impossible to conclude definitively that these punishments met the aims outlined in the Murder Act, namely for the punishments to impress upon the minds of every person condemned and upon the minds of all those who witnessed them. However, through an examination of some of the responses to these punishments we can gain an insight, although certainly not a homogeneous one, into the scene at the public execution, the dissection table and the gibbet foot. In turn, in placing the Murder Act within its broader discussion of the changing nature of capital punishment between the mid-eighteenth and early nineteenth century, this study has challenged the meta-narrative that the decline in aggravated executions meant that prolonged bodily punishment ceased to be a desired part of the death sentence. Instead, it has shown that there was an intermediate stage where, despite the decline in pre-mortem suffering on the part of the condemned, the criminal body continued to hold some punitive currency and remained an important means of setting apart certain criminals, particularly murderers.

Wrightson stated that much of the research into Scottish history in the eighteenth century can be placed into two distinguishable, yet overlapping, interpretive traditions. The first highlights Scotland's unique institutions, society and culture. The second stresses Scottish participation or incorporation in the making of modern Britain.[12] Key topics that have received substantial attention include the passing of the 1707 Union and its potential effects upon Scotland's economic and, later, cultural identity. Following the Union, Scotland maintained its own distinct legal

system and a large degree of autonomy in its application of criminal law, a fact that has been acknowledged by historians but thus far not extensively explored in relation to the country's use of the death sentence.[13] Chapter 2 examined the crucial distinctions of the Scottish legal and court systems, especially when compared to England, which impacted upon the country's use of capital punishment. It explored the practices in the Justiciary Courts of allowing offenders to petition the courts prior to the commencement of their trials and of allowing the court, with the agreement of the Advocate Depute acting as the prosecution, to limit the level of punishment to be meted out in potentially capital trials. It demonstrated how the judicial discretion these practices afforded to the courts impacted upon the level of capital convictions. For example, historians have argued that pre-trial processes, including how the evidence against the accused person was compiled, meant that the cases brought before the Justiciary Court were "effectively incontrovertible" and, for those charged with serious offences, "their chances of survival were slim."[14] However, this study has shown that, while a high proportion of offenders did receive some form of punishment, this was the death sentence in a relatively small proportion of the total cases that could have potentially resulted in a capital conviction. Chapter 3 explored the importance of the ability of the courts to limit the level of punishment for potentially capital property offences. Crucially, it demonstrated that the impairment of this option by the temporary cessation of transportation for much of the 1780s, and thus the removal of a sufficiently severe secondary punishment, had a marked effect upon levels of capital convictions, and thus executions, for property offences.

Examining the ability of offenders to petition the courts is particularly important to our understanding of the punishment of infanticide in Scotland across this period. Although it was a form of homicide, the crime of infanticide was treated with some distinction in the courts. The provisions of the draconian seventeenth-century act which pointed to the concealment of pregnancy and the birth of an illegitimate infant as evidence of murder should said child be found dead, was still in place for much of this period. However, Chap. 4 demonstrated that only a small proportion of the women charged with infanticide faced the death sentence and that executions for the crime declined markedly following the mid-eighteenth century. Approximately 250 women brought before the Justiciary Courts received some form of punishment, and were thus either found guilty or admitted some level of guilt, of the crime of child murder

between 1740 and 1809. The latter was the year in which the 1690 statute was repealed and concealment of birth was established as an alternative charge to child murder and carried a maximum sentence of two years in prison. Of this total, only 33 (13%) of these women received a capital conviction which resulted in 23 executions and 10 pardons. In most of the remaining cases the courts had allowed the accused women to petition before the start of their trials which resulted in most of them being banished from Scotland, and a few being transported. In the 20 years immediately preceding the 1809 act, 79 women accused of child murder petitioned the court and were banished from Scotland and an additional two were transported. Comparatively, in the same period, there were only three women capitally convicted for the crime, of whom two were executed. This not only reflects the broader shift in legal and press responses to women who committed infanticide, but again demonstrates the discretion afforded to the judges by the nuances in the Scottish court system which impacted upon the country's use of the death sentence.

In focusing upon the whole of Scotland, rather than just one specific area, across almost a century, this study has demonstrated that there were intra-Scottish factors, such as social and political contexts, population growth and industrialisation that affected the use of the death sentence in certain areas at different times. In addition, this study has used the unique Scottish experience to offer notable comparisons with practices in England. For example, the peak periods of execution discussed in Chap. 3, namely the mid-eighteenth century, the 1780s and the early nineteenth century, were also times of increased executions in England. However, comparisons between the drivers responsible and judicial and press responses to it is an area of research that had been largely neglected by Scottish and English crime historians alike prior to the completion of the current study.

Execution levels increased in both England and Scotland in the mid-eighteenth century. However, the reasons for this differed. In England, there were fears over the negative effects of demobilisation in the late 1740s and a moral panic in the newspapers over the perceived prevalence of certain crimes, notably violent robbery, in and around London. In comparison, Chap. 3 demonstrated that the peak numbers of executions between the late 1740s and the 1750s in Scotland were linked to the aftermath of the late Jacobite Rebellion. The Northern Circuit accounted for more than half the total number of executions and the decade witnessed the highest percentage of those capitally convicted who

were subsequently executed, showing the determination of the authorities to make severe examples in the area. Certain property offences such as cattle theft and robberies committed by men who were notorious in the area were particularly prevalent in the numbers sent to the gallows with 2.1 executions for property offences per 100,000 head of Scotland's population occurring in the Northern Circuit. This figure is put into even sharper focus when we compare it to the figure for property offences convicted at the High Court in Edinburgh, which was only 0.5 per 100,000 head of Scotland's population.

In their recent study of the use of capital punishment in the third quarter of the eighteenth century, King and Ward argued that there were notable regional variations in the use of the 'Bloody Code' for property offences, with large areas on the peripheries sending markedly low numbers to the gallows. They included Scotland between 1755 and 1770 in their analysis, to avoid the mid-eighteenth-century peak, and found that, although the numbers of executions in Scotland nationally were low, there were regional variations. The Northern and Western Circuits had very low execution rates for property offences at 0.05 compared to the figure for Edinburgh which was 0.21.[15] The current study therefore provides a reinforcement of their centre–periphery dichotomy, especially in the early nineteenth century, but also demonstrates that the mid-eighteenth century in Scotland provides a caveat wherein capital punishment was used to establish control in the peripheral north.

While the mid-eighteenth-century increase in executions was due to the specific context and location of northern Scotland, the drivers behind the increased use of capital punishment in the 1780s were comparable with the situation south of the border. Executions for property offences in Scotland tripled from 24 in the 1770s to 73 in the 1780s. Similarly, in England there was an increase in capital convictions following the end of the American War of Independence and, by the mid-1780s, the number of executions per year in London had reached a high of 80.[16] Following the end of the War of Independence, both countries faced the problem of demobilisation.[17] In Scotland, 15.8% of those capitally convicted were stated to have been part of the army or navy and every one of the convictions was for property offences. An additional problem facing both countries in the 1780s was the end of the penal option of transporting convicts to the American colonies. Donnachie stated that, prior to the 1780s, transportation had been used relatively infrequently by the Scots and even after the establishment of transportation to Australia

he estimated that they made up just over 5% of the total convicts sent from Britain and Ireland.[18] However, this seemingly low proportion of offenders was more reflective of the lower numbers tried by the Scottish courts for capital or transportable offences rather than an aversion to the use of the punishment. It could also be attributed to the fact that not all offenders sentenced to transportation were sent across the seas as some were still imprisoned in Scotland years after their original sentence. In Scotland, the lack of the option of transportation had a direct impact upon the numbers of capital convictions for property offences in the 1780s, which again demonstrates the centrality of the punishment in Scotland's penal arsenal. This was, in part, due to the removal of the option for the court to restrict potentially capital cases prior to the accused standing trial and left limited penal options between the death sentence and short-term prison sentences or corporal punishments.

Despite the evident similarities in the causes of the increased use of capital convictions in the 1780s, there was not the same determination to send offenders to the gallows in Scotland as there appeared to be in England. In the mid-1780s in London, the judges were determined that no one capitally convicted in the Home Counties would be pardoned. Although this extreme policy received criticism, and was quickly modified, it did increase the rate of execution.[19] Instead, in Scotland, despite the number of capital convictions increasing by three times compared to the 1770s, the proportion of those capitally convicted who were executed in the 1780s did not increase. In fact, the proportion of capitally convicted property offenders who were executed slightly decreased compared to the figure in the 1770s. Furthermore, a study of the pardoning material highlights how the judges often advocated mercy and pointed towards potential mitigating circumstances in some cases. In addition, there was not the same level of moral panic over the perceived prevalence of crime in the Scottish newspapers as there was in their English counterparts. Therefore, despite the similar causes for the increased numbers of capital convictions north and south of the border, Scotland maintained notable distinctions in its use of the death sentence.

The second decade of the nineteenth century witnessed the number of executions in Scotland double compared to the previous decade, an increase that continued in the 1820s. When broken down by category of offence, the number of executions for murder remained stable until the late 1820s and early 1830s, when it became one of the only crimes sending offenders to the gallows. However, executions for property offences

increased markedly in the second and third decades of the nineteenth century, with the majority occurring following trials in Edinburgh and those before the Western Circuit, chiefly the sitting at Glasgow. Chapter 2 demonstrated that the increase in Scotland's population and the ensuing rapid urbanisation, which was especially dense across the country's central belt and was particularly rapid in Glasgow, was of central importance to the analysis of capital punishment for property offences. Of the total capital convictions at the Western Circuit between 1810 and 1829, around 90% were for property offences. Furthermore, executions for property offences per 100,000 head of Scotland's population rose from 0.2 in the 1750s to 1.4 in the 1820s at the Western Circuit. Comparably, the figures for murder presented a much less dramatic increase, rising from 0.08 in the 1750s to 0.1 in the 1820s. In addition, the figures for the Northern Circuit show a reverse pattern as executions for property offences per 100,000 head of Scotland's population decreased from 2.1 in the 1750s to 0.2 in the 1820s. Therefore, unlike the caveat presented during the mid-eighteenth-century peak, the situation in the early nineteenth century reinforces King and Ward's argument that executions for property offences were markedly higher in the centre than on the peripheries.[20]

In terms of comparing Scotland and England, both countries evidently witnessed rising numbers of capital convictions in the early nineteenth century. However, English crime historians have pointed towards a widening of the gap between the number of people capitally convicted and the number who were subsequently executed.[21] Gatrell argued that the authorities could no longer plausibly execute 56% of offenders as they had done in the 1780s and thus the system became increasingly unworkable.[22] However, an analysis of Scotland again presents a different situation and a fresh perspective from which to view this British problem. The proportion of those capitally convicted who were subsequently executed had consistently been 60% or above since the 1770s and, if we remove the executions and remissions for treason following the unrest in 1820, the figure was still 52% in the 1820s. Therefore, this study enhances the argument briefly made by Crowther, namely that, rather than keeping executions to a socially acceptable level, as Gatrell suggested, there were fewer capital convictions in Scotland and thus, in the face of rising numbers of them, it was necessary to keep up a certain level of exemplary punishment.[23]

Prior to the late eighteenth century, crime reporting in Scotland had been minimal, with the newspapers only briefly detailing the trials and executions of offenders in most cases, unless they were of a particularly sensational nature, or had occurred during the attempts to stabilise the Highlands in the mid-eighteenth century, and they offered limited journalistic opinion. Furthermore, the moral panics that had characterised English crime reporting in the mid-eighteenth century and the 1780s did not occur to the same extent in Scotland. However, this study has identified a similar panic in the early nineteenth century in Scotland. It has highlighted recurring lamentations at the unprecedented numbers being sent to the scaffold whilst also demonstrating repeated calls for more severity in the face of rising levels of capital convictions. This desire for some further punishment beyond the death sentence offers a potential explanation for the increased use of crime scene executions in Scotland in the early nineteenth century.

Between 1740 and 1834, a total of 53 criminals were sentenced to be executed at or near the scene of their crime in Scotland. There had been a concentration of cases in the mid-eighteenth century, particularly following trials before the Northern Circuit. In addition, 32 of the total 53 cases, over 60%, occurred between 1801 and 1834, thus demonstrating that the penal option was primarily exercised at peak times of executions more widely. In his investigation of crime scene executions in England, Poole found that they were more of an eighteenth-century feature which declined after the 1790s, apart from some sporadic cases in the early nineteenth century.[24] Therefore, the concentration of crime scene executions in Scotland in the first third of the nineteenth century presented not only their reintroduction into Scotland's penal cache, but also an entirely different pattern to practices in England. Chapter 5 highlighted the changes that gradually occurred to the location of public executions, with the common place shifting from urban peripheries to outside the places of confinement by the end of the eighteenth century. In turn, there was a decline in the need for traditional elements of the public execution such as the lengthy procession of both the condemned and the crowd to the scaffold, a practice which had previously attracted criticism. However, in a recent study the author has demonstrated that crime scene executions provide a rethinking of this narrative of the long-term decline in older gallows culture as they often required a lengthy procession and the authorities frequently incurred further logistical expenses.[25] From a reading of Home Office records and the newspapers it is evident that

the courts intended crime scene executions to be stark and lasting examples, particularly in towns unaccustomed to the public execution spectacle, and were willing to forego more modern concerns for efficiency to achieve this end.

It is important to briefly note that by the end of the period under investigation here, the use of capital punishment in Britain had undergone major changes judicially, ideologically and practically. The number of offenders executed in Scotland, which had doubled between the first and second decades of the nineteenth century and had risen further in the 1820s, halved in the 1830s. Furthermore, comparable to the situation in England, by the 1830s murder was the predominant crime sending offenders to the scaffold as property offenders increasingly received the non-capital punishments of transportation and prison sentences. In addition, while there were still discussions over the believed prevalence of certain crimes within the newspapers, their attention increasingly turned towards debates over the reform of the capital code north and south of the border. Furthermore, the increased and concentrated use of crime scene executions was a distinct Scottish response to the problem of rising numbers of capital convictions in Britain in the first third of the nineteenth century. However, their decline and cessation was also explicitly linked to the wider and longer-term dismantling of older public execution practices explored throughout, which eventually culminated in the transfer of executions to behind the prison walls in 1868.

In addition to providing an extensive study of the use of the death sentence in Scotland, this study has also conducted the first in-depth investigation into the post-mortem punishment of the criminal corpse. Whilst acknowledging that Britain was unique in its placing of post-mortem punishment at the centre of the criminal justice system with the passing of the Murder Act, it is important to explore the similarities and distinctions in its use north and south of the border. Hurren has demonstrated that, in England, criminal bodies could be used as a lucrative means for medical men to charge entrance fees for the dissections and in turn that they could attract large audiences.[26] However, Chap. 6 showed that in Scotland it was the main universities of Edinburgh, Glasgow and, to a lesser extent, Aberdeen who had a monopoly on the supply of executed criminals with over 76% of the bodies being handed over to one of their professors of anatomy. Thus, while Scottish criminal dissections were still conducted before an audience, this was a different, and predominantly medical, public compared to the one often found in England.

Although the number of criminal corpses yielded by the Murder Act was not enough to adequately supply the universities, and there is evidence of their acquiring cadavers through several other means, the bodies were used for pedagogical purposes in the teaching of anatomy courses. Furthermore, they were used to conduct original research into areas such as the cause of death when a person was hanged and the effects of blood congestion upon the brain. In addition, as capitally convicted criminals in Scotland had around a month to wait between their sentencing and execution, there is evidence that special arrangements were made for certain dissections. For example, Monro *tertius* rearranged his course so that the parts looking at the female anatomy would occur during the week before he received the body of Barbara Malcolm in 1808. Therefore, this study provides some reinforcement to the argument made by Cunningham that, by the end of the eighteenth century, dissection was intended to show the complexity of the human body and that anatomical demonstration had become more of a teaching event.[27] Within this, there was certainly scope for original research using criminal bodies in the main Scottish universities, despite their limited numbers.

The Murder Act did not stipulate which offenders should be subjected to dissection and which to hanging in chains and thus the decision was left to the discretion of the judges. Chapter 7 demonstrated that the proportion of capitally convicted murderers who were sentenced to be hung in chains was comparable in England and Scotland but demonstrated that the chronology of the punishment in Scotland needed to be further examined. Despite occupying a similarly central role in the criminal justice system as dissection in the two decades following 1752, gibbeting disappeared in Scotland after 1779, apart from one case in 1810. Comparatively, although gibbeting was used on a lesser scale than dissection, the collapse of the punishment in England occurred later, in the early nineteenth century. Chapter 7 offered potential explanations for this, a key one being the importance of location. In England, criminals could be gibbeted miles away from the place at which they were executed. However, if a criminal was to be hung in chains in Scotland they were always gibbeted at the place of execution.

This study has demonstrated that the gradual changes that occurred to the location of public executions more generally were crucial in the disappearance of gibbeting after 1779. For example, the circuit cities of Perth, Aberdeen, Inverness, Glasgow and Ayr had all witnessed the use of hanging in chains between the mid-eighteenth century and the late 1770s.

However, crucially, all these cases had occurred prior to the gradual shift in the common place of execution across Scotland from peripheral areas, perhaps more suitable to be used as gibbet sites, to locations closer to the places of confinement that were often in urban centres. In addition, Alexander Gillan's case, which marked the final gibbeting in Scotland in 1810, occurred at around the same time as the increased and concentrated use of crime scene executions. The case stood out among the black catalogue of murders that had occurred across the period under examination here and the brutality involved was clearly a key factor that impacted upon the judges' decision. However, significantly, the rhetoric deployed in Gillan's case was comparable to that found in other crime scene hangings, namely that the judges explicitly stated their intention to demonstrate the long arm of the law in this remote area.

The Anatomy Act of 1832 removed the penal option of dissection and, to ensure the better supply of cadavers to the medical profession, it made available the unclaimed bodies of those dying in public institutions such as hospitals and the workhouse. While the dissection of criminals was criticised during debates over the act, it was not the practice itself that was targeted, but rather the inadequate number of bodies it yielded. However, the punishment of hanging in chains differed from dissection in that it had all but disappeared in Scotland half a century before it was finally repealed by legal statute. Furthermore, the act of 1834 had been largely prompted by the difficulties the English authorities had faced in gibbeting the bodies of Jobling and Cook in 1832. Jobling's body had been illegally removed by his fellow colliers and Cook's was ordered to be taken down for fear it would also be stolen. However, the argument made by Lord Suffield in parliament that gibbeting was "unsuited to the present state of public feeling" had already been used in Scotland in the late eighteenth and early nineteenth centuries.[28] For example, the judges in the case of McDonald and Black had decided to forgo the punishment of hanging in chains in 1813 out of a "consideration of the uneasiness it must occasion to the innocent neighbourhood."[29] Again, this can be linked to the location as they were to be executed at the scene of their crime, which was only a couple of miles outside of Edinburgh's city centre. An analysis of the earlier disappearance of gibbeting in Scotland serves to further demonstrate that, despite the potential for comparison with practices in England, Scotland was unique in its implementation of post-mortem punishment following the passing of the Murder Act.

In conclusion, this book has provided an original and pioneering study of capital punishment in Scotland between 1740 and 1834. It has progressed beyond the filling of a scholarly gap and has instead demonstrated that a study of the unique Scottish experience can advance, and challenge, the broader historiography focused upon the changing nature of capital punishment between the mid-eighteenth and early nineteenth centuries. Through an in-depth investigation into post-mortem punishment, an area previously neglected by crime historians, the current research has established an intermediate stage within the meta-narrative of the decline in the public punishment of the body. In addition, a key strength of this study is that it has provided the most extensive analysis of the administration of capital punishment in Scotland between the mid-eighteenth and early nineteenth centuries to date. In focusing upon the whole of Scotland across almost a century, the research has highlighted the importance of geographical context, population growth and industrialisation in affecting the use of the death sentence in different areas at varying intervals. Furthermore, whilst demonstrating Scotland's distinctiveness, it has also explored the potential for comparison with practices in England, an area that has been largely neglected by Scottish and English crime historians alike. In short, this study has explored the journey of the Scottish malefactor from the courtroom to the gallows and, in some cases, to the dissection table or the gibbet cage. However, in doing so, the current narrative hopes to have demonstrated the potential for future scholarship to develop Scotland's capital punishment story.

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