

‘A Thorn in Their Side’:  
Trends in British Punishment during the  
Long Eighteenth Century and the Crime  
of Jacobitism, 1688–c.1815

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# ‘A Thorn in Their Side’: Trends in British Punishment during the Long Eighteenth Century and the Crime of Jacobitism, 1688–c.1815

This paper appears to be the first academic attempt to discuss the crime of Jacobitism as a focal point amongst the various trends in British punishment during the long eighteenth century. Throughout, relevant chosen examples highlight the numerous links and prominence of Jacobitism in both the socio-political and legal spheres of this epoch, and how its persistent existence encompassed a pivotal junction of a growing division between public opinion and state policy regarding suitable methods of criminal punishment. The paper also surveys some pertinent connections and divisions within the Scottish and English judicial systems from 1688 to c.1815. It shows how they coincided with the repeated challenges that were instigated by the Jacobite movement as Enlightenment ideas permeated across Europe, influencing eighteenth-century policymakers and jurists. Consequently, the paper argues that the enduring survival of Jacobitism conceivably prolonged the practice of some punishments instead of its gradual suppression falling more generally amid those employed across this ‘extended’ century.<sup>1</sup>

**Keywords:** Jacobitism; punishment; crime; criminalisation; Long Eighteenth Century; Enlightenment; Great Britain; Scotland; England

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## Introduction

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It is the author's view that not enough research has been undertaken on the influence of socio-political movements affecting general trends in crime and punishment during the period of their existence and even beyond in retrospect – hence the primary aim of this paper. This is a noteworthy topic, especially when considering the many progressive changes that occurred in the early modern era. Particularly pertinent was the intellectual and philosophical advance across Europe of the movement known as the 'Enlightenment' and prominent thinkers' views on crime and punishment at this time. Also, politically, in the British Isles, revolution and parliamentary union were but two significant factors that transpired during the so-called 'long eighteenth century', which sparked both unprecedented connections amongst the British people as never before yet also provoked deep divisions and considerable subsequent law-breaking (O'Gorman 1997, *passim*; Seeley 1914, p. 23).<sup>2</sup> Within this milieu, a significant socio-political movement concerned the exploits of the exiled Stuart claimants or 'pretenders' and the endeavours of their adherents who fought to restore them to their lost thrones. This is remembered in history as Jacobitism (Lenman 1980, p. 7).<sup>3</sup>

Throughout this paper, it will be highlighted that Jacobitism played a significant role amongst the broader political and legal contextual transformations that arose in the earlier half of the period under discussion and through its example for the remainder. As a result, it will be argued that Jacobitism shaped and conceivably prolonged certain methods of, and thus wider trends in, British punishment during this era that might otherwise not have endured into the

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<sup>2</sup> The phrase 'long eighteenth century' is often used by historians to refer to a more *natural* historical epoch and movement than the typical definition denoted by calendar years. Though sometimes expanded to periods including 1660–1830 and 1688–1832, it was possibly first coined by Sir John Robert Seeley in 1883. He described its most common designation as lasting from the Revolution or 'Glorious Revolution' of 1688 to the ensuing peace resulting from the victory against Napoleon's forces at the Battle of Waterloo in 1815.

<sup>3</sup> The term Jacobite derives from the Latin word *Jacobus* meaning James in English. Thus, the Jacobites were the supporters of King James VII and II and his primogenital heirs, his son, Prince James Francis Edward Stuart, and two grandsons, Prince Charles Edward Stuart and Prince Henry Benedict Stuart, respectively.

early nineteenth century. This is a connection that does not appear to have been made before. Only recently have studies begun to materialise linking the Jacobite movement and its prominence to the development of state power and control.<sup>4</sup> So, this investigation will add to this valuable sub-field of research. The paper will also demonstrate the ensuing connections and divisions between Scotland and England's separate judicial systems and, therefore, at times, contrary trends in how punishment was employed by these two nations. Consequently, it will reveal some of the growing fissures between British public opinion and state policy regarding how criminals were punished and in what ways Enlightenment-inspired ideas and trends from other European nations helped to shape aspects of the British penal system. Due to their robust connections to Jacobitism, this will include an emphasis on primary, or greater (capital), punishments of beheading and hanging, drawing and quartering, and the secondary, or lesser, punishments of transportation and imprisonment.

## **The Crime of Jacobitism**

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Amongst the many pivotal factors and changes that occurred concerning criminal justice throughout the long eighteenth century, the crime of Jacobitism was a unique phenomenon. It came to be associated with this collection of the most severe punishments utilised to stamp out all notions of rebellion. Following the Revolution of 1688 and the flight, then exile, of King James VII and II, it defined the gravest crime of high treason against the Crown and proved to be a recurring challenge for almost six decades (Lenman 1980, p. 7). Indeed, it has been argued that Jacobitism was 'the only political or social movement that posed a *total* threat to the post-1688 social system [of the British Isles]' (McLynn 1989, p. 159).

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<sup>4</sup> For a very recent study on this topic, see M. P. Dziennik, (2021) "Under ye Lash of ye Law": The State and the Law in the Post-Culloden Scottish Highlands, *Journal of British Studies*, First View, pp. 1-23. *Cambridge Core*, Available: [doi:10.1017/jbr.2021.58](https://doi.org/10.1017/jbr.2021.58) [Accessed: 15 June 2021].

Accordingly, the Jacobite movement presented a formidable danger to the foundations of the emergent British state and was a multi-decade ‘thorn in their side’ that obstinately endured.<sup>5</sup> Dealing with it conclusively became a foremost priority for numerous British administrations. In a broader context, Jacobitism turned out to be a significant model in the way that mass criminality and crimes – especially high treason – were dealt with in a rapidly changing landscape regarding long-established methods of punishment.

### **The Age of Enlightenment (1715–89)**

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In early modern Europe, and certainly throughout the Middle Ages, criminal punishment had been predominantly retributive. However, as more rational or enlightened ways of thinking started to emerge at the dawn of the eighteenth century, punishment also began to be viewed with utilitarian and reformatory outcomes.

The retributive principle, upheld by Kant, is that the criminal has committed an offence against society which must be avenged with an equal amount of suffering. The utilitarian principle means that the punishment must be just severe enough to achieve a useful purpose: it should prevent a criminal from repeating his [or her] crime and deter others from committing crime in the first place. And the reformatory principle regards punishment as a means to make criminals aware of their wrong-doing and turn them into better citizens (Robertson 2020, p. 450).

Jacobitism was in its most active state at the zenith of this transitional epoch during the first sixty years of the eighteenth century. As such, it encompassed several of the final collective practices of retributive capital punishments of the previous centuries and, more generally, those lesser types embraced by the reformers. For instance, by the mid-eighteenth century, it was

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<sup>5</sup> Numbers 33:55.

imprisonment – employed upon numerous Jacobites – that became the punishment most closely associated with the humanitarian movements of reform, based firmly on principles of the ensuing Enlightenment with the possibility of rehabilitation. Even so, throughout Great Britain, transportation was still being used heavily to ship convicts to distant colonies, which also included many Jacobites. By this point, some felt that transportation for life was not sufficiently severe and was a moral rather than physical punishment for offences such as theft. Yet others maintained that transportation was as good as a death sentence (Cameron 1983, pp. 44-5).

Significantly, conflict appeared between the philosophical approaches of both Scotland and England, which, in turn, informed their respective judicial systems and led to the gradual discontinuation of certain punishments as the long eighteenth century progressed. Scots law has its basis in Roman law and a later set of legal principles derived from the European model of *jus gentium* (law of nations) (Scullion 2010, pp. 111-4). The judiciary in Scotland, amongst others, was influenced by the writings of leading Scottish Enlightenment thinkers, including Smith, Robertson and Hume, but also of those abroad (Mackay 1873, p. 55). Indeed, foreign ‘writers such as Montesquieu (*De L’Esprit des Lois* 1748), Beccaria (*On Crimes and Punishments* 1764), Rousseau and Voltaire ... had achieved some penal reform in Continental countries ... but [amid these developments] the brutality of the English system remained untouched’ (Cameron 1983, p. 45). Consequently, the English approach led to a decidedly dissimilar and more insular development in the ways it employed punishment.

### **Primary, or Greater (Capital), and Secondary, or Lesser, Punishments**

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Throughout the long eighteenth century, capital punishment began to be exercised for a wide-ranging number of crimes. Perhaps the most infamous statute to strengthen the British state’s supremacy concerning English criminal justice was the Waltham Black Act 1723, often

branded as the ‘Bloody Code’.<sup>6</sup> It has been described as ‘one of the most repressive pieces of legislation ever passed by Parliament’, but initially arose from fears of continuing Jacobite conspiracy and rebellion (Cruikshanks and Erskine-Hill 2004, p. 148; Bailey 1989, p. 19).<sup>7</sup> This ‘Black Act’ was passed to impose the stern deterrent of death and was decreed to be the immediate sentence for over two hundred offences, most of them petty crimes, serving as ‘the backdrop for every investigation of serious felony’ (Rabin 2004, p. 8). For example, in England, in 1689, there were fifty crimes of a capital nature; by 1800 there were over 200 (Robertson 2020, p. 451). This statute’s enactment essentially transpired at the behest of the land-owning elites who retained all political authority and, accordingly, power over life and death. In pursuit of this right, they strove to maintain the existing social order by cherishing the death penalty and its potency against the lower classes by strengthening the law against them (Hay et al. 1975, p. 17).

Incidentally, this highest-ranking group of noblemen, consisting of several prominent Jacobites, were also dealt with by their fellow peers if they dared to revolt (McLynn 1989, pp. 150-1; Bailey 1989, pp. 28-30).<sup>8</sup> If convicted, they often faced the subsequent punishments of forfeiture, attainder and the loss of their titles, which were grave consequences for elite rebels. Even ‘traitor peers’ of royal descent could still pay the severest of penalties. A notable example is the case of the fervent Jacobite James Radcliffe, Earl of Derwentwater. Derwentwater’s mother was Lady Mary Tudor, an illegitimate daughter of King Charles II. He was, therefore,

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<sup>6</sup> For 9 Geo. I., c. 22, see Great Britain, D. Pickering, ed. (1765) *The Statutes at Large, From the Ninth Year of King George I. to the Second Year of King George II.* (Vol. XV.). London: Cambridge University Press, pp. 88-94.

<sup>7</sup> For notable studies concerning the ‘Black Act’ and its alleged connections to Jacobitism, see E. P. Thompson, (1975) *Whigs and Hunters: The Origin of the Black Act.* Harmondsworth: Penguin Books, *passim*; E. Cruickshanks and H. Erskine-Hill, (1985) The Waltham Black Act and Jacobitism, *Journal of British Studies*, 24 (3), pp. 358-65.

<sup>8</sup> For instance, though not concerned with high treason, the high-profile case of Laurence Shirley, Earl Ferrers, who, following a litany of violence including domestic abuse against his wife and the point-blank range shooting of one of his stewards, risked doing enormous damage to the reputation of the wider aristocracy and they decided to make an example of him. The traditional privileges of his rank were rejected, and he was hanged, not beheaded, in 1760.

a first cousin once removed of the exiled Prince James Francis Edward Stuart – otherwise King James VIII and III or The Old Pretender – and became his companion, for a time, amongst the exiled Jacobite court at Saint-Germain-en-Laye on the outskirts of Paris. Derwentwater was executed in early 1716 for his leading role in the Jacobite Rising of 1715, which was the first major effort to restore James Stuart (Gooch 2006, paras. 1-4). As late as the early twentieth century, even closer familial proximity to the reigning monarch still provided no immunity. This occurred when a grandson of Queen Victoria, Prince Charles Edward, Duke of Albany and Duke of Saxe-Coburg and Gotha, and the first member of the Hanoverian dynasty to become the namesake of the more famous Stuart claimant, Prince Charles Edward Stuart – otherwise King Charles III or The Young Pretender – was denounced as a traitor. He suffered the sternest punishments a traitor peer could be condemned with at that time, which stopped short of death but still included the loss of both title and land (Zeevat 2008, paras. 5-6).<sup>9</sup>

### **Beheading**

The elements of class, social status, wealth and influence all played their parts in how individuals met their end. The centuries-old trend under English and Scots common law was for noble or royal traitors to be afforded the privilege of beheading – a quick and clean death if the axeman was efficient. In England, this can be traced back to William the Conqueror, who had Waltheof, Earl of Northumbria, decapitated in 1076. In Scotland, records exist from 1425 of Donnchadh, Earl of Lennox, being killed by this method on the orders of King James I. An axe was most commonly reserved and utilised for high-ranking offenders and the fact that ‘some of the highest personages in the kingdom [of England]’ were beheaded with one,

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<sup>9</sup> These consequences were due to Charles Edward’s involvement in the First World War and his command in the German Army wherein he attained the rank of general. Three days after the Armistice, during the German Revolution (1918–19), he was stripped of his German ducal throne and royal status, including all his British titles later in 1919. Charles Edward later joined the Nazi Party and rose to the rank of *Obergruppenführer* in the *Sturmabteilung* (SA). Too ill to face a trial in person, he was tried *in absentia* and fined by a denazification court in 1949, subsequently dying in abject poverty at Coburg in early 1954.



including Lady Jane Grey, Mary, Queen of Scots, and King Charles I, suggests a particular trend of brutality within this system. Comparisons can be made with other European powers. For instance, Sweden also used the axe, but it was thought to be more honourable in Denmark to be decapitated by the sword and in Holland by means of a broadsword (Laurence 1932, pp. 29-30). In a rare demonstration of ‘mercy’ allowed by her husband, King Henry VIII, Queen Anne Boleyn was, at her request, beheaded with a sword in the French fashion by the executioner of Calais (Ives 2004, para. 29). Some believed that the easier death brought by decapitation may have been merciful, but the axe was not the most reliable weapon of execution, and its use was considered as ignoble – an early sign of contestation for this method of punishment. This practice was a dispensation not afforded to felons from the lower classes.<sup>10</sup>

Often acquired by years of practice, the executioner’s skill with his axe dictated how effective a given sentence was carried out (Laurence 1932, p. 35). Not all were great successes. A prominent example is that of the leading rebel, James Scott, Duke of Monmouth, an illegitimate son of Charles II who was beheaded on the orders of his uncle, James VII and II. Monmouth’s slaying was botched by an executioner who ‘mangled the job’ (Harris 2009, para. 33). Indeed, it took five strokes to sever the condemned man’s head from his body (Laurence 1932, pp. 35-6; Pierce 2015, para. 12).<sup>11</sup> In England, the execution of living high-ranking traitors by the axe was a process of capital punishment that lasted well into the 1740s. Overtly mocked before his death, in 1747, the Jacobite Simon Fraser, Lord Lovat and Chief of Clan Fraser, notably holds the distinction of being the last individual to be publicly beheaded, whilst

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<sup>10</sup> Though not utilised against the lower classes, in later decades the axe was used to posthumously decapitate all traitors. The last recorded case of its usage was in 1817. This occurred when Jeremiah Brandreth, Isaac Ludlam and William Turner, known collectively as the ‘Pentrich Martyrs’, were executed for attempting to lead a ‘revolution’ following the economic depression that resulted in the aftermath of the Napoleonic Wars.

<sup>11</sup> It also took two strokes to dispatch Mary, Queen of Scots, and even more in the execution of Margaret Pole, Countess of Salisbury, daughter of George Plantagenet, Duke of Clarence. It is said, in the absence of the regular executioner, ‘a wretched and blundering youth ... literally hacked her head and shoulders to pieces in the most pitiful manner’. Further notorious examples of botched executions include those given from across the Channel, such as Madame Tiquet, guilty of conspiring to murder her husband, who required three blows and the criminal, de Thou, requiring an absurd eleven to finish the job.

still alive, in British history (Bailey 1989, pp. 27-9).<sup>12</sup> In future years, all traitors would initially be hanged and then decapitated after death, such as the late examples of the Scottish radicals and English Cato Street conspirators of the 1820s (Laurence 1932, pp. 31-2).

Numerous Jacobites were beheaded during the first half of the long eighteenth century, yet this punishment had been used sparingly as it was reserved for the nobility. In 1697, a noteworthy exception to this rule was the Jacobite Sir John Fenwick of Wallington. Owing to his previous military service and connections, he was awarded the peers' privilege of beheading. Fenwick became the last individual to be executed by an Act of Attainder in British history and is, thus, also an early example of Jacobitism conceivably prolonging a long-lasting mechanism used to punish political opponents (Hopkins 2004, para. 25). Though these elite rebels were regarded as traitors, they remained connected to their fellow peers by retaining the benefits, in death, of their rank and social status. Furthermore, most Jacobites who were executed between 1690 and 1753 came from the gentry or educated echelons of society, such as the clergy (Szechi 1988, pp. 60-1). At the highest sovereign rank, James Stuart also risked the death penalty if captured as he was attainted by a specific statute for high treason upon his acceptance of the various foreign proclamations of his birthrights to the three kingdoms in 1701, which stressed that he was 'to suffer Pains of Death and incurr all Forfeitures as a Traitor' (Steffen 2001, p. 59).<sup>13</sup> The precedent for this punishment had personal resonance for James as it echoed the death of his grandfather, Charles I, who was beheaded by the axe in 1649, not the sword. Unlike Monmouth, however, the king's head was removed from his body with one clean stroke (Kishlansky and Morrill 2008, para. 123).

Bearing out the gravity of the Jacobite threat, government prosecutors tended to

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<sup>12</sup> See Appendix I.

<sup>13</sup> For 13 and 14 Will. III., c. 3, or the Correspondence with James the Pretender (High Treason) Act 1701 which had the long title An Act for the Attainder of the pretended Prince of Wales of High Treason, see Great Britain, T. E. Tomlins and J. Raithby, eds. (1811) *The Statutes at Large, of England and of Great-Britain: from Magna Carta to the Union of the Kingdoms of Great Britain and Ireland* (Vol. VI). London: George Eyre and Andrew Strahan, p. 322.

disregard traditional rights to a more ‘humane’ death by beheading for those convicted of high treason. Hence, seven Jacobite lords were originally sentenced to be hanged, drawn and quartered following the ’15, though their sentences were commuted by the new monarch, King George I, to simple beheading, with two suffering this punishment.<sup>14</sup> Still, despite an abeyance of thirty years and the developments in less oppressive criminal justice, we see, though, that four were executed following similar commutations after the Jacobite Rising of 1745–6 (Bailey 1989, p. 17).<sup>15</sup> Notably, there was a minority (2 out of 7) of those Jacobite lords executed for the crime of high treason after the ’15 and a majority (4 out of 5) in the wake of the ’45. Thus, the final rising was a markedly distinctive event in the mid-eighteenth century as a greater number of peers lost their lives at a time when the general usage of this retributive punishment had already begun to ebb. Arguably, it also saw the Bloody Code reach its apotheosis and reveals the continued determination of the British state to stamp out any further notions of rebellion and division (McLynn 1989, p. 159). Indeed, this strengthens the case for Jacobitism conceivably prolonging this diminishing form of capital punishment.<sup>16</sup>

### **Hanging, Drawing and Quartering**

Like beheading, the punishment of hanging, drawing and quartering was a practice ‘bearded and hallowed by its very antiquity’ and had been utilised extensively throughout the Middle Ages and early modern era (Duff 1928, p. 10). By the mid-1750s, this brutal sequence

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<sup>14</sup> These men were James Radcliffe, Earl of Derwentwater, and William Gordon, Viscount (and styled Jacobite Marquess of) Kenmure. That number might have been higher had two of the condemned men not escaped from the Tower of London to a life in exile on the Continent. These men were William Maxwell, Earl of Nithsdale, who was already scheduled to be executed, and George Seton, Earl of Winton. The others were William Widdrington, Baron Widdrington, Robert Dalzell, Earl of Carnwath, and William Murray, Lord Nairne. These three men were subsequently pardoned.

<sup>15</sup> These men were William Boyd, Earl of Kilmarnock, Arthur Elphinstone, Lord Balmerino and Lord Couper, Charles Radcliffe, styled Earl of Derwentwater (and afforded a nobleman’s privilege of beheading), and Simon Fraser, Lord Lovat. A fifth lord, George Mackenzie, Earl of Cromarty, gained a pardon.

<sup>16</sup> For a recent study on this topic, see R. E. Bennett, (2017) Chapter 3, Contextualising the Punishment of Death. *Capital Punishment and the Criminal Corpse in Scotland, 1740–1834*, NCBI, Available: <https://www.ncbi.nlm.nih.gov/books/NBK481739/> [Accessed: 3 April 2021].

of procedures, pre- and post-execution, was becoming increasingly rare as a method of punishment. However, the ongoing Jacobite threat conceivably caused this extreme punishment to last longer than it would have done otherwise (Roth 2014, p. 117). The showcase of watching rebellious traitors suffer pains of death still drew huge numbers to observe executions and numerous convicted Jacobites were hanged, drawn and quartered during each major rising's aftermath in front of very large crowds in specially built stands.<sup>17</sup> In 1716, examples include the Roman Catholic Jacobites Captain John Gordon, Captain William Kerr and John Dorrell who were each executed as a result of this fully carried-out sentence (The Newgate Gallery; Capital Punishment UK). This was thought to prove a more effective deterrent to the wider populace than the beheadings of the privileged elites (Szechi 2019, p. 143).

Following the '45, there were, for instance, ninety-one sentences of hanging, drawing and quartering passed by a Special Commission at Carlisle, which demonstrated the severity of the final Jacobite rising and the British state's reaction to it (Capital Punishment UK). Jacobitism, therefore, became the last cause for which this fully carried-out method of punishment was used on a mass scale in British history. Yet, after the first spate of Jacobite executions on Kennington Common in July 1746, it was stipulated that all the victims were to be hanged for fifteen minutes. Before this, the standard time for hanging was three minutes to ensure the condemned would survive long enough to witness their own disembowelment. This new act of 'clemency' was done not for the benefit of the Jacobites being executed but more to appease the unease of many in the crowd. When the Jacobite colonel Francis Towneley was cut down and remained alive on the table, gasping for air, this caused an expression of such disgust and sympathetic outcry from some watching that the executioner decided to slit Towneley's throat before eviscerating him (Robb 2008, pp. 13-4, 40-2). Nevertheless, public

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<sup>17</sup> See Appendix III.

executions did remain popular in England until their abolition in 1868 but these more merciful examples do highlight changing trends during the more enlightened mid-eighteenth-century period (Robertson 2020, p. 451). This also included the methods by which Jacobite rebels and traitors were put to death at this time.

By 1753 and deep into the reign of King George II, Dr Archibald Cameron, who holds the status of being the last Jacobite to be executed by drawing and hanging, was left suspended for twenty minutes ‘and it was decided to forgo the brutal disembowelling ... to keep public discipline’ (Robb 2008, pp. 40-2). On this occasion, it was also determined that his body should not be quartered, though his heart was still removed and burnt (Mackenzie 1971, p. 239). This further Enlightenment-inspired shift in thinking is demonstrated by the fact that Cameron was one of only a handful of men to be given the full sentence of hanging, drawing and quartering by Scottish and English courts following the ’45 (The Newgate Gallery; Capital Punishment UK). As has been stated,

if there was little outward sign of any public disquiet over the brutal treatment of the Jacobite prisoners, one may sense a general disgust over the savagery of the executions. It was, after all, the middle of the eighteenth century and the country was generally becoming more humane and civilised (Robb 2008, p. 41).

Thus, these factors demonstrate even further societal developments within just seven years and a shifting trend in the overall mood towards exhibitions of extreme cruelty practised upon the condemned – including Jacobites – in this short period. Indeed, these reactions expressed the more humane tendencies that connected the supporters of King George and ‘King James’.

Aside from Archibald Cameron, during the remainder of the long eighteenth century, eight other notable cases of this severe punishment were dispensed for the crime of high treason – and resulting in death – were those of the adjudged traitors Francis Henry de la Motte, David

Tyrie, Robert Watt, James O’Coigly, Colonel Edward Marcus Despard, Robert Emmet, William Cundell and John Smith. All were as a result of high treason, albeit in different forms, against the Crown. De la Motte, a Frenchman, was executed in 1781 for conspiracy against the king’s life but was scored with a knife as a symbolic form of quartering. Tyrie, a Scotsman, whose sentence was carried out in full in 1782 for conspiring with the French, is recorded as the last person in British history to be wholly hanged, drawn and quartered in the centuries-long trend of punishing traitors by this method. Notably, outwith Great Britain, there is also the last-known case of this full sentence being carried out in Ireland at a later date. Robert Keon of County Leitrim, following a private quarrel and subsequent duel, was subjected to this full punishment in 1788 (Capital Punishment UK). In Scotland, following the discovery of the Pike Plot in 1794, the political radical Watt was given this sentence after being convicted of high treason but was not quartered following his decapitation (Johnson 1980, p. 87; The Newgate Gallery; Fortescue 2012, pp. 51-2).<sup>18</sup> In England, in 1798 and following the Treason Act 1795, O’Coigly, an Irishman, was sentenced to this punishment for ‘compassing and imagining the death of the King and adhering to the King’s enemies [France]’, but he was hanged and posthumously beheaded.<sup>19</sup>

At the dawn of the nineteenth century, in 1802, following the failure of the eponymous Despard Plot, Despard, an Irish officer in the service of the British Crown, was amongst the first to be sentenced with this punishment in the newly created United Kingdom of Great Britain and Ireland (1801) for his participation in a plan to assassinate King George III. Subsequently found guilty, Despard and his co-conspirators were executed in early 1803

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<sup>18</sup> Watt’s primary accomplice, David Downie, was also handed a death sentence by this method of execution but was subsequently given a reprieve. After an extended period of imprisonment, he was then banished for life. He managed to obtain passage to the United States of America where he settled in Augusta, Georgia. Several other leaders of this conspiracy were transported to Botany Bay in Australia.

<sup>19</sup> For 36 Geo. III., c. 7, see Legislation UK, (no date) Treason Act 1795, *legislation.gov.uk*, The National Archives, Available: <https://www.legislation.gov.uk/apgb/Geo3/36/7/contents/1991-02-01> [Accessed: 15 June 2021].

(Anon. and Despard 1803, *passim*).<sup>20</sup> Similarly, during the Irish Rebellion or Rising that same year, one of its republican leaders, Emmet, was also given this sentence for his treasonous actions and was hanged then afterwards decapitated in late 1803. Two British prisoners of war, Cundell and Smith, became the last individuals sentenced to hanging, drawing and quartering during the long eighteenth century for entering French service. They were executed in early 1812. As was now long customary by this point, both were also publicly hanged and beheaded once dead. Like Cameron, de la Motte, Watt, O’Coigly, Despard, Emmet and all others, excluding Tyrie (and Keon), Cundell and Smith were not quartered (Capital Punishment UK).

### **Public Warnings and Spectacles of Death**

Another long-established trend that continued into this period was the public exhibition of severed heads on spikes, usually in prominent positions including civic buildings and well-trodden bridges, etc. This execution process was wielded upon the condemned to further emphasise the power of the state and its total control over the admonishing spectacle of death. Notorious early examples of this scene occurred in England with high-profile treason cases, such as those of Sir William Wallace and Sir Thomas More. Perhaps most unusual was the ‘execution’ of Oliver Cromwell years after his natural death and his putrefied head’s subsequent display (Morrill 2015, para. 132).<sup>21</sup> What these infamous cases demonstrate is that the sentence, method of execution and subsequent showing of body parts were all specifically designed to function as ominous warnings to would-be traitors. Treason, potential rebellion and, therefore, division would not be tolerated by the state in any form. As a result, numerous

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<sup>20</sup> Also given this sentence for conspiring with Despard were John Wood and John Francis, both privates in the British Army, Thomas Broughton, James Sedgwick Wratten (or Wrutton), Arthur Graham and John MacNamara. Alongside Despard, these men were all executed on the same day (21 February).

<sup>21</sup> Following the ‘Stuart Restoration’ of Charles II in 1660, Cromwell’s purported body was exhumed around two-and-a-half years after his death and publicly ‘executed’ in front of a bloodthirsty crowd. His impaled head was exposed at the south end of Westminster Hall until it was rescued either during the Exclusion Crisis (1678–81) or in or around 1688.

Jacobites were also connected to this punishment in notable ways as some had their decapitated heads affixed upon spikes and displayed in the public sphere.

The heads of some lower-ranking Jacobites who were executed between 1716–23 remained publicly visible for years afterwards. For instance, two of these individuals, Colonel Henry Oxburgh and Christopher Layer, had their heads placed on Temple Bar (Thornbury 1878, pp. 22-31).<sup>22</sup> Layer became its most long-standing occupant, his remains surviving many years in public, blackened and weather-beaten. The trend of this horrific display continued, and the last heads placed ‘upon the Bar’ on 12 August 1746 were those of Jacobites of the ’45 in the Manchester Regiment, Colonel Francis Towneley and Captain George Fletcher (Laurence 1932, pp. 34-5).<sup>23</sup> Their decomposing heads remained there for decades until 31 March 1772 when bad weather dislodged one from atop its spike and the other fell shortly thereafter (Robb 2008, p. 14; Szechi 2019, p. 143). Further examples were made of many Jacobites tried at Carlisle in 1746. Several of the condemned had their heads placed on one of the town’s ‘three gates: the Scots gate, the English gate, and the Irish gate ... [and] the Scots gate was naturally selected as a suitable place for those trophies’ as it faced back towards that northern ‘rebellious’ part of Great Britain (Watt 1913, p. 133). Thus, these highlighted cases all served as lengthy warnings and reminders of the consequences of insurrection.

As late as the Irish Rebellion, or Rising, of 1798 there were cases of Irish nationalists being subjected to a similar indignity, such as Father John Murphy, an Irish Roman Catholic priest. He was sentenced to death by court-martial and summarily and barbarically flogged, hanged and posthumously beheaded. His body was later burned in a barrel of pitch and his head was placed on a spike by British soldiers as a warning against any further insurgency (de Val 1997, pp. 3-12). This suggests that such a display was still intended to deter enemies of the

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<sup>22</sup> Temple Bar, once known as the ‘dreaded Golgotha of English traitors’, was one of the seven gateways into the city of London. It became the most prominent place used for the exhibition of human heads placed upon spikes.

<sup>23</sup> See Appendix II.



British Crown, being deemed an attack on its sovereignty. This tradition, however, fell into complete disuse in the nineteenth century (Emsley 1996, pp. 262-3).

### **Transportation**

The two most serious lesser punishments during this extensive period were enforced transportation and imprisonment. Transportation was ‘typically used to punish grave crimes which did not quite seem to merit the gallows ... [and] was a feature unique to British penal culture’, though it was subsequently adopted by the French in the nineteenth century (McLynn 1989, pp. 285-7). This punishment began to be commonly used during the seventeenth century and saw varying levels of use throughout the eighteenth century. Owing to the nature of a rebellion as a collective breaking of the law and the large numbers of traitorous felons it produced, transportation served as a useful method for dealing with many Jacobites. Before the Jacobite era, transportation was used exclusively against those ‘deemed dangerous to the social order’ and ‘the few transportees that there were up to the 1650s were sent to North America ... [such as] Irish Catholics in Cromwell’s time’ (McLynn 1989, pp. 285-7). Other than the Russian authorities, who had the vast space of Siberia to which they could send the condemned, only England matched Russia in terms of colonial space and expanse (McLynn 1989, pp. 285-7). Hitherto, during Charles II’s reign, the North American colonists opposed this effective dumping method for Scottish, English, Welsh, and Irish malefactors, citing increased costs and a general grievance at having to accommodate these convicts, whom they regarded as menaces.

Due to various ongoing legal and commercial quarrels concerning this form of punishment, it was essentially suspended for about thirty years following 1688. However, due to a period of major socio-political turmoil that included the major ’15 Jacobite rising, the punishment of transportation returned in 1718 in ‘spectacular fashion’ and was used to deal with the many Jacobite prisoners – now a significant threat to the social order – who were

captured following its failure (McLynn 1989, pp. 285-7). As the Jacobites refused to recognise all statutes enacted following the Revolution of 1688, an immediate division was created over their legal prerogatives. A pertinent illustration of this was when some Jacobite captives refused 'to sign petitions asking for mercy (since that was admitting guilt) [and thus an acknowledgement of the Williamite and Hanoverian regimes] or, if they did sign, declined to sign indentures for their own servitude' (Morgan and Rushton 2013, p. 232).

Transportation subsequently became Great Britain's foremost punishment yet lacked the example of shame that characterised the more severe penalties, as transportees were only publicly humiliated when being led to vessels for boarding (Ekirch 1987, p. 223). It also shifted the focus of penal policy away from deterrence and exhibitions of physical suffering – wholly abused by the grotesqueries of the Bloody Code. As an intermediate penalty between capital punishment and lesser sanctions, such as whipping and branding, transportation became a vital alternative to the existing structure of punishment (Ekirch 1987, p. 223). Consequently, transportation continued to be successfully exploited in the following decades, predominantly throughout the 1750s and 1760s. It then entered an acute phase, especially after 1765 following the growing crisis in the Thirteen Colonies, where it began to receive much resistance. Furthermore, in 1775, with the outbreak of the War of American Independence (1775–83) transportation was completely terminated (McLynn 1989, pp. 290-1). Yet the British authorities maintained that this form of punishment was indispensable, 'as crime rates soared and prisons overflowed with hundreds of diseased and dangerous offenders' (Ekirch 1987, p. 233). Feasible spots for relocation within the burgeoning empire were considered, including the coastline of West Africa, but the climate and potential for a convict-native conflict thwarted this plan. In 1786, after much parliamentary debate and enquiry, Botany Bay on the eastern seaboard of Australia was finally decided upon (Ekirch 1987, pp. 236-7). Whilst not the first choice, Australia's climate, lack of Europeanisation and extreme distance of around 15,000

miles from the British Isles meant that there was very little likelihood that transportees would ever return home and, so, the danger of escape was utterly nullified. Arthur Phillip, Governor of New South Wales, disembarked there with his First Fleet on 18 January 1788 (Rudé 1978, p. 237).

The transporting of criminals continued to be used as a major form of punishment into the latter years of the nineteenth century for both Scotland and England. Indeed, for about eighty years, following the First Fleet's landing, over 150,000 felons were banished to Australia (Ekirch 1987, p. 237). These sentences were handed out with the possibility of reintegration. Transportation was seen as a method of punishing criminal behaviour whilst still preserving the lives of British citizens as 'in the minds of its more thoughtful exponents, transportation ... seemed to offer a slender hope of rehabilitating the criminal' (McLynn 1989, p. 285). This remained so for many Jacobites as well, predominantly after the '45, when general trends in British punishment within the Scottish and, albeit more slowly, English judicial systems were moving towards a rehabilitation model. Moreover, this is especially pertinent for those who instead chose 'to take the King's shilling' and entered British Army service. In particular, numerous clansmen and some erstwhile Jacobites fought bravely for the British state in the Seven Years' War (1756–63), subsequently cultivating general respect for the warrior Gael (Plank 2006, *passim*; Gibson 1998, p. 28).

### **Imprisonment**

Imprisonment was another secondary trend within the category of lesser punishments. Like these other related punishments, but especially in connection with transportation, the Jacobite risings produced a large-scale number of prisoners that forced the victorious British state to determine what to do with so many individuals who had rebelled against it. The numbers far exceeded those of standard years throughout this period, increasing to the

thousands following both the '15 and the '45 (Szechi 2019, p. 142; Steffen 2001, p. 75; Seton and Arnot, eds., 1928–9, *passim*). Thus, the punishment of imprisonment was very common, with a high number of captured Jacobite convicts, mostly drawn from the lower classes. While numerous rebels awaited further sentencing, there were, naturally, many other prisoners unassociated with the Jacobite movement, and the British authorities had to deal with these felons in addition to those inciting insurrections.

Whereas some minor attempts at reform had taken place during the early years of the eighteenth century, by its mid-point conditions had remained ‘virtually unchanged since the preceding centuries’ (Cameron 1983, p. 44). Additionally, public complacency had done nothing to help the endeavours of would-be reformers. By this time, ‘the function of prisons was still merely to detain offenders in safe custody pending execution, transportation or the payment of debts’ (Cameron 1983, p. 44). As transportation was reintroduced during the years 1718–75, this created a vacuum, and extended prison sentences largely vanished (McLynn 1989, p. 296). However, as the British authorities realised that the punishment of transportation was an unsustainable long-term solution, another utilitarian alternative had to be sought.

After 1780, the penal wind began to blow in a different direction as ‘the notion of imprisonment, designed as a serious punishment *per se* began to take hold’ (McLynn 1989, p. 297). This was due, mainly, to the pivotal Penitentiary Act 1779, which preceded the founding of national penitentiaries or houses of correction.<sup>24</sup> They featured hard but productive, compulsory labour with the hope that offenders would be reformed following a period of reflection. The emphasis on exemplary punishments over the next two decades was an attempt to shift the rehabilitation of criminals away from the violent methods of the past (McLynn 1989, pp. 296-7). Still, reform proved to be difficult and slow, and the overcrowding of prisons

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<sup>24</sup> For 19 Geo. III., c. 74, see D. Pickering, ed. (1778) *The Statutes at Large, Anno Decimo Nono Georgii III. Regis: Being the Fifth Session of the Fourteenth Parliament of Great Britain* (Vol. XXXII. Part II.). London: Cambridge University Press, pp. 417-45.

was a major problem. For instance, for ten years after 1775, the dilapidated hulks of traditional convict ships (decayed inside and out) in many estuaries, such as the Thames and the Medway, became floating prisons on a more permanent basis. These lasted to some degree for almost another century and appear to have been less sustainable than transportation but were necessary due to a lack of incarceration space on land (Cameron 1983, p. 44).

Continued attempts by the authorities to maintain the Bloody Code through ‘the savagery of the English law’ led to inhumane and unsanitary prison conditions lasting into the nineteenth century (Cameron 1983, p. 45). Due to a general rejection of violent methods of the past, the practice of imprisonment developed into a widely used punishment throughout the British Isles in the early 1800s. Furthermore, continual pressure for Enlightenment-inspired reform gradually endorsed it as ‘a much more flexible and finely nuanced apparatus of social control’ (McLynn 1989, p. 298). Coinciding with this changing trend, the science of national statistical crime data was founded and instituted. As the long eighteenth century drew to a close, a further transformation in criminal justice reform occurred in 1805 with the introduction of national crime figures. This was the first time they were recorded throughout the United Kingdom (Emsley 1996, pp. 21-2). So, with the acquisition of this data, a gradual breakdown amid growing divisions in the political consensus of the establishment and a push for a more enlightened, evidence-based social management system, significant shifts in the trends of punishment from the preceding century and earlier were now firmly underway.

### **Connections and Divisions within the Scottish and English Judicial Systems**

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For centuries before the long eighteenth century commenced, Scotland and England cultivated distinct judicial systems. The two independent kingdoms had generally always engaged with each other in agreements on how to adjudicate crimes that affected both realms.

This was most required in disputes concerning offences committed on each kingdom's respective frontier under the nominal 'Border Law' (Roth 2014, pp. 111-2).

The aspect of torture is another element of punishment that is closely associated with crimes of a capital nature. In seventeenth-century Restoration Scotland, questionably brutal methods of judicial torture were regulated by the Scottish Parliament or the Privy Council. Though not sanctioned frequently, it was only authorised in cases of the gravest offences committed, namely 'suspected treason, sedition, witchcraft and murder' (Jackson 2005, pp. 75-102; Lang 1909, pp. 40-5). In an early demonstration of the divisions between the two politically independent kingdoms, inhumane torture had been forbidden in England and Wales since 1640 (Justice UK). This was further enshrined in common law with the English Bill of Rights 1689, and though the Scottish Claim of Right 1689 forbade its use 'without evidence and in ordinary crimes', it was, nevertheless, still used on occasion by the Scottish state (Brown et al., eds., no date).<sup>25</sup>

Naturally, the parliamentary union in 1707 fundamentally changed the relationship between the two kingdoms. The English and Scots treason laws were merged in the aftermath of the Union with the Treason Act 1708, connecting Scotland and England indefinitely regarding the specific legal issues of both high and petty treason.<sup>26</sup> In fact, this unification came as a direct result of the Jacobite threat and the abortive rising in 1708 (Szechi 2015, *passim*). However, a predominant condition within the Articles of Union was for Scots law to endure, alongside its education system and the supremacy of the Presbyterian church, as a separate administrative entity (Farmer 1997, p. 21). Consequently, general trends in punishment of a capital nature steadily began to diverge between the two nations throughout the eighteenth

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<sup>25</sup> For 1 Will. and Mar. Sess. 2, c. 2, see D. Pickering, ed. (1764) *The Statutes at Large, From the First Year of K. William and Q. Mary, to the Eighth Year of K. William III.* (Vol. IX.). London: Cambridge University Press, p. 3.

<sup>26</sup> For 7 Ann., c. 21, see D. Pickering, ed. (1764) *The Statutes at Large, From the Second to the Eighth Year of Queen Anne.* (Vol. XI.). London: Cambridge University Press, pp. 509-13.

century. For instance, Section VIII of the essentially amalgamated ‘British’ statute of 1708 had swiftly outlawed any form of inhumane torture throughout Scotland, describing it as the specified infliction of cruel and unusual punishment. Yet, by the mid-eighteenth century, Scotland and England had diverged again in their views on torture, with Scotland preferring to follow a less severe and more European and rational precedent by declaring it illegal, in all forms, in 1740. More generally, attitudes toward capital punishment in Europe had shifted in conjunction with developing Enlightenment philosophies, pushing brutal displays of execution out of the public sphere (Roth 2014, p. 109). Indeed, the move away from torture and physical pain was already happening across the Continent (Roth 2014, p. 138). As in Scotland, its practice was proclaimed unlawful in Prussia in 1740, in Denmark in 1771, in Spain in 1790, in France in 1798 and in Russia in 1801, as it began to be viewed as ‘an anachronistic reminder of an earlier era’, both ‘arbitrary and barbaric, and did not diminish crime’ (Roth 2014, p. 109; Emsley 1996, pp. 262-3).

Conversely, in England, the Bloody Code continued to be exercised, though public opinion was slowly changing there as well. By the 1750s when ‘relatively fewer people were actually executed ... the Bloody Code had become considerably more sanguinary’ (Taylor 1998, p. 129). For example, the introduction of new laws, such as the Murder Act 1752, extended gibbeting and dissection as another form of public caution and introduced private whipping (Hay 1980, pp. 51-2).<sup>27</sup> Besides, the general shift in societal attitudes regarded these changes ‘as a violation of accepted norms ... as the law [was] failing to reflect popular ideas of culpability and justice’ (Emsley 1996, pp. 260-1). Many of the plebeian masses and the courts of the establishment were, therefore, set upon a collision course, of sorts. Alongside

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<sup>27</sup> Following the passing of this 1752 statute, the regularisation of the gibbet as an instrument of public execution reached its peak wherein English judges were given the full prerogative to impose this additional punishment upon criminals following their sentence being carried out, usually by hanging. Gibbeting came to be defined as the use of a gallows-type structure that would display rotting corpses bound in chains to deter others from committing similar offences. For 25 Geo. II., c. 37, see D. Pickering, ed. (1765) *The Statutes at Large, From the 23d to the 26<sup>th</sup> Year of King George II.* (Vol. XX.). London: Cambridge University Press, pp. 380-2.

considerable popular disquiet for these torturous methods of execution, the fact that hanging began to be used more frequently for lesser crimes withered its spectacle appeal.

Another example of divergence was in the instrument of execution known as the ‘Scottish Maiden’, an earlier prototype of the French guillotine, which was used in Edinburgh and had been designed as a more ‘compassionate’ method of beheading with greater accuracy, as opposed to the continued use of the axe for all beheadings by their English counterparts (Roth 2014, p. 118).<sup>28</sup> The Maiden began to be abandoned in the eighteenth century and was withdrawn from general use as early as 1710. It was last used in 1716, therefore signalling the trajectory of Scotland’s outlook upon criminal justice and began the process of more regularly applying lesser sentences decades before England did (Abbott 2016, n.p.). On the other hand, whilst the Bloody Code persisted from 1723 onwards within English criminal justice for offences that often did not match the crime, Scotland continued to exhibit something of a reputation as England’s violent northern neighbour. Moreover, it had a ‘notorious reputation for enacting tough justice with demonstrations of violence and pre- and post-mortem amputations (Kilday 2019, pp. 8-9). Yet the reality was that by the mid-eighteenth century, Scotland was also considerably more lenient than it had ever been. Indeed,

by this time [it] came to be described as a nation which had an ‘innocence of the noose’ ... capital punishment was never commonly or extensively utilised North of the Tweed ... [I]t had effectively become obsolete to be replaced firstly by transportation and latterly by imprisonment (Kilday 2019, p. 8).

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<sup>28</sup> The Maiden, likely based on the earlier English Halifax Gibbet, was inaugurated by the Scots in the sixteenth century during the reign of Mary, Queen of Scots. Its similarity to the more famous French guillotine has led to the Maiden being recognised by many as its predominant forerunner. The guillotine was employed upon all, rich or poor, sentenced to death in France after 1792, particularly during the Reign of Terror period (1793–94) of the French Revolution (1789–99).



Nonetheless, the sentence of death by hanging continued to be imposed in Scotland, particularly from the 1750s, for crimes such as theft, fire-raising and forgery, etc. – not merely for more serious crimes including murder. And, in rare instances, the punishment of removing an individual's head after death continued to be used in Scotland in the execution of traitors until the 1820s.

It was in Scotland that the last posthumous beheadings, and sentences of hanging, drawing and quartering (but not carried out), took place in the British Isles. In Stirling, in late 1820, during the Scottish Radical Rising or 'Radical War', twenty-two individuals were convicted of high treason whilst campaigning for improved working conditions, universal male suffrage and an independent Scottish parliament. All were found guilty but only two, Andrew Hardie and John Baird, lost their heads after death by hanging, which were then displayed to the observing crowd as a warning to all of the consequences of treasonous actions. The remaining twenty were reprieved (Capital Punishment UK).<sup>29</sup> This late example suggests that the Scottish judiciary was just as likely as England's to hand out capital punishments and publicly demonstrate the consequences of high treason against the Crown.

In England, however, following a slower general trend in capital punishment repeal in contrast to many other countries (including Scotland), it was not until the late eighteenth century that the punishment of burning at the stake, commonly applied as the sentence against females for the crime of high treason, was abolished in the Treason Act 1790.<sup>30</sup> The punishment of hanging, drawing and quartering only ended as a lawful sentence with the Treason Act 1814

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<sup>29</sup> The five Cato Street conspirators became the final group to be executed in England by this method for hatching a plot to murder several members of the Cabinet. These men were Arthur Thistlewood, James Ings, John Brunt, Richard Tidd and William Davidson.

<sup>30</sup> This punishment did not become illegal in Ireland until 1796 with the Treason by Women Act (Ireland) 1796 (36 Geo III., c. 3). For 30 Geo. III., c. 48, see D. Pickering, ed. (1790) *The Statutes at Large, Anno Tricesimo Georgii III. Regis: Being the Seventh Session of the Sixteenth Parliament of Great Britain* (Vol. XXXVII.). London: Cambridge University Press, pp. 111-2.

(Cox 2014, p. 180; Capital Punishment UK; Anon. 1870, pp. 197-205).<sup>31</sup> This statute specified that hanging followed by posthumous quartering became the substitute as the mode of death for traitors. But the monarch maintained the lawful prerogative to demand the sentence of beheading (Laurence 1932, p. 30; The Statutes Project).<sup>32</sup> The Corruption of Blood Act 1814 also removed the punishment of attainder for a felony, yet it remained for both high and petty treason and murder.<sup>33</sup> These statutes were implemented to break the *status quo* as the institutions of justice were re-evaluated by the British state and citizenry.

As humbler felons began to be hanged for lesser offences, such as theft and housebreaking, fewer people attended these executions as they were considered by many to be unjust punishments for the nature of their crimes (Gatrell 1994, pp. 101-2). Consequently, public toleration and the frequency of this means of ‘justice’ had to be reconsidered by the courts. Indeed, the Bloody Code began to collapse in the early decades of the nineteenth century, ‘as prosecutions and hence death sentences mounted ... [and] the system unravelled itself and became unworkable’ (Gatrell 1994, p. 103). When crimes against the British state were proclaimed, radicals, protestors and, above all, traitors – including Jacobites – did not receive great sympathy from the masses for their wrongdoings. Hitherto ‘the beheading of traitors was always watched by huge crowds, but never without overt or displaced disgust at the law’s brutality’ (Gatrell 1994, pp. 103-4).

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<sup>31</sup> All reference to hanging, drawing and quartering was not completely removed from the statute book until the latter half of the nineteenth century with the Forfeiture Act 1870. By this statute, the manner of death for traitors was commuted to hanging, which was the equivalent punishment for murder. This commutation was not acknowledged in Scots law until the Criminal Justice (Scotland) Act 1949. For 54 Geo. III., c. 146, see Great Britain, Anon. (1814) *The Statutes of the United Kingdom of Great Britain and Ireland*, 54 George III. 1814.). London: His Majesty’s Statute and Law Printers, pp. 742-3.

<sup>32</sup> Although long considered obsolete, this royal prerogative was not abolished in law until 1973. For 1973, c. 39, see Legislation UK, (no date) Statute Law (Repeals) Act 1973 (Sch. 1 Pt. V.), p. 7, [legislation.gov.uk](https://www.legislation.gov.uk), The National Archives, Available: <https://www.legislation.gov.uk/ukpga/1973/39/enacted> [Accessed: 13 July 2021].

<sup>33</sup> For 54 Geo. III., c. 145, see Anon., 54 George III., p. 742.

## Conclusions

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The trends in British punishment from 1688 to c.1815 have been shown to have gradually increased and declined to varying degrees of severity over different timespans in Scotland and England during the long eighteenth century. Across this period, the overall trend concerning primary, or greater (capital), punishments moved away from a retributive system, which relied upon beheading as a traditional right of the nobility, and hanging, drawing and quartering as a torturous execution method intent on making the condemned lower classes suffer before death. Over time, by retaining an offender's life, secondary, or lesser, punishments began to be used more commonly with the eventual goal of rehabilitation. This showed a desire to relinquish the violent medieval past, thus reflecting a broader implementation of Enlightenment ideas and attitudes, both domestic and foreign.

Before the Union of 1707, Scotland and England had distinct parliaments and laws but were connected by their mutual land border, which they still share today. Traditionally, they had maintained co-operative dealings regarding border disputes. However, following their union and the manifest assimilation of both kingdoms' treason laws as a result of Jacobitism, despite Scotland's continued separate judicial system, significant legal and social divisions began to emerge. For example, though debatably the more barbaric at the beginning of the period, Scotland banned all torturous punishments first and more frequently introduced secondary penalties earlier than its English counterpart. Crucially, it was the critical introduction of the Bloody Code in the 1720s that garnered England a reputation, not only in Scotland but throughout many European nations, for remaining a particularly brutal realm and effective outlier with disproportionate and divisive punishments lasting late into the period under discussion. Amid the Scottish and wider European Enlightenments, Scotland could arguably be regarded as taking a Continental, and less English, philosophical approach towards more lenient sentencing as the long eighteenth century progressed. Nevertheless, when

required, both kingdoms always produced the necessary sentences and displayed their consequences for threats to the stability of the Scottish, English and British states.

Amongst these wider trends, the specific crime of Jacobitism, and how it related to them during this period, became a twofold problem for the nascent British state. Fundamentally, the Jacobites and their enemies were divided by various ideological outlooks but connected in many ways by the laws and customs of the kingdoms of the British Isles. As *the* socio-political alternative to the establishment of the parliamentary union, Jacobitism evolved into the British state's greatest domestically-rooted opposition until the late eighteenth century. Consequently, the Jacobite risings became a severe periodic threat that had to be definitively dealt with – particularly in Scotland during the aftermath of the '45. There was certainly a demonstrable upsurge for most of the surveyed punishments employed upon Jacobites in this period – essentially due to the nature of rebellion in a war against the Crown on British soil. A substantial number of death sentences and wider violence meant that Jacobitism was viewed as a significant enough crime to warrant exemplary executions. Jacobites were, regularly, the final or amongst the last chronicled individuals to be subjected to brutal medieval methods of execution. Therefore, the Jacobite threat, as has been demonstrated, could have conceivably prolonged these trends in British punishment for many decades. This is particularly acute with primary punishments and in its example with future mass applications of secondary punishments.

These highlighted trends across this extensive period – when connected with Jacobite-related examples – show it to be an epoch that stood at a crossroads of intense social change and Enlightenment thinking regarding methods of criminal punishment. As revealed, punishment practices employed against the Jacobites illustrate, perhaps most prominently in a few cases, wider public disapproval and some state recognition that the brutality of their usage was becoming associated with the medieval and unenlightened past. It has been argued that the

Jacobite movement's very existence, remarkable longevity and near-overthrow of the Hanoverian dynasty prompted abnormally sustained reprisals and plausible extensions of ebbing retributive punishments during the period under discussion. Ultimately, its violent suppression throughout the late seventeenth and early to mid-eighteenth centuries helped to stimulate a growing divide between considerable rational public opinion and that of the British state on how to penalise its criminal population for the remainder of the long eighteenth century and beyond.

## Appendix I



‘A Funeral Ticket for Lord Lovat’ by an unknown artist, engraving on paper, published 19 March 1747 [Accession Number: BLAIKIE 17.16]

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<https://www.nationalgalleries.org/art-and-artists/38014/simon-fraser-lord-lovat-c-1667-1747-jacobite-funeral-ticket-lord-lovat>

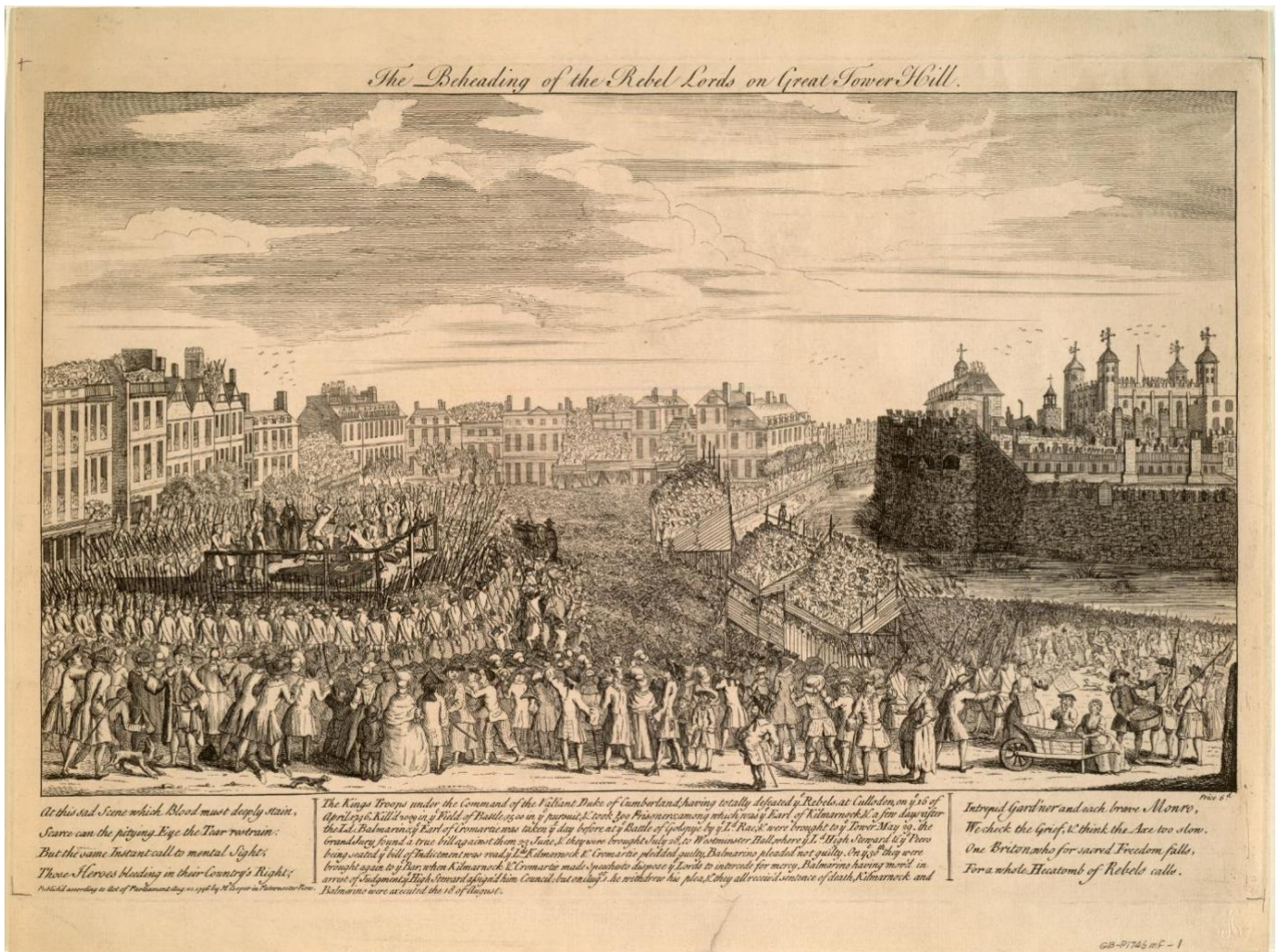
## Appendix II



‘Francis Towneley; George Fletcher’ by an unknown artist, etching, published 20 September 1746 [NPG D20239]

© National Portrait Gallery, London. Available:  
<https://www.npg.org.uk/collections/search/portrait/mw81808/Francis-Towneley-George-Fletcher?>

## Appendix III



‘The Beheading of the Rebel Lords on Great Tower Hill’ by an unknown artist, etching, published 1746 [Museum Number: 1880,1113.3456]

© The Trustees of the British Museum, London. Available:  
[https://www.britishmuseum.org/collection/object/P\\_1880-1113-3456](https://www.britishmuseum.org/collection/object/P_1880-1113-3456)



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