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.