

‘Hanging not Punishment Enough’: Attitudes to Aggravated Forms of Execution and the Making of the Murder Act 1690–1752

1 INTRODUCTION AND HISTORIOGRAPHY

The majority of the small group of historians who have written on the history of capital punishment in the early-eighteenth century has given relatively little attention to those contemporaries who advocated increasing the severity of capital punishment and/or adding post-execution punishments to it. Leon Radzinowicz, for example, only refers to two pamphlets, the anonymous *Hanging Not Punishment Enough* (1701) and George Ollyffe’s *Essay ... to Prevent Capital Crimes* (1731), which both advocated extreme forms of execution that also had elements of post-execution punishment inscribed within them, such as breaking on the wheel or gibbeting and starving to death. He then writes these ideas off as completely irrelevant because ‘the system they devised was utterly foreign to the spirit of the English people and so foredoomed to failure’.¹ While rightly rejecting Radzinowicz’s teleological framework, John Beattie also confined his discussion of this issue to these two pamphlets and two or three other pieces—most notably Nourse’s comments published in 1700—and therefore provides only a preliminary analysis of contemporary ideas about the possibility of increasing the use of aggravated execution practices and/or post-execution punishment.² Randall McGowen’s important work on ‘The Problem of Punishment in Eighteenth-Century England’ offers a more detailed exploration of the fluid range of penal ideas and proposals that were circulating in the first half of the century.³ The three most common themes in these writings, he suggests, were dismay at the failure of the gallows,

belief in the potential of imprisonment with hard labour and criticism of the negative effects of prisons as they were currently managed, but he also discusses the role played by aggravated forms of capital punishment.⁴ By drawing on a handful of newspapers and monthly periodicals, as well as the pamphlets already referred to, McGowen provides a much more nuanced analysis of contemporary penal discourse, but within this he also tends to marginalize, or at the very least downplay, the possibility that in the first half of the eighteenth century aggravated forms of capital punishment were still a viable option, a real (if eventually rejected) penal policy alternative. His discussion of ‘Hanging not Punishment Enough’ and Ollyffe’s 1731 pamphlet stresses their modest and apologetic tone, and concludes that they were ‘scarcely ringing endorsements of severity’.⁵ Moreover he does not include aggravated execution practices as one of the three common themes that regularly appeared in writings about punishment, arguing instead that these ‘extreme and unusual measures’ played a significant role only occasionally at moments of crisis or of frustration at the failure of current policies.⁶ Through a detailed survey of the debates about post-execution punishment and aggravated execution policies that arose in the period between the mid-1690s and the end of March 1752—when the Murder Act was passed by Parliament—the analysis presented here aims to reassess the views of these historians by recovering and analysing the chronological rhythm of the debate, the extent of its impact and the changing forms of aggravated punishment that were most frequently advocated at different points. It then concludes by suggesting a different way of thinking about why the Murder Act was passed, which integrates the Act more fully within the overall history of the Bloody Code.

2 THE STRUCTURE AND DEPTH OF CONTEMPORARY DISCOURSE

The first important finding that emerges from the research presented here is the sheer depth of material that a survey of contemporary discourse can uncover, now that a reasonable proportion of eighteenth-century newspapers, periodicals and pamphlets can be keyword searched—a facility unavailable to earlier historians. The sources remain extremely patchy for a number of reasons. Surviving runs of newspapers and periodicals have many gaps. Many of the provincial (and some of the London) newspapers are still not available for online keyword searching and even when searches

are possible they do not, of course, pick up all the relevant references.⁷ Finally, it appears that not all the relevant pamphlets have survived. For example, the 'Register of Books Published in April 1733' printed in the *Gentleman's Magazine* included reference to a work that does not appear to have survived entitled *Some Reasons, in a Letter to a Member of Parliament, setting forth the Defect of our laws in the Punishment of Execrable Murders, and for Changing that of Hanging into something more Severe*. We may never know, therefore, what specific punishment this author advocated. However, even though we do not have access to all the relevant material, it is clear that a wide range of writings that included discussions of, and recommendations about, the introduction of post-execution and aggravated execution options were published between 1700 and 1752.

A total of twenty-nine different and separate pieces of published writing specifically advocating one or more forms of post-execution or aggravated pre-execution punishment for non-treasonable offences can be found in the pamphlets, periodicals and newspapers we were able to gain access to.⁸ A further two advocated castration as an aggravated punishment for robbery, theft and rape. 'Tis an operation not without a suitable degree of pain, sometimes danger' one wrote, 'and perhaps Newgate would tremble more at the approach of such an execution than at the parade at Tyburn'. Many offenders, he argued, 'were more anxious about the safety of their bodies' than about death itself, for 'their bodies are themselves. The body relishes pleasure and enjoyment and is the only object of their concern'.⁹ The other, which was reprinted several times, argued that 'since the pleasures of love, and the hope of issue are almost universal, no punishment can be invented that will have a deeper impression on the mind'. It then went on to point out (in a line of argument that drew widespread support in the later nineteenth century) that since 'Rapine and Theft, like Madness, very often run in the blood and ... become Hereditary ... this Law ... by disabling a set of vile people from leaving their pernicious breed behind them' would be of great advantage. The punishment of castration could only be applied to males, of course, but it was thought it would also affect 'the female felons' because for them it would 'be a severe mortification to think that their husbands, lovers and friends may come under this punishment'.¹⁰ These pamphlets have, however, been excluded from the sample analysed in detail here (Table 1) because, in theory at least, the punishment advocated did not include the execution of the convict, although death would not infrequently have followed its infliction.

Table 1 Types of aggravated execution and post-execution punishment advocated for murderers and property offenders between 1694 and 1752

<i>Type of aggravated execution/Post-execution punishment positively advocated by writer</i>	<i>Number</i>	<i>%</i>
<i>A. Major overall categories</i>		
Dissection of corpse post-execution	8	20
Breaking on the wheel	7	17
<i>Lex Talionis</i> (execution mirrors violence victim suffered)	7	17
Burning at stake (Whether dead or still alive)	6	15
Gibbeting (Alive or dead—different types)	7	17
Other aggravated forms	6	15
Total	41	
<i>B. Detailed sub-categories</i>		
Dissection of corpse post-execution	8	
Breaking on the wheel	7	
<i>Lex Talionis</i> (execution mirrors violence victim suffered)	7	
Burning at the stake: alive	4	
Gibbeting: Post-execution only	3	
Burning at the stake: after strangling	2	
Gibbeting: alive and starving to death	2	
Fed to the lions/tigers in the tower	2	
Gibbeting: alive after cords wound around arms/legs	1	
Gibbeting: alive after limbs broken	1	
Death on rack under weights (as in <i>Peine Fort et Dure</i>)	1	
Whipping to death	1	
Execution as if treason (disembowelled, beheaded, etc.)	1	
Death by bite from Mad Dog	1	
Total	41	

Sources see Note 8

The vast majority of these twenty-nine writers targeted either murderers or highway robbers, and a considerable number were aimed at both categories or at the overlap between them, that is, at extremely violent forms of robbery.¹¹ Nearly one-fifth extended their range to all capital felonies, one writer being particularly keen to include duelists.¹² In addition to these twenty-nine we also uncovered other pieces of writing that addressed this issue without directly recommending the adoption of one particular form of aggravated execution practice. In 1735, for example, the *Derby Mercury* published an article that simply asked ‘the Legislature’ to find ‘some punishment more terrifying’ than the gallows in order to prevent the frequent robberies currently being committed, while in 1750 several papers

demanded that 'additional pain' be added to the execution process for 'the vindictive or cruel murderer'.¹³ Other publications either briefly discussed one or more of the torment-based execution techniques used on the Continent only to then completely reject their use,¹⁴ or described a new aggravated punishment idea without overtly recommending it. At the beginning of 1752, for example, an article describing a new French proposal—that murderers be hanged alive in chains for two days on bread and water and then have the hand 'with which the murder was committed' chopped off before being executed—was published just before the Murder Act was debated in Parliament—suggesting, but not explicitly declaring, that the writer wanted the legislature to consider such a policy.¹⁵

Overall therefore, once these other publications are included, around thirty-five separate interventions within the broader pre-Murder Act debate about penal policy and capital punishment involved positive discussions of aggravated execution procedures and/or post-execution punishment in relation to murderers or property offenders. Well over half of these were published either in newspapers or in well-known periodicals such as the *Gentleman's Magazine* and the *London Magazine*, which alone gave space to four substantial contributions. Only ten of the twenty-nine interventions that specifically advocated one of these policies were published in pamphlet form. Some of the works advocating aggravated execution procedures had well-known authors such as Mandeville, Ollyffe and Defoe, but most were anonymous or were written under pseudonyms such as Plain Truth, Publicus or Philandros, which can make it very difficult to trace the background of the writer. Many of these pieces of writing can be found in more than one publication, either because some provincial newspapers reprinted articles that had already been published in London-based journals or newspapers,¹⁶ or because a rival periodical reprinted the original but then added a response.¹⁷ Some of them were written specifically in reply to other writers, but although a denser set of interrelated debates did develop immediately before the Murder Act, on the whole discussions about execution policies, and about the role of aggravated or post-execution punishments within them, were fluid and multi-vocal rather than being well-structured debates.¹⁸

The publication dates of these writings were not distributed regularly across the period 1694–1752. Given the fact that the first half of the eighteenth century witnessed a large increase in the number of outlets available for those who wished to publish their thoughts on penal policy, it is not surprising that our survey of the first half of the period (1700–1726)

has yielded only six discussions advocating forms of aggravated execution or post-execution punishment, or that thirteen of the twenty-nine pro-severity publications we have identified were published in the two-and-a-half years immediately before the Murder Act. However, on closer inspection it becomes clear that these publications were mainly clustered into three groups of years, all of which coincided with periods of acute anxiety about crime in general, and about violent robbery and murder in particular, that is, 1694–1701, the 1730s (especially the period 1733–1736) and the final three years before the Murder Act. Nearly 80% of these writings were published during these periods, the remaining 20% being printed during two other brief windows of time, that is, 1725–1728 and 1744–1746.

Although Britain spent almost as many years at war as at peace between 1690 and 1752, all but one of these peak periods of debate occurred in peacetime, and there were good reasons for this. Post-war demobilization flooded the capital's labour market and brought home many of the marginal, and sometimes violent, young men who were swept off the streets and sent to fight overseas during every wartime period. This meant that, as Beattie has pointed out, 'peace abroad was commonly accompanied by violence at home'.¹⁹ Indictment rates rose rapidly in each of these periods and the burgeoning London press, short of news now that the wars were over, tended to fuel the resulting fears by publishing increasing numbers of stories about murders, violent robberies, burglaries and other crimes.²⁰ Very occasionally the press also managed to create one of these moral panics about violent street crime during wartime, as Richard Ward's excellent article on the London crime wave of 1744 has recently shown, and as a result 1744–1746 was the only wartime period that witnessed the publication of even a small cluster of articles advocating aggravated execution policies.²¹ Publications recommending, and often demanding, the introduction of new aggravated execution policies and post-execution punishments were not randomly distributed but came in clusters during key periods of anxiety about crime, when the existing capital punishment system was clearly perceived to be failing in its main role—as a deterrent against violent property crime and murder.

Many of the pamphlets and articles published in these key periods pinpointed the same three basic problems before going on to describe the different aggravated execution policies they wished to implement in order to solve them. A considerable number began by highlighting 'the lamentable increase of highwaymen and house-breakers among us', and

emphasized that the use of lethal violence was on the increase by stressing that 'murders and robberies have been of late more frequent than has been known in the memory of man', or that 'the roads ... swarm with thieves, and not only robberies, but murders are more frequent than they were ever ... before'.²² Several of these publications then went on to argue vehemently that 'even the gallows cannot terrify' and therefore that the capital punishment system as it currently stood was simply not working.²³ 'Daily experience shows us' a correspondent of *Wye's Letter* argued, 'that hanging only signifies nothing, therefore the law in that particular is frustrated, and should be amended, as most laws are when they are found not to answer the ends intended'.²⁴ Thirdly, many of the contributors to the debate were concerned that the same punishment—death by hanging—was being given to very dissimilar crimes, 'there not being the least additional pain, or mark of infamy, to distinguish the vindictive or cruel murderer from the necessitous thief',—a theme we will discuss in more detail at the end of this chapter.²⁵

As the number of executions rose rapidly in these key periods in response to rising indictments levels for robbery and violent crime, the sense that hanging was not working and that it was being used in an undifferentiated manner against too wide a range of crimes clearly increased. This in turn stimulated a wide variety of penal proposals. Some of these schemes tried to find suitably tough or terrifying non-capital punishments such as imprisonment with hard labour, work in dockyards or in public chain gangs, or tougher variations on the theme of transportation such as lifetime sentences to the galleys.²⁶ Others, by contrast, proposed keeping capital punishment but increasing the pain of execution, or the level of post-execution exposure of the corpse (and sometimes the amounts of time that both of these would be have to be endured) by advocating punishments such as breaking on the wheel, burning alive or starving to death on the gibbet. Because many of the proposals based on non-capital punishment options were adopted either during this period or after it, and became the core sanctions on which penal policy was based in the eighteenth and nineteenth centuries,²⁷ the writings that advocated them have received considerable attention from historians. The same is not true, however, for those publications that foregrounded ideas about aggravated and post-execution punishments. The implicit assumption that they were never serious possibilities because (with one or two exceptions) they were not eventually adopted by Parliament needs to be seriously questioned.²⁸ Those who felt that the condemned should either 'be made to feel himself

die²⁹ and/or face the prospect of his corpse being subjected to further humiliations after his death, put forward a range of proposals that appealed to a variety of audiences. When we look at the nature of these proposals, and at the particular sub-groups of aggravated execution and post-execution punishments that were advocated in each of the key periods between the end of the seventeenth century and the Murder Act, it becomes clear that these issues played a very significant part in contemporary penal debates.

3 THE TYPES OF AGGRAVATED EXECUTION AND POST-EXECUTION PUNISHMENTS ADVOCATED

At least fourteen different types of aggravated execution and/or post-execution punishments found support in the twenty-nine writings we have identified (Table 1). Several of the writers who advocated increasing the severity of capital punishment wanted more than one new punishment introduced; Table 1 lists forty-one positive suggestions. However, the count presented in Table 1 excludes the negative references within these twenty-nine writings, several of which not only recommended a particular option or options, but also argued that other potential aggravated punishments should definitely not be introduced.³⁰ In these twenty-nine writings negative expressions were considerably outnumbered by positive recommendations but at least one policy option, breaking on the wheel, was so controversial that it attracted as many critical comments as it did recommendations. Nearly half of the fourteen forms of aggravated execution or post-execution punishments suggested in these writings between 1700 and 1752 were only mentioned once (Table 1) and a number of these involved highly exceptional methods of increasing the pain of capital punishment that do not appear to have gained much support from contemporaries. Two of the suggested options involved using animals to effect the punishment. One option (which achieved two recommendations) recommended that murderers be ‘thrust bound hand and feet into the den of their kindred savages ... the lions or tygers kept in the Tower’, while the other proposed subjecting them to the bite of a mad dog—both of which would have resulted in a particularly painful death even by the high standards set by contemporary execution practices on the continent.³¹ Another isolated proposal ‘whipping them to death’ built on an already

existing punishment for felony and one which, when it was used by the army courts (where sentences of 1000 lashes were sometimes passed) could occasionally end in the death of the offender.³² Two of the other options that were mentioned in only a single publication involved extending to murderers existing forms of execution that were particularly severe, but which were normally reserved for much more specific categories of offender. One pamphlet proposed that murder should be redefined as high treason.³³ The other, having pointed out that it was incorrect to say that 'our laws are strangers to tortures ... for in the case of high treason you are to be emboweled being alive',³⁴ went on to mobilize a different tradition of torture by recommending that murderers should be subjected to *Peine Fort et Dure*, the punishment used by the courts when an offender refused to plead. This involved putting the prisoner on the 'equivalent to a rack' and then loading him with a huge weight of irons until he died.³⁵

Almost all the remaining forms of aggravated or post-execution punishment found in these publications were mentioned several times and seem to have played a significant role in the debates about capital punishment during at least one of the periods we have listed. All but one of these forms clustered around a small group of fairly broad categories of punishments that were defined and visualized through their association with a particular specific mechanism/location: the wheel, the stake, the gibbet and the surgeon's table. The exception was discussed under the title *Lex Talionis*³⁶ and was based on a principle rather than a process, that is, on the retaliatory idea that violent offenders should suffer on their own bodies, before death, the same violent blows and pain at the hands of the executioner that they had inflicted on their victims.³⁷ 'Notorious robbers who desperately wound the persons they rob' were the main group targeted by most of the writers who favoured *Lex Talionis*.³⁸ One recommended very specifically that these severe retaliatory injuries should be inflicted well before the condemned was executed, and that they then 'be taken proper care of till their wounds are nearly healed and then hanged'.³⁹ Another wanted to confine *Lex Talionis* to those found guilty of premeditated murder, partly on the grounds of retribution, that is, that 'excess should be repaid with excess'. However, he also rather optimistically believed that forcing the condemned through the 'same process of pain and horror' as the victim would have a preventative role, because 'the deliberating villain, designing the murderous blow, would from a sudden recollection that he might afterwards feel the same painful stroke ... stay his hand in the work of horror'.⁴⁰ Two of the authors recommending this punishment also suggested an alternative non-capital but

extremely agonizing punishment—cutting off the hands of the prisoner—on the grounds that the offender’s associates ‘might be more awed by such an example ... than by an execution at Tyburn’.⁴¹ It is worth noting at this point that all these three writings, along with another *Gentleman’s Magazine* article (excluded from Table 1 because it advocated a non-capital sanction), which recommended the castration of all capital convicts, were not, as we might expect, published at the very beginning of the eighteenth century. Six out of the seven publications recommending *Lex Talionis* came out between 1744 and 1752—a clear indication of the survival right up to the Murder Act of writers willing to advocate punishments involving severe ‘additions of torment’ and ‘a suitable degree of pain’.⁴²

Directly retaliatory punishment apart, the options widely discussed in these pamphlets fell into six significant groups (Table 1). Dissection, breaking on the wheel, burning alive at the stake, burning after strangulation, gibbeting alive (with or without previous breaking/twisting of limbs) and gibbeting after hanging. All of these involved an element of post-execution punishment. Three of them, which between them constituted about one-third of all recommendations in Table 1, were simply and only post-execution punishments. Dissection was never performed (deliberately at least) on the living, while gibbeting after death by hanging and burning after strangulation were both punishments of the criminal corpse alone. However, the other three options, though they involved the infliction of pain on the condemned whilst they were still living, also had important elements of post-execution punishment written into them. Breaking on the wheel was usually designed to end with the long-term placement of the offender’s corpse on a wheel in a public and highly visible place (often similar in location to the places where English offenders were gibbeted).⁴³ Burning alive ended in the complete obliteration of the criminal corpse, which some regarded as the ultimate post-execution punishment, and gibbeting alive was usually followed by the continued exposure of the criminal’s corpse in chains after death. Almost all the main forms of aggravated execution advocated in the first half of the eighteenth century therefore had important consequences for, and tried to mobilize the power of, the criminal corpse. The role of the post-execution journey of the criminal’s body was by no means always given centre stage in debates about increasing the severity of capital punishment, but with the exception of the discussions on *Lex Talionis* at mid-century, post-execution punishment was always a significant element whenever any of the other alternatives was discussed.

Dissection was the most popular aggravated execution option between 1700 and 1752, being recommended in eight of the twenty-nine publications we have identified (Table 1). Breaking on the wheel was recommended by seven different writers, while six argued for the introduction of burning at the stake (only two of whom wanted the condemned strangled first). Gibbeting alive (with or without the condemned being previously subjected to the breaking or twisting of limbs) was recommended four times and gibbeting after execution three. Although the vast majority of these proposals were based on similar foundational assumptions about the inadequacy of the existing capital punishment system and its failure to deter or to differentiate between offenders, some were also justified by more individual rationales.

Sending the prisoner's corpse to the surgeons for either public or private anatomization and dissection immediately after they had been executed was virtually the only option that was popular for both penal and non-penal (i.e. medical) reasons. Based in part on their belief in 'the superstitious Reverence of the vulgar for a corpse, even of a malefactor, and the strong aversion they have against dissecting them',⁴⁴ several commentators saw post-execution dissection as a very useful penal option. 'Death itself is hardly more terrible to the minds of criminals, than the apprehensions of being dissected', one suggested in 1733 'so were the bodies of all executed felons made liable for dissection, it would reduce the number of felons'.⁴⁵ Rather than confining this punishment only to murderers, some writers also recommended that 'every felon that shall be hanged at Tyburn' be then 'carried from thence to Surgeons Hall'.⁴⁶ This was true throughout the first half of the eighteenth century. In 1750 an article in the *London Magazine* recommended 'that all the bodies of executed criminals be given to the surgeons: because the generality of mankind have a great aversion to being anatomized: nay to many it is more terrible than death'. It then went on to point out that, 'by this means Surgeon's Hall will always be well supplied, without any need of robbing church yards'.⁴⁷

Several other pamphlets were also concerned about the supply problems that the rapid development of anatomy was generating. The limited number of criminal corpses officially made available may previously have been adequate 'in that infant state of the chirurgical art', one writer argued, but 'the number of surgeons is so much increased, and the art itself arrived at so great a degree of perfection' that this was no longer the case. There were 'at least five or six lectures in anatomy read every night in the winter season' and every lecturer needed 'to be furnished with at least one fresh

body a week'.⁴⁸ Some publications also showed an awareness of the problems that might be encountered in allocating criminals' cadavers between different groups of surgeons. One writer suggested that once the bodies reached Surgeons Hall, 'proper persons' should then distribute them 'among those gentlemen who are then reading anatomical lectures'.⁴⁹ Another recommended that the bodies of all 'doom'd to the gallows ... shall be liable to be purchased by any surgeon: That after the Surgeon's Company have chosen the body allowed them by law, any private surgeon shall be at liberty to purchase any other he shall pitch upon; paying twenty shillings, and that the first bidder, according to a register book kept for that purpose, be the buyer'. This writer then took the commodification of the criminal corpse to new heights by suggesting that if the relations of the hanged were willing to pay £5, they would be allowed instead to 'bury them themselves'.⁵⁰ The extent to which these writings were influenced by pressure from the surgeons, or even written in one or two cases by them, is difficult to determine. It is interesting, however, that one pamphlet, having recommended that all felons be anatomized, then went on to suggest that 'the governors of all the respective hospitals in England may be empowered to appropriate as many of the patients, who shall die in such respective hospitals, as they shall judge sufficient, for the service of the surgeons who belong thereto'—a policy that was only fully implemented in the nineteenth century.⁵¹ Many of the advocates of dissection clearly understood the problems being experienced by the various institutions and private practitioners involved in the rapidly growing practice of anatomy, and in advocating that the bodies of all felons be subjected to dissection they would have known that this policy would make large number of corpses available. In the 1750s an average of thirty offenders a year went to the gallows in London and in peacetime crisis years such as 1749–1752 more than fifty a year were hanged.⁵² Many of the writers who argued strongly for the potential effectiveness of dissection as a penal measure clearly also had in mind the potentially positive impact of such a policy on the supply of corpses.

In the first half of the eighteenth century dissection attracted hardly any direct critics as a potential means of aggravating the execution process, but the same was not true for the second most widely advocated option—breaking on the wheel. In Holland, France and Germany as well as elsewhere in North-Western Europe breaking on the wheel was the standard form of prolonged death penalty used during this period. It usually involved the convict being tied to a wheel or wooden cross-section with all

his limbs exposed and then having each of them broken in turn with an iron bar by the hangman. Once he was dead, the corpse was usually then taken to the city's 'gallows field' where it was permanently displayed on a wheel.⁵³ Although the immense pain this process generated could be largely avoided by starting from the top, as it were, with blows to the heart or head, it was often effected from below so that the convict remained alive until the very end of the process, which was sometimes deliberately prolonged to increase the torment.⁵⁴ The nature of this punishment was fairly well known in England being described in many pamphlets, accounts of journeys abroad and newspaper reports from the continent.⁵⁵ Recommended by Ollyffe for the 'exquisite agonies' and the almost 'un-conceivable torture' it involved, breaking on the wheel was popular with a number of writers as the most obvious and well-tried way to create pain in such 'an intense degree' that would be 'so terrifying' that it would dissuade others from offending.⁵⁶ 'Breaking on the wheel has been found in other countries to be the best expedient to diminish the number of malefactors', Nourse observed. 'Tis true this sort of punishment carries the face of cruelty ... a man's bones are broken to pieces, and his nerves and sinews beaten to a pulp, which must needs be very dolorous and ... very grievous to him'. However, robberies were said to have been reduced by 90% since its introduction in France, and fear of ending up 'in the same place of torment' was therefore thought to be effective 'in the prevention of the like offences'.⁵⁷ If they only faced a simple hanging some offenders might 'go fearless and ranting to the gallows, not in the least concerned at the approach of death', but 'they would hardly do so were they carrying to the wheel, where the pains of death would be so often repeated, before they would expire'.⁵⁸ This punishment was seen as a particularly appropriate response when offenders were thought to be showing 'a growing proneness to cruelty'⁵⁹ and, as we will see, it was still being widely proposed as a punishment for murder in the run up to the Murder Act.⁶⁰

Opposition to breaking on the wheel was often strong, however. Some critics simply argued that the customs of the English would not stomach such punishments, quietly ignoring in doing so the fact that breaking on the wheel had occasionally been used against murderers in late-sixteenth and early-seventeenth-century Scotland.⁶¹ 'Breaking on the wheel and other like torturing deaths, common in other Christian countries, the English look upon as too cruel to be used by the Professors of Christianity', Edward Chamberlayne wrote in *The Present State of Great Britain* in 1735.⁶² Other writers argued more pragmatically that the negative effects outweighed the

positive ones. ‘In those countries where the breaking on the wheel is the form of execution, robberies are not so frequent but seldom or never committed without murder’, one writer argued in 1726.⁶³ Twenty years later the author of a long article published in two prominent journals, while admitting reluctantly that there might be some justification for ‘breaking on the wheel and other horrible executions’ if they deterred ‘others from committing the like crimes’, argued that such spectacles of ‘barbarity’ would undermine the sensibilities of the audience, making them too familiar with violence and therefore more likely to accept its use.⁶⁴

The third option—burning the condemned at the stake—although it also mirrored continental practice, may have appeared as a less radical departure because it had strong precedents in England. Until 1791 women accused of acts defined as petty treason (such as coining or the murder of a husband or master) could still be burnt at the stake and some writers wanted not only to extend the use of this punishment to thieves or murderers but also to make it much more painful by forbidding the executioner from following the customary practice of strangling the convict before burning her. After agreeing that it was only ‘reasonable’ that women burnt at the stake for coining ‘are strangled first’, the author of *Street Robberies Considered* (almost certainly Daniel Defoe) went on to advocate that ‘in the case of Murder, both Male and Female should be burnt alive’, because ‘the fear of such dreadful punishments would correct the vicious minds, and make them less criminal’.⁶⁵ Hanging was ‘too mild’ for ‘crimes of the blackest dye’, the writer argued, and this was echoed ten years later by the author of a ‘Scheme for Burning Malefactors at a Stake’. ‘Even the gallows cannot terrify’, he argued. ‘A death without pain, or seeming pain, cannot be presumed to deter such people: moreover the many attempts of late to evade the cord, prove they do not believe it inevitably fatal. All hopes of evasion would be taken away by the awful stake; a punishment known to our laws, and not thought too severe for the softer sex.’ In order to differentiate between crimes, he then went on to suggest that thieves who had not shed blood ‘might be strangled’ first, but that murderers should ‘expiate their crimes in flames’.⁶⁶ The increasingly ‘shocking barbarities’ being committed by highway robbers caused another writer to argue that burning alive should be extended to some property offenders. Such offenders ‘undoubtedly deserve a severer death than bare hanging’, he argued, ‘and methinks that burning alive or breaking upon the wheel, would not be at this juncture unseasonable’.⁶⁷

The two pamphlets that advocated gibbeting the condemned whilst still alive and then starving them to death also recommended breaking on the wheel as another appropriate punishment. To the author of *Hanging not Punishment Enough* these two torment-based execution practices offered a finely graded method of dealing with murderers, highwaymen and arsonists. 'If hanging will not restrain them', he wrote, 'hanging them in chains and starving them, or (if murderers and robbers at the same time, or night-incendiaries) breaking them on the wheel', certainly would. Ollyffe, after rejecting burning as a 'quick dispatch', went on to suggest three different types of gibbeting, as well as breaking on the wheel, as particularly useful ways of creating 'lingering and terrifying torment'. Having pointed out that the 'ancient method of hanging such alive on gibbets till starved to death ... could not fail of raising a suitable terror', he went on to advocate policies that mixed this option with other elements reminiscent of continental practice. 'Twisting a little cord hard about their arms and legs, which would particularly affect the nerves and sinews and the most sensible parts to produce the keenest anguish', was suggested as a prelude to fixing them on a gibbet within hearing distance of the highway, as was setting them 'on a gibbet in the like manner with their limbs broken'.⁶⁸

Neither of these writers actively advocated the obvious, and less painful, alternative to these policies, that is, gibbeting the condemned person's corpse only after his execution. However, since (as we saw in Chap. 1) this policy was already being quite extensively used against particularly heinous male offenders, they did not need to advocate its use and their silence cannot therefore be automatically read as disapproval. The relative lack of writings suggesting a more extensive use of post-execution gibbeting may reflect a similar sense that, since the policy had already been adopted by the authorities, it did not need to be discussed. Only three of our twenty-nine writers explicitly indicated a positive attitude to hanging the offender's corpse in chains after execution, and one of these, who focused on murderers alone, was more descriptive than openly advocacy. Having contrasted the 'mild and gentle' approach of the English law with 'the most exquisite torments' inflicted on murderers elsewhere, the author noted that even in England the bodies of many murderers were 'denied even the burial of a Christian; and ... exposed a prey to the ravenous birds of the air'. This he noted (apparently with approval) meant that 'his infamy is preserved as long as nature will admit, a gibbet exposes him as a terrible

example to others, and he becomes the monument of his own shame, and of that of all his relations'.⁶⁹ Another article, which focused on the punishment of street robbers, contained a much more overt recommendation that this option be used. 'To let all their bodies remain upon the gallows in the manner they are hanged ... would be a perpetual memorandum of the dreadful consequences that attend such pursuits', it argued. 'Nothing is more terrible, even to these profligate men, than to be denied decent interment ... how very careful they appear that the dead may not be deprived of funeral rites'.⁷⁰ However, even though post-execution gibbeting had its advocates, it is difficult not to read the many demands for more 'tormenting' forms of execution that can be found in the majority of these twenty-nine writings as implicit critiques of this already existing practice. Indeed, at least one writer explicitly made this link as part of a broader critique of the policy of gibbeting after execution. 'What signifies hanging in chains after the breath is out of the body? As it gives no pain, it gives very little concern', he observed in 1752. 'In other countries ... executions are less frequent than with us; because when they punish they do it with great severity'.⁷¹ Henry Fielding was also critical of gibbeting. In the *Covent Garden Journal* he told a fictional story of a man's conversation with a friend while visiting the latter's garden, where the fruit had been devastated by blackbirds. 'I have endeavoured all I can to prevent it ... I have hung up the carcasses of several of them in terrorem and you see the clacker there that the wind turns round all day long', his friend told him. 'It is visible enough', the main character replied, 'and so are four or five blackbirds, the wickedest of all felons who are playing just by it'.⁷² This fictional account was probably given extra resonance by newspaper reports that described crimes committed within sight of the corpses of criminals still hanging in chains. *The London Journal*, for example, reported that a highwayman had robbed a coach 'just by the gibbet on Highgate road; one would have thought the remains of the two pendant criminals there should have struck some terror ... but it proved otherwise'.⁷³ Four years later another paper expressed equal surprise that despite the diligence of the Post-Master General, who had made sure that nine offenders were currently hanging in chains, others still attempted 'to rob the mails' even when 'there are so many dreadful objects in view'.⁷⁴ Despite the fact that post-execution gibbeting was the most widely used method of adding further sanctions to the execution process in the first half of the eighteenth century,⁷⁵ its efficacy was by no means universally accepted.

4 THE KEY PERIODS OF DEBATE

Although a wide spectrum of aggravated and post-execution punishments can be found in the printed literature throughout the whole period from the late 1690s to 1752, the three key periods of debate—1694–1701, the 1730s and the two-and-a-half years before 1752—each exhibited their own particular mix of suggested penal measures. However, although there was a gradual increase in the advocacy of the post-execution punishment of dissection, this should not be allowed to obscure the fact that in all three of these periods the possibility of introducing new and more tortuous forms of execution was seriously debated not only in print but also in Parliament.

The first period when heightened anxiety about violent crime and robbery led to extensive discussions on these lines began in the mid-1690s and ended in 1702 when large-scale remobilization and a rapid fall in male indictment rates temporarily reduced the perceived need for changes in penal policy. In the mid-1690s the distress caused by harvest failures, the coinage crisis and wartime trade disruptions had been accompanied by rising crime rates in London, even though the wartime recruitment of many young men usually reduced indictment levels.⁷⁶ When peace returned in 1697 large numbers of soldiers and sailors were demobilized in London and the number of males accused of property crimes, nearly doubled reaching a peak in 1699–1700.⁷⁷ As alarming reports of robberies and violence multiplied rapidly, both contemporary writings and the limited parliamentary records that have come down to us indicate that a growing debate developed about how these offences should be prevented and punished. Facilitated, and in part stimulated, by the new regularity of parliamentary sessions after 1689,⁷⁸ discussions about capital punishment began to gain momentum.⁷⁹ As early as 1694 Parliament appointed a committee to consider the law on highway robbery⁸⁰ and in 1695 the House of Commons set up two separate committees to make the laws against highway robbery 'more effectual', as well as receiving a petition and further policy suggestions from two London citizens, which stressed that 'the frequent robberies' were a 'great grievance'.⁸¹ Printed comments by contemporaries are relatively difficult to find at this point but at least one pamphlet published in 1695 directly addressed this issue. After arguing that hanging held 'little terror' because it was thought by offenders to be 'a most easie [sic] death', the writer called for either 'sharper deaths and more solemn' or 'loss of liberty by ... perpetual imprisonment'.⁸² Another pamphlet written by the Kent M.P William Brockman, but surviving only

in manuscript, suggested that the corpses of highwaymen should be hung in chains near the scene of the robbery ‘for a terrour’, but this relatively mild solution was soon superseded.⁸³

The further rise in robbery prosecutions and male property crime indictments that accompanied demobilization in 1697–1698, produced both another parliamentary debate and two important published writings (one of which was expressly addressed to the two Houses of Parliament) advocating much more painful forms of execution practice. A bill for ‘the more effectual prevention of robberies and punishing such as shall be convicted’ was considered by both Houses, was referred to two separate committees, and was subjected to various detailed amendments and debates in 1697–1698. We do not know precisely what was being proposed, because, although the bill got at least as far as a second reading, it failed to become law.⁸⁴ However it is interesting to note that at almost exactly the same moment Timothy Nourse was advocating in print that the law was ‘too merciful’ in punishing highway robbers and murderers, and recommending breaking on the wheel as a means of recreating the gallows as a ‘place of torment’.⁸⁵ As robbery prosecutions and reports peaked in 1700–1701, Parliament was then directly addressed by another pamphlet—*Hanging Not Punishment Enough*—which advocated not only breaking on the wheel but also starving to death in chains and whipping to death, on the grounds that ‘no argument will be so cogent as pain in an intense degree’.⁸⁶ We have no record of the content of the Parliamentary debates of the years 1694–1702, although it is clear from the *House of Commons Journals* that bills were written, committees appointed and amendments much discussed. However, it is more than possible that these pamphlets, which argued cogently for aggravated forms of execution designed to ensure that ‘the pain’ would ‘much outbid the pleasure’,⁸⁷ played a substantial part in these debates. The justification advanced at this point for greater severity—that ‘any community may secure itself, as best it can, without the imputation of cruelty’⁸⁸ would almost certainly have overcome the scruples some MPs might have had about such policies. Branding the forehead, another policy advocated in these pamphlets, was actually introduced in 1699 and not repealed until 1706.⁸⁹ At the high point of anxieties about rising violence in the late 1690s extreme measures that might have introduced ‘different sorts of death for different crimes’⁹⁰ were almost certainly discussed and may have come close to receiving Parliamentary sanction.

In the aftermath of the next demobilization crisis in 1714 mushrooming crime rates generated further debate, which centered mainly on the need for an effective non-capital sanction and resulted in the Transportation Act of 1717.⁹¹ After this was passed transportation rapidly became the major punishment for most felonies,⁹² but it was not long before it too came under serious scrutiny. Within a few years metropolitan magistrates were complaining that transportation was not working and that many transported convicts were quickly making their way back to Britain.⁹³ Three pamphlets published in 1725–1728, a period of particularly acute anxiety about violent robberies, not only criticized transportation as ineffectual and easily undermined, but also suggested the need for new additions to the current form of death penalty.⁹⁴ However, only one of these three writers was prepared to advocate adding torment to the execution process itself and his suggestion—that both male and female offenders be ‘burned alive’—was confined to cases of involving murder.⁹⁵ The other two whilst acknowledging that ‘tortures have been mentioned by many as the surest means to extirpate these criminals’ both confined themselves to suggesting the introduction of post-execution punishments. One advocated hanging street robbers in chains ‘as a perpetual memorandum’ while the other made the first detailed case for dissection on the grounds that it would not only put offenders in fear but also ‘encourage the improvement of ... Surgery’.⁹⁶

In contrast to the period 1725–1728, however, in the second major period of debate about the need to add further punishments to the execution process, the years 1731–1738, only one of the seven publications advocated post-execution punishment alone. Although this pamphlet did contain the first detailed plan to introduce the dissection of all capital offenders and to organize the distribution of the resulting cadavers amongst London’s surgeons,⁹⁷ it was the exception. Almost all those who demanded that further punishment be added to the hanging process wanted to ensure that the convict ‘felt his death’. Burning alive at ‘the awful stake’ and the equally cruel procedure of breaking on the wheel were each advocated by three of the seven writers,⁹⁸ while gibbeting alive, *Lex Talionis* and ‘bringing the rack among us’ by the introduction of pressing to death also received the backing of at least one writer.⁹⁹ The substantial wave of writings published in 1730s clearly focused almost entirely on ways to make the execution process more of a torment for the condemned.

Since many of those writings were addressed directly to Parliament or to individual MPs, it is not surprising that there is considerable evidence that Parliament was debating these issues during the 1730s. By that time male

indictment rates for violent property crime had been at a very high level for nearly two decades, drawing the government into various policing and rewards-based initiatives.¹⁰⁰ In the early 1730s, however, fears of violent crime and the increasing space it was given in the newspapers, the *Old Bailey Sessions Papers* and a series of pamphlets had clearly sparked a broader debate not just about the prevention of violent property crime but also about the ways in which it was being punished.¹⁰¹ A deep unease was already evident in 1731, the year in which Defoe observed that street robbery had grown to such a height that ‘the cry against it is universal’ and in which Ollyffe wrote his detailed pamphlet advocating a variety of torment-based execution methods.¹⁰² By 1733 this wave of anxiety seems to have been reaching a climax. The newspapers reported that robberies were so frequent that travelling about the city was highly dangerous,¹⁰³ and after describing in considerable detail two robberies involving the murder of four victims, the *Gentleman’s Magazine* published lengthy ‘reflections’ engendered by the ‘barbarous murders lately committed’.¹⁰⁴ These fears led to pressure on Parliament to increase the severity of the capital code, which came to a head between March and May 1733. The House of Commons journals contain a series of references to ‘a committee of the whole house to consider the laws in being with respect to the punishment of criminals and how the same can be made more effectual’, and although those journals offer no evidence about the length or content of these debates,¹⁰⁵ there was a clear expectation in the newspapers and pamphlets of these months that aggravated forms of the death penalty were being given serious consideration. The first of these publications, which came out on 21st March, the day after the Parliamentary committee was first appointed, made the context very clear. ‘There being a bill now depending in the House of Commons, to consider the laws ... with respect to the punishment of criminals, it is thought proper to offer the following observations to the considerations of that Honourable House. The roads ... swarm with thieves, and not only robberies, but murders are more frequent than were ever known before’. Execution alone, the author then argued, was clearly not working and ‘the bodies of all executed felons’ should therefore be ‘made liable to dissection’ in order to suppress crime and ‘effectually supply the demands of our surgeons’.¹⁰⁶ The debate grew more intense in April both in Parliament and in the press. On the 10th April the newspapers noted that the House of Commons was about to receive the report of the committee for rendering the law more effectual

against criminals and a week later the *Derby Mercury* noted that 'several schemes have also been printed on the punishment of criminals'.¹⁰⁷ The publication of at least three pamphlets on this subject was announced in the press during that month and although the text of only one of these appears to have survived the title of another—*Some Reasons, in a Letter to a Member of Parliament, setting forth the Defect of our laws in the Punishment of Execrable Murders, and for Changing that of Hanging into something more Severe*—suggests that it almost certainly advocated the introduction of more aggravated forms of the death penalty.¹⁰⁸ The surviving pamphlet, which was addressed to an MP, and which various newspapers announced was 'just published' on 26th April—the day before Parliament was again due to consider the issue—argued that 'Hanging only signifies nothing', and that in view of 'the many fierce and bloody assassins infesting our streets' it was necessary to ignore those who 'say tis inhuman to punish one of our own species in so tormenting a way' and introduce the torture-based punishment of pressing offenders to death.¹⁰⁹

The debates of 1733 did not result in an Act of Parliament, nor has it been possible to trace the bill referred to in the newspaper reports.¹¹⁰ The impact both of the pamphlets published in the early months of 1733 and of Ollyffe's 1731 demand for offenders to 'feel their death' is therefore impossible to measure. However, the introduction of aggravated execution methods was clearly discussed by Parliament that year. Nor did the issue then disappear. In April 1735 it was reported that since robberies remained frequent both in London and 'in distant parts' of the country, 'tis talked the Legislature will take cognizance of these proceedings, in order, by some punishment more terrifying to put a stop to them',¹¹¹ and these demands seem to have grown stronger as the year progressed. In August another newspaper argued that 'nothing but severity remains, such severity as may be felt',¹¹² and in early December 1735 it was announced that 'three different proposals are now before the Ministry for a law to be enacted by Parliament for altering the punishment of persons guilty of murder, burglary and other robberies'.¹¹³ Another report published later that month made it clear, moreover, that at least one of those proposals involved the introduction of aggravated forms of the death penalty. 'Tis thought', it noted, 'it will be proposed to Parliament next Sessions to punish Murder, Robbery, Sodomy and other offences of the blackest Dye, with burning or breaking on the wheel, instead of hanging, a death which hardened villains perfectly laugh at'.¹¹⁴ Having pointed out that 'all other

nations' used aggravated punishments, 'the Dutch have their *Lex Talionis*, the wheel, the gallows, the sword; the French, Germans etc. have the St Andrew's cross, hot pincers, scalping; ... the Spaniards have all these ...' another 1735 writer went on to propose 'to the consideration of the Legislature' both the introduction of *Lex Talionis* for violent robbers and that murderers be fed to 'the Lions or Tygers kept in the Tower'.¹¹⁵ However, despite further demands in 1736 that 'steps be taken next Session of Parliament' to introduce 'burning alive or breaking on the wheel',¹¹⁶ there is no evidence that these writers succeeded in persuading Parliament to introduce a bill incorporating any of these aggravated punishments in either 1735 or 1736. Reflecting later on this recent period when the punishment of crimes was 'ordered by the House of Commons to be taken into consideration' one 1738 writer suggested that 'the just fear of verging to cruelty ... prevented any resolution being taken',¹¹⁷ but despite these fears various writers continued to advocate aggravated forms of the death penalty right up to the passing of the Murder Act.

During the brief crime panic of the mid-1740s¹¹⁸ the balance between the advocacy of aggravated pre-execution practices and that of post-execution punishments changed in favour of the latter. Two of the three writers who published demands for the introduction of more severe forms of the death penalty in the period 1744–1746 advocated dissection as the best solution and specifically rejected breaking on the wheel.¹¹⁹ However, in the next period of major debate—from the beginning of 1750 until the passing of the Murder Act in late March 1752—only four of the thirteen pamphlets, newspaper articles and brief indirect reports about discussions in Parliament that we have traced involved dissection.¹²⁰ The majority of the fourteen recommendations contained in these thirteen writings still involved aggravated pre-execution practices rather than post-execution punishments. Four advocated some form of *Lex Talionis*, two wanted the introduction of breaking on the wheel, one argued for death via the bite of a mad dog and another suggested that the punishments inflicted for high treason be extended to all murderers.¹²¹ Growing fears about a particular kind of murder—parricide—prompted the suggestion that the punishment for petty treason (burning at the stake) be extended to it,¹²² while only one writer advocated gibbetting after hanging.¹²³ The fact that the Murder Act only incorporated the two post-execution options of dissection and gibbetting does not therefore mean that other more severe policies were not still being powerfully advocated in the mid-eighteenth century.

5 THE MAKING OF THE MURDER ACT

Unlike the extensive debates about pre-execution practices that took place in the years 1697–1701 and 1733–1736, the three years of debate leading up to the 1752 Murder Act have been quite extensively discussed by historians. Since Richard Ward has recently written an excellent summary of both the historiography and of the main background elements that led to the Murder Act,¹²⁴ these will only be briefly summarized here. The coming of peace in 1748 and the consequent rise in recorded crime and especially in violent robbery formed the background. By 1751 anxieties had reached such a level that the King's annual speech to Parliament highlighted both the alarming growth of crime in London and the need for government action. In response the Commons rapidly set up a 'felonies' committee to look into the law relating to felony.¹²⁵ This began a period of extensive scrutiny by the legislature that initially focused on bills relating to issues not directly related to capital punishment—disorderly houses, pawn-broking and the possibility of using hard labour on the Thames as a sentencing option.¹²⁶ However, on the 10 February 1752 the Commons suddenly focused on capital punishment in relation to murder and ordered two MPs to bring in a bill 'for the better preventing the horrid crime of murder'.¹²⁷ In less than seven weeks this had passed into law as the Murder Act, having been hurried through both the Commons and the Lords with remarkable speed.¹²⁸

Historians have highlighted various factors that may have brought about this sudden legislative initiative.¹²⁹ The influence of one possible factor, pressure from the medical community because of its need for cadavers, has not proved easy to substantiate due to the lack of any convincing evidence that they were directly involved.¹³⁰ Other historians have pinpointed Henry Fielding's influence—his formative *Enquiry into the Causes of the Late Increase of Robbers* came out two days after the King's initial speech in 1751. However, his tract was not addressed specifically to murder, focused mainly on the need to execute offenders behind closed doors (which was not adopted in the Act), and did not recommend adding either dissection or hanging in chains to the execution process.¹³¹ Nicholas Rogers has recently highlighted another factor—the increasingly regular and violent battles at Tyburn between the surgeons' servants and their opponents over the disposal of the bodies of the condemned.¹³² However, apart from the clause in the Murder Act that made any attempt to rescue a murderer's body into a transportable offence, the Act does not seem to have been aimed mainly at controlling the Tyburn riots and may have had little

impact on them, since more than 80% of the bodies fought over at Tyburn belonged not to murderers but to property offenders—over whose bodies battles continued well after 1752.¹³³ The particular political situation in the late 1740s and early 1750s may well have been a more important contributory factor. As Richard Connors has pointed out, the atmosphere created by both the economic policies of the Pelham administration and the coming of peace in 1748 encouraged broader parliamentary discussion of a range of social issues including those related to the criminal law.¹³⁴ The Pelhamites control of the House of Commons and the fact that the early 1750s continued to be a period of peace gave the ministry an opportunity to ‘embark on a variety of reformatory measures’, a number of which (including the Murder Act) subsequently introduced major legislative innovations.¹³⁵

While these background influences had a role to play, Ward’s recent book has argued cogently that the main catalyst that generated a demand for legislation introducing new punishments for murder was a press-fuelled moral panic about the nature and frequency of murder in the Metropolis. His detailed research into reporting patterns in the press indicates clearly that in late 1751 and early 1752 murder became a ‘crime theme’, a core news story that was developed and exaggerated through various printed media.¹³⁶ Reports of robberies involving overt violence and the murder of the victims, combined with two specific and hugely publicized cases of parricide (or neo-parricide)¹³⁷ and a general sense that the number of murder prosecutions was rising,¹³⁸ clearly frightened London’s propertied classes, who felt increasingly unsafe in both their houses and in the streets. The legislators responded by debating new ways to make the death penalty more effective and by rapidly passing the Murder Act.

The reasons why the Murder Act eventually took the specific form that it did are less easy to unravel. The minor clauses of the Act enforcing speedier executions, and solitary confinement on bread and water between sentencing and execution were clearly influenced by Fielding.¹³⁹ However, given that the majority of the publications we have uncovered in the period 1750–1752 did not favour either dissection or hanging in chains, but wanted the introduction of more aggravated pre-execution punishments, it is more difficult to understand why the Act chose the former two options. The precise conjunction of forces that shaped the final form of the Murder Act passed on 26th March 1752 remains very difficult to unravel, given the lack of direct Parliamentary reporting. However, the chronology of the general debate about what the Act should contain, as it was reported

in the press during the six-and-a-half weeks that Parliament was engaged in creating and debating the Act, makes it clear that the argument for torment-based additions to the execution process, and especially for the introduction of breaking on the wheel, was very definitely put forward by members of Parliament.

Although four publications advocating *Lex Talionis* were published between January 1750 and 1 February 1752,¹⁴⁰ this option was not mentioned in any of the reports or pamphlets published during the six-and-a-half weeks of Parliamentary debate. Nor was gibbeting mentioned until the final two days. In the first five days after 10th February, the day that the Commons commissioned the Bill, the reports about what might be proposed focused mainly on the introduction of punishment by breaking on the wheel. On 11th February an initial article published in several newspapers simply noted that 'we are assured that a proposal is on foot for altering the punishment for murder from hanging to breaking on the wheel'.¹⁴¹ Four days later, on 15th February, a report in the *London Evening Post* (which was reprinted in several provincial newspapers) suggested that this proposal had been well received. 'A scheme which has lately been proposed to the consideration of the public, for breaking on the wheel all murderers, has been warmly received and agitated amongst many persons of distinction; who form part of the Legislature', it noted, before going on to suggest that any juvenile offenders in the local prisons 'should be brought out ... to witness the execution, that by seeing the tortures of the delinquent, they may be terrified into obedience of the law: for those criminals are not sufficiently deterred from the dread of hanging, as they have imbibed the notion that this is an easy death'.¹⁴² Although the newspapers were not allowed to report parliamentary debates or speeches, they were still able to report discussions in the Commons indirectly, as they appear to have done in this case. It is clear moreover, that a debate on the introduction of breaking on the wheel was also taking place in the public sphere outside Parliament. The following day the *Daily Advertiser* announced that amongst other things there would be a discussion of 'the wheel or next day execution for murderers' at the Oratory by Lincoln's Inn Fields.¹⁴³ Reports of similar punishments being used abroad may also have been used to reinforce these arguments. A very pointed report from Italy published on 8th February in the *Read's Weekly Journal* or the British Gazetteer lauded the fact that the authorities' 'resolution to keep their roads clear of robbers' had led to 17 'banditti' being 'broken alive on the wheel' in Lucca for 'several horrid crimes'.¹⁴⁴

It may never be possible to ascertain whether those who wanted to introduce breaking on the wheel had a brief period in early February 1752 when they believed that this could be achieved, but on the 15th February an alternative proposal was also published in another London newspaper, the *Old England, or, The National Gazette*. This suggested two very different procedures both of which were eventually adopted. ‘We hear it’s proposed’, the paper reported, ‘for the more exemplary punishment of Murderers, that they should be executed soon after Conviction, and their Bodies sent to Surgeon’s Hall to be anatomized’.¹⁴⁵ When, five days later on 20th February, the whole Murder Act debate was subjected to an excellent satire in *The Drury Lane Journal* all the different sides received equally critical treatment—not only breaking on the wheel, dissection and one of the proposed forms of *Lex Talionis* involving the cutting off of the right hand,¹⁴⁶ but also the proposals of Charles Jones—whose pamphlet, published during this debate, suggested that murderers be treated as if they had committed high treason and therefore be disembowelled and beheaded.

The satirical article began like many other contemporary pieces by complaining about ‘the most horrid, barbarous, bloody, cruel, and unnatural murders’ heard about ‘every day’, and about the ‘danger of being knock’d in the head by vile villains’ when out in the streets. It then went on to observe that ‘these desperate and bloody-minded fellows don’t mind being hanged or going to the gallows a pin. A harder punishment is necessary to frighten ‘em ... and therefore the following scheme has been thought on’, and is ‘humbly proposed to the consideration of Parliament’. The ‘bill’ then proposed first suggested that ‘surgeons be appointed for every jail, to make ottomies of all the condemned’s bodies’, and second ‘that all malefactors, within two days after sentence of death is passed ... be cut up alive in the prison yard; and that every one confined there for capital offences be obliged to stand by and see it done’. While the surgeons were ‘thus ottomising’, the offenders’ mouths were to be gagged ‘to hinder their horrible shriekings and groans’, and after this process their flesh should be cooked and fed to the prisoners. Moreover ‘all those found guilty of the horrid sin of murder’ were to be ‘immediately roasted by a slow fire, and basted with their own grease’. Street robbers should be flayed alive and their tanned skins used for the prisoners to lie on, while other property offenders were to get off comparatively lightly: pickpockets and shoplifters were merely to ‘have their hands chopped off in open court’ and nailed on the inside of the prison gate. ‘This’, the satire concluded, ‘will have a

greater effect upon the minds of the people' than 'the fear of being broken alive upon the wheel ... and the like, which is practis'd abroad in foreign countries and dominions'.¹⁴⁷

The author of this satire is unknown and its impact cannot be gauged, but no further 'proposals' were reported in the newspapers until 5th March, the day when the Bill was formally presented to the House of Commons and given its first reading.¹⁴⁸ At this point the debate was briefly redirected to a new theme: the need to punish parricide more severely. Two cases involving women who had killed their fathers—the prosecutions of Mary Blandy and Elizabeth Jeffries—had exploded into public view late in 1751.¹⁴⁹ Both came to trial in March 1752 accompanied by a huge wave of publicity¹⁵⁰ and this included detailed reports highlighting the judges' comments at Blandy's trial, which pointed out that, unlike females who had murdered their master or their husband—who could be burned at the stake for petty treason—these two women could only be hanged.¹⁵¹ This was followed on the day of Jeffries' trial by reports suggesting that 'a clause be inserted in the Bill, to prevent the horrid crime of murder, whereby parricide and some other species of murder, will be made Petit Treason'.¹⁵²

Neither this proposal to extend the use of burning at the stake, nor those involving breaking on the wheel or treating murder as high treason were eventually adopted by Parliament. In the Commons between the 5th and 18th of March the Bill ran rapidly through first and second readings, through a committee of the whole house where several (unfortunately unrecorded) amendments were made, through its third reading and on to the Lords.¹⁵³ There it was ordered to be considered by a committee of the whole house, the vital role of the judges at this point being highlighted by the specific request that 'the Judges in Town do then attend'.¹⁵⁴ While the bill was in the Lords the panic about the prevalence of murder in the metropolis was further fuelled by the reports in many newspapers that a further six murderers had been convicted at the Old Bailey and were to be executed on the Monday the 23rd, and by observations that this was not just a metropolitan phenomenon, since there were 'no less than 40 prisoners under confinement in several goals in this Kingdom for the horrid crime of murder'.¹⁵⁵

At this point reports of one final 'proposal' appeared in a range of newspapers. The edition of the tri-weekly *London Evening Post* covering the period 21st–24th March, for example, reported at length that 'for the better preventing the crime of murder it is proposed that all persons who shall be found guilty of willful murder, be executed on the next day ... and also that

the body of such murderer be ... dissected and anatomized by the ... surgeons'. The article then reported that it was also proposed that the judges could order 'the body of any such criminal to be hung in chains'.¹⁵⁶ Other newspapers used different words—reporting that 'the following regulations are talked on' and then repeated the core proposal that the body of every convicted murderer was 'to be anatomized or hung in chains'.¹⁵⁷ This reported 'proposal' quoted almost verbatim parts of the draft that the Lord's committee considered on the 23rd—around the time when printed copies of the proposed bill would first have become available.¹⁵⁸ Presumably it was this printed draft that was used by the press when they outlined the so-called proposal. When the Lords' Committee announced its amendments on the 24th minor matters had been changed—the Parliamentary Journals reported, for example, that the Lords changed 'next day' to 'next day but one' giving the condemned a little more time before execution.¹⁵⁹ However, although the bill was more detailed than the proposal reported in the press its main clauses were very nearly the same. The Commons received and agreed all the Lord's amendments on the 25th March, and the royal assent was then given the next day, just before parliament was prorogued.¹⁶⁰ The pressure to introduce new aggravated pre-execution punishments had made no impact on the final legislation. From April 1752 onwards it would be compulsory for the sentencing judge in all murder cases to choose between one of the two already existing post-execution punishments of dissection and hanging in chains, thereby adding—as the Act announced—'some further terror and peculiar mark of infamy' to the execution process and ensuring that no murderer would henceforth receive an intact burial.¹⁶¹

6 WHY WERE AGGRAVATED PRE-EXECUTION PUNISHMENTS NOT ADOPTED IN THE MURDER ACT?

There can be little doubt that Richard Ward was correct in seeing the Murder Act as, in part at least, the outcome of a print-driven moral panic. As the Act's introduction announced 'the horrid crime of murder has of late been more frequently perpetrated than formerly, and particularly in and near the Metropolis',¹⁶² and the government clearly felt that it had to react. However, the nature of the sanctions to be introduced was by no means preordained. During the debate ideas about the possibility of

resorting to continental-style aggravated punishments such as breaking on the wheel were obviously given consideration, as were ideas about extending the current English punishments for petty treason (or even for high treason) to all murderers. There is every sign that breaking on the wheel in particular was seriously proposed by some MPs and may well have played an important part in the varied debates and discussions that occurred in February and early March 1752. It should be remembered at this point that the first half of the eighteenth century did not necessarily see a decline in the use of such punishments elsewhere in Europe. As Pieter Spierenburg's research on Amsterdam has shown, prolonged and torment-based death penalties were much more common in the period 1700–1750 than they had been between 1650 and 1700. Only four people were broken on the wheel in the half century before 1700, compared to thirty-six in the first half of the eighteenth century.¹⁶³ As late as 1748 a Dutch woman found guilty of murdering a servant and her mistress was not only broken on the wheel but also had her right hand and legs cut off and displayed separately. A similar practice was still used in Scotland. Between 1750 and 1754 three Scottish offenders suffered the aggravation of having their hand cut off prior to execution—a practice that was continued until 1765.¹⁶⁴ One of these executions was widely reported in January 1752 just as the debate on the Murder Act was getting under way. Normand Ross, who had been found guilty of murder in Edinburgh, was sentenced to 'have his right hand cut off' before he was hanged and then to have his hand 'affixed on the top of the gibbet above his body'.¹⁶⁵ Two weeks later a French proposal that in future murderers were to be hanged alive for two days and then have the offending hand chopped off before being executed was widely publicized in several press reports and then recommended in an article advocating the introduction of *Lex Talionis* in England.¹⁶⁶ The execution of Damiens, which a number of historians have seen as a watershed in French attitudes to aggravated execution rituals, was still in the future¹⁶⁷ and in Germany the reforms under Friedrich II had only just begun. Prussian Law not only continued to allow for the use of breaking on the wheel but also enshrined it in the new Penal Code of 1794 as the appropriate gradation of punishment for murder.¹⁶⁸

In this context therefore, the question needs to be asked: Why did the advocates of aggravated torment-based pre-execution punishments fail to persuade Parliament that they should be introduced in England? There were clearly at least three distinct periods in the first half of the eighteenth century when this particular range of penal options was considered—why

were none of them ever adopted? Pride in being different from the torture- and torment-based practices used on the Continent was often mentioned as a key reason. A long and well-argued article advocating post-execution dissection, published in both the *Westminster Journal* and the *London Magazine* in 1746 began by announcing that ‘it is a common observation of foreigners, to the honour of the English nation, that ... we have abolished all sorts of racks and tortures, and every other circumstance that any way tends to cruelty’. It then discussed ‘breaking on the wheel, and other horrible executions’, concluding that, despite their potential to prevent crimes the author could not ‘see that such executions are anything else than wanton barbarity’.¹⁶⁹ At the beginning of the eighteenth century torment-based executions were specifically linked to the threat posed by Catholic France. *The Observer* argued in 1705, for example, that a successful Jacobite rebellion and the overthrow of Queen Anne would inevitably lead to the introduction of the forms of execution favoured by French tyrants (and used widely by them against protestants), namely burning alive and breaking ‘alive on the wheel’.¹⁷⁰ In general, however, the foreign torment-based penal ‘other’ against which the English defined their own approach to capital punishment included almost all the countries on the Continent—the Dutch and German examples being particularly frequently quoted. In a pamphlet addressed to an MP in 1751 on the ‘Vigorous Execution of the Present Laws’ another writer noted that ‘the merciful spirit of our laws spares even the boldest and blackest invader of them from those terrifying circumstances that attend ... capital punishments in other countries’, where ‘plain death is looked upon as a favour’.¹⁷¹

Fear of the negative effects of torment-based executions—on both the audience and the offenders—was a second inhibiting factor also mentioned by several writers. ‘General tortures in time become familiar to the mind and not very terrible to the heart’ one 1752 newspaper article pointed out.¹⁷² ‘The scenes of barbarity and torture, that are so often exhibited before the eyes of the people ... extirpate and extinguish the soft and tender passions of the human heart’, another commented in 1746, ‘so that at the last, we may be brought to behold the breaking of bones, and rending of limbs, without any remorse’. He then went on to suggest that ‘the publick stabbings, and private assassinations, among some of our weak and pusillanimous neighbours (i.e. on the Continent)’ were due to the fact that ‘these bloody scenes’ at executions had undermined ‘any abhorrence to the spilling of human blood’.¹⁷³ A more specific fear about torment-based executions was that they would change the behaviour of

those committing robbery. 'Tortures have been mentioned by many as the surest means ... to extirpate these violences', one article suggested. 'But then they would introduce more pernicious evils. In those countries where breaking on the wheel is the form of execution, robberies are not so frequent, but seldom or never committed without murder'—an argument repeated by a *London Magazine* article in 1750, which suggested that, if faced by the possibility of an excruciatingly painful death, robbers would 'always murder' their victims in order to avoid detection.¹⁷⁴

A third factor inhibiting the introduction of new aggravated pre-execution practices was thought to be the innate conservatism of the English people in relation to legal change. 'The English nation', one pamphleteer wrote in 1751, 'cannot easily digest either sudden alterations in their laws, or unknown, or unusual ways of executing them'. Rapid change might therefore be destructive and might undermine 'the genius of the English nation, to love and respect the laws'.¹⁷⁵ 'It is the duty of every honest Englishman', another pamphlet argued in the same year, 'to aim at the preservation of every part of the original constitution' and 'to guard against any innovation'.¹⁷⁶ Even if every honest Englishman did not necessarily feel as concerned as this author suggested about the introduction of innovations in sentencing and punishment policies, the judges almost certainly did. Judges very rarely made their opinions known but there is little evidence that a significant proportion of them favoured the introduction of torment-based execution rituals. One judge, faced with a particularly heinous rape and murder by a black soldier did remark in 1750 that he would have liked, in this case, to have passed a heavier sentence than just hanging. However, he prefaced this remark by saying that this was an exception and that he had 'never before desired a power of extending legal penalties'.¹⁷⁷ The twelve judges, who manned the main Westminster courts and the Assize Circuits certainly proved to be innately conservative when criminal law reform was discussed in the late-eighteenth and early-nineteenth century¹⁷⁸ (see Chaps. 4 and 5). Before the 1770s no record of what they may have said in Parliament is available, but it seems very likely that the judges were also a conservative force at this point,¹⁷⁹ preferring to make compulsory the post-execution sanctions they were already making informal use of, rather than introduce new ones tainted by Continental overtones of torture and torment. The leading judge at this point, the Lord Chancellor, Lord Hardwicke, when later recalling the debates of the early 1750s, made it clear that in penal matters he was opposed to what he called 'rash theorists'.¹⁸⁰ His private papers indicate

that he was deeply involved in shaping the Act as it finally came out, and it appears almost certain that he was one of the key government figures, and possibly the most influential government figure, who influenced the shaping and passing of the bill in February and March 1752, thereby insuring that post- rather than pre-execution punishments were the compulsory sanctions selected.¹⁸¹ Although the lack of direct reports of Parliamentary debates or of intra-governmental discussions make it impossible to draw definitive conclusions, it appears that in 1751–1752, faced with pressure from the King, the public and a press-fuelled moral panic about murder, the government felt obliged to organize the introduction a new level of penalties for that offence.¹⁸² Not being convinced that aggravated pre-execution penalties were appropriate in the English context, they therefore turned to two existing and already widely used post-execution punishments—dissection and hanging in chains.

7 CONCLUSION: RETHINKING THE ORIGINS OF THE MURDER ACT

It would be dangerous, however, to see the Murder Act as simply a knee-jerk reaction to a moral panic or to other short-term circumstances. Certainly the immediate context in the early 1750s—the battles over bodies at Tyburn, the surgeon's need of cadavers, Fielding's demands for more solemn executions, the intense early 1750s legislative activity around related social issues,¹⁸³ and the press's tendency to fuel anxieties by extensive and exaggerated reports of every new murder—were important catalysts, but from another perspective the Murder Act can be seen in an entirely different way: as the almost inevitable solution to a long-term and growing penal problem.

As the number of property offences punishable by the death penalty continued to accumulate from the later seventeenth century to the mid-eighteenth century,¹⁸⁴ the fact that the punishment for murder was exactly the same as that for relatively trivial property offences came to be seen as increasingly anomalous and problematic. This disjunction in the legislation would have caused considerable disquiet even if those accused of violent or particularly heinous property crimes, such as robbery or burglary, had been the only offenders actually hanged rather than conditionally pardoned. However, in London and the South-East at least, a small but significant proportion of the property offenders that ended up on the

gallows had committed relatively minor felonies, many of which had only recently been made capital.¹⁸⁵

This theme played an important role in the debates that led up to the Murder Act. It was first aired as early as 1701 when the author of *Hanging not Punishment Enough* pointed out that 'If Death then be due to a Man who surreptitiously steals the value of five shillings (as is made by a late statute) surely He who ... murders me ... and burns my house, deserves another sort of censure; and if the one must die, the other should be made to feel himself die'.¹⁸⁶ This reference to the fact that Parliament had just made shoplifting to the value of five shillings (and thefts of the same amount from stables or warehouses)¹⁸⁷ a hanging offence made a clear link between the growth of the capital code and the consequent need for heavier punishments for murder. So did Charles Jones's remark, published in 1752 in the middle of the Murder Act debate in Parliament, which also referred to an offence only added to the Bloody Code a few years before. 'Almost all nations but ours, adapt their punishments to the Nature of the Offence', he wrote. 'We make no difference in the sentence of our laws, between a poor sheepstealer that takes wherewith to feed his wretched Family, and the most inhuman and blood-mangling Highwayman or murderer'.¹⁸⁸ This demand for greater differentiation, which was reinforced by a growing range of different arguments and approaches, was heard with increasing frequency in the years immediately before the Murder Act, and came particularly to the fore between 1750 and 1752.

Several articles argued that the inequality of punishment actually created violent crime. 'The man who takes a shilling on the highway, shall meet with the same fate as if he had murdered half a score of people', an article in the *London Magazine* argued in the mid-1740s.¹⁸⁹ 'This inequality of punishment is the principal reason of the frequency of the crime. If murder was to be punished with greater severity, or theft or robbery with less, it would, in all probability have its desired effect'.¹⁹⁰ In December 1750 a widely published newspaper article about the 'barbarities committed of late by robbers' reinforced this view. 'We hear a bill will be brought in the next session of Parliament', it announced, 'to inflict a heavier punishment on offenders of this sort than what the Law now does, which making no difference in the punishment of these barbarous villains from others, in a great measure occasions the offence'.¹⁹¹ In 1751 this argument was once again applied to murderers alone. 'Is it not the frequency of executions that is the principal cause of murder in England?' Sedgley's response to Fielding's pamphlet asked. 'Ought the pilferer of a few shillings to be

punished with the severity due to a murderer? ... Is it not from this indiscriminate execution of felons, that so many felonies have their source?' He then went on to argue that death should 'be more sparingly implemented' and confined to murderers and street robbers.¹⁹²

Others pushed this argument even further generating a critique of capital punishment for property offences that was further developed by a range of penal reformers from the later eighteenth century onwards. In April 1751 a long journal article, reproduced in several provincial newspapers, highlighted the problem of 'the inequality of punishments to the offence' and demanded that capital punishment be reserved for murder alone, as part of a much more general critique of the unnecessary growth of the Bloody Code. 'It has always been the practice, when any particular species of robbery becomes prevalent and common, to endeavor its suppression by capital punishments. Thus one generation of malefactors is commonly cut off and their successors are frighted into new expedients', the article argued. 'The law then renews the pursuit in the heat of anger, and overtakes the offender again with death. By this practice, capital inflictions are multiplied, and crimes very different in their degrees of enormity are equally subjected to the severest punishment that man has the power of executing upon man'. The terror of death 'should therefore be reserved as the last resort of authority ... and placed only before the treasure of life, to guard from invasion what cannot be restored. To equal robbery with murder is to reduce murder to robbery', which would 'confound in common minds the gradations of injury'.¹⁹³ This deep critique of the capital code was also not infrequently reinforced by references to Biblical arguments. As a journal article pointed out in 1750 'the law of God', while permitting the execution of murderers made it clear that 'it must be unlawful to take away the life of a man for ... robbery or theft'.¹⁹⁴ In the following year another pamphlet argued even more strongly on the same grounds that it was

a very unjust thing to take away a man's life for a little money ... we ought not to approve of these terrible laws that make the smallest offences capital ... as if there was no difference between killing a man and taking his purse ... God has commanded us not to kill, and shall we kill so easily for a little money? ... If by the Mosaical law ... men were only fined, and not put to death for theft; we cannot imagine that, in this new law of mercy, in which God treats us with the tenderness of a father, he has given us greater license to cruelty than he did to the Jews. Upon these reasons ... it is plain and obvious that it is absurd ... that a thief and a murderer should be equally punished.¹⁹⁵

This argument that murder alone should be punished with death was still the view of only a relatively small minority in the 1750s, but while it would take three-quarters of a century before Parliament would seriously countenance removing the death penalty from all property crimes, in the early 1750s the fact that such fundamental critiques were already being aired—both in Parliament¹⁹⁶ and outside it—would almost certainly have made the ruling elite aware that in order to preserve the Bloody Code it was important to differentiate the punishments inflicted for murder from those used against routine property crimes. Since they were clearly not yet willing to countenance repealing the property-crime-based capital statutes—indeed they went on adding to them in the second half of the eighteenth century¹⁹⁷—the obvious solution to the problem of differentiation was to add further levels of punishment to the execution process in the case of murderers. This is precisely what the Murder Act did, and what its preface explicitly said it wanted to do. Faced with a moral panic about murder in the early months of 1752 the government turned to a policy which by then had a long pedigree, a good degree of backing from penal writings and an obvious grounding in what contemporaries would have seen as ‘common sense’. ‘It has long been the Opinion of many thinking People’, one fairly typical and widely published article observed in 1750,

that our laws are too severe with regard to the crimes for which capital punishments are inflicted, at the same time that they are too gentle in the manner of those punishments for crimes of the most atrocious nature. Thus a very small felony, attended with certain circumstances, brings the malefactor to the gallows; and the most barbarous murderer ... does no more; there not being the least additional pain, or mark of ignominy, to distinguish the vindictive or cruel murderer, from the necessitous thief.¹⁹⁸

That article went on to suggest that ‘the practice of other countries, in similar cases’ should be ‘sometimes attended to’¹⁹⁹ but even though the English government did not eventually take that road—choosing to introduce two post-execution punishments rather than their Continental alternatives—by passing the Murder Act they explicitly accepted the argument for differentiation, as the preface to that Act made clear. In wording that was very similar to that found in the article just quoted, the first sentence of the Act’s preface stated that since ‘the horrid crime of murder’ was now being much more ‘frequently perpetrated’, it had ‘become necessary that some further terror and peculiar mark of infamy be added to the

punishment of death, now by law inflicted' on that specific and particularly 'heinous' offence.²⁰⁰

Underlying the passing of the Murder Act, therefore, was the need to solve a well-recognized structural problem created by the growth of the Bloody Code. As the capital sanction was attached to more and more minor property offences—shoplifting, thefts by servants in a dwelling house, breaking and entering (to steal to the value of five shillings or more), stealing from bleaching grounds, thefts from ships on navigable rivers, sheep theft, cow theft and so forth²⁰¹—so the need for a specific extra sanction to be available for the punishment of murder became more and more pressing, especially when a panic about rising murder rates occurred at the beginning of the 1750s. Many existing accounts of the Murder Act have implicitly or explicitly portrayed it as cutting across a more general trend away from severity, and from this viewpoint the imposition in the Murder Act of 'a more severe and exemplary form of punishment' seems aberrant, exceptional and difficult to explain.²⁰² However, the fresh perspective suggested by these contemporary writings casts a very different light on the origins of the Murder Act. The increasing sanctions imposed on murderers in 1752 no longer appear as a temporary reversal within what was otherwise a long-term movement towards a more humane penal code, but rather as a logical and necessary extension of the inhumanity of the Bloody Code, and another stage in its development.

NOTES

1. L. Radzinowicz, *A History of English Criminal Law and its Administration from 1750* (London, 5 Vols., 1948–1986), 1, pp. 231–238.
2. J. Beattie, *Crime and the Courts in England 1660–1800* (Oxford, 1986) pp. 487–490, 524–530 also quotes Jones's 1752 pamphlet and mentions that similar ideas were frequently discussed in the press (p. 525). P. Smith, *Punishment and Culture* (Chicago, 2008), pp. 48–52 quotes only 2 pre-1750 pamphlets.
3. R. McGowen, 'The Problem of Punishment in Eighteenth-Century England' in S. Devereaux and P. Griffiths (eds.) *Penal Practice and Culture 1500–1900: Punishing the English* (Basingstoke, 2004), pp. 10–31.
4. *Ibid.*, pp. 222–223.
5. *Ibid.*, pp. 214–216.
6. *Ibid.*, p. 222.
7. The poor quality of eighteenth-century type face means an unknown fraction of the relevant items are missed.

8. T. Nourse, *Campania Foliæ* (originally published London, 1700), 2nd edition (London, 1706), pp. 229–230; J. Beattie, *Policing and Punishment in London 1660-1750* (Oxford, 2001), pp. 42–43; Anon, *Hanging not Punishment Enough* (London, 1701), especially pp. 1–14; B. Mandeville, *An Enquiry into the Causes of the Frequent Executions at Tyburn* (London, 1725), pp. 26–27; Philandros, *British Journal*, 2 April 1726; Anon (attributed to D. Defoe), *Street-Robberies Considered: The Reason of their Being so Frequent with Means to Prevent 'em* (London, 1728), p. 54; G. Ollyffe, *An Essay Humbly Offer'd for An Act of Parliament to Prevent Capital Crimes* (London, 1731), pp. 3–11; *Derby Mercury*, 3 May 1733; Eboranos (attributed to Thomas Rake), *A Collection of Political Tracts: Some Considerations for Rendering the Punishment of Criminals more Effectual* (London, 1735), pp. 42–45; Supplement by Philo Patriæ—Anon. *A Full and Genuine Account of the Murder of Mrs Robinson by Elton Lewis* (London, 1735); *Caledonian Mercury*, 22 December 1735; *Derby Mercury*, 4 November 1736 and *Caledonian Mercury*, 8 November 1736; Verus, *Gentleman's Magazine*, 8 (June 1738), pp. 286–288; Justitia, *London Magazine*, 13 (1744), pp. 506–508—this includes passages from the 'Philo Patriæ' piece 9 years earlier but then advocates a different post-execution punishment; Publicus, *The Daily Advertiser*, 19 October 1744; Publicus, *Westminster Journal*, 20 December 1746, reprinted with further remarks *London Magazine* (December 1746), pp. 637–639; *Derby Mercury*, 4–11 January 1750; 'Plain Truth', *London Magazine* (October 1750), pp. 452–453; *Newcastle Courant*, 22 December 1750 and *Derby Mercury*, 28 December 1750; *London Magazine* (February 1751), pp. 82–83; B. Sedgely, *Observations on Mr Fielding's Enquiry into the Causes of the Late Increase of Robbers* (London, 1751), pp. 49–69; C. Jones, *Some Methods Proposed to Put a Stop to the Flagrant Crimes of Murder, Robbery and Perjury* (London, 1752), pp. 7–14; *Old England or The National Gazette*, 1 February 1752; *London Evening Post*, 13 February 1752; *Salisbury Journal*, 17 February 1752 and *Newcastle Courant*, 15 and 22 February 1752; Beattie, *Crime*, pp. 525–526; *Derby Mercury*, 7–14 February 1752; *London Daily Advertiser*, 14 February 1752 and *Old England or The National Gazette*, 15 February 1752; *Newcastle Courant*, 15 February 1752; *London Daily Advertiser*, 13 March 1752, and *General Advertiser*, 13 March 1752; *Read's Weekly Journal or The British Gazetteer*, 14 March 1752; *London Evening Post*, 21–24 March 1752; *General Advertiser*, 24 March 1752; *Old England or The National Gazette*, 28 March 1752. Some of these reports note that people of distinction were discussing a particular policy and I have defined these as advocating that punishment since they record or imply this was happening in Parliament. Because it was published a week after the Murder Act, *Examples of the*