

FORGERY AND THE END OF THE ‘BLOODY CODE’ IN EARLY NINETEENTH-CENTURY ENGLAND*

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ABSTRACT. *Penal reformers in the 1810s and 1820s condemned the English criminal law as a ‘bloody code’: a monolithic mass of draconian statutes inherited from a former, less civilized age. This overwhelmingly negative image underpinned the dramatic and unexpected repeal of the capital statutes in the 1830s and survived to define a whole era of criminal justice history. This article explores the conditions that enabled the reformers to establish such a powerful critique of the law in such a short space of time. It contends that a key to their success was their ability to exploit contemporary scandals to argue that the law had lost touch with public opinion. Forgery aroused more controversy than any other species of capital crime in the 1820s and became the focal point for opposition to the capital laws. By analysing how reformers used the scandal surrounding forgery to foster the notion that the law was a ‘bloody code’, this article presents a new perspective on the early nineteenth-century penal reform debate.*

In 1832, an advocate of penal reform in the House of Lords reflected that ‘[i]n this enlightened age, the frowning aspect of a barbarous and bloody code, whatever might have been its effect formerly, had lost all its terrors’. Few dissented from Lord Dacre’s assessment, although the ageing Lord Eldon and a few others maintained the need for capital punishment to be affixed to a wide range of crimes.¹ Eldon had lived to see his view of the proper purpose of the criminal law eclipsed by new ideas about the role of punishment and the use of the death penalty. Reformers condemned the criminal law as a monolithic mass of draconian statutes inherited from a former, less civilized age and demanded change to meet the expectations of a more humane public. In the 1830s, a series of reforms swept away the great majority of England’s capital statutes and effectively confined the use of the death penalty to murder. It was not long before commentators were reflecting upon the horrific nature of the unreformed criminal law. In 1857, Charles Phillips commented that it was ‘frightful to look back on the penal code

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* I would like to thank the editor and reviewers of the *Historical Journal* for their comments on an earlier version of this article.

¹ 3 Parliamentary Debates (PD), XI (1832), 991, 987–990.

of England, as it stood even in our own day. Every page of our statute book smelt of blood.²

The label of the 'bloody code' has survived to define the whole era of criminal justice in the long eighteenth century. This durability bears testimony to the power of the arguments of the early nineteenth-century law reformers who invented it. It is only recently that this view has been revised and historians have emphasized the need for a more textured reading of the eighteenth-century criminal law that attends to the histories of individual offences.³ There has been little effort however to address the question of how the image of a 'bloody code' was created. Historians of the early nineteenth century have used the label uncritically. The various statutes that were the objects of reform have been treated as all of a piece, their collective fate dependent on the outcome of a debate between advocates of mild, certain justice and defenders of harsh, discretionary punishments.⁴ The parliamentary debates over penal reform in the 1810s and 1820s were not framed in such general terms; reformers focused on specific statutes and disowned radical schemes to overthrow the capital laws. Yet although the subsequent collapse of the hanging laws was sudden and unexpected, it cannot be explained exclusively by reference to the new whig government and changed political circumstances of the 1830s. It was in the preceding years that reformers established the image of the law as a 'bloody code', dangerously out of touch with the people it was supposed to protect.

This article explores the conditions that facilitated this change. It argues that the scandal surrounding the crime of forgery was vital to the reformers' success. Forgery became the focal point for opposition to the death penalty following a crisis in forged Bank of England notes in the period 1818–21 and a series of scandalous cases in the 1820s. Reformers exploited these events to mobilize opinion against the capital laws. Matters reached a climax in 1830 when Peel's forgery bill presaged a decisive battle in the Commons. By 1830, reformers were in a position to persuade the Commons that opinion had shifted irrevocably against the punishment of death. As they did so, they suggested new ways of understanding the relationship between law and society. Public opinion emerged as the key measure of the justice of the law, paving the way for the dramatic penal reforms of the 1830s.

² C. Phillips, *Vacation thoughts on the punishment of death* (London, 1857), p. 3. Phillips was a renowned Old Bailey barrister in the 1820s and 1830s who joined the campaign for abolishing the punishment of death in his retirement (*DNB*).

³ For examples of this revision of the eighteenth-century criminal law, see J. Beattie, *Policing and punishment in London, 1660–1750: urban crimes and the limits of terror* (Oxford, 2001), pp. 319–38 and *passim*. See also R. McGowen, 'From pillory to gallows: the punishment of forgery in the age of the financial revolution', *Past and Present*, 165 (1999), pp. 107–41; *idem*, 'Making the "bloody code"? Forgery legislation in eighteenth-century England', in N. Landau, ed., *Law, crime and English society, 1660–1830* (Cambridge, 2002), pp. 117–38.

⁴ See, for example, R. Follett, *Evangelicalism, penal theory and the politics of criminal law reform in England, 1808–1830* (Basingstoke, 2001), p. 90.

I

The speed with which England's capital laws were overthrown is remarkable. In the 1820s reformers struggled to remove the death penalty from relatively minor property offences; by 1840 the pendulum had swung so far that a campaign to abolish the punishment of death altogether stood a realistic chance of success.⁵ Such a large change in such a short space of time looks inevitable with hindsight. It seems to speak of a fatal flaw in the system of punishment that unravelled the whole. Yet few of the participants in the parliamentary debates over reform in the 1810s and 1820s anticipated such a rapid transformation. The leaders of the reform movement, Samuel Romilly and James Mackintosh, approached the subject cautiously. Romilly focused on obsolete capital statutes that had not been used to inflict the death penalty for decades. Mackintosh adopted a similarly piecemeal approach and dismissed any notion of forming a new criminal code as 'too extravagant and ridiculous to be for a moment listened to'.⁶ Advocates of reform had to tread carefully and avoid alienating those in favour of moderate change, but there is little to indicate that these expressions of limited ambition masked a more radical agenda aimed at overthrowing the whole system of capital punishments. Some may have held such views but there was no consensus: even Mackintosh stated that any crime that attacked 'the life or dwelling of man ought to be punished with death'.⁷

If there was no agreement upon the extent to which mitigation could safely be carried, there was widespread condemnation of the chaotic nature of eighteenth-century legislation. Reformers denigrated the casual and inhumane mode of legislating in the eighteenth century and estimated that over 200 capital offences had been created. The result was that offences were bundled up into an 'ill sorted and incongruous package' which then had 'death without benefit of the clergy' stamped upon it.⁸ This criticism was not new; it formed part of a more general critique that contrasted the ancient wisdom of the common law with the actions of a blundering legislature. Blackstone had complained that the tendency of the legislature to create new capital statutes amounted to a 'kind of quackery in government'.⁹ The men who brought the question of penal reform before parliament drew upon this critique when combating the common charge that they were innovators seeking to overthrow the laws that had served England so well for centuries. By emphasizing the comparatively recent genesis of the statutes, they were able to contend that they simply wished to 'reduce the law to its ancient state'.¹⁰

⁵ For the abolitionist campaign see L. Radzinowicz, *A history of English criminal law from 1750* (5 vols., London, 1948–86), IV, pp. 326–43. ⁶ 1 PD, xxxix (1819), 783. ⁷ *Ibid.*, 790. ⁸ *Ibid.*, 810.

⁹ W. Blackstone, *Commentaries on the laws of England* (4 vols., facsimile of the 1st edn, 1765–9; Chicago, 1979), IV, p. 17.

¹⁰ 1 PD, xi (1808), 884. The word 'innovation' had very negative connotations in this period, hence it was common for reformers to claim to be restoring a previous state of affairs that had been corrupted. For an excellent discussion of the terminology of reform in the period, see J. Innes, '“Reform” in English public life: the fortunes of a word', in A. Burns and J. Innes, eds., *Rethinking the age of reform* (Cambridge, 2003).

David Lieberman locates this critique within a conventional, Baconian programme of law reform by means of statutory consolidation and renewal.¹¹ The argument that the form of the criminal law needed to be changed attracted general support in the 1810s and 1820s; the real point of contention was the severity of punishment. On this issue, the reformers' fundamental indictment of the law concerned its incompatibility with public opinion. They sought to demonstrate that the harsh laws were anachronistic and out of line with the habits and sensibilities of the people. If eighteenth-century legislators made justice a potentially fatal lottery by casually enacting new capital felonies, this was no longer acceptable in the enlightened early nineteenth century. Mackintosh warned that 'To ensure them [the laws] full efficacy, they ought to be in accordance, not only with the general feelings of mankind, but with the particular feelings of the age; for if they were not so supported, they were certain to meet with its contempt and indignation.'¹² The 'particular feelings of the age' were quite different, so the reformers alleged, to the feelings that had motivated those who had created the 'bloody code'.

Few historians now would accept these 'progressive' views about the growth and increasing humanity of public opinion at face value but many of those concerned to provide a corrective to whiggish narratives have been too quick to dismiss such talk as insignificant or merely justificatory.¹³ The state of the law and its relationship with public opinion was at the heart of the penal reform debate and the language of humanity and progress that the reformers employed is significant. Randall McGowen presents a more sophisticated analysis, arguing that the 'challenge is not to deny the humanitarians their sympathy but to discover its meanings and explore its dimensions'.¹⁴ Thus the question of what the reformers meant by their expressions of sympathy and their pleas for the law to be brought back into line with public opinion has to be understood contextually. This involves an exploration of the contemporary significance of the terms used in the debate in order to establish how reformers were able to define public opinion and present their own conception of its relationship with the law in such compelling terms.

Public opinion was an increasingly important feature of the political landscape in early nineteenth-century England. According to Jonathan Parry the 'rapid growth in the profile of public opinion' was one of two overriding problems for the government between 1800 and 1830.¹⁵ In the late 1810s, against a backdrop of

¹¹ See D. Lieberman, *The province of legislation determined: legal theory in eighteenth century Britain* (Cambridge, 1989), pp. 199–205.

¹² 2 PD, IX (1823), 403.

¹³ Gatrell, for example, suggests that 'humane opinion had influence chiefly in so far as it bore a plausible and justificatory relationship to processes which were working to change punishment anyway.' (V. Gatrell, *The hanging tree: execution and the English people, 1770–1868* (Oxford, 1994), p. 24.)

¹⁴ R. McGowen, 'A powerful sympathy: terror, the prison and humanitarian reform in early nineteenth-century Britain', *Journal of British Studies*, 25 (1986), pp. 312–34, at p. 315.

¹⁵ The other was parliament's refusal to accept the level of taxation necessary to fund the wartime regime: J. Parry, *The rise and fall of liberal government in Victorian Britain* (London, 1993), p. 27.

popular radicalism, public opinion became the measure of political legitimacy. As Dror Wahrman points out, the post-war years saw 'an extraordinary outburst of confidence in public opinion as the ultimate key to the political process – an omnipotent, infallible, supreme arbiter'.¹⁶ This almost universal confidence gave way to a more critical attitude in the 1820s as political moderates sought to dissociate themselves from the kind of radical populism that resulted in the Peterloo massacre. They staked out a middle course in favour of judicious and cautious reform.¹⁷ Public opinion retained its central role, but came to be defined in respectable, 'middle-class' terms. In 1828, William Mackinnon described public opinion as 'that sentiment on any given subject which is entertained by the best informed, most intelligent and most moral persons in the community, which is gradually spread and adopted by nearly all persons of any education or proper feeling in a civilized state'.¹⁸ This was quite distinct from a popular clamour, described by Mackinnon as 'that sort of feeling, arising from the passions of a multitude acting without consideration'.¹⁹ Mackintosh reflected a similar understanding, when arguing that the law had to be mitigated in the light of public agitation over the operation of the forgery laws: 'It is no popular clamour, likely to subside with the temporary cause which gives it voice. It is the well-grounded persuasion of that numerous and respectable class of society, to the soundness of whose sentiments I have endeavoured however feebly to do justice.'²⁰

The reformers expressed themselves to be referring exclusively to respectable opinion, but all of the participants in the parliamentary debates were aware of the dangers associated with popular outcries, especially during times of unrest. Thus the meaning and significance of public opinion shifted with the political climate. It was not anchored to a consensus of opinion amongst specific classes or the populace as a whole. Reformers and their opponents interpreted and manipulated it according to their own agenda and view of the world.²¹ Yet the fact that public opinion was, to a large extent, a construct of those involved in the discourse does not lessen its significance. The battle to define public opinion and its relationship with the law had a decisive impact on the outcome of the penal reform

¹⁶ D. Wahrman, 'Public opinion, violence and the limits of constitutional politics', in J. Vernon, ed., *Re-reading the constitution: new narratives in the political history of England's long nineteenth century* (Cambridge, 1996), p. 90.

¹⁷ For a highly nuanced account of these developments, see *ibid.*, *passim*. See also D. Wahrman *Imagining the middle class: the political representation of class in Britain, c. 1780–1840* (Cambridge 1995), pp. 184–272.

¹⁸ W. Mackinnon, *On the rise, progress and present state of public opinion* (London 1828), p. 15. Mackinnon was a Tory who had a lengthy parliamentary career. For details on Mackinnon and the influence of his book, see Wahrman, *Imagining the middle class* pp. 298–304.

¹⁹ Mackinnon, *On the rise* p. 18.

²⁰ 1 PD, XL (1819), 1536.

²¹ McGowen argues that the reformers formulated an argument against the death penalty from their own middle-class feelings of alienation and distance at the sight of a scaffold crowd apparently indifferent to the fate of the condemned. See in particular the following articles: R. McGowen, 'The image of justice and reform in early nineteenth-century England', *Buffalo Law Review*, 32 (1983), pp. 89–125; *idem*, 'A powerful sympathy', *passim*.

debate. As McGowen comments: 'Ultimately the issue in dispute was not how to secure greater efficiency of the criminal justice system but how to present a more pleasing image of justice. The desire was not just to reduce crime but to secure wider support for the legal order.'²²

The reformers' eventual success was by no means assured. They had to produce evidence that respectable opinion had changed since the eighteenth century and would no longer accept the extensive use of capital punishment, but this was not easily done. Historians have tended to assume that there had been a 'fundamental change in sentiment' or a 'major shift in opinion' against capital punishment, at least amongst the respectable classes, by the time Romilly first brought the issue before parliament in 1808.²³ The evidence for such a change is equivocal. Unease was expressed in certain middle-class constituencies about hanging people, but the reaction was not uniform, nor is there any clear indication that where such sentiment did exist, it was a recent or increasing phenomenon that was substantially undermining the operation of the law. As V. A. C. Gatrell has pointed out, the sharp rise in the number of prosecutions at the beginning of the nineteenth century suggests a very different conclusion.²⁴ Opponents of reform pointed to the time, trouble, and expense of prosecutions as more significant deterrents than distaste for the death penalty.²⁵

Reformers also faced real difficulty in attracting attention to the general question of penal reform. Romilly complained of the small attendance at the debates over his bills and sometimes had to abandon them due to a lack of interest.²⁶ Mackintosh often had similar problems exciting interest in his attempts at reform in the early 1820s whilst Peel sensed that many considered the question of penal reform to be 'barren and uninviting'.²⁷ The case against the death penalty was all too easily dismissed as a dangerous form of speculation based on sentiment that, if accepted, would place all of property at risk. In the light of the sweeping and rapid reforms that followed in the 1830s, it is easy to overestimate the coherence, consistency, and urgency of the reform movement of the preceding decades. On their own, abstract issues of justice and punishment and evidence concerning general public reluctance to co-operate with the criminal justice system lacked widespread appeal or the requisite sense of importance to prompt parliamentary action. Reformers were therefore faced with a double challenge: first, to attract attention to their cause and secondly, to produce hard evidence that opinion was set against the existing law.

²² McGowen, 'The image of justice', p. 96.

²³ J. Beattie, *Crime and the courts in England 1660-1800* (Oxford, 1986), p. 614; McGowen, 'The image of justice', p. 123.

²⁴ Gatrell, *The hanging tree*, p. 19.

²⁵ Peel frequently expressed this point, for examples see 2 PD, IX (1823), 427; 2 PD, XXIV (1830), 1048.

²⁶ S. Romilly, *Memoirs of the life of Sir Samuel Romilly with a selection from his correspondence edited by his sons* (2nd edn, 3 vols., London, 1840), II, p. 333; Radzinowicz, *History*, I, pp. 504-5.

²⁷ 2 PD, VII (1822), 790; 2 PD, XIV (1826), 1214.

II

Certain aspects of the hanging laws were capable of raising huge public interest.²⁸ Public indignation at the law, where it operated, tended to focus on individual offences or species of crime, rather than the whole body of capital statutes. The offence that generated the most scandal, publicity, and ill feeling in the 1810s and 1820s was forgery. The history of the crime in the period demonstrates how reformers were able to draw upon expressions of public feeling to construct the idea of the 'bloody code'.

By the time the question of penal reform came before parliament in the 1810s, forgery had long occupied a prominent position in public perceptions of the criminal law and its lethal sanction. From the early eighteenth century onwards, it had attracted more legislative intervention than any other crime. A formidable array of capital offences was created as the government sought to protect the fiscal military state from the peculiarly subversive threat that forgery posed to paper credit.²⁹ The same fears underpinned the unremittingly severe policy that was adopted towards convicted forgers; only murderers were less likely to escape the gallows.³⁰

The other chief distinguishing characteristic of forgery was that it was a middle-class crime, typically committed by clerks or men who took a desperate risk to preserve their position. These respectable offenders were peculiarly likely to generate sympathy. A victim of a fraud might be reluctant to prosecute a man that he knew, perhaps his clerk or business acquaintance, to almost certain death, whilst the prospect of a respectable forger hanging was more likely to move the polite classes to make efforts to secure a pardon. Yet in view of the premium placed on credit and commercial confidence, the forger also provoked feelings of uncertainty and betrayal amongst a community that was reliant on reputation and personal knowledge for financial security. These unique characteristics singled forgery out from other offences. The crime attracted interest and scandal and by the second half of the eighteenth century had established a strong hold over the public imagination. The executions of Dr Dodd and the Perreau brothers for forgery in the 1770s were amongst the most sensational of the century.³¹ Faller,

²⁸ Gatrell has highlighted the impact that individual cases of harsh justice could have on popular perceptions of justice, see Gatrell, *The hanging tree*, pp. 339–70.

²⁹ This account of eighteenth-century forgery draws upon a series of excellent articles by Randall McGowen, see: 'From pillory to gallows'; 'Making the "bloody code"?'; 'The punishment of forgery in eighteenth century England', *International Association for the History of Crime and Criminal Justice Bulletin*, 17 (1992–3), pp. 29–45; 'Forgery discovered or the perils of circulation in eighteenth century England', *Angelaki*, 1 (1993), pp. 113–29; 'Knowing the hand: forgery and the proof of writing in eighteenth century England', *Historical Reflections*, 24 (1998), pp. 385–414.

³⁰ Approximately two out of every three forgers were executed in the last quarter of the eighteenth century, whereas less than half of those convicted of burglary and highway robbery were hanged (C. Emsley, *Crime and society in England, 1750–1900* (2nd edn, London, 1996), p. 258).

³¹ For the cases of Dr Dodd and the Perreau brothers see Radzinowicz, *History*, 1, pp. 450–72; Gatrell, *The hanging tree*, pp. 292–4; D. Andrew and R. McGowen, *The Perreaus and Mrs. Rudd: forgery and betrayal in eighteenth century England* (Berkeley, 2001).

in his account of eighteenth-century criminal biography, argues that forgers replaced highwaymen as the ‘great crooks of the latter part of the eighteenth century’.³²

Viewed from the perspective of the nineteenth-century reformers, the forgery laws epitomized two of the key flaws of the capital code. The volume of legislation rendered the law unintelligible, whilst the blanket imposition of the death penalty, together with the merciless enforcement policy, exposed its brutal severity. For defenders of the death penalty, however, the crime was potentially the most serious of all property crimes and hence particularly deserving of the capital sanction. Peel remarked that the crime had ‘a peculiar and exclusive character – a character which belonged to no other species of crime against which the Legislature had to guard’.³³ It was not just the nature and history of forgery that gave it a unique position in the list of capital offences; events forcibly focused public attention on the crime and pushed it to the centre of the early nineteenth-century penal reform debate.

The Bank of England’s first ever issue of £1 and £2 notes, following the suspension of cash payments in 1797, brought a new and disturbing dimension to the crime. The notes circulated widely and proved easy to forge. There was a steep rise in prosecutions and executions for the offence.³⁴ Almost one in three of those executed in London and Middlesex in the period 1805–18 and one in five in England and Wales as a whole were convicted of forgery or of uttering counterfeit notes.³⁵ Matters reached a crisis point in the period 1818–21 when the possible return to cash payments was high on the political agenda. The number of forgery executions, together with the rising number of forged notes in circulation, played a key role in focusing blame on the Bank of England for the problems associated with the ‘paper system’. Radicals concerned to discredit the Bank, the paper system, and the government highlighted the apparent injustice of the Bank’s prosecutions.³⁶ The radical clamour finally resulted in two juries at the December 1818 sessions at the Old Bailey refusing to convict any of the prisoners prosecuted by the Bank on the capital charge of forging or uttering counterfeit notes.

The controversy surrounding forgery in the period 1818–21 had a galvanizing effect on the penal reform movement. The immediacy of the forged notes problem and its connection with the issue of cash payments provided previously

³² L. Faller, *Turned to account: the forms and functions of criminal biography in late seventeenth- and early eighteenth-century England* (Cambridge, 1987), pp. 92–3. ³³ 2 PD, xxiv (1830), 1047.

³⁴ In the fourteen years prior to the 1797 Restriction there were only four prosecutions for the crime; in the period 1797–1817, there were 972 (*Accounts relating to prosecutions for forging Bank of England notes*, Parliamentary papers (PP), 1818, xvi, 161).

³⁵ There were 214 executions in London in the period 1805–18, 68 of which were for forgery. In England and Wales there were 204 executions for forgery out of a total of 1035 (*Report of the select committee appointed to consider so much of the criminal law as relates to capital punishment in felonies*, PP, 1819, viii, Appendices Nos. 1 and 2).

³⁶ Thomas Wooler’s radical publication the *Black Dwarf* was at the forefront of the attack on the Bank. For details of the radical attack on the forgery laws see P. Handler, ‘Forging the agenda: the 1819 select committee on the criminal laws revisited’, *Journal of Legal History*, 25 (2004), pp. 249–68.

lacking political impetus. Economic fears about the security and reliability of the paper currency fuelled resentment of the Bank and the forgery executions. The popular clamour surrounding forgery influenced the decision to resume cash payments in 1819.³⁷ More significantly in the context of penal reform, it led directly to the appointment of the 1819 select committee on the criminal laws. Mackintosh carried a House of Commons motion against the government and provided a significant victory for the whigs in the 1819 parliamentary session.³⁸

The period 1818–21 witnessed a significant mobilization of respectable opinion against the death penalty. The Society for the Diffusion of Knowledge on the Punishment of Death (SDKPD), a Quaker-dominated group, which had campaigned fitfully against the death penalty since its formation in 1808, focused its energies on the forgery laws. It established societies around the country and organized petitions to be sent into parliament in the lead up to the appointment of the 1819 select committee and the 1821 forgery bill that followed the committee's report. Pamphlets appeared attacking the inhumanity of the forgery laws whilst the popular press debated the question extensively.³⁹ The 1819 select committee and the report that it produced is generally acknowledged to be a key moment in the movement for reform, setting the agenda for much of what followed. It is less often recognized that the report focused on specific crimes and most notably on forgery. It collected a wealth of evidence from middle-class witnesses, most of whom were either prompted, or came prepared, to single out the forgery laws as being especially difficult to enforce.⁴⁰ The most important attempt at legislation to stem from the report was the 1821 forgery punishment mitigation bill. The narrow failure of the bill was a sign that real progress had been made in parliament.⁴¹ If no consensus emerged on the justice of punishing forgers with death, it was clear that the forgery laws had become the locus for concerns about the death penalty.

The resumption of cash payments in 1821 virtually put an end to executions for offences relating to forged Bank of England notes, but a series of high-profile private forgeries in the 1820s ensured that the crime remained at the centre of public attention.⁴² In 1824, the trial and execution of Henry Fauntleroy, a respectable banker whose forgeries involved hundreds of thousands of pounds, led to a huge public outcry.⁴³ People were shocked by the extent of his crimes,

³⁷ See P. Handler, 'Forgery and penal reform in England, 1818–1830' (Ph.D. dissertation, Cambridge, 2002), pp. 63–97.

³⁸ For the debate see 1 PD, xxxix (1819), 777–845. I have discussed the forged bank notes crisis and the 1819 select committee report in much more detail in my article, 'Forging the agenda'.

³⁹ For the history of the SDKPD and the public debate over the forgery laws in this period see Handler, 'Forging the agenda', pp. 254–6 and *passim*.

⁴⁰ The report devotes one of its four sections entirely to forgery, see *Select committee on the criminal laws* (1819), pp. 13–16. ⁴¹ For the debates on the bill see 2 PD, v (1821), 893–971, 999–1001, 1099–114.

⁴² Convictions for offences relating to forged Bank of England notes (including the non-capital offence of possession) dropped from a peak of 352 in 1820 to just 16 in 1822; executions fell from 18 in 1820 to 4 in 1822 (*Forgery returns*, PP, 1830, xxiii, 182, 184).

⁴³ For a detailed account of Fauntleroy's case, see H. Bleackley, *Trial of Henry Fauntleroy and other famous trials for forgery* (London, 1924).

particularly the fact that he had been able to operate undetected at the heart of London's financial community, but there was still an extensive, though ultimately unsuccessful, campaign for mercy. Newspapers printed a list of places where the public could go to sign a general petition on Fauntleroy's behalf and it was estimated that almost 12,000 people signed. In addition to that general petition another one circulated calling for an end to the punishment of death for forgery and received nearly 1,500 signatures.⁴⁴

Fauntleroy's case did not prompt any immediate movement towards law reform, perhaps because the extent of his crimes seemed to many to warrant the death penalty, but the case did envelope the forgery laws in scandal and infamy again. An estimated 100,000 went to watch him hang, more than for any other execution in the 1820s apart from that of the Cato Street conspirators.⁴⁵ Four years later a similar number was estimated to have attended the execution of another respectable forger, Joseph Hunton.⁴⁶ Hunton's was a classical forgery case. A merchant, who had speculated heavily and lost, Hunton forged a number of bills of exchange to alleviate his financial difficulties. The amounts involved were considerably less than in Fauntleroy's case which encouraged opponents of the death penalty to make efforts on his behalf. Crucially, Hunton had Quaker connections which enabled him to mount an impressive campaign for mercy.⁴⁷ Petitions and letters flooded into the home office claiming confidently that the punishment of death for forgery was unsuitable and counterproductive.⁴⁸ Many men of commerce, including N. Rothschild, D. Barclay, and M. Attwood signed petitions for Hunton's pardon.⁴⁹ One merchant, who did not even know Hunton, warned Peel that the crime was performed 'by hundreds daily'.⁵⁰

The charge that Hunton's acts were not exceptional was especially worrying for those in authority. In the same week as Hunton's trial, *The Times* reported that substantial forgeries had been committed on a number of Quaker bankers who had refused to prosecute out of dislike for the death penalty. This led *The Times* vehemently to denounce the paper system and 'its base progeny' the hanging system.⁵¹ Soon after Hunton's execution news broke of fraud on a scale not seen since Fauntleroy. In late December 1828 it transpired that Rowland Stephenson, a banker in the firm of Remington & Co., and like Fauntleroy the only active partner, had defrauded the bank and its customers of £300,000.⁵² He fled to America and was never brought to justice, but his case only intensified the

⁴⁴ *Morning Chronicle*, 15, 22 Nov. 1824. These general petitions have not survived having been too bulky to store alongside the other petitions and letters which are preserved in the National Archive (NA), HO 17/87 Qk 46.

⁴⁵ Gatrell, *The hanging tree*, p. 57. For an account of the execution see *Times*, 1 Dec. 1824.

⁴⁶ *Times*, 9 Dec. 1828.

⁴⁷ Hunton himself had been ejected from the Society of Friends, but his wife's family was Quaker.

⁴⁸ Hunton's appeal papers are in NA, HO 17/88 Ln 5. Gatrell discusses his appeal in some detail, see *The hanging tree*, pp. 409–13.

⁴⁹ *Times*, 6 Dec. 1828.

⁵⁰ NA, HO 17/88 Ln 5, quoted in Gatrell, *The hanging tree*, p. 410.

⁵¹ *Times*, 31 Oct. 1828.

⁵² *News*, 4 Jan. 1829; Bleackley, *Trial*, pp. 238–9.

controversy surrounding the forgery laws.⁵³ The death penalty was coming to seem ineffective in the face of such systematic and apparently widespread fraud.⁵⁴

Hunton was hanged, but the movement that his case prompted did not abate with his death. After a lengthy spell of inactivity, the SDKPD re-established itself under a slightly different name: the Society for the Diffusion of Information on the Punishment of Death (SDIPD). According to the recollection of Alfred Dymond, it reformed itself because Hunton's execution 'had struck a reeling blow at the capital forgery laws', and had 'very forcibly drawn public attention' to the question of reform.⁵⁵ The newly formed SDIPD focused its activities against the forgery laws. It established committees in London, Edinburgh, and Dublin, which arranged lectures, conducted press campaigns, and encouraged its members to put pressure on their MPs to mitigate the law. Driven by the Quaker, John Barry, the society maintained a correspondence with the provinces, amassed statistics and went to great efforts to pressurize the legislature into amending the forgery laws.⁵⁶ Barry estimated that the postage cost of sending out his anti-forgery law literature amounted to £1,000.⁵⁷ The society sent frequent letters imploring its correspondents to petition parliament on the forgery laws. It even sent standard forms of petition that contained phrases that could be used and adapted to the particular concerns of the locality. It also gave detailed instructions on the best means of filling out the petitions, ways of minimizing the cost of postage and the MPs to whom the petitions could most profitably be sent.⁵⁸ This well-orchestrated campaign sought to capitalize on the circumstances that had rendered the forgery laws so vulnerable to attack. The petitions that resulted had a crucial effect on the outcome of the debate in the House of Commons over Peel's forgery bill in 1830.⁵⁹

The forged bank notes crisis and the scandalous cases of the 1820s exposed the criminal justice system and the forgery laws in particular to extensive public scrutiny. The debate that ensued does not disclose any underlying consensus on the justice of punishing forgers with death.⁶⁰ There were those, for example, who

⁵³ The *News* reported the damage to commercial confidence to be worse than it had been in Fauntleroy's case (*News*, 4 Jan. 1829).

⁵⁴ Newspapers increasingly focused their criticism on the financial system, rather than the forger, for failing to provide safeguards against forgery, see *Circular to Bankers*, 17 Oct. 1828; *Times*, 6 Jan. 1829.

⁵⁵ A. Dymond, *The law on its trial: or personal recollections of the death penalty and its opponents* (London, 1865), pp. 26–7. Dymond was a member of the Society against Capital Punishment and was writing during the campaign for the abolition of public executions.

⁵⁶ Barry had been articulated to William Allen, the well-known philanthropist at whose house the SDKPD had first met, before becoming a partner in the firm Allen, Hanbury's and Co. See Dymond, *The law on its trial*, pp. 25–6.

⁵⁷ The cost was borne by MPs friendly to his cause who used their privileges to 'frank' his correspondence (*ibid.*, p. 28).

⁵⁸ A range of SDIPD correspondence is preserved in the papers of Francis Cobb, a banker from Margate who served as an important link for the Society in Kent. See Cobb collection, East Kent Archives (EK), U1453 092 fos. 1–32.

⁵⁹ See below, pp. 697–9.

⁶⁰ John Miller commented that 'There is scarcely any crime, about the punishment for which people differ so widely' (*Quarterly Review*, 24 (1820–1), pp. 195–270, at p. 214).

argued that the crimes of Fauntleroy manifested a clear need for the death penalty to remain for forgery. There was also principled opposition to the death penalty for forgery, but this only became politically significant when coupled with the economic question of cash payments or when a respectable forger such as Fauntleroy or Hunton died on the scaffold. Many forgers were hanged prior to the crisis of 1818–21 and many died in the 1820s without hope of mercy or the comfort of sympathy. The key element in the cases of the respectable forgers of the 1820s or the forged bank notes crisis of 1818–21 was that they aroused passionate interest in the operation of the criminal law and thus attracted attention to the cause of reform.

The events also created a strong link in the public mind between the forgery laws and injustice. Through into the 1830s, the forged bank notes crisis and Fauntleroy's case were readily recognizable reference points in the discourse, highlighting the presence and importance of public opinion over the criminal laws.⁶¹ Indeed, they were remembered long after the reforms of the 1830s, serving as a terrible illustration of the days of the 'bloody code'. In 1860, Charles Dickens, passing the Debtor's Door at Newgate on one of his night walks, reflected on 'the days of the uttering of forged one-pound notes' when 'hundreds of wretched creatures ... swung out of a pitiless and inconsistent world'.⁶²

The question remains as to how to measure the impact of such manifestations of opinion on policy. Acknowledging that these public outcries were motivated by forces other than a detached distaste for the death penalty should not lead to a conclusion that they were correspondingly limited in their effects.⁶³ There is no need to subscribe to progressive notions of an increasingly humane consensus in society to recognize that opinion, as it was referred to in the discourse, could exercise a highly influential role. Reformers mobilized, manipulated, and sometimes fabricated opinion for their cause but they did so with important effect.

III

The debate over mitigating the capital laws fluctuated with the political climate in the 1810s and 1820s. It is no coincidence, as McGowen has pointed out, that the key periods for agitation against the criminal laws in the years before 1822 and the period around 1830 were years of civil unrest and economic difficulty.⁶⁴ The speed with which the momentum from outside government fell away following the failure of the 1821 forgery bill serves as an important reminder that even in the

⁶¹ See, for example, Stephen Lushington's evidence to the 1836 Royal Commission on the Criminal Laws (*Second Report of his Majesty's Commissioners on Criminal Law*, PP, 1836, xxxvi, p. 51). See also, Phillips, *Vacation thoughts*, pp. 3, 15, 20, 103–4.

⁶² C. Dickens, 'Night walks', *All the Year Round*, 21 July 1860, reprinted in C. Dickens, *Selected journalism, 1850–1870*, ed. David Pascoe (London, 1997), p. 75.

⁶³ Gatrell argues that the Quakers' selective campaigns for mercy in cases of forgery show that their 'sympathetic imagination had familiar and significant limits, and ... "opinion" met its limits at that point too' (Gatrell, *The hanging tree*, p. 413).

⁶⁴ McGowen, 'The image of justice', p. 106.

1820s the prospect of a radical overhaul of England's capital laws seemed remote. It also underlines the extent to which reformers were dependent upon events to attract parliamentary attention to their cause. The arrival of Peel at the home office in 1822 brought with it the promise of mitigation of the capital laws from within government and for much of the decade the leaders of the penal reform movement, Mackintosh and Thomas Fowell Buxton, remained largely passive.⁶⁵

If there was no consensus that the law needed to be mitigated in the 1820s, there was at least a growing recognition amongst the political classes that the criminal law was in need of reform. Peel acknowledged as much on his arrival at the home office in 1822, advising the prime minister that 'in the present spirit of the times, it was in vain to attempt to defend what is established, merely because it is established'.⁶⁶ For the remainder of the decade, Peel set about reforming the law with vigour. He consolidated and clarified a host of statutes, abolished obsolete offences, made significant procedural changes, and introduced a professional police force. Peel did not then, as has recently been alleged, seek to retain the central tenets of the *ancien régime*.⁶⁷ He wanted the law to be certain and clear and his measures went some way towards that end. However, a desire to consolidate and clarify the law did not necessarily entail a commitment to mitigating it, and Peel had few scruples about hanging people. Despite grand statements about wishing to 'break the sleep of a century', his acts did little to mitigate the law's severity.⁶⁸

Peel's attitude towards forgery was typical of his general attitude towards criminal law reform. He recognized the significance of the crime, considering it to occupy 'a most important station in the list of offences', but he made it clear from the outset that he did not think it safe to remove the death penalty from the crime.⁶⁹ When Mackintosh proposed a resolution to mitigate the forgery laws in 1823, Peel replied that 'he was certainly not prepared to bring any bill to alter the law'.⁷⁰ His uncompromising attitude found expression in his policy regarding extending mercy to capitally convicted forgers. It was notorious that convicted forgers would hang and Peel wished to maintain that impression. Indeed, such was his conviction, that on at least two occasions he defied the efforts of the king to secure mercy on behalf of convicted forgers. When the king wrote to Peel suggesting mercy for Hunton, Peel replied that 'it would be very difficult hereafter

⁶⁵ Mackintosh proposed resolutions relating to the criminal law in 1822 and 1823, but he desisted in view of the lack of interest in his attempts and Peel's reassurances that he planned to take on the question of penal reform. For the debates, see 2 PD, VII (1822), 790–805, 2 PD, IX (1823), 397–432.

⁶⁶ Peel to Lord Liverpool, 12 Oct. 1822, Liverpool papers British Library (BL), Add. MSS 38195, fo. 120.

⁶⁷ Gatrell, *The hanging tree*, p. 583.

⁶⁸ 2 PD, XIV (1826), 1218. Peel's commitment to the consolidation but not the mitigation of the penal laws explains why historians have had some difficulty knowing what to make of his reform credentials. Recent judgements have been overwhelmingly negative (see especially Gatrell, *The hanging tree*, pp. 566–85), but, for a valuable reappraisal, see B. Hilton, 'The gallows and Mr Peel', in T. Blanning and D. Cannadine, eds., *History and biography essays in honour of Derek Beales* (Cambridge, 1996), pp. 88–112.

⁶⁹ 2 PD, XXIII (1830), 1176.

⁷⁰ 2 PD, IX (1823), 422.

to enforce the Capital Sentence of the Law in the case of forgery if mercy be extended in this case'.⁷¹

Peel's fears concerning the consequences of granting Hunton mercy demonstrate that he was aware of the significance of public opinion but his refusal to compromise did not mean that he saw no need for reform. In the early part of 1829, in the immediate aftermath of the scandal surrounding Hunton's case, he turned his attention towards the consolidation and clarification of the law and became actively involved in the preparation of a forgery consolidation bill. He corresponded with senior judges and a range of lawyers and showed a characteristic grasp of the difficult detail.⁷² The draft bill which emerged from these consultations simplified the law but retained the death penalty for all of the principal forgery offences.⁷³ The failure to mitigate the law clearly signalled the limits of Peel's approach to penal reform and prompted Mackintosh to move an amendment that proposed abolishing the death penalty for all species of forgery. The debate that followed was hard fought and finely balanced.⁷⁴ Many of those who had backed Peel's gradualist approach to penal reform on previous occasions stuck with him. Outside parliament he received backing from *The Times*, which expressed itself to 'entirely concur with Mr. Peel in thinking that it would be extremely dangerous to abolish the punishment of death in the cases where he reserves it'.⁷⁵

The men who wished to extend mitigation further than Peel were not in agreement on how the law should be changed, nor on the manner in which it should be administered. The pervasive view of the reform movement as a unified assault on the whole mass of capital statutes has obscured the range of ideological viewpoints that underpinned the reformers' arguments. For some, it was public opinion that was to be the final arbiter of the justice of the law, not the perceived needs of society or the seriousness of the crime. For example, Colin Macauley put the case for mitigating the forgery laws in the following terms:

Whatever punishment the offences of Mr. Fauntleroy might have been thought to deserve – (some might think he deserved to be put to torture, or to be roasted by a slow fire, or to be broken on the wheel, and left to die of thirst) – yet that was not the way in which legislators ought to look at crime. The opinion of the people ought to regulate the measure of punishment.⁷⁶

⁷¹ The first case was that of Samuel Miles who was convicted and executed in 1823; see H. Hobhouse, *The diary of Henry Hobhouse, 1820–1827*, ed. A. Aspinall (London, 1947), p. 104. For the correspondence on the case between Peel and the king see Peel papers BL Add. MSS 40299, fos. 241–3. For Hunton's case, see king to Peel, 5 Dec. 1828, Peel papers BL Add. MSS 40300, fo. 265; NA HO 17/88 Ln 5 Part 1.

⁷² The principal actors involved in the preparation of the bill were James Scarlett, the attorney general, Henry Hobhouse, his undersecretary in the home department, William Gregson, a barrister who acted as a legal adviser, Lord Tenterden, the lord chief justice, and Lord Lyndhurst, the lord chancellor. See Peel papers BL Add. MSS 40399, fos. 312, 314, 375, 410, 419; Peel papers BL Add. MSS 40400, fos. 3, 14, 30, 37, 76–80, 89.

⁷³ For the draft bill, see PP, 1830, I, 417.

⁷⁴ For the Commons' debates on the bill see 2 PD, XXIII (1830), 1176–88, 2 PD, XXIV (1830), 1031–60, 2 PD, XXV (1830), 47–78.

⁷⁵ *Times*, 3 Apr. 1830.

⁷⁶ 2 PD, XXV (1830), 61.

This view of punishment is distinct from the enlightened or scientific view that is often associated with the early nineteenth-century criminal law reformers. As Macauley's vivid imagination illustrates, there was no concern with proportionate or mild punishment; the law's content had to be determined by public opinion. In contrast, the penal theories of 'enlightened' criminal law reformers, such as Beccaria or Bentham were formulated along entirely rational lines. They believed that punishment had to be measured according to principle without any reference to the state of public opinion. Society was a mechanism that needed to be regulated by the law; it was static, not organic.⁷⁷ By the late 1820s it was not the rational critique that threatened the continued presence of the capital laws on England's statute book but the whig appeal for the law to be reconciled with public opinion.

The huge amounts of publicity that the forgery laws had received over the bank notes crisis and the famous 1820s cases made it particularly difficult to refute the reformers' central contention that the law was out of harmony with popular feeling. Henry Brougham put the case against capital punishment for forgery sharply in the *Edinburgh Review*:

Men's minds are set against it. This was natural and inevitable, independent of any accidental circumstances; but the conduct of the Bank of England in its prosecutions greatly increased the unpopularity of the law; and it is undeniable that in a large class of the community, and especially the mercantile portion of it, religious views and moral feelings mixed themselves, so as to make the repugnance altogether invincible. The consequences have been fatal to the efficacy of the law.⁷⁸

Peel was well aware of the potential consequences for his bill of the reformers' efforts to mobilize opinion against the forgery laws. He wrote to the Bank of England's solicitor, James Freshfield, stating that a great effort was likely to be made to abolish the death penalty for forgery and that 'the main argument would be that the severity of punishment deters from prosecution and prevents conviction'. He requested information to combat this argument, adding his own opinion that trouble and expense were more powerful deterrents than 'sensibility or conscious feelings in regard to the punishment of Death'.⁷⁹

Peel obtained evidence from the Bank of England and certain London bankers, but it paled in comparison with the weight of opinion amassed by the reformers. The agitation over the forgery laws that had begun in the aftermath of Hunton's execution produced the most impressive petitioning campaign that had ever been mounted on a penal issue. By the time of the debate, the table in the Commons 'groaned with petitions'.⁸⁰ The SDIPD worked in collaboration with the

⁷⁷ Hilton, 'The gallows and Mr Peel', p. 91.

⁷⁸ *Edinburgh Review*, 52 (1830–1), pp. 398–410, at p. 405.

⁷⁹ Peel to J. W. Freshfield, 1 May 1830, Peel papers BL Add. MSS 40400, fo. 164.

⁸⁰ 2 PD, xxiv (1830), 1058 (Brougham). For the petitions see *Journals of the House of Commons*, lxxxv (1830); *Journal of the House of Lords*, lxvii (1830). The petitions are listed in the indexes under 'criminal law' and 'forgery' in the Commons journal and under 'petitions' in the Lords journal.

reformers in parliament to mobilize opinion in the lead up to Peel's bill and during its passage through the Commons. As a result, almost 200 petitions were sent from all parts of the country.⁸¹ This was a very high number in relative terms. Peter Jupp has identified and subdivided twenty-nine subjects which generated a significant volume of petitions in the period 1828–30. Forgery appears in the second highest category below only the Catholic question and in the same group as the abolition of slavery and the repeal of the Test and Corporation Acts.⁸²

As well as highlighting the remarkable quantity of petitions on the subject, the reformers were also eager to emphasize their sources. The petition that attracted the most attention was one signed by 735 bankers from 214 cities and towns around the country. Buxton had written it, after Barry had suggested to him the 'extreme importance' of getting the feelings of the commercial classes of England formally expressed.⁸³ The SDIPD distributed the petition to its correspondents around the country emphasizing that 'nothing would be more likely to effect the abolition of capital punishment for forgery than a petition for the mitigation of the law coming exclusively from bankers'.⁸⁴ Brougham estimated that it contained the signatures of over half the bankers in the country.⁸⁵ The London Court of Common Council also felt moved to petition the legislature on the subject.⁸⁶ These petitioners were bankers and merchants, 'practical men', as the reformers never tired of pointing out as they refuted the well-rehearsed charge that their arguments were speculative and theoretical.⁸⁷

The petitions enabled the reformers to argue that the tide of commercial opinion had turned against the death penalty for forgery. Brougham commented that 'It was most gratifying to observe that those persons who had formerly thought it their interest to oppose any such measure, and more particularly the traders and dealers in paper currency, were now becoming generally favourable to it.'⁸⁸ There is little in the eighteenth-century history of the crime of forgery to indicate that commercial men had ever been universally in favour of the death penalty.⁸⁹ The fact that the 1830 petitioning campaign was orchestrated by opponents of the death penalty (the petition Brougham referred to was the one dictated by Buxton and did not contain the signatures of the London bankers) suggests that they were not universally against it in 1830. Nevertheless, the petitions appeared to indicate that respectable opinion had turned against the forgery laws, whilst the scandal that had surrounded the crime over the preceding decade

⁸¹ A map was published showing the places where the petitions had come from: Anon., *Petition map. Ought the crime of forgery to be punished with death. The State of Public Opinion on this important question* (3rd edn, London, 1831). Although published anonymously, this map was almost certainly prepared by the SDIPD, see SDIPD letter to correspondents, 12 June 1830, EK, Cobb collection, U1453 92, fo. 15.

⁸² P. Jupp, *British politics on the eve of reform: the duke of Wellington's administration, 1828–1830* (Basingstoke, 1998), pp. 220–1.

⁸³ T. Buxton, *The memoirs of Sir Thomas Fowell Buxton*, ed. C. Buxton (3rd edn, London, 1849), p. 199.

⁸⁴ SDIPD letter to correspondents, 27 Apr. 1830, EK, Cobb collection, U1453 92, fo. 30.

⁸⁵ 2 PD, XXIV (1830), 1014. ⁸⁶ See *Times*, 20 Feb. 1829. ⁸⁷ 2 PD, XXIV (1830), 1059.

⁸⁸ *Ibid.*, 35. ⁸⁹ See McGowen, 'Making the "bloody code"?'', *passim*.

served as a reminder of the strength of popular feeling on the subject. Thus the forgery laws brought together middle-class opinion and popular clamour to allow reformers to present their argument in compelling terms.

Mackintosh's amendment to Peel's bill passed narrowly by 151 votes to 138. The victory was a highly significant moment in the penal reform movement. It was the first occasion on which the reformers had carried a vote in the Commons which abolished a capital offence that regularly claimed scaffold victims. The significance was not lost on Peel, who was ungracious in defeat, stating that his sentiments remained unchanged and that 'they would soon have reason to repent the decision to which they had just come'.⁹⁰ In private he was 'quite disgusted' by the outcome and certain that whatever happened in the Lords it would no longer be possible to obtain a conviction for forgery.⁹¹ The cabinet debated whether or not to oppose the bill in the Lords. Peel wanted to abandon it and place all the blame on the Commons, but the prime minister, Wellington, and Lord Ellenborough were both in favour of trying to re-establish the death penalty in the Lords on the grounds that public opinion could be turned 'into its former course'. In the end it was decided to contest Mackintosh's amendment, Wellington being convinced that the 'character of the Government would be affected' if it gave the bill up.⁹² They were not confident of victory however; Ellenborough thought the margin very narrow and feared defeat. In fact, as Peel and Brougham looked on, the Lords voted to remove Mackintosh's amendment by seventy-seven votes to twenty, a result which left Wellington 'delighted' and Ellenborough certain that public opinion would 'be set right again'.⁹³

It is clear from these ministerial deliberations that public opinion was the key determinant in the debate, but there was little chance that the reversal in the Lords would have the effect that Ellenborough desired. The victory in the Commons had given the reformers' arguments critical mass. Although Peel's fears that it would be impossible to gain a conviction proved unfounded, there were no more executions for forgery. In the months that followed, the pressure was kept up for reform of the criminal laws and the forgery laws in particular. Basil Montagu, a founder member of the SDKPD and consistent advocate of penal reform, published a tract on forgery at the end of the year, which referred to a 'universal confederacy amongst the middle classes of society not to punish these [forgery] offences by death'.⁹⁴ The SDIPD continued to mobilize opinion around the country and published a series of tracts between 1829 and 1833 all of which called for the abolition of the punishment of death for property offences.⁹⁵ Edward Gibbon Wakefield published his influential tract on his experiences in Newgate in 1831, which generated more attention to the cause and again singled

⁹⁰ 2 PD, xxv (1830), 78.

⁹¹ E. Law (Lord Ellenborough), *A political diary, 1828-1830*, ed. Lord Colchester (2 vols., London 1881), II, p. 264 (8 June 1830). Ellenborough was the president of the Board of Control at the time.

⁹² *Ibid.*, pp. 267, 271, 273 (13, 16, 22 June 1830).

⁹³ *Ibid.*, p. 294 (1 July 1830).

⁹⁴ B. Montagu, *Thoughts on the punishment of death in cases of forgery* (London, 1830) pp. 189-90.

⁹⁵ SDIPD, *Punishment of death: a series of articles* (3rd edn, London, 1833).

out forgery from other capital crimes. Wakefield observed that convicted forgers attracted an ‘extraordinary degree of interest’ in Newgate because ‘those who object to the punishment of death generally are especially opposed to its infliction for the crime of forgery’.⁹⁶

The change of government in November 1830 eased the passage of many of the bills that mitigated the law in the following decade, but its impact should not be exaggerated. The new ministry did not address the issue of penal reform in its first few years and progress was dependent on the willingness of individuals, notably William Ewart, to introduce private bills. These bills brought substantial dividends. In 1832, horse, sheep, and cattle stealing, together with larceny from a dwelling house and most types of forgery, ceased to be capital offences.⁹⁷ Even the forgery bill passed with relatively little debate, and although opponents of reform introduced some amendments successfully, most bills passed without a division.⁹⁸ The appointment of the Criminal Law Commissioners in 1833 brought with it the promise of a more general review of the criminal law. Its report facilitated the reforms in the latter half of the decade, when Lord John Russell, as home secretary, oversaw the dismantling of the remaining part of the capital code.⁹⁹

The smooth passage of the bills in the 1830s owed much to the reformers’ victory in 1830, when they had established opinion as the chief criterion for judging the efficacy of the law and demonstrated that it was set against the death penalty on the crucial question of forgery. Even the most stalwart opponents of reform, such as the deeply reactionary judge Lord Wynford, accepted that the law needed to be changed.¹⁰⁰ The reformers’ success in defining the terms of the debate was summed up in 1832 when Sir Edward Sugden, who as solicitor general had opposed the mitigation of the forgery laws in 1830, stated that ‘when one general and universal opinion pervaded the public mind amongst all ranks and classes, let it be right or wrong, the Members of that House were bound to attend to it’.¹⁰¹

IV

By the 1830s, the idea of a ‘bloody code’ had become firmly embedded in the penal reform discourse. It implied that the existing law was unsuitable for an enlightened and humane public. This shift may not have corresponded to a general movement of opinion amongst the populace at large but it was dramatic

⁹⁶ E. Wakefield, *Facts relating to the punishment of death in the Metropolis* (1831), in M. F. Lloyd Prichard, ed., *The collected works of Edward Gibbon Wakefield* (London, 1968) p. 232.

⁹⁷ See 2 & 3 Will. 4 c. 62; 2 & 3 Will. IV c. 123. The forgery of powers of attorney for the transfer of government stock and forgery of wills remained capital until an act of 1837 (7 Will. IV & 1 Vict. c. 84).

⁹⁸ For the debates on the forgery bill see 3 PD, xiv (1832), 968–89 (Commons), 1133–5, 1302–3, 1345–54, 1358–61 (Lords).

⁹⁹ *Second Report of his Majesty’s Commissioners on Criminal Law*, PP, 1836 xxxvi, p. 83. For the passage of the 1830s reforms, see Radzinowicz, *History*, IV, pp. 303–43.

¹⁰⁰ 3 PD, xiv (1832), 1348.
¹⁰¹ *Ibid.*, 984. Both Sugden and Wynford still argued for the retention of the death penalty for certain types of forgery.

nonetheless. Mackintosh gave some sense of the change during the debate over Peel's forgery bill: 'It appeared to him as if he had lived in the short compass of his life, through two different ages, opposite and contrasted in character ... he almost thought that he lived in two different countries, and conversed with people who spoke two different languages.'¹⁰²

The parliamentary debates over penal reform in the 1820s reveal shifting perceptions of the function of the criminal law. Its health came to be inextricably bound up with the state of public opinion. Reformers argued that the state of the criminal law was a key reflection of national humanity. In 1832, Ewart contended that 'a mild code of law was really a proof of a great and good country, because in all countries where the law was mild, the inhabitants were also mild and civilized'.¹⁰³ The forgery laws afforded the reformers their best opportunity to impose this powerful interpretation of the nature of the law and its relationship with public opinion. Not only was it the crime that summed up the faults and inadequacies of the 'bloody code', it was also the offence that, in the early part of the nineteenth century, 'had done more than any other single circumstance to alienate the public mind from the administration of the criminal law'.¹⁰⁴

The repeal of the capital statutes is generally viewed as a watershed in English penal history, marking the end of the era of the 'bloody code' and the beginning of a new identifiably 'modern' system of criminal justice. For some historians the reforms of the 1830s mark a sharp, unexpected break from the past, for others the legislation realized an ideological shift that had already taken place by the turn of the nineteenth century.¹⁰⁵ This article has contended that the debates in the 1810s and 1820s witnessed important changes in perceptions of the criminal justice system. It was in this period, when 'pressure from without' was exercising an increasingly important influence over politics, that reformers fully developed their critique of the 'bloody code' in which the law and public opinion were dangerously opposed. Public manifestations of disaffection with the law, such as that which surrounded the forgery laws, underpinned their argument and facilitated its success. Reformers wished sharply to differentiate their own era from that which had gone before and by depicting the law as a 'bloody code' they were able to do so. The radical and speedy reforms of the 1830s seem to provide evidence that there had indeed been a revolutionary change in public attitudes towards punishment in the late eighteenth and early nineteenth centuries and that the reforms were simply a belated legal recognition of that transformation.

The idea there was such a shift from an old image of justice to a new one was a product of the reformers' overwhelmingly negative characterization of the existing law. Contemporaries were keenly aware of the implications of the reformers'

¹⁰² 2 PD, xxiv (1830), 1033. ¹⁰³ 3 PD, xvii (1833), 172. ¹⁰⁴ 2 PD, ix (1823), 412 (Mackintosh).

¹⁰⁵ Gatrell sees the retreat from hanging in the 1830s as the most sudden revolution in English penal history. In contrast John Beattie and Randall McGowen suggest that opinion and sentiment had already shifted irrevocably against the capital code by the time parliament addressed the issue in the nineteenth century. See Gatrell, *The hanging tree*, p. 9; McGowen, 'The image of justice', p. 123; Beattie, *Crime and the courts*, p. 614.

arguments. In 1819 Viscount Castlereagh warned against ‘any attempt ... to influence the passions of the multitude, by persuading them, that instead of living, as it had been represented to them by their ancestors they lived, under a mild and merciful government, they were to learn for the first time that the law of England, was the most sanguinary code on earth’.¹⁰⁶ His plea was to no avail. As the debates over penal reform developed in the 1810s and 1820s, the law came to be defined by the features that the reformers viewed as objectionable. The 1830 forgery bill marks the point where the balance of the argument shifted and the law became a ‘bloody code’ abhorrent to the wishes of the nineteenth-century public. Once this image was established in the discourse the calls for reform became impossible to resist.

¹⁰⁶ 1 PD, xxxix (1819), 753.