**Wales and the ‘Bloody Code’: the Court of Great Sessions 1805-1830**

**(Version 2)**

**By**

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**Abstract:** The last 65 years has witnessed a growing interest by historians of crime in the so-called Bloody Code of the eighteenth and early-nineteenth centuries. Most, if not all, of the existing historiography on the Bloody Code has, however, focused on the South-East of England and the Old Bailey. The aim of this article is examine the broad trends in the operation of the Bloody Code in Wales between 1805 and 1830, the last quarter of a century of the Wales Courts of Great Sessions.

**Wales and the ‘Bloody Code’: the Court of Great Sessions 1805-1830[[1]](#footnote-1)**

**Introduction**

The last 65 years has witnessed a growing interest by historians of crime in the so-called Bloody Code of the eighteenth and early-nineteenth centuries. Between 1688 and 1820, the number of capital statutes increased rapidly from fifty to over 220, although in practice most condemned felons did not expiate for their crime on the gallows.[[2]](#footnote-2) In the first volume of magisterial *History of English Criminal Law and its Administration from 1750*, Sir Leon Radzinowicz exhaustively outlined the operation of the Bloody Code as well as the reasons behind its eventual abolition.[[3]](#footnote-3) Almost three decades later, Douglas Hay and his colleagues published *Albion’s Fatal Tree*, in which they presented a Marxist analysis of the Bloody Code. For Hay, the Bloody Code was a system of terror developed and maintained by members of the elite to protect property from theft by the lower orders.[[4]](#footnote-4) This thesis, however, came under sustained critique by, among others, Peter King and John Langbein, who pointed out how the great deal of discretion that operated at all levels of the criminal justice system undermined the ability of any one group to use the courts to pursue their own ends. [[5]](#footnote-5) Subsequent work by historians have focused on other aspects of the Bloody Code, exploring the influence of controversy around forgery convictions and the emergence of new notions of sympathy on the movement for reform.[[6]](#footnote-6)

 Most, if not all, of the existing historiography on the Bloody Code has, however, focused on the South-East of England and the Old Bailey.[[7]](#footnote-7) More recently, several scholars have begun to explore the wide regional variations in how the Bloody Code operated between the centre and the periphery, or what has been termed the ‘Unbloody Code’. Thus, in their work on the mid to late eighteenth century, Peter King and his colleagues at the University of Leicester have shown how not only were capital conviction rates for property offenders in Middlesex four times higher in Northumberland and Cornwall, but that whereas just over half of those convicted of property offences in Middlesex were pardoned, almost 95% were pardoned in the latter counties. More broadly, of the 1082 property offenders executed in England, Wales and Scotland between 1755 and 1775, 98% were executed in England alone.[[8]](#footnote-8)

The aim of this article is examine the broad trends in the operation of the Bloody Code in Wales between 1805 and 1830, the last quarter of a century of the Wales Courts of Great Sessions.[[9]](#footnote-9) To date comparatively little attention has been paid to the Wales Great Sessions during the latter years of their existence. Susan Howard has examined the Denbighshire Sessions from 1660 to 1730, while T.M. Humphrey’s unpublished PhD thesis focused on the Montgomeryshire Sessions during the eighteenth century. Both David D.V. Jones and John Minkes have both examined the Brecon Sessions; Jones focused on the period 1753 to 1818 while Minkes examined a small sample of records from the 1750s.[[10]](#footnote-10) The article will argue that, belying the image of a criminal justice system dripping in blood, the majority of those who were convicted at the Wales Great Sessions were sentenced to periods of imprisonment. Although sentences of death were passed on around a third of all cases, only 2.5% of those who received a sentence of death were subsequently executed. Those who died on the gallows were mainly those convicted of a serious crime against the person, namely murder or rape, with a comparatively smaller number of those convicted of property crimes suffering a similar fate. Males were also more likely to receive harsher sentences than females and be executed for a broader range of crimes than women, even when convicted of the same offence. Welsh juries, however, would appear to have been reluctant to return guilty verdicts for those crimes that would leave a convicted felon likely to be hanged, although they were less so in cases where their decision would instead result in the convicted felon undergoing a period of imprisonment or transportation. To this end, the article will be structured so as to trace the criminal justice process, beginning first by examining the patterns of indictments per year and by crime over the period. Having done this, it will then move on to examine the outcomes of prosecutions; the different verdicts passed for different offences and the sentences handed down. Finally, the analysis will narrow down to sentences of death, exploring the impact of gender and the type of offence on whether or not a capitally convicted felon hanged.

 The documents that form the basis of analysis are the Criminal Registers for the Court of Great Sessions for the years 1805 to 1830 (HO27/1-40).[[11]](#footnote-11) Historians have long cautioned against both the uncritical reading of judicial records as a measure of crime in the past, as well as highlighting problems with the accuracy and reliability of some of the information that they contain.[[12]](#footnote-12) Mindful of this, the present research makes no claims about levels of crime, capital or other, in Wales during the period but rather restricts itself to analysing that information which can be obtained with some certainty; namely the year and county in which the trial took place, the gender of the convict, the crime for which they were tried, the verdict, and whether they were executed or pardoned. The criminal registers for each county were then coded and analysed via the statistical software package SPSS v.20.[[13]](#footnote-13)

**The Bloody Code in Wales, 1805-30**

*Patterns of Indictments*

Between 1805-1830, 3089 persons were indicted at the Wales Great Sessions:

**Figure 1**

As can be seen from figure 1, the number persons indicted grew by 70% over the period from 73 in 1805 to 160 in 1829, an average of 124 per year. Until 1816 the number of convictions remained below one hundred per year, before increasing for the remainder of the period. The thirteen counties, however, differed in the number of persons indicted at their respective Sessions; the number of indictments in the thirteen counties typically being smaller than those found in English counties.[[14]](#footnote-14) Monmouthshire saw the highest number of persons indicted (632), with a fifth of those indicted across the Great Sessions during the period being indicted in this one county. Glamorgan also saw a large number of persons indicted with 424 persons passing through its Sessions. In contrast only thirty-six and fifty-seven persons were indicted in Merionethshire and Anglesey respectively: the combined total for both counties being just less than one seventh the number for Monmouthshire. Indeed, the latter county indicted more persons in the years 1817-19, 1824, 1827 and 1829, than Merionethshire tried over the twenty-five year period.

The number of indictments by type of crime is shown in figure 2 below:

**Figure 2**

The vast majority of cases indicted at the Wales Great Sessions related to property crime (2709 or 88%), chiefly larceny which comprised just under half of all the cases heard (1747), sheep stealing (235 or 7.6%) and burglary (187 or 6.1%). As Gwenda Morgan and Peter Rushton have observed in relation to North East England, the high numbers of indictments for larceny may reflect the relative ease by which this crime, compared with some others such as murder, sexual crimes or infanticide, could be detected and prosecuted.[[15]](#footnote-15) In contrast only 293 persons (around one in ten) were indicted for crimes against the person, around a fifth of the number indicted for larceny. Indeed, the number of persons indicted for all crimes against the person is only fifty-eight more than the number tried for cattle stealing alone. Of the crimes against the person, the largest numbers of persons were indicted for murder and manslaughter, with roughly similar percentages of persons being indicted for shooting at/stabbing, wounding and cutting and rape/other sexual crimes.

 Both the increase in indictments over the period, particularly after 1816, and the preponderance of indictments for property crime mirrored trends in England. The number of indictments increased across both countries from the turn of the century until the 1840s, with indictments for property crime comprising around 80% of all committals until 1857.[[16]](#footnote-16) Partly, this may be explained as a consequence of the growth in the population of Wales, which increased by 51% over the same period (1805-1831) from 533,235 to 805,749. However, population growth can only provide a partial answer. Between 1811 and 1821 the population of Wales increased by 18% from 600,612 to 708,105 while the number of persons tried increased by 108% from 65 to 135.[[17]](#footnote-17)

 Another explanation may be found in differences between rural and urban areas. As David J.V. Jones has observed, one of the commonplaces of nineteenth century Wales was that there was less crime in rural than in urban Wales, suggesting that the reason for this may be found in the strength of the “be found in the close relationships, co-operative mentality, and religious feelings of the rural community, and in the effective agencies of authority and control”.[[18]](#footnote-18) Taking the five counties selected by Jones as representative of rural and urban Wales (Anglesey, Cardiganshire, Radnorshire and Glamorgan and Monmouthshire respectively), the evidence from the Criminal Registers reveals that the number of indictments was significantly higher in the latter. Thus, while 57, 116 and 154 persons were indicted in Anglesey, Cardiganshire and Radnorshire respectively, 424 and 632 persons were indicted in Glamorgan and Monmouthshire. Equally, looking at individual crimes for which persons were indicted, 19% and 11% of all indictments for murder across the country occurred in Monmouthshire and Glamorganshire respectively, compared to just 3% in Anglesey. Similarly, 28% of those indicted for monetary offences were indicted in Monmouthshire, the three rural counties contributing just 6% to the total.

The sharp rise in indictments after 1816 may also be explained as an interrelated consequence of war and economic factors. As Douglas Hay and Peter King among other historians have observed, the Napoleonic war witnessed a significantly higher level of mobilisation than any previous war; this mobilisation effectively removing many of the kind of person more likely to commit crime – those who King refers to as “young, mobile, marginal and often underemployed or unemployed males” - from the country for the period of the war.[[19]](#footnote-19) This would explain both the relatively low levels of indictments in the early part of the period and the sudden increase after 1816 when soldiers – a number of whom had enlisted rather than face a prison sentence – returned to the population.[[20]](#footnote-20)The return of large numbers of males coupled with the shift in the economy from a war footing to peacetime production led to a period of social and economic disruption, rising prices[[21]](#footnote-21) and a rise in indictments, particularly for property crime, across both England and Wales.[[22]](#footnote-22)

As can also be seen from figure 2, of the 3089 persons indicted at the Wales Great Sessions during the period, the vast majority were unsurprisingly male. Males constituted 79% of those indicted (2450), the number increasing by 139% from 51 in 1805 to 122 in 1829 (an average of 98 per year). In contrast, whether because females genuinely committed less crime than males or because victims of crime were reluctant to prosecute females,[[23]](#footnote-23) only 639 females were indicted over the period, an average of 25 per year. In addition, while the number of females indicted rose over the period, the rate of growth was lower than that of males (73%). The numbers of males indicted outnumbered the number of females for all forms of crime with the obvious exception of concealing the birth of a child. Over four times more males were indicted for crimes against the person than females while over six times more were indicted for forms of property crime. Similarly, looking at individual crimes, almost three times more males were indicted for larceny than females, thirteen times more were indicted for sheep stealing and twelve-times more were indicted for burglary. Indeed, the number of males indicted for larceny alone was 72% higher than the total number of females indicted for all crimes across the period.

 In his research on the Chester Great Sessions over the same period, John Walliss found that in Cheshire tended to be indicted for those forms of property offence that involved more guile than violence, such as monetary offences, larceny and receiving stolen goods. Males, in contrast, tended to be indicted for crimes against property that involved some degree of actual or threatened violence or some degree of physical strength, such as burglary, larceny from the person and horse stealing.[[24]](#footnote-24) The evidence from the Wales Great Sessions points to similar conclusions, although there are some differences between the two sets of indictments. Thus, while a greater proportion of males than females were indicted for burglary, horse stealing and highway robbery, a higher proportion of females in Wales were indicted for larceny from the person. Similarly, although males predominated among those indicted for crimes against the person, there was little difference between the proportion of each gender indicted for stabbing, cutting and wounding and, indeed, over double the proportion of females were indicted for murder than males (the majority of these being indicted for murdering their infant). In both places, a higher proportion of females were indicted for receiving stolen good, although in Wales a higher proportion of males were indicted for monetary offences than females.

*Outcomes of prosecutions*

A more marked difference between the operation of justice at the Wales and Chester Great Sessions during the period is in the outcome of the various prosecutions. In Cheshire, the majority of those indicted stood trial (84%), with only 8% and 4% of indictments being dismissed before trial as No True Bill or No Prosecution respectively. In contrast, in the Wales Sessions, 18% of those indicted did not stand trial, the Grand Juries dismissing more than one in ten indictments (12%), and of those who did stand trial, only just over two thirds were found guilty (69% or 57% of the total indicted).[[25]](#footnote-25) In both places, however, there was little or no difference in the verdicts handed down to males and females, with 57% of males being found guilty compared to 54% of females and 25% of males being found not guilty compared to 24% of females. That said, however, females were slightly more likely in Wales to be discharged on either No True Bill or no prosecution, with none being discharged for admitting evidence (compared with 1% of males).

 The verdicts handed down for the different crime types are shown in figure 3 below:

**Figure 3**

As can be seen from figure 3, there were marked differences in the conviction rates for different types of crime at the Wales Great Sessions during the period. Indictments for property crime were typically more successful than for crimes against the person, with 71% of the former compared to 41.5% of the latter resulting in a guilty verdict. It is particularly noteworthy that in the case of the most serious crime that the Great Sessions tried, murder, only a third of those who were tried (and a quarter of those indicted) were found guilty. Indeed, almost as many persons brought to the Sessions to be tried for murder were discharged on No True Bill as were found guilty. Similarly, with the offence of shooting at a person, only a fifth of those who stood trial (and 13% of those indicted) were found guilty. The crime of rape also saw both a high number of No True Bills of no prosecutions (11% and 47% respectively). Evidently many alleged victims of rape were either unwilling or unable to face their alleged attacker or attackers in court.[[26]](#footnote-26) Equally, almost a third and a quarter of those charged with shooting at a person and monetary offences and receiving stolen goods respectively also did not face their prosecutor in court.

Turning next to sentencing patterns, the various sentences handed down by the Wales Great Sessions are summarised in the following table:

**Figure 4**

As can be seen from figure 4 above, relatively low numbers of persons were sentenced to death and executed. Of the sentences passed by the Wales Great Sessions, just under half were for periods of imprisonment, just under a fifth were for a period of transportation and around a third were sentences of death. Indeed, looking at both the severity of each sentence type and its gradations, it can be seen that there is an inverse relationship between the severity of sentence and the numbers of persons on whom it was passed. Thus, six times as many persons received a prison sentence for less than a year as one of two years or more, more than four times as many received a sentence of transportation for less than a year than for life, and, as will discussed in more detail below, twelve times as many had their sentence of death respited as died on the gallows. This should not, however, be seen as evidence of leniency on the part of the Justices, but, rather, reflects the types of offences for which men were most commonly tried across the thirteen counties. Almost three quarters (74%) of those convicted of larceny, the most commonly seen offence in the courts, were sentenced to a period of imprisonment. Similarly, all and 72% of those convicted of concealing the birth of a child and game offences respectively were similarly sentenced. In contrast, as noted above, those types of serious crimes against the person, where more often than not a conviction would lead to a sentence of death, such as shooting at a person, rape and murder, had relatively low conviction rates.

 Figure 4 also shows the differences in the sentences passed on males and females. 72% of females received a prison sentence, the majority (44%) for less than a year. In contrast, only 44% of males were sent to prison, although again most were imprisoned for less than a year (27%). Males were also slightly more likely to receive a sentence of transportation, typically for seven years, and, as will be discussed below, were over twice as likely to receive a sentence of death. On one level, this discrepancy could be explained in relation to the different types of offences for which males and females were indicted and convicted. As noted previously, males were typically indicted for those property offences which caused most concern among contemporaries and which consequently attracted the heaviest sentences, such as burglary, housebreaking, robbery and horse stealing.[[27]](#footnote-27) Of the 522 persons indicted for these four offences, only 4% were females. Similarly, males made over three-quarters (79%) of those indicted for crimes against the person. That said, however, there is evidence to suggest that even when convicted of the same offence, females tended to receive lighter sentences than males.[[28]](#footnote-28) Thus, of the 219 females convicted of larceny, 82% were sentenced to a period of imprisonment, 13% to transportation, and 3% to death. In contrast, of the 676 males convicted of this crime 70% were sentenced to a period of imprisonment, 27% to transportation and 1% to death. Similarly of the 17 females convicted of larceny from the person, 65% were sentenced to a period of imprisonment compared to 23% of males, with the remaining 35% being sentenced to transportation, compared to 73% of males. Several reasons may be suggested for why this was the case. Primarily, the relatively few females who appeared before the Great Sessions were typically tried for low-level forms of property crime, and not for crimes against the person or those forms of property crime that generated concern. They were thus, as King suggests, less likely to be seen as ‘troublesome’, and more likely to be seen as ‘troubled’: “as more vulnerable and more motivated by economic difficulties not of their own making”.[[29]](#footnote-29) More broadly, again following King, female offenders may have benefitted from what he terms “a distinctly gendered set of attitudes and policy decisions” during this period, characterised by an increasing sensitivity to the use of physical punishment and concomitant increase in sympathy towards the accused; this latter trend “manifest[ing] itself particularly early and particularly strongly in relation to female offenders”.[[30]](#footnote-30)

*Death Sentences*

Only around a third of the persons convicted at the Wales Great Sessions received a sentence of death, only 7.5% of whom were subsequently executed. The number of convicted felons sentenced to death or pardoned by year is shown in figure 5 below:

**Figure 5**

Between 1805 and 1830 the annual number of capital convictions increased by 200% from seven to twenty-one. The number of capital convictions remained at or below twenty between 1805 and 1816, staying in single figures for seven years during the period but then grew rapidly from 1817, reaching a peak of 51 in 1819, before declining again in the first half of the 1820s. Even at the peak of capital convictions in 1819, however, there was not a concomitant rise in the number of executions, with only three persons dying on the gallows in this year (or 1/16th of those who received a sentence of death). Between 1820 and 1830, the number of capital convictions fluctuated between a low of 23 in 1823 and 1824 and a high of 38 in 1828, before dropping to 24 in 1829. This pattern was not peculiar to Wales. Between 1805 and 1830 the number of capital convictions across England and Wales grew rapidly, increasing by over 300% from 320 to 1884. Similarly, the 92.5% of capitally convicted felons who escaped the gallows is not significantly out of step with pardoning patterns across both countries, where over the period around 91% of capitally convicted felons were pardoned. The thirteen counties, however, differed in the percentage of persons indicted who were both sentenced to death and subsequently executed:

**Figure 6**

As can be seen from figure 6 above, the percentage of those indicted who were sentenced to death ranged between 9% in Anglesey and 25% in Merionethshire. In the two counties with the highest number of indicted persons, Glamorgan and Monmouthshire, the percentages sentenced to death were 18% and 21% respectively. Merionethshire also saw the highest percentage of those sentenced to death subsequently executed (22%), while, in contrast, none of those sentenced to death in Anglesey and only 5% of those in Caernarvonshire and Pembrokeshire. Drawing again on Jones’s distinction it can be seen that there was a clear difference between the percentages of persons sentenced to death and executed in urban and rural counties. Of the 557 persons sentenced to death, only 10% were condemned in Anglesey, Cardiganshire, and Radnorshire, while over half (57%) were condemned in Glamorgan and Monmouthshire. Similarly, 38% of those executed across Wales were in the two urban counties, with only 2% in the rural counties. This, however, may be explained as a consequence of the relatively high numbers of persons convicted of crimes against the person and serious forms of property crime in Monmouthshire. Thus, of the 27 persons convicted of murder across the country during the period, around a third were convicted in the county, as were all those convicted of rape and around just under a fifth of those convicted of burglary.

The 92.5% pardon rate was also not significantly out of step with pardoning rates across both countries, where between 1805 and 1830 only 9% of capitally convicted felons were executed. There were, however, marked differences in the percentage of capitally convicted felons who were executed in the Welsh counties than some English counties. The pardoning rates in Cheshire, for example, was 91% over the period, while in Cornwall and Kent it was 89.5% and 90% respectively. Similarly, in Norfolk and Northumberland the rate was 5% and 8.5% respectively, while at the Old Bailey it was 88% over a similar period (1806-30 inclusive). The majority of the thirteen counties had a much higher pardoning rate than this, with only Merionethshire pardoning significantly less (although this may be explained by the low number of persons both indicted and sentenced to death in this county).

 Figure 7 below shows the number and percentage of persons executed or pardoned for each crime type at the Wales Sessions:

**Figure 7**

The vast majority of capital convictions at the Wales Great Sessions during the period were for property crimes, most notably horse stealing (110 convictions), sheep stealing (112 convictions) and burglary (106 convictions). Indeed, convictions for these three offences alone made up 57% of the total number during the period. Housebreaking comprised another 12.4%, larceny in a dwelling house 7.7% and highway robbery 3%. In contrast, murder/attempted murder comprised just 4.7% of capital convictions (26 convictions), rape only 0.5% (3 convictions) and shooting with intent 0.4% (2 convictions). Indeed, if the number of convictions for shooting with intent and stabbing/cutting and wounding are added to those for murder/attempted murder, the combined total is still less than a third of those convicted for either horse stealing, burglary or sheep stealing.

 It was, however, for crimes against the person that the majority of those sentenced to death were subsequently executed. Murder in particular was a crime for which the Sessions showed little mercy, with only one of the 26 persons, Richard Chugg, convicted of this offence not expiating their crime on the gallows.[[31]](#footnote-31) Rape was treated with even less mercy, with all three men found guilty of the crime – John Jenkins, Daniel James and Richard Radner, convicted at the Monmouthshire Sessions in 1820, 1823 and 1829 respectively - dying on the gallows. Only 6 of the 28 persons brought to court for this crime were found guilty (and just under half were discharged on no true bill), but the execution of these three men supports Beattie’s assertion that “Grand jurors did not perhaps think capital punishment too harsh a penalty for rape when the evidence was plain and unambiguous, but they clearly wanted the case to be overwhelmingly persuasive before a man was sent to trial”.[[32]](#footnote-32) In contrast, convictions for several other crimes – most notably larceny, larceny in a dwelling house, housebreaking and cattle stealing, did not lead to any of the condemned being executed. Only three and four persons out of the 110 and 106 sentenced for horse stealing and burglary died on the gallows, and only one man for sheep stealing.

 Of those sentenced to death, the vast majority were male (91%). With the exception of one year, 1809 when one woman alone was sentenced to death (Ann Thomas, convicted at 1809 Glamorgan Spring Great Session for housebreaking), the number of males sentenced to death per year always outnumbered the number of females, often by a large ratio, and six years saw no females condemned to death. Moreover, while the number of females sentenced to death averaged two per year (and never rose above six), the number of males sentenced to death rose dramatically between 1817 and 1819, averaging twenty per year. Indeed, almost as many males were sentenced to death in one of these years, 1819, than females over the entire 25-year period (47 compared to 51).

 In terms of actual executions, only three women died on the gallows in Wales compared to 39 males, all three having been condemned for murdering a family member, most often a child. The execution of these women, it was presumably felt, would not only have a degree of public support (or, at least, would not generate a sufficient degree of pity or hostility), but would also serve as a salutary lesson.[[33]](#footnote-33) It is worth describing each of these exceptional cases. In 1805, Mary Morgan, a young woman described in newspaper reports as being between 16 and 17, was sentenced to death at the Radnorshire Great Sessions for murdering her bastard child, almost severing her head with a penknife. In his summing up prior to sentence, Mr. Justice Hardinge combined clear abhorrence for her crime and the desire that her death operate as a deterrent to others with a degree of compassion;

You must not think that we are cruel; it is to save other infants like your’s [sic.] and many other girls like you, from the pit into which you are fallen; your sentence and your death are mercy to them; if you have repented of your impious crime, it is mercy to yourself. Had you escaped, your mind and conscience would, or might have been so depraved, that mercy, winged as it is, could not reach it in time. You have now the tears and prayers of all around you. In our abhorrence of your crime, we have not lost our compassion for your fate, not our zealous hope that you will find mercy at the Judgement Seat of a Redeeming Intercessor, who died for you; that is, who died, that penitent sinners, through him, should be rescued from the doom they had incurred, and should expiate their pollutions in the atonement of his blood.[[34]](#footnote-34)

Seventeen years later, in 1822 Rachel Edwards was sentenced to death at the Monmouthshire Summer Assizes for murdering her husband by putting arsenic in his milk. He servant, Mary Sandbrooke, stood charged as her accomplice, however no true bill was found against her and she was released. Finally, in 1827, at Monmouthshire Lent Assizes, twenty-six year old Sarah Jones was sentenced to death, like Mary Morgan twenty-two years before for murdering her bastard daughter, again by cutting her throat with a knife. According to the *Morning Chronicle*, such was the apparent “humanity” of the Judge, Mr Sergeant Bosanquet, that when he pronounced the sentence of death on Jones, telling her in “impressive language” that her end should be “a warning to the unguarded of her age, and to those wretches unworthy of the name of men who have, or who may seduce females in a similar state of degradation”, that it “drew tears from the eyes of the majority of spectators witnessed within that court”.[[35]](#footnote-35)

**Conclusion**

Writing in the early 1980s, David J.V. Jones concluded his analysis of the Brecon circuit by arguing that in Wales “the authorities either did not need the death penalty or ceased in practice to regard many property crimes as capital offences”.[[36]](#footnote-36) More broadly, he argued “those found guilty of a serious crime in eighteenth-century Wales might well have received more favourable treatment than their counterparts across the border”.[[37]](#footnote-37) The evidence from the Great Sessions across the whole of Wales between 1805 and 1830 does not support this view. There was no difference between England and Wales in the treatment of the most serious offenders – on both sides of the border, all or the majority of those convicted of a serious crime against the person – rape and murder – were executed. Similarly, in Wales as in England, only a small number of those convicted of a property crime also expiated for their crime on the gallows, the majority receiving a period of imprisonment or transportation instead. While the thirteen counties differed in the proportion of convicted felons that they executed, the pardoning rate across Wales was, while lower, not significantly out of step with the rate across both countries. It would therefore to be wrong to conclude that Wales had given up on the gallows or that serious offenders were treated more leniently on the Welsh side of the border.

The major difference between English and Welsh justice during the period would appear instead to be the relatively low levels of indictments and low conviction rates. This is an area that needs further comparative research but, in comparison to the English county Assizes and Great Sessions, the Wales Great Sessions saw comparatively fewer persons indicted. While this may be cited of evidence of the law-abiding tendencies of the Welsh, it may arguably point to the possibility that a large number of offences – particularly low-level offences such as larceny or those committed by women or juveniles - were dealt with informally within the community between victim(s) and offender. The numbers of potential indictments that were filtered out before trial, however, is, as it still is today, largely unknowable. The numbers filtered out at the indictment stage is clearer; around four fifths of those indicted stood trial, the Welsh Grand Juries having dismissed more than one in ten indictments. The third stage of filtering, the verdict passed, was arguably the most significant in reducing the possible number of persons facing the gallows. Only around two-thirds of those who stood trial – or 57% of the total indicted - were found guilty. Indeed, only 24% and 21% of those indicted for murder and rape - the crimes that almost automatically led to the gallows – were found guilty. Less serious crimes, that typically resulted in a prison sentence or a period of transportation such as larceny from the person or dwelling house or game offences or concealing the birth of a child, however, had a higher conviction rate. It would thus appear that Welsh juries were reluctant to return guilty verdicts for those crimes that would leave a convicted felon likely to be hanged.In this way, it was not that the authorities did not need the death penalty, but that jurors were unwilling, even in the most serious cases, to return a guilty verdict which would send potentially send one of their countrymen to the gallows.

1. This article grew out of an initial collaboration with Mr. John Minkes. I would like to acknowledge his input to this project. I would also like to thank the reviewer for their helpful comments on the previous draft of this article. [↑](#footnote-ref-1)
2. V.A.C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford, Oxford University Press, 1996). [↑](#footnote-ref-2)
3. Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750, vol . 1, The Movement for Reform* (London, Stevens and Sons Ltd., 1948). [↑](#footnote-ref-3)
4. Douglas Hay, ‘Property, Authority and the Criminal law’, in Douglas Hay, Peter Linebaugh, John G. Rule, E.P. Thompson and Cal Winslow, *Albion’s Fatal Tree* (London, Verso, 2011 [orig] 1975), pp. 17-73. See also the Symposium on ‘Property, Authority and the Criminal Law’, *Legal History*, vol. 10 (2006), pp. 13-51. [↑](#footnote-ref-4)
5. John H. Langbein, ‘The criminal trial before the lawyers’ *University of Chicago Law Review*, 45, 2, 1978, pp. 263-316; ‘Shaping the Eighteenth Century Criminal Trial - A view from the Ryder sources’, *University of Chicago Law Review*, 50, 1, 1983, pp. 1-136; ‘Albion’s Fatal Flaws’, *Past and Present*, 98, 1983, pp. 96-120; Peter King, ‘Decision makers and decision making in the English criminal law 1750-1800; *Historical Journal*, 27, 1, 1984), pp. 25-58. [↑](#footnote-ref-5)
6. Phil Handler, ‘Forging the Agenda: The 1819 Select Committee on the Criminal Laws Revisited’, *The Journal of Legal History* vol. 25, no. 3 (2004), pp. 249-68; Phil Handler, ‘Forgery and the End of the “Bloody Code” in Early Nineteenth-Century England’, *The Historical Journal* vol. 48, no. 3, pp. 683-702; Randall McGowen, ‘A Powerful Sympathy: Terror, the Prison, and Humanitarian Reform in Early Nineteenth-Century Britain’, *Journal of British Studies* vol. 25, no. 3, pp. 312-34. [↑](#footnote-ref-6)
7. See, for example, the classic studies by John Beattie and Peter King: J.M. Beattie, *Crime and the Courts in England 1600-1800* (Oxford, Clarendon Press, 1986); *Peter King, Crime, Justice, and Discretion in England 1740-1820* (Oxford, Oxford University Press, 2005). [↑](#footnote-ref-7)
8. Peter King, ‘Rethinking the Bloody Code. The Role of Capital Punishment in Britain’, presented to the Criminal Justice, the Courts and Punishment in France and England in the Eighteenth and Nineteenth Centuries Conference, Leicester, 14th September 2013. [↑](#footnote-ref-8)
9. The Courts of Great Sessions were established in 1541 as part of the process of unification between England and Wales. They sat twice a year to deal with civil and serious criminal cases on four circuits: North Wales (covering Anglesey, Caernarvonshire and Merioneth), Chester (Flintshire, Denbighshire and Montgomeryshire), Cardigan (Cardiganshire, Carmarthenshire and Pembrokeshire) and Brecon (Glamorgan, Breconshire and Radnorshire). Despite Welsh opposition, they were abolished in 1830 and replaced by two circuits subject to Westminster. See Copy of the First Report Made to His Majesty by the Commissioners Appointed to Inquire into the Practice and Proceedings of the Superior Courts of the Common Law, Parliamentary Papers 1829 (46), IX.1; David Williams, *A History of Modern Wales*, (London, John Murray, 1977), pp. 40-41, 269-70); Evan D. Jones, ‘Gleanings from the Radnorshire Files of Great Sessions Papers, 1691-1699’, *Transactions of the Radnorshire Society*, 13 (1943), pp. 7-34, records that abolition was opposed by all but one Welsh MP and a majority of witnesses to the Royal Commission. [↑](#footnote-ref-9)
10. Sharon Howard, ‘Communities Policing Criminal Bodies in Early Modern Wales’, (2002) <http://sharonhoward.org/archive/controlling-bodies.pdf> (accessed 20th November 2013); T.M. Humphreys, *Rural Society in 18th Century Montgomeryshire* (unpublished PhD thesis, University of Wales, Swansea, 1982); David J.V. Jones, ‘Life and Death in Eighteenth Century Wales: A note’, *Welsh History Review*, 10 (1981), pp. 536-48; John Minkes, ‘Wales and the “Bloody Code”: The Brecon Circuit of the Court of Great Sessions in the 1750s’, *Welsh Historical Review* 22 (2005), pp. 673-704. [↑](#footnote-ref-10)
11. These registers have been digitised and are available via www.ancestry.co.uk/ [↑](#footnote-ref-11)
12. John S. Cockburn, ‘Early-Modern Assize Records as Historical Evidence’, *Journal of the Society of Archivists* 5, 4 (1975), pp. 215-231; John M. Beattie, ‘Judicial Records and the Measurement of Crime in Eighteenth-Century England’, in Louis A. Knafla (ed.), *Crime and Criminal Justice in Europe and Canada* (Waterloo, ON, Wilfrid Laurier Press, 1981), pp. 127-45; Robert B. Shoemaker, ‘Using Quarter Sessions Records as Evidence for the Study of Crime and Criminal Justice’, *Archives* 20, 90 (1993), pp. 145-57. For a recent review of the parallel debate over the reliability of information contained in criminal statistics for the period, see John Walliss, ‘Lies, Damned Lies and Statistics? Nineteenth-Century Crime Statistics for England and Wales as a Historical Source’, *History Compass*, 10, 8 (2012), pp. 574-83. [↑](#footnote-ref-12)
13. To simplify the analysis, the crimes for which convicts were tried were classified into twenty-five broad offence groups. For example, murder, attempted murder, accessory to murder and murdering of an infant were grouped together as ‘murder’, while attempts to steal cattle, cows, or heifers were classified as ‘cattle stealing’. Any attempt to steal a sheep or lamb, or kill one with the intention of stealing it was similarly classified as ‘sheep stealing’. Crimes that were presented in the registers as either ‘cutting with intent to murder’, ‘cutting and maiming’, ‘stabbing with intent to murder’ and so on were classified as ‘cutting, stabbing and wounding’, while a distinction was made between rape and other forms of sexual crimes. These are broad categories, and it is acknowledged that there may be blurring between them in some cases, such as, for example, a burglary that involved violence, or where a horse thief shot at his pursuers, or where an attack on a person was followed by a theft. [↑](#footnote-ref-13)
14. See Minkes, ‘Wales and the “Bloody Code”’ for a discussion of why the Welsh counties had comparably low levels of indictments. [↑](#footnote-ref-14)
15. Gwenda Morgan and Peter Rushton, *Rogues, Thieves And the Rule of Law: The Problem Of Law Enforcement In North-East England, 1718-1820* (London, Routledge, 1998) [↑](#footnote-ref-15)
16. V.A. C. Gatrell and T.B. Hadden, ‘Criminal Statistics and their Interpretation’, in E.A. Wrigley (ed) *Nineteenth Century Social History: Essays in the Use of Quantitative Methods for The Study of Social Data* (Cambridge, Cambridge University Press, 1972), pp. 336-96. [↑](#footnote-ref-16)
17. GB Historical GIS/University of Portsmouth, Wales Through Time | Population Statistics | Total Population, *A Vision of Britain through Time*. <http://www.visionofbritain.org.uk/unit/100001055/cube/TOT_POP> (accessed November 21st 2013) [↑](#footnote-ref-17)
18. Jones, *Crime in Nineteenth-Century Wales*, p39. See also Morgan and Rushton, *Rogues, Thieves and the Rule of Law*, pp. 64-7. For a contemporary discussion of the relationship between urban and rural areas and crime, see Thomas Plint, *Crime in England, Its Relation, Character and Extent as Developed from 1801 to 1848* (London, Charles Gilpin 1851), pp. 80-131. Another possibility, observed in the study of other rural communities, may be that these members of these communities used informal measures such as community justice rather than the Courts to deal with crime – see Beattie, *Crime and the Courts in England*; King, *Crime, Justice and Discretion in England 1740-1820*; Peter King, ‘The Impact of Urbanization on Murder rates and on the Geography of Homicide in England and Wales, 1780-1850’, *The Historical Journal* 53, 3 (2010), pp. 671-98. [↑](#footnote-ref-18)
19. Douglas Hay ‘War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts’, *Past and Present*, 9 1982, pp. 117-60. King, *Crime, Justice, and Discretion in England*; Peter King, *Crime and Law in England, 1750-1840*: *Remaking Justice from the Margins (Cambridge, Cambridge University* Press, 2006), p. 212; see also Beattie, *Crime and the Courts in England*, pp. 213-37, and Minkes, ‘Wales and the “Bloody Code”. Patrick Karl O’Brien estimates that between 11-14% of the male population aged between 15-40 were recruited into the army and navy between 1801-11 (Patrick Karl O’Brien, ‘The Impact of the Revolutionary Wars, 1793-1815’, *Review*, 12, 3, 1989, pp. 335-95). On the economic impact of the French Revolutionary and Napoleonic Wars, see also Kevin, H. O’Rourke, ‘The Worldwide Economic Impact of the French Revolutionary and Napoleonic Wars, 1793-1815’, *Journal of Global History*, 1, 2006, p. 123-49. [↑](#footnote-ref-19)
20. Twelve men during the period were discharged on condition of joining the army or navy during the period, all of one of whom were convicted of larceny (the exception being John Brown who was indicted at the Spring 1811 Breconshire Session for uttering base coin). Again, O’Brien estimates the wartime loss as less than 4% of the workforce of 1811. [↑](#footnote-ref-20)
21. To take just one example, the price of wheat: O’Rourke has shown how the relative price of this one staple increased by 77% relative to its pre-war average. [↑](#footnote-ref-21)
22. Gatrell and T.B. Hadden, ‘Criminal Statistics and their Interpretation’; King, *Crime, Justice, and Discretion in England*, Plint, *Crime in England*, pp. 41-79. See also Jones, *Crime in Nineteenth-Century Wales*, p. 57 Graph 7. [↑](#footnote-ref-22)
23. Cf Beattie, *Crime and the Courts in England*; King, *Crime, Justice and Discretion*. [↑](#footnote-ref-23)
24. John Walliss, ‘The Bloody Code in Cheshire’, under review. [↑](#footnote-ref-24)
25. The conviction rate differed between the thirteen counties, ranging from 45% in Radnorshire to 77% in Merionethshire. [↑](#footnote-ref-25)
26. Cf Morgan and Rushton, Rogues, *Thieves and the Rule of Law*, pp. 56-8. For a discussion of the problem of identifying and proving cases of rape in Court, see Kim Stevenson, ‘“Most Intimate Violations”: Contextualising the Crime of Rape’, in Anne-Marie Kilday and David Nash (eds.) *Histories of Crime: Britain 1600-2000* (Houndmills, Plagrave Macmillan, 2010), pp. 79-99, part 3, Kim Stevenson, ‘“She got past knowing herself and didn’t know how many there were”: Uncovering the Gendered Brutality of Gang Rapes in Victorian London’, *Nottingham Law Journal*, 18 1 (2009), pp. 1-17; and Beattie *Crime and the Courts in England*, pp. 124-32. [↑](#footnote-ref-26)
27. Cf. King, *Crime and Law in England*; Jones, ‘Life and Death in Eighteenth Century Wales’. [↑](#footnote-ref-27)
28. Cf. King, *Crime and Law in England*. [↑](#footnote-ref-28)
29. King, *Crime, Justice and Discretion*, p. 283. [↑](#footnote-ref-29)
30. King, *Crime, Justice and Discretion*, p. 286. See also, d’Cruze and Jackson, *Women, Crime and Justice*. [↑](#footnote-ref-30)
31. Chugg had been indicted to appear at the Summer Assizes of 1819 alongside William Owen and Edward Jones for the murder of one John Gunter, a shoemaker, near Abergavenny. Owen, described in the report as “having been a bad character for years” and Jones, a travelling tinker, both hanged, but Chugg – either because of his age (18) or because, as the newspaper noted, he “had been drawn in [to the crime] from giving way to bad company” – was instead transported for life ‘Accidents, Offences, &c.’, *The Examiner*, June 7th 1819, p. 16 [↑](#footnote-ref-31)
32. Beattie, *Crime and the Courts in England*, p. 401. See also King, *Crime, Justice and Discretion*, pp. 273-4; Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750*; Jones, ‘Life and Death in Eighteenth Century Wales’. [↑](#footnote-ref-32)
33. CF Beattie, *Crime and the Courts in England*, pp. 436-9; King, *Crime and Law in England,* pp. 62-3. [↑](#footnote-ref-33)
34. ‘Radnor Sessions’, *Chester Courant*, May 14th 1805, p. 4 [↑](#footnote-ref-34)
35. ‘Execution of Sarah Jones’, *Morning Chronicle*, April 24th 1827, p. 4. [↑](#footnote-ref-35)
36. Jones, ‘Life and Death in Eighteenth Century Wales, p. 545. [↑](#footnote-ref-36)
37. Jones, ‘Life and Death in Eighteenth Century Wales, p. 538. [↑](#footnote-ref-37)