**The Bloody Code in Cheshire:**

**The Cheshire Court of Great Sessions 1805-30**

**(Version 3)**

**Introduction**

The Bloody Code of the eighteenth and early nineteenth century has generated a great deal of interest from historians of crime for a number of decades. Between 1688 and 1820, the number of capital statutes in England and Wales increased exponentially from fifty to over 220. The number of sentences of death also grew concomitantly, increasing by 300% between 1805 and 1830 alone, although in practice most condemned felons did not expiate for their crime on the gallows.[[1]](#endnote-1) For historians adopting a Marxist interpretation, such as Douglas Hay and his colleagues, 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.[[2]](#endnote-2) Others, most notably Peter King and John Langbein, have challenged this interpretation, pointing out 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.[[3]](#endnote-3) Other historians have explored the reasons behind the reform of the Bloody Code from the 1820s onwards, exploring the influence of controversy around forgery convictions and the emergence of new notions of sympathy on the movement for reform.[[4]](#endnote-4)

To date, most research – most notably the magisterial studies by John Beattie and Peter King published in the 1980s – have focused on the South East of England and the Old Bailey.[[5]](#endnote-5) However, more recently several scholars have begun to explore the wide regional variations between the centre and periphery in how the Bloody Code operated, or what has been termed the ‘Unbloody Code’. Focusing on the mid to late eighteenth century, Peter King and his colleagues on the Harnessing the Power of the Criminal Corpse Project have shown how capital conviction rates for property offenders in Middlesex were over four times higher than in Wales and in English counties such as Northumberland and Cornwall. In addition, 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.[[6]](#endnote-6) Similarly, in their work on the Wales Great Sessions between 1805 and 1830, John Walliss and John Minkes have shown how just under a fifth of indictments were dismissed as no True Bill or No Prosecution. Of those persons who were tried, around two-thirds were found guilty, the majority receiving a prison sentence of less than a year. Executions were relatively rare, with only 42 (or 2.5%) of the 557 persons sentenced to death during the period dying on the gallows.[[7]](#endnote-7)

The aim of this article is to contribute to this debate by exploring the operation of the Bloody Code in Cheshire between 1805 and 1830, the last quarter of a century of the Chester Great Sessions.[[8]](#endnote-8) Previous research on the administration of justice in Cheshire has focused on the Quarter Sessions records, and to date there has been no analysis of the Great Sessions.[[9]](#endnote-9) While not suggesting that Cheshire represents a distinct case in the operation of the Bloody Code, the article will use the county as a case study in the operation of justice during the period away from the South East. The article will argue that, belying an image of a criminal justice system dripping in the blood of the condemned, the majority of those found guilty at the Chester Great Sessions were sentenced to periods of imprisonment. While sentences of death were passed in around a third of all cases, only 3% of those who received a sentence of death were subsequently executed. Those who subsequently expiated for their crimes on the gallows had typically been convicted of either a serious crime against the person or burglary, the latter crime being one where the Justices were keen to make examples of offenders. Males were also more likely to receive harsher sentences, and be executed for a broader range of crimes than females, even when convicted of the same offence. 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.

**Analysis**

The documents that form the basis of analysis are the Criminal Registers for the Court of Great Sessions for the years 1805 to 1830.[[10]](#endnote-10) 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.[[11]](#endnote-11) Mindful of this, the present research makes no claims about levels of crime, capital or other, in Cheshire during the period but rather restricts itself to that information that can be obtained with some certainty from the Criminal Registers; namely the year 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 the period were then coded and analysed via the statistical software package SPSS v.20. To simplify the analysis, the crimes for which convicts were tried were classified into twenty-three broad offence groups.[[12]](#endnote-12)

*Patterns of Indictments*

Between 1805-1830, 2101 persons were indicted at the Chester Court of Great Sessions:

**Figure 1:** the number of persons indicted at the Chester Great Sessions, 1805-30.

The number of persons indicted increased fourfold over the period from 38 in 1805 to 153 in 1839. Until 1816, the number of indictments remained below one hundred per year, before reaching 143 in 1819. Between 1819 and 1823, the number of indictments then fell rapidly, before rising again between 1825 and 1829. The growth after 1816 mirrors trends across England and Wales; the end of the Napoleonic Wars 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, and a rise in indictments for property offences across England and Wales.[[13]](#endnote-13) The Justices that oversaw the Chester Great Sessions between 1816 and 1819 regularly commented with alarm during their opening address on the increase in the number of convicts that appeared before them, offering their own theories on its cause. When he opened the Summer 1816 Sessions, Chief Justice Garrow, for example, observed that “it is with deep regret…[that]…I perceive that in the Calendar which the Sherriff has put into my hands, there are so many names”.[[14]](#endnote-14) For Garrow, this was symptomatic of the transition from peace to war;

We are yet in the very infancy of Peace; and it must be expected after the dreadful convulsions which we, in common with the world, have experienced, and the influx of so many persons which the war employed that the country cannot immediately return to a state of quiet and prosperity. The good sense, however, of the people of Great Britain, will no doubt compete against distress unavoidable, as it did against the late dangers of protracted war.[[15]](#endnote-15)

The following Spring, W.D. Best Esq., Serjeant at Law, railed at how the list if prisoners before him “was a calendar of depravity, shocking to humanity, and could not be look at without fear, and the most painful sensations”, although he, like Garrow, explained the situation as consequence of ‘temporary causes’ which would soon dissipate.[[16]](#endnote-16) An alternative interpretation was offered by Mr Justice Marshall at the opening of the Spring 1818 Great Session, who posited the cause of the continuing increase in size of the Calendar as “…the decline of moral rectitude, and the subversion of the foundations of honor, virtue and religion”.[[17]](#endnote-17) Warming to this theme, the following year Marshall embarked on a long discourse, in which he argued that “the Calendar which now lies before me, affords a melancholy proof of the rapid growth of vice and depravity in this country”.[[18]](#endnote-18) Rejecting that the claim that the increase could be ascribed to the disbanding of soldiers or stagnation in trade, he put the blame instead at the feet of radicals who wished to overthrow the existing order. The country, he bemoaned,

has long been deluged with publications, suited to the capacities of the lower orders of the people, and sold at prices which they can easily afford. These publications are filled with blasphemy and profaneness, are calculated to sap the foundation of every moral and social virtue, to destroy all the distinctions between right and wrong, and to sow the seeds of disaffection, treason, and rebellion…A dark and gloomy cloud is made to hang continually over [the readers of this literature]; they are bereaved of all cheerfulness, enjoyment and comfort; they become sullen, morose and melancholy, till they finally resign themselves to the guidance of those who upon the watch to lead them into mischief, which almost constantly terminates in their ruin; while those perfidious leaders (unless they see some prospect of plundering) keep aloof, and leave them to their unhappy fates.[[19]](#endnote-19)

As noted above, Marshall was correct in his assessment of the rise in indictments in Cheshire between 1816 and 1819, although the extent to which his views were reflected in sentences handed down is, as will be seen below, less easy to discern.

**Figure 2:** the number and percentage of each crime type indicted along with the gender of those indicted at the Chester Great Sessions, 1805-30.[[20]](#endnote-20)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Crime Type** | **Number of Indictments** | **% of Indictments** | **Gender** | |
| **Female** | **Male** |
| Larceny | 908 | 43.2% | 123  (53%) | 785  (42%) |
| Burglary | 249 | 11.9% | 9  (4%) | 240  (13%) |
| Other | 110 | 5.2% | 8  (3%) | 102  (5.5%) |
| Manslaughter | 95 | 4.5% | 4  (1.75%) | 91  (5%) |
| Monetary Offences | 89 | 4.2% | 34  (14.75%) | 55  (3%) |
| Receiving Stolen Goods | 85 | 4% | 28  (12%) | 57  (3%) |
| Larceny from the Person | 77 | 3.7% | 5  (2%) | 72  (4%) |
| Housebreaking | 66 | 3.1% | 2  (1%) | 64  (3.5%) |
| Horse Stealing | 62 | 3% | 0 | 62  (3%) |
| Highway Robbery | 57 | 2.7% | 0 | 57  (3%) |
| Fraud & Forgery | 42 | 2% | 4  (1.75%) | 38  (2%) |
| Game Offences | 38 | 1.8% | 0 | 38  (2%) |
| Sheep Stealing | 32 | 1.5% | 1  (0.5%) | 31  (1.75%) |
| Larceny in a Dwelling House | 32 | 1.5% | 3  (1%) | 29  (1.75%) |
| Rape | 27 | 1.3% | 0 | 27  (1.5%) |
| Shooting at | 26 | 1.2% | 0 | 26  (1.5%) |
| Cattle Stealing | 26 | 1.2% | 1  (0.5%) | 25  (1%) |
| Murder | 23 | 1.1% | 5  (2%) | 18  (1%) |
| Robbery | 23 | 1.1% | 0 | 23  (1%) |
| Other Sexual Crimes | 15 | 0.7% | 0 | 15  (1%) |
| Stabbing, Cutting & Wounding | 9 | 0.4% | 0 | 9  (0.5%) |
| Concealing the Birth of a Child | 6 | 0.3% | 6  (2.75%) | 0 |
| Arson | 4 | 0.2% | 0 | 4  (0.25%) |
| **Total** | 2101  (100%) | | 233  (100%) | 1868  (100%) |

As can be seen from figure 2, the vast majority of persons indicted before the Chester Great Sessions, were indicted for forms of property crime (85%), chiefly larceny and burglary which comprised 43% and almost 12% respectively of all cases. This again mirrors national trends, where indictments for property crime rose from the turn of the century until the 1850s, and comprised around 80% of all indictments until 1857.[[21]](#endnote-21) This could be interpreted as evidence of a large number of larcenies having being committed, but it could equally, as Gwenda Morgan and Peter Rushton have observed in relation to North East England, reflect the relative ease by which this crime, compared to some others such as murder, sexual crimes or infanticide, would be detected or prosecuted.[[22]](#endnote-22) In either case, it is more than likely that a number of less serious indictable offences were either not pursued by victims or were dealt with informally before they could be brought before the courts, and that the number of offenders who were indicted represented a fraction of those who could have been indicted.[[23]](#endnote-23) In contrast, only 195 persons (or 9%) were indicted for a crime against the person, just over a quarter of the number indicted for larceny alone. Of the crimes against the person, the largest number were indicted for manslaughter, the number indicted for this one offence being four times the number indicted for murder.

Figure 2 also shows that the vast majority of those indicted were unsurprisingly male. Males constituted 89% of those indicted (1868), the number increasing by almost 400% from 30 in 1805 to 148 in 1829 (an average of 75 per year). In contrast, whether because females genuinely committed less crime than males or because victims of crime were reluctant to prosecute females,[[24]](#endnote-24) only 233 females were indicted over the period, the number ranging between a low of two (1806) and a high of 22 (1816). The number of males indicted outnumbered the number of females for all forms of crime, with the exception of concealing the birth of a child. Indeed, more males were indicted for burglary alone (240) than the total number of females indicted for all crimes over the period.

The majority of both genders were indicted for larceny, although a higher proportion of females were indicted for this crime than males.[[25]](#endnote-25) On the whole, the forms of property crime that females were indicted for tended to be those which involved more guile than violence, such as larceny, monetary offences and receiving stolen goods. The higher proportion of females indicted for the latter two offences in particular may reflect the greater difficulties faced (and therefore the greater likelihood of being caught) by females trying to pass on stolen goods than males.[[26]](#endnote-26) Males, in contrast, tended to be indicted for crimes against property that both involved some degree of violence or physical strength, such as burglary, larceny from the person, horse stealing and highway robbery, and which were taken extremely seriously by contemporaries. Males also, again tended to be indicted more often for crimes against the person, such as manslaughter, shooting and stabbing, cutting and wounding, although a slightly higher proportion of females were indicted for murder than males. Again, the number of indictments for forms of violence, particularly male on male violence, undoubtedly reflects the tip of an iceberg, with many ‘victims’ being either unwilling to prosecute, not considering the act as a crime, or, as Beattie suggests, they and their families found other, informal ways of exacting revenge on the attacker.[[27]](#endnote-27)

*Outcomes of Prosecutions*

The vast majority of those who were indicted at the Chester Great Sessions subsequently stood trial (84%), with only 8% and 4% of indictments being dismissed before trial as No True Bill or No Prosecution respectively. Overall, slightly more males were found guilty than females (63% to 57%), although the percentage of both genders found not guilty was almost identical (22 to 21% female/male). Females, however, were more likely than males not to have stood trial, with almost double the percentage of females indicted having their cases dismissed because a victim failed to appear to prosecute (7% to 4%). Females were also more likely than males to leave the court free because a Grand Jury was unable to return a True Bill against them (11 to 8% respectively).[[28]](#endnote-28)

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

**Figure 3:** the number and Percentage of Guilty and Non-Guilty Verdicts by Crime Type at the Chester Great Sessions, 1805-30.[[29]](#endnote-29)

|  |  |  |
| --- | --- | --- |
| **Crime Type** | **Verdict** | |
| **Guilty** | **Not Guilty** |
| Concealing the Birth of a Child | 3  (100%) | 0 |
| Game Offences | 17  (100%) | 0 |
| Cattle Stealing | 23  (88%) | 3  (12%) |
| Larceny in a dwelling house | 24  (83%) | 5  (17%) |
| Monetary Offences | 61  (85%) | 11  (15%) |
| Horse Stealing | 46  (81%) | 11  (19%) |
| Housebreaking | 44  (81%) | 10  (29%) |
| Other | 65  (81%) | 15  (19%) |
| Larceny | 610  (79%) | 164  (21%) |
| Larceny from the person | 54  (77%) | 16  (23%) |
| Stabbing, Cutting, Wounding | 6  (75%) | 2  (25%) |
| Burglary | 156  (73%) | 58  (27%) |
| Sheep Stealing | 19  (73%) | 7  (27%) |
| Fraud and Forgery | 26  (72%) | 10  (28%) |
| Shooting at | 15  (62.5%) | 9  (37.5%) |
| Rape | 12  (60%) | 8  (40%) |
| Highway Robbery | 29  (59%) | 20  (41%) |
| Other Sexual Crimes | 8  (57%) | 6  (43%) |
| Manslaughter | 45  (55.5%) | 36  (44.5%) |
| Robbery | 10  (55.5%) | 8  (45.5%) |
| Receiving Stolen Goods | 30  (46%) | 35  (54%) |
| Arson | 1  (33%) | 2  (67%) |
| Murder | 6  (30%) | 14  (70%) |
| **Total** | 1310  (74%) | 450  (26%) |

As can be seen, of those persons who stood trial, around three-quarters were convicted, the proportion of guilty verdicts by crime type ranging from 100% for concealing the birth of a child and game offences down to 30% for murder. Indictments for property crimes were more likely to result in a conviction than indictments for crimes against the person, with 76% of the former compared to 55% of the latter leading to a guilty verdict. Of those crime types where a guilty verdict lead to a sentence of death - murder, shooting at, sheep, cattle, and horse theft, housebreaking, robbery, highway robbery and arson – a guilty verdict was returned for 70% of indictments.That said,it is particularly noteworthy that in the case of the most serious crime that the Great Sessions tried, murder, only just under a third of those who were tried (or a quarter of the total indicted) were found guilty. Similarly with rape, although 60% of those who were tried were subsequently found guilty, these persons represented a mere 44% of those indicted for the crime.

Turning next to sentencing patterns, the various sentences passed by the Chester Great Sessions are summarised in figure 4:

**Figure 4:** the sentences passed by the Chester Great Sessions, 1805-30.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Sentence** | **Number & %** | **Number & Percentage for Punishment Type** | **Gender** | |
| **Female** | **Male** |
| Death and Executed | 38  (3%) | 440  (33.5%) | 1  (1%) | 37  (3%) |
| Death and Reprieved | 402  (30.5%) | 22  (16.5) | 380  (32%) |
| Transportation for Life | 14  (1%) | 329  (25%) | 0 | 14  (1%) |
| Transportation for 14 years | 63  (5%) | 9  (7%) | 54  (5%) |
| Transportation for 7 years | 252  (19%) | 8  (6%) | 244  (21%) |
| Imprisonment for 24 months and over | 110  (8.5%) | 531  (40.5%) | 10  (7.5%) | 100  (8.5%) |
| Imprisonment for 12-18 months | 137  (10%) | 26  (19.5%) | 111  (9%) |
| Imprisonment for less than a year | 284  (22%) | 55  (41%) | 229  (19%) |
| Other | 10  (1%) | 10  (1%) | 2  (1.5%) | 8  (1%) |
| **Total** | 1310  (100%) | 1310  (100%) | 133  (100%) | 1177  (100%) |

The most notable feature of figure 4 is the relatively low numbers of persons both sentenced to death and, most importantly, executed. Of the sentences passed by the Chester Great Sessions, 40.5% were for periods of imprisonment, most often for a period of less than a year. In contrast, sentences of transportation and death were passed less often (25% and 33.5% respectively), and broadly there was an inverse relationship between the severity of sentence and the number of persons on whom it was passed. Thus, over two-and-a-half times as many persons received a sentence of imprisonment of one year or less than of two years or more, eighteen-times more were transported for seven years than for life, and, as will be discussed further below, less than a tenth of those sentenced to death were subsequently executed. This should not, however, be seen as evidence of leniency on the part of the Justices, but, rather, reflects the types of offence for which males and females were most commonly tried in the county. Almost all of those convicted of the larceny, an offence that, as noted previously, comprised just over 43% of indictments, were sentenced to either a period of imprisonment or transportation (58.5% and 37% respectively). Similarly, 80% and 50% of those convicted of manslaughter and larceny from the person respectively received a sentence of imprisonment.

Another significant trend illustrated in the figure is difference in the sentences passed on males and females respectively. 68% of females received a prison sentence, the majority (41%) for less than a year. In contrast, only 36.5% of males received a prison sentence, although, again, most were imprisoned for less than a year. Males were also significantly more likely to receive a sentence of transportation, with double the percentage of males being transported than that of females. Finally, as will be discussed below, males were also more likely to both receive a sentence of death and be executed than females. 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 offences which caused most concern among contemporaries and which consequently attracted the heaviest sentences, such as burglary, housebreaking, robbery and horse stealing.[[30]](#endnote-30) Of the 400 persons indicted for these four offences, less than 3% were females. Similarly, males made up the majority (95%) 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.[[31]](#endnote-31) Thus, of the 24 females convicted of monetary offences, 71% were sentenced to a period of imprisonment compared to 19% of males, while 29% were sentenced to transportation compared to 32% of males. No females were sentenced to death for this crime, although eighteen males were thus sentenced, with one subsequently being executed. Similarly, of the 78 females convicted of larceny, 70.5% were sentenced to a period of imprisonment, 10% to transportation, and 17% to death. In contrast, of the 610 males convicted of this crime 57% were sentenced to a period of imprisonment, 41% to transportation and 10% to death. No one, however, was subsequently executed for this crime. The same can be said for the crime of receiving stolen goods, where of the four females found guilty, two were imprisoned and two transported. In contrast, of the 26 males convicted of this offence, 81% were sentenced to a period of transportation. 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 alarm among contemporaries. 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”.[[32]](#endnote-32) 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”.[[33]](#endnote-33)

*Death Sentences*

Only around one-third of the persons convicted at the Chester Great Sessions, then, received a sentence of death, less than one in ten of whom were subsequently executed (9%). The number of persons sentenced to death or pardoned by year is shown in figure 5 below:

**Figure 5:** the number of criminals sentenced to death executed or pardoned at the Chester Great Sessions, 1805-30

As can be seen, the number of capital convictions increased over the period more than tenfold from five in 1805 to 54 in 1829. The number of capital convictions in Cheshire remained below twenty per year between 1805 and 1818, staying in single figures for eight of these fourteen years. In 1819, the year in which Justice Marshall excoriated against what he claimed was ‘the rapid growth of vice and depravity in this county’, the number of capital convictions then rose rapidly to thirty, before falling again down to sixteen in 1820. Between 1821 and 1829, the number then fluctuated between a low of 15 (1821) and a high of 55 (1829). The number of persons executed, however, remained relatively low throughout the period, ranging between a minimum of no executions and a maximum of six (in 1813) per year. Indeed, even in the two peak years of capital convictions, there was not a commensurate increase in the number of executions, with only three people being executed in 1822 out of 41 capital convictions and four persons being executed in 1829 out of 50 capital convictions (or 7% and 8% respectively).

This state of affairs was in no way peculiar to Cheshire, and, in many ways, reflected trends across England and Wales, where between 1805 and 1830, the number of capital convictions grew rapidly, increasing by over 300% from 320 to 1884. Indeed, at both the national level and in Cheshire, the majority of capital convictions took place after Peel began to rationalise the Bloody Code in 1823. Thus, the seven years between 1823 and 1830 saw just over half (51%) and around a quarter (23%) of the number of capital convictions and executions respectively across England and Wales for the entire twenty-five year period. In Cheshire, the same period witnessed 47% of all capital convictions and 26% of executions. Put another way, in a period of relative reform of the capital code, courts in England and Wales were still sending around a quarter of those capitally convicted to the gallows, and the Cheshire Great Sessions, while condemning a slightly lower percentage of persons than the national level, nevertheless executed a slightly higher percentage of felons.[[34]](#endnote-34)

Similarly, the 91% of capitally convicted felons who escaped the gallows in the county is not out of step with pardoning patterns across England and Wales. Between 1805 and 1830, around 9% of capitally convicted felons expiated for their crimes on the gallows, the estimated number of pardons across England and Wales increasing from 81 to 95%.[[35]](#endnote-35) Over the same period, Cornwall and Kent, for example, saw a higher level of pardons (10.5% and 10% respectively), while others such as Norfolk and Northumberland saw a lower level (5% and 8.5% respectively).[[36]](#endnote-36) The percentage of convicts pardoned at the Old Bailey also increased slightly over a similar period (1806-1830 inclusive) from 88% to 90%, while in Wales 92% of those sentenced to death between 1805 and 1830 were pardoned.[[37]](#endnote-37) This would suggest that, *pace* King on the Unbloody Code, while there was a degree of regional variation in pardoning rates, it was by no means a stark one and would appear to have narrowed significantly between the mid-eighteenth century and 1830. Indeed, it could be argued that the centre was coming to align with the practice of high pardoning rates found in the periphery. Thus, as Gatrell has shown, between 1701 and 1725, around a third of capitally convicted felons at the Old Bailey were executed. By 1801-05, this had fallen to just 11%, and by 1826-30 inclusive, only one in ten died on the gallows.[[38]](#endnote-38)

Figure 6 below shows the number and percentage of persons executed or pardoned for each crime type at the Chester Great Sessions:

**Figure 6:** the number and percentage of those executed or pardoned for different crimes at the Chester Great Sessions, 1805-30.

|  |  |  |  |
| --- | --- | --- | --- |
| **Crime Type** | **Executed** | **Pardoned** | **Total** |
| Arson | 1  (100%) | 0 | 1  (0.33%) |
| Murder | 5  (83%) | 1  (17%) | 6  (1.5%) |
| Rape | 6  (60%) | 4  (40%) | 10  (2%) |
| Shooting at | 4  (27%) | 11  (73%) | 15  (3.5%) |
| Larceny from the Person | 1  (17%) | 5  (83%) | 6  (1.5%) |
| Highway Robbery | 5  (17%) | 24  (83%) | 29  (7%) |
| Burglary | 14  (10%) | 129  (90%) | 143  (32.5%) |
| Robbery | 1  (10%) | 9  (90%) | 10  (2%) |
| Monetary Offences | 1  (6%) | 17  (94%) | 18  (4%) |
| Stabbing, Cutting & Wounding | 0 | 4  (100%) | 4  (1%) |
| Other Sexual Crimes | 0 | 1  (100%) | 1  (0.33%) |
| Sheep Stealing | 0 | 19  (100%) | 19  (4.5%) |
| Cattle Stealing | 0 | 23  (100%) | 23  (5%) |
| Horse Stealing | 0 | 46  (100%) | 46  (10.5%) |
| Larceny | 0 | 23  (100%) | 23  (5%) |
| Larceny in a dwelling house | 0 | 23  (100%) | 23  (5%) |
| Housebreaking | 0 | 44  (100%) | 44  (10%) |
| Game Offences | 0 | 1  (100%) | 1  (0.33%) |
| Fraud & Forgery | 0 | 10  (100%) | 10  (2%) |
| Other | 0 | 8  (100%) | 8  (2%) |
| **Total** | 38  (9%) | 402  (91%) | 440  (100%) |

As discussed in the introduction, for Marxist historians such as Douglas Hay and his colleagues, the Bloody Code was an instrument of terror used by the elite to maintain order and protect property. By tempering justice (the gallows) with mercy (the pardon), Hay argued, the elite were able to maintain their hegemonic position, by hanging only those deemed to be irredeemable or whose crimes warranted an example being made.[[39]](#endnote-39) On one level, the evidence from the Chester Great Sessions seems to support Hay’s claims. The vast majority of capital convictions at the Chester Great Sessions were for property crimes, most notably burglary (143 convictions), horse stealing (46 convictions) and housebreaking (44 convictions). Indeed, convictions for these three offences alone made up 53% of the total number during the period. In contrast, crimes against the person such as murder comprised just 1% of capital convictions, shooting at a person comprised 3%, and rape 2%. Indeed, if the number of capital convictions for shooting with intent and stabbing, cutting and wounding are added to those for murder, the combined total is still almost six-times less than the number of those receiving a sentence of death for burglary alone.

It was, however, for crimes against the person, and not property crimes, that the majority of those sentenced to death were subsequently executed. Murder in particular was a crime for which, as in courts across England and Wales, that the Chester Sessions showed little mercy. Between 1805 and 1830, the proportion of convicted murderers across England and Wales who were executed was always high, ranging between 71% and 100%. Of the 24 years of the period for which there is published data, seven saw all those thus convicted dying on the gallows.[[40]](#endnote-40) Only one of the six persons, John Grattan, who were sentenced to death at the Chester Great Sessions for murder were not executed. Grattan had been indicted in 1826 for the wilful murder of one John Milburne in April 1824 by throwing him into the Huddersfield Canal near Stayley Bridge. Although found guilty at his trial, his execution was respited and he then received a reprieve when the Attorney General entered a verdict of *Nolle Prosequi* on the indictment found against him because of issues with the evidence on which he was convicted. It was also a conviction of murder that led to the only female being executed in Chester during the period; Edith Morrey who was executed in 1813 for the murder of her husband.[[41]](#endnote-41) Likewise, four of the fifteen persons convicted of shooting at a person and six of the ten persons convicted of rape died on the gallows.

That said, however, the majority of persons who were executed after being capitally convicted at the Chester Great Sessions had been convicted of a single property offence: burglary. Between 1805 and 1829, fourteen persons were executed for this one crime, only slightly fewer than the total number executed for murder, shooting at a person and stabbing, cutting and wounding combined. It is clear, not least from reading the addresses made to those whom they had sentenced to death for this crime, that the Justices wished to make an example of them to deter others. Sentencing William Ricklington to death in the Summer 1820 Great Sessions for breaking into the house of Unwin Clarke, Archdeacon of Chester, the Hon. Charles Warren bemoaned how “it is truly painful to see so many cases of burglary committed in this county”, adding that “a more cruel case, a case in which were combined more circumstances of malice, and barbarity, never before was inquired into by a Court of Justice”.[[42]](#endnote-42) Donning the black cap, he concluded by telling Ricklington that, “the cruelty of your offence is almost without parallel” and that “it would be trifling with Justice, we should be sitting here in vain were a crime of such enormous magnitude to escape the deserved and well merited punishment of DEATH”[[43]](#endnote-43) Almost a decade later, sentencing John Leir to death, Mr Justice Johnson observed;

…that he and the Chief Justice had long since made up their minds, that whenever a conviction for [burglary] attended with circumstances of personal violence, should take place before them, they would certainly inflict the extreme penalty of the law upon the culprit.[[44]](#endnote-44)

Likewise, in the same year, Justice Warren told John Proudlove that the aggravated nature of his crime “imposes upon the Court the painful duty of making a public example of you – *not so much for the punishment of the individual, but for the prevention of crime*”.[[45]](#endnote-45)

Those burglars, such as Proudlove and Ricklington, that were hanged nevertheless only comprised a small proportion of those capitally convicted of this crime. The vast majority of those sentenced to death for burglary (90%) received a lesser sentence. Put another way, if the same proportion of convicted burglars had been hanged as convicted murderers, then around 119 would have been executed, or around five per year. More broadly, if the same proportion of those convicted of any form of property crime had been hanged as those convicted of a crime against the person, then Cheshire would have had to execute 129 felons, rather than the 23 that it did over the period. While burglary, then, was taken very seriously by juries and Justices, the latter being keen to pass sentences of death where the crime had involved violence or where an execution would serve as an example, crimes against the person were taken much more seriously, and where a life had been taken was punished to utmost extent.

**Conclusion**

To conclude, the operation of Justice in Cheshire during the period of the Bloody Code may be imagined as a funnelling process that only in minority of cases led to the gallows. Although, as one commentator observed in 1857 of the period, “every page of our statute-book smelt of blood”,[[46]](#endnote-46) in practice death was only reserved for a limited number of the most serious cases. As has been shown, at every stage of the legal process, more and more persons were filtered out until all that remained to be hanged were those who had been convicted of the most serious crimes against the person, or who had committed an aggravated form of property crime. Five stages in this funnelling process may be observed. The first occurred before indictment, where an unknowable, but presumably large, number of potential indictments were dealt with informally within the community between victim and offender. This would have filtered out many less serious offences, offences that were unlikely to ever lead to a capital conviction, as well as many female or young offenders who victims were, for various reasons, reluctant to prosecute. At the start of the Session, a small number of offenders (16%) had their indictments dismissed as no true bill, because the victim did not turn up to prosecute, or because the offender turned evidence against associates or agreed to join the forces instead. Again, at this stage, more females would be filtered out.

Once indicted and tried, the funnel then began to narrow significantly, with around three-quarters of those indicted being found guilty, with 70% of those convicted of capital offences for which they stood a strong likelihood of being executed being found guilty. That said, however, only around half of those indicted for a crime against the person were found guilty. At this point, gender ceased momentarily to play a role, with a roughly equal number of guilty verdicts being handed down to males and females. Of those found guilty, the majority (40.5%) received a sentence of imprisonment, most often for less than a year. Here, again, gender played a role, with females typically receiving more lenient sentences than males, even when convicted of the same type of offence. In contrast, sentences of transportation and death were reserved most often for males, largely as a consequence of the types of crimes that they had committed – namely crimes against the person and serious forms of property crime, often involving violence.

At the final stage of the funnel, then, only around a third of those found guilty (and a fifth of those who stood trial) remained facing the gallows. Here the nature of the offence largely determined who hanged, with almost all of those convicted of the most serious crime against the person, murder, expiating for their crime on the gallows, 60% of convicted rapists, and a just over a quarter of those convicted of shooting at a person meeting the same fate. In contrast, the majority of those receiving death sentences for property crimes were pardoned, with only 5% of these felons being executed. Here again the issue of whether violence was involved would seem to have played a significant role in the decision of who would hang. Thus, of the twenty-three males who were sentenced to death for a property crime, all but two had been convicted of one that involved actual or threatened violence such as larceny from the person, highway robbery, robbery or burglary.

The evidence from the Chester Great Sessions thus paints a picture of a system in which, if the accused made it into the court, he or she faced a high likelihood of being found guilty. More than likely, the offence for which they had been indicted would have been a property offence, most likely larceny, for which they would receive a brief period of imprisonment. The gender of the accused would appear to have had little bearing on the verdict of the jury, although it would on the sentence. If they were a female and had been convicted of any crime but murder, then it was extremely unlikely that they would die on the gallows. Males, in contrast, could find themselves on the gallows after being convicted of a far wider range of offences, the Justices believing that the execution of these male offenders would serve as a salutary lesson, and would have a degree of public support that the execution of females would not.[[47]](#endnote-47) In these ways, the patterns of indictments, verdicts and sentencing at the Chester Great Sessions parallel broader national trends during the period. As at the national level, the operation of the Bloody Code in Chester balanced the threat of the gallows for a wide range of offences, but only executed those convicted of the most serious crimes against the person such as rape and murder or those who had committed a property crime that the Justices wished to make an example of to deter others.

**Notes**

1. L. Radzinowicz, *A History of English Criminal Law and its Administration from 1750, vol . 1, The Movement for Reform* (London, Stevens and Sons Ltd., 1948); V.A.C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford, Oxford University Press, 1996) [↑](#endnote-ref-1)
2. D. Hay, ‘Property, Authority and the Criminal law’, in D. Hay, P. Linebaugh, J.G. Rule, E.P. Thompson and C. Winslow, *Albion’s Fatal Tree* (Verso, 2011 [orig] 1975), 17-73. See also the Symposium on ‘Property, Authority and the Criminal Law’, *Legal History*, vol. 10 (2006), 13-51. [↑](#endnote-ref-2)
3. J.H. Langbein, ‘The criminal trial before the lawyers’ *University of Chicago Law Review*, 45, 2, (1978), 263-316; ‘Shaping the Eighteenth Century Criminal Trial - A view from the Ryder sources’, *University of Chicago Law Review*, 50, 1 (1983), 1-136; ‘Albion’s Fatal Flaws’, *Past and Present*, 98 (1983), pp. 96-120; P. King, ‘Decision makers and decision making in the English criminal law 1750-1800; *Historical Journal*, 27, 1, (1984), 25-58. [↑](#endnote-ref-3)
4. P. Handler, ‘Forging the Agenda: The 1819 Select Committee on the Criminal Laws Revisited’, *The Journal of Legal History* 25, 3 (2004), 249-68; ‘Forgery and the End of the “Bloody Code” in Early Nineteenth-Century England’, *The Historical Journal* 48, 3 (2005), 683-702; R. McGowen, ‘A Powerful Sympathy: Terror, the Prison, and Humanitarian Reform in Early Nineteenth-Century Britain’, *Journal of British Studies*, 25, 3 (1986), 312-34. [↑](#endnote-ref-4)
5. J.M. Beattie, *Crime and the Courts in England 1600-1800* (Clarendon Press, 1986); P. King, *Crime, Justice, and Discretion in England 1740-1820* (Oxford, 2005). [↑](#endnote-ref-5)
6. P. 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. [↑](#endnote-ref-6)
7. J. Walliss, ‘The Bloody Code in Wales: The Court of Great Sessions, 1805-30’, *Welsh History Review*, forthcoming 2014. [↑](#endnote-ref-7)
8. Wales and Chester was not part of the Assize Circuit during this period, the latter as a consequence of its status as a Palatine. Instead, justice was dispensed in these areas via four circuits of Courts of Great Sessions (Brecon, Carmarthen, North Wales and Chester) that, like the county assizes, met twice per year in March or April and in September or October. From the late eighteenth century, a number of parliamentary complaints were made regarding the operation of the Great Sessions, following a Parliamentary Report on the Common Law recommendation that the Great Sessions in Chester and Wales be discontinued, both areas were brought into the Assizes circuit under the Law Terms Act of 1830. See J. Faulkner, *The Practice of the Court of Great Session for the County of Cheshire together with the Practice of the Court of Exchequer at Chester* (M. Monk, 1822); *D. Bentley, English Criminal Justice in the Nineteenth Century* (The Hambledon Press, 1998). [↑](#endnote-ref-8)
9. See G. Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge, 2003); A.E. Lagemann, ‘A Decade of Disorder? The Performance of Justice in Cheshire in the 1590s’, *Journal of the Wooden O Symposium*, 10 (2010), 49-59; A.A. Barrett, *The System of Justice in Cheshire, 1820-75*. PhD Thesis, University of Keele, 1996. [↑](#endnote-ref-9)
10. HO27/1-37. These registers have been digitised and are available via www.ancestry.co.uk/ [↑](#endnote-ref-10)
11. J.S. Cockburn, ‘Early-Modern Assize Records as Historical Evidence’, *Journal of the Society of Archivists* 5, 4 (1975), 215-231; J.M. Beattie, ‘Judicial Records and the Measurement of Crime in Eighteenth-Century England’, in L.A. Knafla (ed.), *Crime and Criminal Justice in Europe and Canada* (Wilfrid Laurier Press, 1981), 127-45; R.B Shoemaker, ‘Using Quarter Sessions Records as Evidence for the Study of Crime and Criminal Justice’, *Archives* 20, 90 (1993), 145-57. For a recent review of the parallel debate over the reliability of information contained in criminal statistics for the period, see J. Walliss, ‘Lies, Damned Lies and Statistics? Nineteenth-Century Crime Statistics for England and Wales as a Historical Source’, *History Compass*, 10, 8 (2012), 574-83. [↑](#endnote-ref-11)
12. For example attempts to steal cattle, cows, or heifers were classified as ‘cattle stealing’, while any attempt to steal a sheep or lamb, or kill one with the intention of stealing it were 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. [↑](#endnote-ref-12)
13. D. Hay ‘War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts’, *Past and Present*, 9 (1982), 117-60. King, *Crime, Justice, and Discretion in England*; P. King, *Crime and Law in England, 1750-1840*: *Remaking Justice from the Margins* (Cambridge, 2006), p. 212; see also Beattie, *Crime and the Courts in England*, pp. 213-37. [↑](#endnote-ref-13)
14. ‘Cheshire Summer Assize’, *Chester Chronicle*, 6th September 1816, p. 3 [↑](#endnote-ref-14)
15. ‘Cheshire Summer Assize’, p.3. [↑](#endnote-ref-15)
16. ‘Cheshire Spring Assizes’, *Chester Chronicle*, 18th April 1817, p. 3 [↑](#endnote-ref-16)
17. ‘Cheshire Spring Assize’, *Chester Chronicle*, 3rd April 1818, p. 2. [↑](#endnote-ref-17)
18. ‘Cheshire Spring Assize’, *Chester Chronicle*, 16th April 1819, p. 1. [↑](#endnote-ref-18)
19. ‘Cheshire Spring Assize’, p.1. [↑](#endnote-ref-19)
20. Incidences of admitted evidence or other verdicts not shown. [↑](#endnote-ref-20)
21. 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, 1972), pp. 336-96. [↑](#endnote-ref-21)
22. G. Morgan and P. Rushton, *Rogues, Thieves And the Rule of Law: The Problem Of Law Enforcement In North-East England, 1718-1820* (Routledge, 1998). [↑](#endnote-ref-22)
23. Cf. Beattie, *Crime and the Courts in England*; King, *Crime, Justice, and Discretion in England.* [↑](#endnote-ref-23)
24. Cf. Beattie, *Crime and the Courts in England*; King, *Crime, Justice and Discretion*. [↑](#endnote-ref-24)
25. See S. d’Cruze and L.A. Jackson, *Women, Crime and Justice in England since 1660* (Palgrave Macmillan, 2009), chapter 2. [↑](#endnote-ref-25)
26. Morgan and Rushton, *Rogues, Thieves And the Rule of Law.* [↑](#endnote-ref-26)
27. Beattie, *Crime and the Courts in England.* [↑](#endnote-ref-27)
28. Cf. King, *Crime and Law in England*. [↑](#endnote-ref-28)
29. Incidences where the person admitted evidence or where other verdicts were given are not shown. [↑](#endnote-ref-29)
30. Cf. King, *Crime and Law in England*. [↑](#endnote-ref-30)
31. Cf. King, *Crime and Law in England*. [↑](#endnote-ref-31)
32. King, *Crime, Justice and Discretion*, p. 283. [↑](#endnote-ref-32)
33. King, *Crime, Justice and Discretion*, p. 286. See also, d’Cruze and Jackson, *Women, Crime and Justice*. [↑](#endnote-ref-33)
34. See A.E. Simpson (ed.), *Witnesses to the Scaffold: English Literary Figures as Observers of Public Executions: Patrick Egan, Thackeray, Dickens, Alexander Smith, G.A. Sala, Orwell* (The True Bill Press, 2009), pp. 51-3: Table of Executions in England and Wales 1805-45. [↑](#endnote-ref-34)
35. Simpson, *Witnesses to the Scaffold;* Gatrell, *The Hanging Tree*, Appendix 2. Note: the statistics for 1819 were not published. [↑](#endnote-ref-35)
36. Based on the author’s unpublished dataset for these counties [↑](#endnote-ref-36)
37. Gatrell, *The Hanging Tree*, Appendix 2; Walliss, ‘The Bloody Code in Wales’. [↑](#endnote-ref-37)
38. Gatrell, *The Hanging Tree*. Between 1826 and 1930 in Cheshire, only 4% of capitally convicted felons were executed. [↑](#endnote-ref-38)
39. Hay, ‘Property, Authority and the Criminal Law’. [↑](#endnote-ref-39)
40. See again Simpson, *Witnesses to the Scaffold*. In contrast, the percentage of convicted property offenders never rose above 17%, and for most of the period remained below 10%. [↑](#endnote-ref-40)
41. For a discussion of Morrey’s case, see M. Nield, *Rope Dance: A Sensational Murder in Regency Chester Re-opened* (Cheshire County Council, 1993). [↑](#endnote-ref-41)
42. ‘Cheshire Summer Assize’, *Chester Chronicle*, 1st September 1820, p. 2. [↑](#endnote-ref-42)
43. ‘Cheshire Summer Assize’.  [↑](#endnote-ref-43)
44. ‘Cheshire Spring Assizes’, *Chester Chronicle*, 17th April 1829, p. 1. [↑](#endnote-ref-44)
45. ‘Cheshire Spring Assizes’, *Chester Chronicle*, 24th April 1829, p. 4 [↑](#endnote-ref-45)
46. C. Phillips, *Vacation Thoughts on Capital Punishments* (F & F.G. Cash), p. 2 [↑](#endnote-ref-46)
47. CF Beattie, *Crime and the Courts in England*, pp. 436-9; King, *Crime and Law in England,* pp. 62-3. [↑](#endnote-ref-47)