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The Unwavering Movement: Integrating Reason into British Penal Code 1730-1823

At approximately 7 o'clock in the morning on July 9, 1709, Chris Slaughterford of Westbury Green was loaded into an open cart and led along a slow and solemn journey from Newgate Prison to his final destination at the Tyburn gallows. The excruciating three-mile journey would have been accompanied by common people who lined the streets, anticipating the coming execution. Slaughterford was a convicted murderer, said to have taken the life of his betrothed, Jane Young on the 5th of October 1708. Young's body was found floating in a pond, a month after her disappearance in October appearing to have, "many marks of violence." After public suspicion became heavily fixated on Slaughterford, he voluntarily surrendered himself to two local officers. After a brief investigation, the justices believed he should be released free of charge as his alibi was airtight and evidence was circumstantial. Unfortunately for Slaughterford, neighbors continued to accuse him of the crime claiming that he had been seen with Young the night of her death, and in the days following her disappearance, he had made suspicious comments about the whereabouts of his fiancée. Maintaining his innocence, he attended court and was found innocent. However, during the next term, Henry Young, brother of the deceased, appealed the acquittal. Producing the same evidence and a mirror image of the first case, Slaughterford was now found guilty without hope of appeal; his fate was sealed. Around 11:00 o'clock, Slaughterford was escorted off his chariot and onto the three-sided gallows. As the rope was slipped around his neck, he handed the sheriff a final handwritten letter. In the letter he wrote,

"Being brought here to die, according to the sentence passed upon me at the Queen's Bench Bar... I know nothing of the death of Mrs. Jane Young, nor how she came by her death, directly or indirectly... I freely forgive all my enemies and pray to God to give them a due sense of their errors, and in his due time bring the truth to light...since what I

have here set down is truth, and nothing but the truth, I expect salvation at the hands of the Almighty God.”¹

Slaughterford’s life would have ended but a few short minutes later, his clothes and accessories available to purchase through the executioner himself.² Stories of innocent men dying at the hands of the English penal code are not uncommon. The Newgate Calendar remembered his case stating, “He was evidently convicted on circumstances only, strong as those circumstances appeared: and there have been many instances of innocent people suffering on circumstantial evidence.”³

Between the early 16th and 18th centuries, English attitude towards crime and correction were based on the strong held belief that faith and religion were the only cure to immorality.⁴ Politicians and law makers understood crime and immorality were synonymous with sin and believed that punishment and repentance were the only cure. As a result, lawmakers used scare tactics such as capital punishment and hard labor for seemingly trivial crimes such as pickpocketing and begging.⁵ Although the idea of ones’ body being hanged and dissected struck fear into the hearts of many, most petty crimes were based on necessity without malicious intent. Families fearing the risk of starvation and the responsibility of feeding their children often turned to crimes such as theft and poaching to survive.⁶ The Old Bailey, a common name for the

¹ W.M. Jackson, Esq., *The Newgate Calendar; or Villany Displayed In All Its Branches: Containing Accounts of the Most Notorious Malefactors From the Year 1700 to Present Time*, vol. 1, series 1 (London: Alex Hogg; Kings Arms), 118-123.

² Alan Brooke and David Brandon, *Tyburn: London's Fatal Tree* (Stroud: History Press, 2005), 5.

³ W.M. Jackson, Esq., *The Newgate Calendar; or Villany Displayed In All Its Branches: Containing Accounts of the Most Notorious Malefactors From the Year 1700 to Present Time*, vol. 1, series 1 (London: Alex Hogg; Kings Arms), 118-123.

⁴ Phillipa J. Hardman. "The origins of late eighteenth-century prison reform in England." PhD diss., University of Sheffield, 2007, 77.

⁵ John Walliss, *Bloody Code in England and Wales, 1760-1830* (S.I.: Palgrave Macmillan, 2019), 41.

⁶ Wade, Stephen. *Britain's Most Notorious Hangmen*. Wharncliffe, 2009. Pg 6

criminal court system in England and Wales (1730-1837), produced more capital convictions than any other western judiciary system in the world.⁷ This essay will explore the unjust history of the Bloody Code in England and trace how the transformation of thought by ideologies established in the Enlightenment eventually led to its abolition.

Penal codes throughout Europe had been subjected to criticism for centuries. Some countries such as Italy and France made efforts to reform their law structure to create a sentencing system to reflect the severity of the crime. As early as 1515, people such as Thomas More began speaking out against the unjust discipline system. In his satire *Utopia*, More made a statement against the inequality of crime and punishment stating in a perfect world, "...no prescript punishment is appointed by any law. But according to the heinousness of the offence, or contrary, so the punishment is moderated by the discretion of the counsel."⁸ More's call for a punishment equivalent to the crime committed was propagated throughout Europe by philosophers, and the increasing levels of literacy among the middle class. The English crown, however, believed that fear was the most effective method to eliminate crime in London. The idea of deterrence was a vaguely concealed attempt by the Church of England and British officials to handle the problem of the poor; an idea that would later result in classism and the conception of the "criminal class."⁹ Officials believed that deterrence was the key to stopping crime and, instead of reforming the existing disciplinary system, commenced all-out war against immorality. Deterrence was founded to discourage, specifically, the lower class from committing

⁷ S. Devereaux, "Recasting the Theatre of Execution: The Abolition of the Tyburn Ritual," *Past & Present* 202, no. 1 (2009).

⁸ Thomas More, George M. Logan, and Robert M. Adams, *Thomas More: Utopia* (Cambridge: Cambridge University Press, 2002), 146.

⁹ Robert B Shoemaker, "Worrying About Crime: Experience, Moral Panics and Public Opinion in London, 1660–1800," *Past & Present*, Volume 234, Issue 1, 1 February 2017, Pages 71–100.

crimes and as a show of judicial force.¹⁰ The condemnation of petty crimes such as theft and the use of execution as public spectacle lead to the creation of the harshest penal codes in Europe; a system which would later be called, “The Bloody Code.”

The Enlightenment movement across Europe initiated social and political change in the Western World as well as challenged previous thoughts and ideas. Enlightenment era thinkers were concerned with the reform of traditional social and political systems. Thinkers such as John Locke, Cesare Beccaria and others spearheaded the importance of reason in the judiciary process and pushed for penal code reform throughout Europe. The writings of these men as well as the actions of individual and local reformers brought change and rationality into the global system.

Previous scholarship has covered many different aspects of Enlightenment Era England. However, very few have attempted to bridge the gap between the transformation of social thought and the abolition of the Bloody Code. Many scholars choose to focus on singular topics such as the abolition of the Tyburn Ritual. Simon Devereaux executes this focus well in his article, “Recasting the Theatre of Execution: The Abolition of the Tyburn Ritual.” Devereaux’s essay adds to the idea of execution as public enterprise and disclaims the widely perceived ideology that public executions were an effective deterrent for crime. Devereaux highlights that unforeseen crime surges in the late 1700s were totally unrelated to any previously expected factors to crime increase, such as an influx in returning military members. Moreover, he also introduces a second theory about the dismissal of the Tyburn ritual as a response to an increasing population and the disruptions to business and traffic.¹¹

¹⁰ Christopher Fuqua, "Public Spectacles and Divine Justice: The Collapse of Public Executions in England, 1730-1840," *The Chico Historian* 28 (2018).90.

¹¹ S. Devereaux, "Recasting the Theatre of Execution: The Abolition of the Tyburn Ritual," *Past & Present* 202, no. 1 (2009): , doi:10.1093/pastj/gtn019.

Other scholars, such as Robert B. Shoemaker and his essay, “Worrying about Crime: Experience, Moral Panics and Public Opinion in London, 1660-1800,” expose the value of public opinion on social issues, such as that of the Bloody Code. Shoemaker introduces the invention of “the criminal class” and how the creation of this new social sect defied the intended effect of deterrence. Shoemaker claims that the introduction of weekly media and propaganda emphasized the existence of the criminal class and created a moral panic among citizens. The comparison and formation of a *them and us* dynamic created fear and anger which was then projected at those convicted. Therefore, the separation of the poor, criminal class from the newly established middle-class was responsible for the creation of a circus-like atmosphere at the executions. Although modern literature makes great strides in analyzing and interpreting the social dynamics and the impact reformers had on English penal codes, many scholars fail to recognize the link between the reluctance of the English officials to adopt modern social philosophies and the transformation of thought which resulted in the social change that was responsible for the abolition of the Bloody Code.

In order to understand why England’s penal code was so strict, we must trace the foundations of the English thought. Before the Enlightenment existed an era of religious reformation. The sixteenth century was unique as the views propagated by reformation thinkers challenged the traditional ideals of the Catholic church. Before the religious reformation in Europe, Catholicism was unrivaled in its influence and its teachings. Similar to the aforementioned “criminal class,” Catholics and officials created an *us* and *them* rhetoric which instigated a social divide between themselves and other religious or non-religious factions. The three most influential reformers, Luther, Calvin and Zwingli single handedly crafted the greatest rupture in the structure and power of the Catholic church since its formation. The creation of

newer sects of Christianity caused a religious shift in Europe from Catholic to Protestant. Over the ensuing decades, Public officials and Monarchs over Europe continued to force their preferred religion amongst the people. This phenomenon is evident in England as the establishment of the Bloody Code aimed to enforce Christian ideals and punish immorality.

The religious and political climate in Britain and throughout Europe after the reformation was rocky at best. In an attempt to regain power and order, religious leaders began pressuring political officials to instill Christian values into their subjects. Although there was religious divide between different countries, the entire continent still centered its laws around the principles of the Christian church. As a result of the power struggle between immorality and the slipping grasp of the church on its followers, the Church of England adapted policies to thwart stigmatized actions. To ensure these practices were adapted, the church and therefore the government had instituted itself on three key beliefs. The first belief is the idea that crime stems from idleness and inoccupation. Second, is that immorality was a consequence of a weak or nonexistent relationship with God. Finally, the idea of public discipline and executions as a mode to deter crime. These three principals were the key facets in the formation of deterrence theory and in the stranglehold the English government was placing on its lower class.

The first prisons in England were designed with the intention of keeping the disorderly at bay and to reduce the amount of policing done on the streets. The first house of correction, Bridewell, was founded in London in 1553 as a “hospital for the poor.” These primary correction institutions were meant to deal with the “problem of the poor.” The task of keeping the poor off the streets was not an easy one, however. England’s first prisons were “Houses of Occupation” and were designed to spiritually rehabilitate those who were housed there. Not only did the Houses of Occupation keep the poor and, in theory, crime off the streets, it aided in the war

against indolence as the homes created work for petty thieves, beggars or those who refused to work. Phillipa Hardman, author of “The Origins of Late Eighteenth-Century Prison Reform” commented on the issue stating “ It is important to note that central as it was to living an honest Christian life, hard labour was advocated also by those seeking the religious rehabilitation of the sinful.”¹² The push of religious officials and nobility to fight back against crime was evident in the prison’s ability to reeducate the poor and criminal about Christianity and provide spiritual rehabilitation which was viewed as a necessary element to an abundant society.

However, the so called “problem of the poor” was not solved simply by locking them away. There were two main reasons crime would continue regardless of the prolonged imprisonment of petty thieves and beggars. First, during war times, there was always an influx in crime for a period of two to three years as returning militia men were reintegrated into society.¹³ The second reason of criminal reoccurrence in London was the simple fact that the transition from the Houses of Occupation to the real world would be too dramatic of a shift. Hardman recognizes that the longer the longer a thief is imprisoned, the more desperate their situation is when they are forced out.¹⁴ We must remember that thieves during this time often committed petty crimes based on survival. The usage of hard labor persisted throughout the Enlightenment, however, English officials realized that, while the houses of occupation *were* lowering crime rates to some degree, they were not curing immorality nor were they stopping others from committing new crimes.

¹² Phillipa J. Hardman. "*The origins of late eighteenth-century prison reform in England.*" PhD diss., University of Sheffield, 2007, 77-83.

¹³ S. Devereaux, "*Recasting the Theatre of Execution: The Abolition of the Tyburn Ritual,*" *Past & Present* 202, no. 1 (2009), 134.

¹⁴ Phillipa J. Hardman. "*The origins of late eighteenth-century prison reform in England.*" PhD diss., University of Sheffield, 2007, 89.

Although the Bloody Code was not abolished until well into the 19th century, citizens, reformers and philosophers had been voicing their concerns and trying to make changes to England's increasingly strict penal policy for years. Rationales for changing the existing penal system were varied. Popular narratives for change included the disproportionality of sentences, public disturbance caused by the large gathering crowds, and the public perception of the deaths of Christian men and women. One man, Sir Edward Coke, commented on the executions in 1644 stating, "what a lamentable case it is to see so many Christian men and women strangled on that cursed tree of that gallows." As the years edged closer to the turn of the century, the ground work for the Bloody Code started to solidify. As tensions grew, reformers began protesting the penal codes. In the year 1647, English reformers submitted their, "Large Petition to Parliament which demanded, among other things, that the government should 'proportion punishments to offences so that no man's life may be taken, his body punished, nor his estate forfeited but upon such weighty and considerable causes as justly deserved punishments..'" Similarly, in June of 1652, another petition was submitted to Parliament from the citizens of London and those in surrounding regions demanding more proportionality. During this time, the Levellers, a political movement committed to popular sovereignty, religious tolerance and equal treatment by the law began incorporating "reformist discourse" into their political campaigns.¹⁵ The steady determination and push for the dismissal of Bloody Code by philosophers and social reformers, however, was met with an unwavering advocacy by the Church of England to enforce the new policy.

¹⁵ Phillipa J. Hardman. "*The origins of late eighteenth-century prison reform in England.*" PhD diss., University of Sheffield, 2007, 90-91.

The reluctance of the Church of England and Parliament to modernize criminal law with contemporary philosophies, however, was due to an attempt to deter the “criminal class” from partaking in undesirable activities.¹⁶ Deterrence took shape in the form of public executions, gibbetting and parading criminals through the streets.¹⁷ Despite the push back in the 50s, by 1688 there were already 50 offences that could result in the death penalty. In the year 1765, however, that number more than tripled as there were 160 crimes punishable by death and, finally, in 1815 there were 220 crimes that could result in death. Seemingly petty crimes were capitally punishable such as cutting down trees, pickpocketing goods worth more than one shilling, and being out at night with a blackened face.¹⁸

At first, the public deaths of individuals seemed to have served their purpose as spectators were astounded and disgusted by the sufferings of others. Robert B. Shoemaker provides evidence of these emotions in his article as he recalls the testimonies of those who witnessed the executions. Shoemaker recounts of the tale of James Boswell who witnessed the 1763 execution of Paul Lewis. Boswell wrote in his diary that he was drawn to the execution to witness the melancholy spectacle he was, “most terribly shocked, and thrown into a very deep melancholy.” In a similar situation, Sylas Neville went to see the dissected body of Elizabeth Browning in 1767 calling it, “a most shocking sight’ and he wished he had not seen it.” Shoemaker continues and adds that Neville never personally witnessed any executions thereafter.¹⁹ The disgust and fervor towards public executions was carried by the growing middle

¹⁶ Robert B Shoemaker, “Worrying About Crime: Experience, Moral Panics and Public Opinion in London, 1660–1800,” *Past & Present*, Volume 234, Issue 1, 1 February 2017, Pages 71–100.

¹⁷ Cockburn, J. S. "Punishment and Brutalization in the English Enlightenment." *Law and History Review* 12, no. 1 (1994): 155-79. <http://www.jstor.org/stable/30042825>, 170.

¹⁸ Julian B. Knowles, *The Abolition of the Death Penalty in the United Kingdom: How It Happened and Why It Still Matters* (Death Penalty Project), 9-20.

¹⁹ Christopher Fuqua, "Public Spectacles and Divine Justice: The Collapse of Public Executions in England, 1730-1840," *The Chico Historian* 28 (2018).

class into the eighteenth century and supported by Enlightenment philosophers such as John Locke, and Cesare Beccaria.

The Age of Reason was perhaps the biggest stimulus to penal code reform throughout Europe. The revelation of human understanding and the new-found concept of symmetry between action and consequences, radically challenged pre-existing punishment doctrine. Although people such as Thomas More had been writing and fighting for change of the malicious, capital punishment code in England since 1515, Enlightenment thinkers such as John Locke (1632-1704), initiated a new era of reform. Locke, an English philosopher is widely regarded as one of the most influential thinkers during the Enlightenment. Locke's writings on human understanding, reason and government stimulated change for successive thinkers. In Locke's 1689 publication, *Second Treatise of Government*, Locke reveals that, in general, he believed in the importance of a governing body and that it is the responsibility of the people to obey the government. However, a mere blind support of the government would be contradictory to previous thought and would do very little as a stimulus to social change. Instead, Locke explores the extent of man's responsibility to obey the ruling authority and when it is morally justifiable to do defy it.

Although Locke never directly discusses penal code or its reform, his main ideas and assertions lie with the responsibilities of the government and its people. Locke's major contribution to penal code reform are a product of his philosophy on the roles of government. Locke believed that ones' conscious came from God and that people could not obey their conscience and commit wrong doings. He also advocated that it was the social responsibility to obey God and the government. In Locke's writings he makes it clear that the governing body

should be conducting themselves in a manner that is also in accordance with God's will.²⁰

However, in England and other areas of Europe like Italy, it was obvious that the governments were in fact not creating just realms. Locke's new idea on the role of government acting as a moral safeguard to the people and the idea that the government was supposed to protect its citizens, challenged English doctrine on crime and punishment. These ideas began to circulate throughout Europe, the mindset of the European people began to change, and citizens and reformers alike began to challenge their legislative bodies.

Locke's idea of a government for the people inspired radical new chains of thought. Many of those changes took place in governmental structure, however, the idea of a government as a protective body instead of an authoritarian regime inspired many other thinkers and began to sway public opinion. Cesare Beccaria (1738- 1794) was one of those inspired by Locke's exploration of the role of the government and reason. A young Beccaria continuously met with Alessandro and Pietro Verri and together they established the "Academy of Fists;" a group dedicated to economic, political and administrative reform. Inspired by the 1689 publication of *Concerning Human Understanding* by Locke and other prominent thinkers he published his first major work in 1764 entitled, *On Crimes and Punishment (1767)*. Beccaria's treatise condemned the death penalty and torture. Beccaria believed that it was the role of the government to rehabilitate criminals and reintroduce them into society. Beccaria believed that alternatives to death penalty should be explored such as hard labor and transportation.²¹

²⁰ Internet Encyclopedia of Philosophy, accessed April 19 , 2019, <https://www.iep.utm.edu/locke-po/>.

²¹ In the year 1717 the British penal system was becoming overrun with criminals. Under the current legislature, parliament would have to sentence hundreds more people to die. Realizing the immorality of mass capital punishment to such a scale, the government passed the Transportation Act. This Act enabled the government to send criminals to the colonies as indentured servants as an alternative to execution.

Perhaps Beccaria's most influential point in his essay is that European law was desperately in need of proportionality between crimes and punishments. In Chapter XI, "Of the Execution of Sentences", Beccaria begins, "Must we go to the extremities of the Earth, must we have recourse to the law of China, to learn how sparing we ought to be of human blood?" In the ensuing chapters, Beccaria advocates abolishing the death penalty and calls for a uniform judiciary system in which local governments are not allowed to assign the death penalty. Beccaria's essay makes direct attacks on the British penal system and how they attempted to remove the lower class in an attempt to eliminate crime however, Beccaria argues, "We have proved in some cases by the continual relapses occasioned by very small causes, or even without causes, when not only the economic environment has been changed, but when all the circumstances that might encourage crime have been removed; and we have proved it especially by the increasing recidivism in London, notwithstanding the great efforts by Great Britain to suppress the causes which produce crime." In this section, Beccaria calls out English penal code by labelling it ineffective. He continues to make jabs at English codes in his later chapters. In Chapter XVIII, "Of Domestic Theft", Beccaria writes of the ridiculous nature of capital punishment against theft. He begins by painting an all too familiar picture for the reader portraying a servant or beggar committing petty theft as a means of survival or by necessity. The property owner *could* prosecute his servant, ultimately sending them to their death. However, Beccaria claims that society would recognize that the prosecution and execution of an "unhappy wench" would be ill filling and scorn the property owner.²² As a result of these circumstances, it is likely that the property owner would care too much about his own image and the life of the

²² Marchese di Beccaria, Cesare. *An Essay on Crimes and Punishments*. Philip H. Nicklin, 1819, 49-215.

servant to prosecute and would then release the servant instead. However, when the thief's behavior goes unchecked, he will continue to steal and crime will soar.

The phenomenon of a public afraid to prosecute is one that is not just believed by Beccaria. Other scholars such as Devereaux, specifically wrote of the effect harsh punishment has on a society that solely believes in deterrent as a means of alleviating crime. By the mid to late 1700s, English officials had been ignoring the philosophical advances in penal reform for decades. The unwillingness to accept new ideas stems from the war against morality and the nobilities desire to dramatically reduce or eliminate the "problem of the poor." In a similar situation that Beccaria had recalled in Chapter XI, the common people began to ignore petty crimes to save the lives of their fellow citizens. However, in 1767, levels of crime began to spiral upward in a pattern the city had not seen before. In response to the crime wave, the number of capital charges at the Old Bailey skyrocketed, peaking over 750 death sentences per year between 1780 and 1785. Devereaux, consequently, exposes, "Tyburn executions had clearly been revealed to be devoid of deterrent effect for at least fifteen years before their abolition."²³ The frightening reality of the ineffectiveness of deterrence, perhaps, in addition to other relevant factors, could be associated with the eventual abolition of the Tyburn ritual. Beccaria, however, does not provide criticism without a means of fixing the problem. He ends Chapter XVIII by stating, "But, if the punishment is proportioned to the crime; if the domestic guilty of theft be condemned to labor on the public works; then a master would not hesitate about his conviction, because the public feeling would not stand in his way; and theft would be less frequent. Experience furnishes the lesson, that vigorous laws are productive of crime."²⁴ Beccaria's

²³ S. Devereaux, "Recasting the Theatre of Execution: The Abolition of the Tyburn Ritual," *Past & Present* 202, no. 1 (2009): , doi:10.1093/pastj/gtn019,134-135.

²⁴ Marchese di Beccaria, Cesare. *An Essay on Crimes and Punishments*. Philip H. Nicklin, 1819, 218-219.

treatise was publicly endorsed by Catherine the Great and inspired both lawmakers and civil servants to reconsider their heinous penal codes. Beccaria soon became known as one of the Fathers of criminal justice.

For some time, it appeared as if deterrence theory had worked as fewer poor were seen begging on the streets. However, the executions eventually became a popular form of entertainment and social gathering among the lower class. In the late eighteenth century, an unexpected growth in population led to a dramatic increase in the poverty level and, in turn, the crime rate. Spurred on by massive support of the lower class, executions during the 1770-80s increased drastically. Christopher Fuqua, author of, *Public Spectacles and Divine Justice: The Collapse of Public Executions in England, 1730-1840* commented that, in addition to the support of the lower class, the increase in executions were traced, “to a newly found fear of crime held by the emerging bourgeoisie created by the economic growth of the early industrial revolution in England.” Unfortunately for the Church of England and English politicians, by the time of the crime spike, the executions were massive fair-like gatherings that no longer possessed the capability to deter. Fuqua commented on the execution’s similarity to “Roman-circus atmosphere” and “an age old plebian festival, always rowdy, often cruel, and increasingly shocking.”²⁵ The author determined that, while the gruesome visual threats and warnings may have been enough to terrify the middle class and the nobility, the executions had transformed from a platform of fear into entertaining spectacles. By the end of the eighteenth century, the

²⁵ Christopher Fuqua, "Public Spectacles and Divine Justice: The Collapse of Public Executions in England, 1730-1840," *The Chico Historian* 28 (2018), 90.

newly formed middle class and the existing literature by men such as Beccaria, Locke, Jeremy Bentham, William Bum and numerous others drove penal code reform in England to a head.²⁶

Articulation of philosophical ideas concerning penal code led to a transformation of thought among the English. Contention toward penal policy and its affect upon society was voiced in magazines and in other public realms. One contributor to *The Gentle Man's Magazine* in 1786 states, "As punishments become more cruel, men become more ferocious." Other commentators began to question the link between the public viewing of executions and the temper of society.²⁷ Certainly, it was never the Church of England's nor Parliament's intention to desensitize English citizens to cruel and undeserving deaths. However, it is evident in the eventual support and fair like procession of the executions by the lower class that the viewings did, in fact, have an adverse effect. Public awareness of contemporary Enlightenment ideals drove a wave of change among social reformers. The progressive ideas of men such as Beccaria, Howard, and Bentham and evangelical missionaries such as Elizabeth Fry lead to a large scale change in which the existing penal systems were replaced with "enlightened alternatives."²⁸

Some scholars argue that late eighteenth-century prison reform was not motivated by a revulsion to the cruelty, but by a realization of identifiable issues in the judicial system. Scholars argue that it was no longer the issue of cruelty, but the amount of recognizable issues that deterrence failed to solve. For example, those who were imprisoned were released back into the general population in a worse socio-economic position than they had been before they were

²⁶ Phillipa J. Hardman. "The origins of late eighteenth-century prison reform in England." PhD diss., University of Sheffield, 2007, 90-91.

²⁷ Cockburn, J. S. "Punishment and Brutalization in the English Enlightenment." *Law and History Review* 12, no. 1 (1994): 155-79. <http://www.jstor.org/stable/30042825>.

²⁸ Phillipa J. Hardman. "The origins of late eighteenth-century prison reform in England." PhD diss., University of Sheffield, 2007, 90-91.

imprisoned. English officials had attempted to create alternatives to capital punishment and imprisonment to further deter crime. One of the most notable measures was the Transportation Act of 1717 which allowed convicted criminals to be sent to the colonies or elsewhere as an indentured servant instead of public execution. However, the sheer volume of those convicted in the last two decades of the 18th century over ran the government's attempts to legitimize deterrence.

After decades of hangings, in 1770 a man named William Meredith suggested to Parliament once again to consider more proportionate punishments. Meredith's proposal was rejected; however, it started a post-Enlightenment movement to create proportionality throughout criminal law. Inspired by Enlightenment philosophers and Parliament's denial, Samuel Romilly became the figure head of the movement to decapitalize minor crimes.²⁹ In 1807, Romilly successfully persuaded Parliament to remove personal theft from the list of more than 200 capital crimes. In the ensuing decades Romilly pursued and advocated for alternatives to the death penalty. Over the years he became bolder in his demands and eventually sought provisions to reduce harshness in occurrences of treason in 1814. After Romilly's death in 1818, fellow abolitionist champions took over and in 1823 rectified the Judgement of Death Act. The Judgement of Death Act was a major success for social reformers and was the first major law that enabled contemporary theory to house itself into the legislature. The Act abolished the mandatory death penalty and, for the first time, enabled judges to assign a punishment based on their discretion except in cases of murder or treason. Over the next forty years, England saw gradual abolition of capital punishment for most offenses. Just a few years later in 1832, The

²⁹ Julian B. Knowles, *The Abolition of the Death Penalty in the United Kingdom: How It Happened and Why Is Still Matters* (Death Penalty Project), 9-20.

Punishment of Death Act reduced the number of crimes punishable to death to sixty, and by 1861 that number was reduced to just four: arson in the royal Dockyards, piracy with violence, high treason and murder.³⁰

English attitude towards crime and correction in between the 16th and 18th centuries were based on the reliance of the English people to the church. In an attempt to eliminate corruption in England, officials initiated as a war against immorality and, as a result, the lower class. The formation of the Bloody Code was a symptom of public fear and the reluctance of English elite to adopt contemporary thought and rectify previous judiciary processes. Instead of adapting to change, Parliament and the Church of England insisted on ruling by deterrence and attempting eliminate the undesirable “criminal class.” However, an unstoppable emergence in Enlightenment doctrine and the growth of the middle-class lead to a change in social thought which sparked the movement to end the Bloody Code. The transformation of thought established in the Enlightenment, planted a seed for individual revolutionaries, such as Samuel Romilly and William Meredith, to create positive change in English penal code. This transformation of thought and the rapid recognition of issues led to the abolition of the Bloody Code and capital punishment in England.

³⁰ Julian B. Knowles, *The Abolition of the Death Penalty in the United Kingdom: How It Happened and Why Is Still Matters* (Death Penalty Project), 9-20.

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