Forging the Agenda: The 1819 Select Committee on the Criminal Laws Revisited

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This article revisits a crucial episode in the early nineteenth century criminal law reform debate: the appointment and report of the 1819 House of Commons select committee on capital punishment. This committee, which helped shape the reforms of the 1820s and 1830s, has traditionally been interpreted as the result of the campaign for penal reform in parliament over the preceding decade. This article argues that its origins and significance can only be understood by reference to the political circumstances of 1819 and the scandal surrounding the crime of forgery. This contextualised reading suggests new ways of approaching and understanding the early nineteenth century penal reform discourse.

At the turn of the nineteenth century in England over two hundred crimes were punishable with death. Less than half a century later this 'bloody code' had been almost completely abolished. From 1837 onwards, only murderers were hanged, most other serious offenders were transported or, increasingly, imprisoned. The speed with which this transformation came about is remarkable. Even in the 1820s, when the Home Secretary Robert Peel consolidated and clarified the law, the death penalty was still firmly entrenched in English law. In 1830 a new whig government came to power and in the space of a decade dismantled a system of punishment that had served England for centuries. A recent historian of the 'bloody code' comments: '[t]here has been no greater nor more sudden revolution in English penal history than this retreat from hanging in the 1830s.'
This article revisits one critical episode in the lead up to this 'revolution': the appointment and report of the 1819 House of Commons select committee on the criminal laws relating to capital punishment. The committee has been awarded an important station in penal reform narratives. Its appointment, in the face of government opposition, has been viewed as a critical breakthrough for penal reformers in parliament. The detailed statistical and anecdotal evidence that the committee gathered provided vital support for the reformers' central contention that there was a dangerous discrepancy between the feelings of the people and the state of the criminal law. According to Radzinowicz, the 'committee reviewed the general state of crime in the community, assessed the punishments awarded by the courts and estimated the attitude of the public to the penal system of the country: but further than this, they submitted a constructive plan of reform.' Other historians have been less enthusiastic, but most accept that it was the fruit of the penal reform movement started by Samuel Romilly a decade earlier and that it set the agenda for the dramatic legislative changes that were to follow. Briggs comments that 'the real turning point [for reform] came not in 1822 when Peel went to the Home Office, but in 1819 when Sir James Mackintosh's motion for the appointment of a Committee of Inquiry into the criminal laws was carried against the government by a majority of nineteen.'

The importance of the 1819 select committee, according to these accounts, lies in its emphatic statement of the new image of justice that reformers were propounding. In this model, punishment had to be certain, proportionate and in harmony with public feeling. In the first thirty years of the nineteenth century this image of justice finally replaced an older one which maintained the need for harsh, discretionary
punishment. It is within the context of a struggle between these two dominant conceptions of justice that the significance of the 1819 select committee has been understood. Whilst hugely illuminating in many crucial respects, this pervasive, binary view of the penal reform discourse runs the risk of underestimating its complexity and overestimating its coherence. In particular, there is a danger of unquestioningly accepting the terms which the early nineteenth century reformers sought to impose on the debate. It was these reformers who first portrayed the unreformed criminal law as a 'bloody code': a monolithic mass of draconian measures, casually enacted in a former, more barbarous, age. The characterisation has proved remarkably durable; it is only relatively recently that historians have questioned it. Detailed analyses of the eighteenth century origins of many of the penal statutes that made up the 'bloody code' emphasise that many were a considered response to a reasonably perceived threat; the death penalty was not casually resorted to by a tiny propertied elite.

This revisionism suggests the need for a much closer reading of the history of the 'bloody code' which discriminates between the various property offences that were punishable with death. It cautions against the generalisations upon which historians have usually relied when considering the early nineteenth century debate, in particular, the idea that the criminal law was a homogenous mass of bloody statutes all of which were fatally undermined by the establishment of a new image of justice. Moreover, as Hilton has pointed out, in a valuable reappraisal of Peel's role as a penal reformer, the idea that one concept of justice simply triumphed over another seems too one dimensional, too 'whiggish'. It fails to accommodate the range of views that were expressed or the wide discrepancies within the ranks of those designated as
reformers or reactionaries. A detailed re-examination of the circumstances surrounding the appointment and report of the 1819 select committee may go at least some way towards recasting the nineteenth century penal reform debate in more particularistic terms.

Close analysis of the report produced by the 1819 select committee immediately suggests problems for traditional interpretations of its significance. The report contained plenty of evidence of public dissatisfaction with certain capital offences, but no sweeping indictment of the criminal laws, still less any attempt to set out a coherent long-term strategy for law reform. It scrupulously declined to pass judgment on the whole of the criminal law and focused on specific offences and most notably on the crime of forgery. This preoccupation reflected the prominence that forgery had assumed in public debate in the period 1818-1821 when the crime of uttering forged Bank of England notes was rife. In December 1818, two Old Bailey juries had signalled their dissatisfaction with the law by refusing to convict any of the prisoners charged with uttering forged Bank of England notes. This precipitated a crisis, which had dangerous political and economic ramifications and a profound influence on the appointment and report of the 1819 committee and the penal reform movement.

I.

The significance of the crime of forgery in the formidable list of offences that made up the 'bloody code' has been recognised by historians only recently. The anomalously high number of convicted forgers who were executed has always

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attracted attention but this is usually accounted for as a harsh and unthinking reaction to the emergence of new economic forms, typical of the era of the 'bloody code'. McGowen has demonstrated the inadequacy of this response in a number of articles which present a much more subtle reading of forgery in the eighteenth century. He links the dramatic rise in the number of forgery statutes with the financial revolution of the late seventeenth and early eighteenth century. As the security of the nation and its capacity to sustain war came to be seen as dependent on its system of finance, the government became increasingly anxious to protect it. Thus, the vast majority of the new forgery offences were very narrow in scope and were annexed to statutes dealing with the revenue and state finance. A different type of threat was exposed in 1728 when a scandalous forgery highlighted the interdependence of private and public finance and led to an unusually sweeping statute that punished the forgery of private instruments with death.

These measures were not a response to an increase in the incidence of the crime; on the contrary it remained rare throughout the century. They were driven by the fears of the governing classes and the judges insisted on their strict enforcement, notwithstanding the absence of any real pressure from the commercial classes. Forgery exposed the vulnerability of a financial system built on paper and fears about the crime were bound up with deeper concerns about the reliability of exchange and the security of public finance. In a world 'haunted by debt, financial insecurity, and ruin … severity was a way of holding one's fears at bay. Thus the authorities punished forgers more severely than any other type of property offender; only convicted murderers were less likely to escape the gallows.
The eighteenth century policy of maintaining economic confidence through severity was sustainable as long as the number of forgery prosecutions and executions remained low. However, at the beginning of the nineteenth century, there was a decisive shift in the nature and extent of the crime. The suspension of cash payments in 1797, due to a shortage of gold in the Napoleonic wars, forced the Bank of England to issue £1 and £2 notes for the first time. These notes proved easy to forge and had to be used in daily transactions by a class of people wholly unfamiliar with paper credit. The result was a dramatic increase in the crime of forging or uttering Bank of England notes. In the fourteen years prior to the 1797 Restriction there were only four prosecutions for the crime; in the period 1797-1817, there were 972.\textsuperscript{15} The problem was particularly acute in London where transactions between strangers involving bank notes were much more commonplace.\textsuperscript{16} The Bank of England took on the task of prosecuting. It was able to manipulate the system by allowing some offenders to plead guilty to a non-capital charge of possession, whilst prosecuting those who refused to plead guilty or who were particularly persistent offenders, with the capital offence of forging or uttering counterfeit notes.\textsuperscript{17}

Almost one third of the people hanged in London in the period 1800-1818 were forgers.\textsuperscript{18} This severity ensured that forgery retained a central position in public perceptions of the criminal law, however it was only in the period after 1815, when the volume of forged notes in circulation increased rapidly, that the Bank's prosecutions began to arouse serious controversy. This controversy stemmed from its link with the system of paper money that had been in place since the 1797 Bank Restriction. The suspension of cash payments was only meant to have been a temporary wartime expedient. After the peace with France in 1815, the question of
the possible return to cash payments became a key political issue.\textsuperscript{19} Opponents of the Restriction pointed to the number of forged notes in circulation and the number of forgery executions as a particular evil of the paper system. In 1816 and 1818, Parliament demanded accounts from the Bank which showed the number of forged notes presented for payment. These indicated that the incidence of the crime was outstripping convictions to an alarming degree.\textsuperscript{20} In 1817 for example, there were 31,180 forged notes presented at the Bank but only 128 convictions for forgery or possession of Bank of England notes.\textsuperscript{21}

In the second half of 1818 the situation reached a crisis point. Radical journalists used the rising number of Bank prosecutions to focus their attack on the paper system and their demands for a return to cash payments. They argued that the Bank and the government had stolen the hard-earned wealth of the country and replaced it with worthless notes. The paper system was a fraud on the people and forgery illustrated the point perfectly. William Cobbett was the first to exploit the issue by suggesting that there was no difference between the notes produced by the Bank and those produced by the forgers. He outlined a scheme to 'puff out' London with a great volume of forged notes and hence collapse confidence in the currency.\textsuperscript{22} Writing from America, he was unable to keep up with the latest developments, but Thomas Wooler, in the leading radical publication of the period, the \textit{Black Dwarf}, carried on the attack in his inimitable style.\textsuperscript{23} He conducted a campaign designed to subvert the Bank prosecutions and specifically urged jurors to reject the Bank's evidence in the trials.\textsuperscript{24} As the crisis in the forgery trials developed from September through to December 1818 the two issues fed off each other and generated momentum. The highly reactionary newspaper, \textit{The New Times}, complained in December that factious
newspapers 'endeavour to confound the question of cash payments with that of the law against forgery' in the hope of driving parliament 'into the dilemma of wither adopting a mischievous policy, or resisting a popular clamour.'

The controversy centred on the Old Bailey. In the second half of 1818, juries began to express doubt about the Bank's evidence that the notes in the trials were forged. In the December sessions at the Old Bailey, two juries acquitted all of the prisoners charged with the capital offence of uttering forged notes. They did so in the face of clear directions from the judge to convict and on evidence that had been sufficient to convict countless forgers and utterers in previous years. This forthright rejection was highly unusual in eighteenth and early nineteenth century criminal trials. Whilst jurors often committed 'pious perjuries' in order to mitigate the law, this practice usually involved tacit official acquiescence and took place covertly. The December 1818 acquittals were of a different magnitude and stemmed from the jurors' unwillingness to accept the evidence of the Bank which in turn derived from fears concerning the reliability of the currency. The acquittals were followed by the highly controversial executions of three utterers who had been convicted on similar evidence to that rejected by the jurors in December. These events precipitated a crisis within the criminal justice system and a widespread debate on the best means of preventing forgery.

II

The problems surrounding forgery have passed almost unnoticed in penal reform histories, notwithstanding the fact that they coincided with a critical period in the
penal reform movement. This is perhaps due to the assumption that the reformers' victory in securing the appointment of a select committee in 1819 was the culmination of efforts both inside and outside parliament over the preceding decade. In parliament, Sir Samuel Romilly famously led the campaign for criminal law reform. Although he enjoyed some success in establishing penal reform as a political issue, Romilly’s labours yielded very few substantive achievements. He managed to abolish the punishment of death for two crimes: stealing from the person (pickpocketing) and stealing from bleaching grounds. He also steered various measures through the Commons only to be defeated in the Lords. Even in the Commons however, he had difficulty generating interest in his bills and sometimes had to drop them because there were not enough M.P.s present. It is also noteworthy that the nature of the changes that Romilly was recommending was very limited, he confined himself to criticising laws that were more or less obsolete. He persisted, but when in 1818 his last attempt to abolish the death penalty for shoplifting followed the familiar pattern of getting through the Commons but failing in the Lords, there were few signs that he was on the verge of more radical success.

Outside parliament the campaign for penal reform was orchestrated by the Society for the Diffusion of Knowledge on the Punishment of Death and the Improvement of Prison Discipline (SDKPD). This society, formed in 1808, comprised a number of Quakers, notably William Allen and was led by Basil Montagu, a barrister and a consistent advocate of penal reform. Taking its cue from the anti-slavery movement, it published tracts upon the subject of capital punishment and drew upon Quaker bankers and local meeting houses for funding and support. It was not a large movement: three years after its formation in 1811 it had only two hundred and eighty-
seven subscribers\textsuperscript{31} and only £1,173 was subscribed between 1808 and 1814. Between the years of 1814 and 1816 the society had to suspend its activities because of a lack of funding.\textsuperscript{32} It recommenced its activities in January 1816 but still failed to attract a great deal of attention or money. The tracts it published, and others notably from Romilly himself, prompted some sporadic debate on the criminal laws and unquestionably increased public awareness of the problem of crime. Compared to the effort to abolish slavery however, the results were not impressive.\textsuperscript{33}

The Quakers' failure to attract widespread support or interest mirrored Romilly's difficulties in parliament, but the fact that the penal reform movement was small should not lead to the conclusion that it was impotent. Propaganda was a powerful tool and determined philanthropists such as the Quakers with good organisation were capable of creating 'opinion'.\textsuperscript{34} The SDKPD and the Quakers organised petitions to be sent to parliament, which had some effect on proceedings there.\textsuperscript{35} These were notable successes but they did not suggest that the small group of reformers operating inside and outside parliament in the 1810s was capable of persuading the House of Commons to adopt a full-scale inquiry into the criminal laws in the face of government opposition as it did in 1819.

The crisis in forged Bank of England notes provided the critical momentum but the opposition to the forgery laws cannot be assimilated into the more general movement for penal reform. It did not stem directly from a deep-rooted opposition to punishing forgers with death; there was nothing new about hanging forgers. The question of whether forgery should be a capital offence was invariably linked with the paper system. The growing public dissatisfaction with the failure of the Bank of England to
prevent the forgery of its notes was at the root of the crisis. This dangerous economic threat preyed on fears about authenticity and the security of exchange, a feature that had made the crime of forgery seem so subversive and serious in the eighteenth century. It was extremely difficult to distinguish between forged and genuine notes and traders could do little to protect themselves. The Bank found itself in an increasingly isolated, invidious position. It recognised the gravity of the situation and devoted substantial resources to efforts to find an improved method of printing its bank notes but without success.\textsuperscript{36} The continued failure to find a new method of printing the notes only added weight to the calls in parliament to renew cash payments.\textsuperscript{37} In 1818, a petition to the House of Commons from a retailer in London, claimed that the forgeries had increased to such an alarming degree that many Bank of England notes were refused by shopkeepers on Oxford Street.\textsuperscript{38} Moreover, the Old Bailey trials cast doubt upon the ability of the Bank of England itself, to distinguish between forged and genuine notes. Suspicion, the ‘mortal foe of all paper money’\textsuperscript{39}, threatened to spread rapidly.

The origins of the crisis then owed little to the critique of the capital laws that was being expounded by Romilly and his fellow law reformers in parliament and without, but its effect was to open up the criminal justice system to widespread public scrutiny. The link with the question of cash payments ensured that many people who would not have concerned themselves with penal reform normally took an interest in the issue. The radicals were most prominent in decrying the paper system and the Bank at its head, but these concerns were echoed in politer circles. Respectable newspapers linked the two issues. \textit{The Times} commented that ‘the evil [of forgery executions] … is irremediable, while there continues an exclusive paper circulation.’\textsuperscript{40} Even in high
political discourse, disquiet was being expressed in private at the 'dreadful noise' that was being made out of doors over the question of forged bank notes.\textsuperscript{41}

At the beginning of the 1819 parliamentary session the clamour was at its height. In January, the satirical artist George Cruikshank produced his own \textit{Bank Restriction Note} which, when published by William Hone, proved hugely popular with the public. The note, which at first glance appeared to be a normal Bank of England note, pictured a line of eleven men and women hanging. The bottom of the note bore a grim pledge from Jack Ketch the hangman:

'I promise to perform, during the issue of Bank Notes easily imitated, and until the resumption of cash payments, or the abolition of the Punishment of Death, for the Governor and the Company of the Bank of England, J. Ketch.'\textsuperscript{42}

Over half a century later, in 1875, Cruikshank, in a letter entitled 'How I put a Stop to Hanging', immodestly declared it to have been the 'most important design and etching' that he had ever made in his life because it 'saved the lives of thousands of my fellow creatures'.\textsuperscript{43} Whilst this claim was clearly exaggerated, the note made a substantial impact. It was a best seller (Hone remarked that it was 'going like wildfire') and a second plate had to be made after between two and three thousand impressions had been made from the first.\textsuperscript{44} Cruikshank’s note neatly illustrated how the problem of forged notes connected two of the crucial political questions of the day, namely the return to cash payments and the question of criminal law reform.
Inside parliament, whig criminal law reformers were keen to link the forgery executions to the issue of cash payments. James Mackintosh commented that:

"Few questions had excited more interest among the public at large and perhaps the greatest interest had been felt among the quietest part of the community … at the course of guilt and blood which had followed the stoppage of cash payments."45

The trials and executions for forgery provided a stark public reminder of the evils of the paper system and the unreliability of Bank of England notes. The events also reflected very unfavourably on a criminal justice system that, despite the numerous Bank prosecutions and the frequent use of the capital sanction, seemed incapable of preventing the forgeries. This added weight to the political momentum towards a resumption of cash payments and galvanised the criminal law reform movement. At the beginning of the 1819 parliamentary session the government had no intention of tackling the cash payments issue or initiating a full-scale inquiry into the operation of the criminal laws, but by March it had conceded both issues.46

III.

The numerous petitions that were sent to parliament in the first half of 1819 have been cited as the most likely trigger for the appointment of the House of Commons select committee on the criminal laws.47 Yet most of the petitions arrived after the decision had been taken: of the sixty-eight petitions that were presented to parliament between February and June 1819, only fifteen arrived before Mackintosh's motion on 2 March. The rest of the petitions came in steadily over the next three months, some may even
have been prompted by the forgery crisis. The one petition that was awarded special weight in parliament was that from the Court of Common Council in London. The Council took the decision to present the petition in the midst of the forgery crisis and *The New Times'* suspicions that 'under cover of petitioning the Legislature on the topic of general concern' the Common Council was trying to 'cast an odium' on the Bank of England, spoke revealingly of its impact. The Common Council's petition was presented to parliament on 25 January, the day before a Royal Commission report on modes of preventing forgery appeared and in the same week as Hone published the *Bank Restriction Note*. At the end of the week, the radical publication *The Gorgon* complained that the Regent's speech at the opening of parliament contained nothing about parliamentary reform or the Bank restriction and that the 'forgery laws and our ferocious criminal code are likewise passed over in silence.' In similar vein, the Middlesex Grand Jury stated in its declaration after the January Old Bailey sessions, that its duties had been rendered 'more acute' by the forgery prosecutions and expressed the 'hope that a revision of the Criminal Code is in contemplation, and more particularly the law respecting forgery of Bank notes.'

It was in this highly favourable political climate that Mackintosh moved for the appointment of a select committee to consider the criminal laws relating to capital punishment. In his speech proposing the committee in the House of Commons, Mackintosh was careful to dissociate himself from any popular clamour and also from any scheme to radically reform the criminal justice system. Thus he expressed the modest aim of abolishing the death penalty for offences where the law was never put into operation. His stated object was to 'make the laws popular, to reconcile public opinion to their enactments, and thus to redeem their character.' He warned that it was
one of the greatest evils that could befall a country 'when the criminal law and the virtuous feelings of community are in hostility to each other.' The most vivid and recent manifestation of this hostility had been in relation to the forgery acquittals and executions, a point highlighted by Thomas Fowell Buxton, who delivered the other major speech in favour of the motion. He explicitly exploited the forgery crisis to underpin his contention that the death penalty failed to deter criminals and discouraged prosecutions and convictions. The proof of jury reluctance to convict in capital cases came from the December acquittals in the forgery trials. Buxton's argument that capital punishment did not operate to deter criminals was based on the detailed figures available for the incidence and convictions for forgery. In addition, he repeated rumours that had circulated in the press after the execution of one of the utterers in December 1818, that when his body was delivered to his widow and friends they were seized in the act of passing forged notes. The story summed up the case against capital punishment.

In terms of hard facts and figures and the apparently unequivocal evidence that the recent acquittals and executions afforded of popular sentiment, the forgery crisis was an invaluable weapon in the hands of the reformers. It also provided the reform movement with an impetus and urgency that was previously lacking. When Buxton rehearsed the standard arguments in favour of reform, he did so with unprecedented venom. He called the law 'vicious in principle, and productive of crime in its consequences' and referred to executions for forgery as 'monstrous'. Just a few years earlier such contempt for the existing laws would have been unthinkable in parliament and is indicative of a new confidence amongst reformers to attack the law. Crucially, Buxton's argument derived its force from its emotional resonance. The forgery laws
had aroused passions and a level of interest that were lacking in previous debates on the subject.\textsuperscript{56}

Mackintosh and Buxton allied the strength of feeling over the paper system and the Bank of England prosecutions for forgery with the move for penal reform. It was the added weight that this gave to the reformers' arguments that enabled them to obtain a majority of nineteen in favour of the motion and defeat the government. This was an important victory for the people who favoured some sort of reform of the criminal law. However, the increasingly confident statements made by men like Mackintosh and Buxton in parliament need to be interpreted within the particular context in which they were expressed. They cannot be extrapolated and situated in a penal reform discourse in which a 'new' image of certain and proportionate justice gradually supplanted an 'old' one which favoured severe and discretionary punishment. That was not where the main thrust of the debates over the appointment of the 1819 select committee lay. Moreover the forgery crisis was not simply the trigger for the appointment of the committee. The political factors that were so important in the appointment of the committee, filtered through into its actual activities and the resultant attempts at penal reform.

IV.

In July 1819, Mackintosh presented a report to parliament on the progress of the committee. He referred to the evidence that the committee had heard from traders who gave their opinion 'respecting the crimes of shoplifting, stealing in warehouses above the value of forty shillings, and, above all, respecting the crime of forgery.'\textsuperscript{57}
This evidence pointed to reluctance amongst such traders to use the criminal law and a widespread desire for penal reform. Mackintosh then went on to make explicit much of what had underpinned the debate over the committee's appointment. He stated that the resumption of cash payments 'ought to induce the House to consider the amendment of the laws respecting forgery as an imperative measure. The reforms proposed by the committee were intended to 'restore to the Bank, and to all connected with recent events of a financial nature, the character which has been so seriously endangered. The crucial factor in the committee's calculations, according to this declaration was the public resentment of the Bank of England and the implications which that resentment had for the status of the Bank both in relation to the government and in terms of its future role. The importance of this policy consideration is manifested by the prominent role that the forgery laws played in the committee's inquiries and in the report that it eventually produced.

The committee heard evidence from people who had direct experience of the criminal justice system as prosecutors, witnesses and jurors. The views of reform minded middle class people were clearly sought out, leading to a seriously flawed approach. Almost all the traders and bankers had prepared stories of instances where a reluctance to see the death penalty enforced had resulted in the offender escaping with impunity. In 1821, the M.P. and banker, John Smith, who was one of the witnesses before the committee defended its methodology and indicated where its main concern lay. He stated that the witnesses were: 'fairly collected … and were supposed to be individuals extremely well acquainted with the nature, application, and effects of the criminal law, particularly with respect to the crime of forgery. Committee members clearly had prior knowledge of what many of the witnesses were going to say and
were so successful in packaging and culling the evidence that they were able to present testimony that was 'perfectly uniform'.

The report that the committee produced has been called a 'document of permanent value' by Radzinowicz, and a 'remarkable bit of propagandising' by McGowen. Both views are tenable: reformers clearly manipulated the content of the report but the inclusion of the statistical returns in the appendices justifies Radzinowicz's praise. The committee recommended the repeal of a number of obsolete statutes and the revival of a number of bills that Romilly had got through the commons. Its most radical proposals were contained in the final section of the report which dealt exclusively with the crime of forgery and which opened with an unusually forthright statement:

'There is no offence in which the infliction of death seems more repugnant to the strong and general and declared sense of the Public, than forgery; there is no other in which there appears to prevail a greater compassion for the offender and more horror at capital executions.'

The opinions of various witnesses were extracted from the evidence to back up this view. The committee recommended that the punishment of death be abolished for all cases of private forgery and first time utterers of Bank of England notes, but retained for forgers of Bank of England notes and common utterers, defined as a person who had committed more than one offence of uttering. The exception for forgers and common utterers of Bank of England notes was justified on the grounds that so long as the small notes continued to constitute the principal part of the circulating medium
it was reasonable to place them on the same footing as the metallic currency. Of all the recommendations contained in the report, those relating to forgery were the only ones, which if adopted, would have resulted in significant changes in existing practice.

In making the forgery recommendations, the committee was criticised by John Miller in the *Quarterly Review* for attaching far too much importance to the forgery acquittals and executions of December 1818. In particular he attacked the committee's deference to the resulting clamour that 'had scarcely any perceivable connexion with the general question about the propriety of capital punishment for forgery.' The committee openly acknowledged the influence of popular opinion on its recommendations by stating that public feeling and the return to cash payments rendered the reform of the forgery laws 'a matter of very considerable urgency.' This reason related exclusively to the question of forgeries of Bank of England notes but the recommendations of the committee for law reform related to every type of forgery. The question of private forgeries was conveniently latched on to the outcry over forged bank notes to produce the most wide-ranging proposal offered up by the committee. A stream of Quaker bankers, many of whom subscribed to the SDKPD, testified to a reluctance to prosecute for private forgeries, adding the necessary evidence of middle class experience to the public clamour over forgery. This combination, of popular clamour and respectable middle class opinion, was a potent one and explains why the reformers picked forgery as the focal point for their legislative efforts.
Whilst the committee was still hearing evidence, Mackintosh wrote to Lord Grenville outlining the measures that he proposed to bring based on the report. Mackintosh discussed some 'unobjectionable' measures and the possible revival of some of Romilly's bills, however the main part of the letter was devoted to 'the difficult and painful question of forgery'.

'The Executions for forgery have chiefly contributed to produce a general call for reformation in the penal system and if I have to acquiesce in a prolongation of the small notes without sufficient security against their being attended by such fatal consequences as heretofore I should justly forfeit all title to the confidence and support of the public. I cannot consider the mere hope of improvement in the standard of the notes as affording any such security.'

In 1821, Mackintosh introduced the Forgery Punishment Mitigation Bill, the centrepiece of the law reform measures brought from the report. Proponents of the bill insisted that reform was necessary to bring the law back into harmony with the feelings of the people. Buxton stated that he knew of 'nothing which reflects so deep a disgrace on our national humanity' as the history of the crime of forgery. The bill reached a third reading in the House of Commons, but was sabotaged by a late amendment moved by a government supporter that would have exempted most types of forgery from the bill. Mackintosh objected strongly to this amendment, claiming that many of his supporters had left the house thinking that no further opposition was intended. Despite further vehement objections from the whigs, Henry Brougham and Lord John Russell, the bill was lost.
The failure of the bill was a severe blow to the reformers. The resumption of cash payments in 1821 put an end to the bank note crisis and precipitated a loss of momentum in the criminal law reform movement. In 1822, the number of Bank prosecutions and executions dropped off dramatically and the urgency which had carried the 1821 bill so close to success was lost.\textsuperscript{73} Indeed, the lack of enthusiasm for criminal law reform in the couple of years after 1821 only serves to highlight just how important the forgery crisis was to the criminal law reform movement.

In 1822, Mackintosh attempted to focus attention to the criminal laws once again by proposing a resolution committing the House of Commons to consider early in the next parliamentary session 'the means of increasing the efficacy of the Criminal Laws by abating their undue rigour'. He conceded that the 'the very nature of the question was calculated to do anything rather than excite the general interest of the House.'\textsuperscript{74} In order to make his case he appealed to the 'feelings exhibited on the question of forgery':

'He would ask, whether the attendance of members had not been as numerous, and the feeling of the House as strong and as clearly manifested against ministers upon that question, as it had ever been found to be, or ever could be expected to be, upon a question merely of general legislation?'\textsuperscript{75}

The House of Commons adopted the resolution but, when Mackintosh moved late in the 1823 session of parliament for the adoption of a number of specific resolutions relating to particular crimes, he was defeated. Most of the resolutions were based on the 1819 committee's recommendations; one related to forgery and once again
Mackintosh highlighted its importance: 'It could not be denied that in the course of the last ten years, no capital punishment had excited so much odium and rendered the administration of justice so unpopular as that in cases of forgery.'\textsuperscript{76} In the event none of the resolutions was adopted, underlining Mackintosh's own description of the reforms effected by the 1819 select committee as 'small and scanty'.\textsuperscript{77}

V.

The interpretation offered here of the origins and significance of the 1819 select committee challenges the more orthodox view that it was appointed as a result of a growing consensus of the need for a certain and proportionate criminal law. The committee and the report that it produced need to be read in the light of the preceding forgery crisis, with all its economic, social and political ramifications. Far from simply endorsing a new, ascendant view on justice and punishment, the committee arose out of and was decisively shaped by, the peculiar political circumstances of 1819. Nevertheless the events of 1818-1821 witnessed an important shift in the penal reform debate. A newly invigorated critique of the existing laws emerged from the 1819 report and the consequent parliamentary debates. The forgery crisis was central to this critique, but did not simply 'activate' a pre-existing and growing body of opinion that was set against the criminal laws. Even following the forgery crisis and the 1819 select committee report, it was not obvious that much progress was likely to be made. In 1821, the forgery bill had failed, the bank note crisis seemed to be over and the tangible achievements of the 1819 committee were negligible. This undermines the view that by this period the reformers' argument had carried all before it rendering the tories' defence of the old regime a battle 'fought by a rear guard
against ideas that had already invaded the citadel." The reformers were by no means certain that their arguments would ultimately prevail, as Mackintosh's somewhat weary complaints about the difficulties of attracting attention to the subject of criminal law reform suggest.

Given this perspective on the state of the penal reform debate around 1820, the forgery laws assume critical importance. They became the battleground on which the dispute over the efficacy of capital punishment was fought. Arguments that had been used in the parliamentary debates over Romilly's proposals in the 1810s were employed alongside other ones that were unique to the forgery laws, most of which centred around the role of the Bank of England. Resentment of the Bank and the paper system was at the heart of the forgery crisis. Radicals harnessed public concern over the problem of forged notes to further their own attack on Old Corruption which in turn threw many of the inadequacies of the criminal justice system into sharp relief. The number of prosecutions appeared unmanageable and the Bank, as a highly visible symbol of elite power, seemed able to control the process at will. The trials and executions provided the focal point for the strong public feeling and in this light, it was inevitable that the forgery laws themselves came to seem draconian.

In its own terms the controversy over the forgery laws shifted understandings of justice and the criminal law substantially. It indicated that the criminal law was subject to the possibility of abuse and corruption, given the presence of a powerful participant like the Bank. The result was that the forger or utterer became an object of sympathy for the public. This sympathy was not grounded in principled opposition to
the death penalty for forgery. It was constituted by defining the utterer as the product of two unfair systems, the paper system and the justice system.

This spectre was unsettling for those in authority. Both proponents and opponents of mitigation in parliament saw a disturbing discrepancy between the way in which the forgery laws were viewed by the lower classes of society and the way in which the middle and upper classes viewed them. The banker, John Smith, thought that 'there was, amongst the lower orders, a general ignorance of the nature of the offence.' William Wilberforce agreed:

'although it was well known to the majority of that House, and of the intelligent part of the community, that the crime of forgery was the most destructive which could be imagined of the vital principle of a commercial nation, and that the correction of the crime was a matter of the greatest necessity, yet they must remember that ignorant minds looked on no offence more venial [sic].

Reformers wanted to mitigate the law to overcome this lack of accord between the law and popular feeling. The defenders of the severity of the existing law wanted a more certain application of the death penalty and an end to the Bank's practice of allowing guilty pleas. Thus both sides argued for more certainty in the law, the crucial difference came over the issue of severity. The withdrawal of small notes in 1821 resolved the particular problem of forged notes, but the underlying issue remained a critical feature of the penal reform debates in the following decade.
The centrality of forgery to the early nineteenth century penal reform debate has been overlooked by historians concerned to trace how enlightened ideas about punishment and criminal justice took hold in England in the early nineteenth century. The dominant view of the penal reform debate as a struggle between advocates of mild, certain punishments and defenders of harsh, discretionary justice has obscured some of its critical features. The 1819 select committee report cannot be integrated into this ideological framework as a particularly notable triumph for the reformers' image of justice. In 1819, that image was not clearly discernible in the parliamentary debates and few reformers had hopes, let alone plans to sweep away the great mass of capital statutes.

Contemporaries may have lacked a common notion of the need for a new model of certain and proportionate justice in 1819, but they did share a deep sense of unease and distrust regarding the operation of the forgery laws. This sense permeated through subsequent debates on the subject and, when combined with a number of high profile forgery cases in the 1820s, ensured that forgery remained at the heart of the capital punishment debate. Forgery was a uniquely subversive crime and its history is deeply bound up with that of the criminal law of the period. It cannot simply be subsumed into the catalogue of capital property offences that were reformed in early nineteenth century England. The events surrounding the crime in 1819 enveloped the criminal justice system in huge notoriety and prompted passionate debate over law reform. Scandal and individual instances of injustice like these were more likely to shift public perceptions and attitudes than were appeals to abstract principles of justice. The forgery crisis was a scandal on a national scale that incorporated a host of economic and social concerns into an already complex discourse. Its effect was to
imprint an indelible mark on the public consciousness of the criminal law and its lethal sanction, which altered the debate substantially. The death penalty for forgery, the most potent symbol of the law's severity, had become the most conspicuous signifier of its injustice.

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2 Report of the Select Committee appointed to consider so much of the Criminal Law as relates to Capital Punishment in Felonies, Parliamentary Papers, 1819, VIII. 1, (SC 1819).


9 The reformers' efforts to reform the 'bloody code' clearly fall within what Lieberman has called the Baconian approach to law reform. Thus reformers professed aims were to repeal obsolete statutes and consolidate the law to repair the damage done by an irresponsible legislature during the previous century. See D. Lieberman *The Province of legislation Determined Legal Theory in Eighteenth Century Britain*, Cambridge, 1989, 199-215.

10 Radzinowicz *History I*, 644.


12 The majority of forgers in the eighteenth century were prosecuted under this statute. For the origins and importance of this statute see: McGowen 'From Pillory to Gallows'.


14 In the period 1785-1794 there were only 38 convictions for forgery in London and Middlesex, as compared to 309 for highway robbery and 220 for burglary. Of these, the percentage executed was 71% for forgery, 44.2% for burglary and 39.1 % for highway robbery. The percentage for murder was 94.7%. See C. Emsley *Crime and Society in England 1750-1900*, 2nd ed, London, 1996, 258. Paul Baines, using figures reported by the prison reformer John Howard, has estimated that three quarters of all convicted forgers between 1749 and 1777 were executed: P. Baines *The House of Forgery in Eighteenth-Century Britain* Aldershot, 1999, 10.

15 *Accounts Relating to Prosecutions for Forging Bank of England notes* Parliamentary Papers (PP), 1818, XVI, 161. A lower figure of 860 for the 21 years after the Restriction was given by Mackintosh in parliament: 1 Parliamentary Debates (PD) XXXVIII (1818), 697.
There were also no country bank notes in London which meant that the Bank of England notes were used more than in most of the other parts of the country where there was a local supply of notes.

The capital indictments were founded upon 45 Geo. III, c. 89 which superseded 15 Geo. II, c. 13.

The indictments for the minor offence of possession were founded upon 41 Geo. III, c. 39.

There were 274 executions in London in the period 1800-1818, 84 of which were for forgery, see SC 1819, Appendix No. 2.


For the accounts produced see PP 1816, XIII, 401; PP 1818, XVI, 161.


Political Register 22 August, 1818.

After Cobbett left in mid 1817, the Black Dwarf had a circulation of 12,000, the largest among political journals. Its actual readership would have been considerably more, given that there was more than one reader per copy. In 1819, Castlereagh commented that Wooler had become ‘the fugleman of the radicals’. See R. Hendrix, 'Popular Humour and the Black Dwarf’, 16, The Journal of British Studies (1976), 109, 112.

The Black Dwarf was a weekly journal and Wooler frequently devoted his front page to his attacks on the Bank in the period between September and December. For examples, see the Black Dwarf 9, 23 September, 7, 14, 28 October, 4, 25 November, 9, 23 December, 1818. For more details of Wooler's campaign and its effect on the jury, see: P. Handler 'The Limits of Discretion: Forgery and the Jury at the Old Bailey, 1818-1821' in J. Cairns and G Mcleod (eds) The Dearest Birthright of the English People, Oxford, 2002, 160-162, 164-165.

The New Times 10 December, 1818.

I have discussed the attitude of the jury in detail elsewhere: P. Handler 'The Limits of Discretion' 155-172.

See the works cited above, n. 4.

In 1810 when his bill to repeal the Act punishing stealing from a dwelling house to the amount of 40s with death was lost by thirty-three votes to thirty-one, he remarked, somewhat bitterly: ‘Very few
members of the Opposition were present. In general they wished well to the Bill, but not well enough to give themselves the trouble of attending upon it.’ S. Romilly *Memoirs of the life of Sir Samuel Romilly with a selection from his correspondence*, edited by his sons, 2nd edition, 3 vols. London, 1840, vol. 2, 317. See also Radzinowicz *History*, I. 504-505.

29 The only law he attacked persistently, the one relating to shoplifting, had not been used to inflict the death penalty in London since 1764 (SC 1819, Appendix No. 2). For the rest of the country figures are only available from 1805, but in that time nobody had been executed for shoplifting. (SC 1819, Appendix No. 1).

30 Montagu was not a Quaker. For the beginnings of the society see: B. Montagu *The Origin and Object of the Society for the Diffusion of knowledge upon the punishment of death*, London, 1812.


33 S. Romilly *Observations on the Criminal Law of England as it relates to Capital Punishments, and on the mode in which it is administered*, London, 1810. For discussion of this pamphlet and the debate that it prompted see Radzinowicz *History* I., 331-336. For the Quakers' relative lack of concern with capital punishment, as compared to their other social activities see E. Isichei *Victorian Quakers* Oxford, 1970, 249-252.

34 For a detailed analysis of the size of the movement and its impact see Gatrell *The Hanging Tree*, 399-405.

35 For example, the petitions to parliament that resulted in the removal of the death penalty for stealing from bleaching grounds originated with Quakers (Romilly *Memoirs*, II, 367).

36 One proprietor of the Bank estimated the effort to have cost £60,000, see Meeting of the Court of Proprietors, *The Times* 23 March, 1821.

37 See James Mackintosh's comments following the report of a Royal Commission on methods of improving the printing of bank notes, 1 PD XXXIX, (1819), 138, 140. For the Royal Commission see below n. 50.
The country bankers, Vincent Stuckey and Hudson Gurney gave evidence to a commons committee on the reluctance of traders to take Bank of England notes, on account of their liability to forgery, see *House of Commons Secret Committee on the Expediency of the Bank resuming cash payments* PP, 1819, III, 247, 250.

Cobbett's *Weekly Political Register* 22 Aug, 1818.

The influential accountant and anti-bullionist, Thomas Smith expressed this concern in a letter to the prime minister, Lord Liverpool in October 1818. See Smith's evidence before the 1819 secret committee on cash payments: *Commons Secret Committee Report on Cash Payments* (1819) 254.

M. George and F. Stephens *Catalogue of Personal and Political Satires*, 11 vols, London, 1952, vol. 9, no. 13198. The note was sold together with Abraham Franklin's *Bank Restriction Barometer*. This ingenious device used the scale of a barometer to couple the economic effects of the restriction with the forgery crisis. It is reproduced in V. Hewitt and J. Keyworth *As Good as Gold 300 Years of British Bank Note Design*, London, 1987, 62.

For the full text of the letter see: B. Jerrold *The Life of George Cruikshank*, 2 vols., London, 1882, vol. 2, 90-94. Although Cruikshank claimed credit for the note, the original idea for it may well have come from William Hone, see: F. Hackwood *William Hone: His Life and Times*, London, 1912, 198-205.

William Hone to John Childs, 29 January 1819: Hone Papers, BL Add Mss 40120, fo. 114. When it appeared in Hone's shop, the crowds that gathered to see it stopped the traffic and had to be dispersed by police. See: Gatrell *The Hanging Tree*, 187-189; Mackenzie *The Bank of England Note*, 75. Other satirical prints appeared attacking the forgery laws, see M. George and F. Stephens *Catalogue of Personal and Political Satires*, IX, nos. 13197-13200.

1 PD XXXVIII, (1818), 672.

Two secret parliamentary committees were appointed to consider the cash payments question. Following their reports the decision to resume cash payments was taken in May 1819. A plan was put in place to withdraw all the small notes and resume full cash payments by 1823. In fact, the Bank withdrew its small notes early in 1821 amidst continuing concerns about the problem of forgery. For a more detailed account of these events, see P. Handler 'Forgery and Criminal Law Reform in England, 1818-1830' Unpublished PhD Thesis, University of Cambridge, 2002, 63-97.
A petition from Norwich for example, one of the handful that came in before the appointment of the committee, related almost exclusively to the forgery laws. For the petitions see: Journal of the House of Commons LXXIV (1818-1819). For a list of references for the petitions see Radzinowicz History, I, 527n. The Commons' Journal only contains a summary of the petitions' content. For fuller versions of some of the petitions see Journal of the House of Lords LII, (1819) 91, 92, 111, 124, 131, 132, 144, 145, 171, 172, 187, 190, 205-7, 211-2, 216, 230, 282, 290-1, 305, 540, 569, 591, 634.

See Mackintosh's comments on its importance: 1 PD XXXIX, (1819), 798-799.

The Commission was appointed to find a mode of printing bank notes that would prevent forgery more effectively. It recommended one plan that held out some hope, but despite much effort on the part of the Bank, the plan was not implemented before the resumption of cash payments rendered it redundant in 1821. For the report see: Report of the Commissioners appointed for inquiring into the mode of preventing the forgery of bank notes 1 PD XXXIX, (1819), 72-78.

The Gorgon 30 January, 1819; 7 The Philanthropist, 1819, 344.

1 PD XXXIX, (1819), 797, 784.

Ibid. 816.

Ibid. 820, 823.

Ibid. 807.

See the discussion of Romilly's bills above at n. 28.

1 PD XL, (1819), 1528.

Ibid. 1533.

Ibid. 1534.

2 PD V, (1821), 955. Witnesses were asked specifically about the December 1818 crisis (SC 1819 Minutes of Evidence, 24-25).

SC 1819, 9. There were a few dissenting views from people who were chosen as witnesses by virtue of their position rather than their views. Thus the clerk to the arraigns at the Old Bailey when asked about the December forgery acquittals maintained that they were a result of the juries' dissatisfaction with the Bank's evidence rather than any distaste for the death penalty. Similarly the chief clerk at Whitechapel Magistrates Office stated that he had observed no particular reluctance to prosecute forgers. These views were smothered by the great weight of opinion that backed up the reformers'
arguments, but they do serve as a reminder that there were other opinions on these issues, a fact that was deliberately ignored by the committee. (SC 1819, 24-5, 86).


63 These were bills to abolish the death penalty for stealing from shops to the value of 5s or privately stealing from dwelling houses or river vessels to the value of 40s.

64 SC 1819, 13.

65 First time uttering of counterfeit coin was not a capital offence. Coining and common uttering were capital offences. For a summary of the coining laws see Radzinowicz History, I, 652-4.


67 SC 1819, 15.

68 The question of reforming punishment for private forgeries actually appeared as a P.S. in a letter that Mackintosh wrote to Lord Grenville in which he outlined the measures he proposed based on the committee's findings, see James Mackintosh to Lord Grenville, 15 April, 1819: Dropmore Papers BL Add MSS 58964 f. 155.

69 Edward Forster, William Fry, Thomas Forster, James Jennings and Samuel Hoare all appear on the SDKPD's list of subscribers in the year 1816. Samuel Hoare, Thomas Forster and Edward Forster were members of the committee. In all, at least twelve of the witnesses before the 1819 committee were members or subscribed to the SDKPD. See: SDKPD The Third Report of the Society for the Diffusion of Knowledge respecting the punishment of death and the improvement of prison discipline together with list of subscribers and accounts, London, 1816.

70 Mackintosh to Lord Grenville, 15 April, 1819.

71 He had tried to bring a bill along with others based on the report in 1820, but the Queen Caroline affair made it impossible to find sufficient parliamentary time for the bills.

72 2 PD V, (1821), 915

73 Convictions for offences relating to the forgery of Bank of England notes dropped from 352 in 1820 to 134 in 1821, the year when cash payments were resumed, and then to 16 in 1822. (PP 1830, XXIII, 184.)

74 2 PD VII, (1822), 790.

75 Ibid. 791.

76 2 PD IX, (1823), 412.
Ibid. 400.

McGowen 'The Image of Justice', 125, 123. The view that the argument had already been won by the time it was raised in parliament is widely held. Beattie, for example, asserts that 'the battle to preserve the law as it stood had clearly been conceded in the House of Commons by 1811.' (Beattie Crime and the Courts, 633). Gatrell challenges this chronology, arguing that reform only became inevitable with the arrival of the whig government in the 1830s. Nevertheless his account still rests on the idea that the debate was between only two opposing images of justice, see: Gatrell The Hanging Tree, 516-519.

2 PD V, (1821), 955.

Ibid. 965.