CONVICTS AND THE STATE:
THE ADMINISTRATION OF CRIMINAL JUSTICE IN GREAT BRITAIN
DURING THE REIGN OF GEORGE III

by

Simon Paul Ross Devereaux

A thesis submitted in conformity with the requirements
for the degree of Doctor of Philosophy
Graduate Department of History
University of Toronto

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0-612-27910-3
Abstract

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Simon Paul Ross Devereaux

Doctor of Philosophy, 1997
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This thesis examines changing English penal practices within the context of the late eighteenth-century state. Capital punishment, transportation and imprisonment are analyzed with reference to the interactions between central and local governments, between ministers and parliament, and amongst the ministers themselves. The main administrative and financial burden of criminal justice fell upon local officials. With the exception of metropolitan London, in which it had long had a particular interest, the central government saw its role in domestic regulation as being supportive of local priorities rather than directive. It was also concerned to limit national expenditure during an age of fiscal retrenchment.

Examination of the state context of penal policy between 1770 and 1800 encourages a narrative of change that draws together various strands of penal and policing practice. The transportation of serious offenders - interrupted by the outbreak of the Revolutionary War in 1775 - was re-commenced with the opening of New South Wales in 1787. The Penitentiary Act of 1779 was as indicative of this continuing adherence to transportation as of the growing use of imprisonment to punish less serious offenders. Although the government failed to build the institutions proposed under that Act, it did so with an alternative strategy of preventive policing in mind. This strategy led to the failed Metropolitan Police bill of 1785 and, ultimately, to the Middlesex Justices Act of 1792. It continued to inform the
government's thinking during the 1790s, when a strong body of opinion in parliament
pressed for the realization of the penitentiary regime not only in London but throughout the
nation. The government's decision to sanction Bentham's ill-fated Panopticon project was an
attempt to quell such concerns.

No explanation for English penal change can ignore changing social and cultural
imperatives. But the precise course that such change followed cannot be explained without
close consideration of the structure and distribution of state authority that it upheld.
Acknowledgments

Sir Isaac Newton once observed that "If I have seen further it is by standing on the shoulders of giants." However far I have seen in this thesis, it has not been for want of shoulders to stand on. I am grateful to the Social Sciences and Humanities Research Council of Canada, the government of the province of Ontario, the London Goodenough Association of Canada, and the School of Graduate Studies, the Department of History, and the Centre of Criminology at the University of Toronto for scholarship and grant support during the years in which I have researched and written this thesis.

For allowing me access to privately held collections, my thanks the Earl of Harrowby and the Harrowby Manuscripts Trust, and to the Earl of Shelburne and the Trustees of the Bowood Manuscripts Collection. My thanks as well to those individuals who facilitated my access to these collections: to Mrs Jane Waley, the Archivist at Sandon Hall, who provided me with transportation to and from the train station, and who kept me well-fed during my work in the collection; and to Miss Ruth Burchnall of the Bodleian Library, who kindly (and recklessly!) loaned me her draft notes of an index to the microfilm of the Bowood Muniments on deposit there. I would also like to thank Mr Giles Adams for allowing me to read the papers of his ancestor, William Dacres Adams, and for the many courtesies he extended to me during my visit to his offices in Wellingborough.

I am grateful also to those keepers of collections who made special efforts to facilitate my access to them: Robert S. Cox of the William L. Clements Library at the University of Michigan for allowing me access to the manuscripts collection while the library was under renovation (I should also like to thank Dr Peter J. Marshall of King's College, London for his generosity and companionship during our week together in the library); Christine North of the Cornwall County Record Office for facilitating access to the Antony House muniments; Christopher Sheppard of the Brotherton Collection at the Leeds University Library; Dr Dorothy B. Johnston of the Department of Manuscripts and Special Collections at the Nottingham University Library; Elizabeth Stazicker and the staff of the Surrey Record Office; and Patricia Gill of the West Sussex Record Office for facilitating access to the Goodwood Papers.

Much of the research underpinning this thesis has been made possible through the outstanding resources available in the John P. Robarts Research Library at the University of Toronto. I am grateful to the staff of the Inter-Library Loan Office, whose many efforts on my behalf have saved me much time and effort elsewhere. I would also like to thank Iqbal Wagle, Joan Links and Judy Young Chong of the Microtext Division for many years of cheerful help and companionship.

During my years as a graduate student I have enjoyed the nurturing atmospheres afforded by a number of first-class institutions. Massey College provided a happy home to me during the one year of my Master's degree and the first two of my doctoral candidacy. I am grateful to Past Master Ann Saddlemeyer and Past Acting Master J. Stefan Dupré for their guidance during my time there; and to Ann Brumell and Marie Korey for their unfailing friendship. I subsequently enjoyed a year's stay in London House, and should like to
acknowledge the many kindnesses shown me by former Warden John Pepper and former Deputy Warden Patricia Tarr during my stay on Mecklenburgh Square.

Since 1991 the Centre of Criminology has provided a happy base from which to pursue my work. It is in the nature of things at the Centre that I can record debts of gratitude to all the faculty and staff there: Director Clifford Shearing; former Director Richard Ericson; Professors Tony Doob, Rosemary Gartner, Philip Stenning, Carolyn Strange, Mariana Valverde and William Watson; former Head Librarian Cathy Matthews; and Rita Donelan, Gloria Cernivo, and Monica Bristol. I am grateful also for the friendship of many of the Junior Fellows: Willem DeLint, Kelly Hannah-Moffat, Voula Marinos, Jane Sprott, Kim Varma, Kimberley White-Mair, Jennifer Wood, and Mary-Lynn Young.

For their friendship, encouragement and support, I am grateful to: Megan Armstrong; Joseph Berkovits; Adam Crerar; Paul Deslandes; Andrew Harris; Stephen Heathorn; Jane Harrison; Elsbeth Heaman; Matthew and Michelle Hendley; David Holub; Paula Humphrey; Jackie Isaac; Dr Peter Lawson; Susan Lewthwaite; Dr Peter Lineham; Tina Loo; Gerry Lorentz; Andrea McKenzie; Chris Munn; Dylan Reid; Lisa and Richard Steigmann-Gall; and Deborah Van Seters. I am particularly grateful for the friendship and forbearance shown me by my Toronto room-mates of the last three years: Robert Thompson, Alexander Colvin, Joaquin Caveides, Alexandra Emberley, and Karen Keller. I must single out four people in particular: Valerie Frith, for unfailing love in dark times and in light; Allyson May, my closest intellectual compatriate; and Greg T. Smith and Jerry Bannister, my best friends in work and at rest.

Professor Richard Helmstadter of the Department of History has supported my work and career since my days in his undergraduate tutorial in nineteenth-century British history. Professor Jim Phillips of the Faculty of Law has read every draft of this thesis quickly and with incisive scrutiny. I could not have hoped for two better members for my thesis committee.

My debts to the work of John Beattie will be only too apparent. Far less so, perhaps, will be the many years of his support, intellectual stimulation, generosity and humour. He has been and will always remain for me the model of what a scholar, teacher, supervisor - and much else - should be. I am sure that he will think himself sufficiently rewarded by the fact of this thesis itself, but it will always seem to me only the smallest sign of my gratitude to him for all that he has made possible for me.

My deepest debts are to my family: to my brother Mark and sister-in-law Janice; to my sister Jane and brother-in-law Chris Karuhanga; and to my nieces Jessica, Amy, Angela and Stephanie for much-needed diversion along the way. I am also grateful to my step-parents, Nathan Palmer and Patricia Giffen, for many kindnesses over the years. Above all I wish to thank my parents, to whom I dedicate this work. My mother Patricia Palmer has loved and indulged me unquestioningly. She supplied the computer on which this thesis was written (and endured her subsequent addiction to TETRIS with quiet fortitude). My father Clive Devereaux has always been my greatest champion. He has followed all my work from its earliest inception to its finished products, and unfailingly given me the best of his advice, love and support.
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### Abbreviations

The following abbreviations are used in the notes. In all other instances full citations are given on the first appearance in each chapter. Unless otherwise indicated, place of publication is London. Complete citations (including christian names and publishers) are given in the Bibliography.

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>Add MS(S)</td>
<td>British Library, Additional Manuscript(s)</td>
</tr>
<tr>
<td>Althorp PP</td>
<td>British Library, Althorp Papers</td>
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<tr>
<td>AR</td>
<td><em>The Annual Register</em> (periodical)</td>
</tr>
<tr>
<td>C.L.R.O.</td>
<td>Corporation of London Records Office</td>
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<tr>
<td>City Lands</td>
<td>Journal of the City Lands Committee</td>
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<td>Jor</td>
<td>Journal of the Court of Common Council</td>
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<td>Rep</td>
<td>Repertories of the Court of Aldermen</td>
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<tr>
<td>Corr. Prince Regent</td>
<td>The Correspondence of George, Prince of Wales, 1770-1812, ed. A. Aspinall (8 vols, 1963-71)</td>
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<tr>
<td>Eg MS(S)</td>
<td>British Library, Egerton Manuscript(s)</td>
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<tr>
<td>GM</td>
<td>The Gentleman’s Magazine (periodical)</td>
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<tr>
<td>Hansard</td>
<td>The Parliamentary Debates, from the Year 1803 to the Present Time (1st-3rd series, 1803-91)</td>
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<tr>
<td>H.M.C.</td>
<td>Historical Manuscripts Commission</td>
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<tr>
<td>HO</td>
<td>Public Record Office, Home Office Papers</td>
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<tr>
<td>J.H.C.</td>
<td>Journals of the House of Commons</td>
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<td>J.H.L.</td>
<td>Journals of the House of Lords</td>
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<tr>
<td>Letters George IV</td>
<td>The Letters of King George IV, ed. A. Aspinall (3 vols, Cambridge, 1938)</td>
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<td>LM</td>
<td>The London Magazine (periodical)</td>
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<tr>
<td>Lords Papers</td>
<td>House of Lords Sessional Papers, 1714-1805, ed. F. W. Torrington (60 vols, Dobbs Ferry, NY, 1972-78)</td>
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<td>MS(S) Loan</td>
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<td>National Library of Scotland</td>
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<td>OBSP</td>
<td>Old Bailey Sessions Papers</td>
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<td>[W. Cobbett,] <em>The Parliamentary History of England, from the Earliest Period to the Year 1803</em> (36 vols)</td>
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<td>[J. Stockdale,] <em>The Parliamentary Register; or, History of the Proceedings and Debates of the House of Commons, 1774-80</em> (17 vols)</td>
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<td>Parliamentary Register 1802-03</td>
<td>[J. Debrett,] <em>The Parliamentary Register; or, ... 1802-1803</em> (3 vols)</td>
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<tr>
<td>PC</td>
<td>Public Record Office, Privy Council Papers</td>
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<td>PCOM</td>
<td>Public Record Office, Prison Commission Papers</td>
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<tr>
<td>PP(HC)</td>
<td>Sessional Papers of the House of Commons, 1801-1900</td>
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<td>PRO 30</td>
<td>Public Record Office, Gifts and Deposits</td>
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<tr>
<td>R.O.</td>
<td>County Record Office (various)</td>
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<tr>
<td>Senator</td>
<td><em>The Senator; or, Clarendon's Parliamentary Chronicle</em> (32 vols, 1790-1802)</td>
</tr>
<tr>
<td>SP</td>
<td>Public Record Office, Secretary of State Papers</td>
</tr>
<tr>
<td>S.R.O.</td>
<td>Scottish Record Office</td>
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<tr>
<td>T</td>
<td>Public Record Office, Treasury Papers</td>
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<td>W.L.C.L.</td>
<td>William L. Clements Library, University of Michigan</td>
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CHAPTER 1

INTRODUCTION:
CRIME AND THE STATE IN EIGHTEENTH-CENTURY ENGLAND

In September 1785 a young man of fifteen was robbed of his watch on a highway leading into London from Kent. Such incidents were common for that area and time and, by comparison with some, this one had a fairly straightforward resolution for the victim.

[The thief] went to pawn the watch for a guinea & a half at an honest Pawnbrokers in Long Acre. The Pawn Broker upon examining the watch found it was worth more, he asked him therefore where he got it. The Highwayman told him he bought it of a watchmaker in the Strand. The Pawn Broker told him he would send into the Strand for the Watchmaker. He sent one of his servants into the Strand, & he sent another Boy privately to Bow Street for a Constable. The Constable arriving first, he told him that he was the Watchmaker upon which the Highwayman saluted him & told him [the Pawnbroker] he was the person of whom he had bought the watch. The Constable immediately took him up, & they found upon him watches & plans to open houses &c &c. When he was produced in Court, he denied this story, & told another story equally incredible, to which he refused to sign his name. He is committed to take his tryal at Kingston next March.¹

The young victim was Robert Banks Jenkinson, later the second Baron Hawkesbury and Earl of Liverpool, who would ultimately serve twice as Home Secretary and end his political career after fifteen years as Prime Minister.

Liverpool was by no means alone amongst late eighteenth-century statesmen in being a victim of crime in its most alarming guises. Amongst future Home Secretaries Lord North, the Duke of Portland and Henry Addington had all been robbed by highwaymen in the vicinity of the metropolis. So too was John King, an Under Secretary in the Home Department between 1794 and 1806.² Henry Seymour Conway, Secretary of State from

¹Add MS 59772 ff.3-4.

1765 to 1768, was not only burgled but had his library set fire to. Charles James Fox, three times Foreign Secretary, behaved with characteristic aplomb when confronted by two highwaymen near Highgate in 1781, spurring his horse forward and discharging his pistols as he passed. His colleague Edmund Burke had once been confronted by two highwaymen on Finchly Common and, at a loss of ten Guineas, thought that "all things considered I came off tolerably." Almost ten years later to the day, Burke’s home at Beaconsfield was plundered.

The Pitts had similarly poor luck. While the Elder Pitt was Secretary of State, his Under Secretary’s servant had his pocket picked of a vital official dispatch. Lady Chatham was once held up on the highway near Lewisham. And their long-time solicitor Thomas Nuthall, then Solicitor to the Treasury, was robbed on Hounslow Heath in 1775. Pitt the Younger had his prime ministerial plate stolen, not once, but twice within a year. On the first occasion it was stolen before delivery; on the second robbers broke into his London home. His factotum George Rose was robbed on the road between London and Hemel Hempstead.

The list could be extended. The home of the Speaker of the House of Commons was burgled in January 1785, the booty including his robes of office. Even more dramatic was the theft of the Great Seal itself from Lord Chancellor Thurlow’s home in March 1784 -

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3 GM 38 (1768): 242; and Walpole Correspondence, 14:183-4.

4 H.M.C., Carlisle MSS. 754; and Walpole Correspondence, 33:267.


although some observers thought the robbery highly suspicious given the imminent dismissal of the Shelburne ministry, and Thurlow with it. A messenger for the Secretary of State's office was even robbed of the dispatch box on his way to Windsor in October 1792. The King himself reportedly made a habit of carefully concealing his favourite watch whenever he crossed Bagshot Heath on his way to Windsor.

* * * *

This thesis describes the changing character of the administration of criminal justice in Great Britain from the perspective of men such as these, the statesmen at the nation's centre. Its argument is that, during the fifty years of the active reign of George III, there was a crucial transition in the nature and extent of the central government's involvement in the administration of criminal justice. In 1760 criminal justice was viewed as a local responsibility in which the central government played a significant but essentially tangential role. The judges of the high courts presided over the administration of the law, but the essential context of crime, trial and punishment was the local community. These judges - whose precise interaction with ministers is, unfortunately, largely unknown - influenced the disposition of convicted offenders through their sentencing and pardon powers. But the crucial element of criminal justice, the execution of sentence, was almost entirely in the hands of local authorities. Convicted offenders were either executed before the members of their community, transported to America at local expense (except in London and the Home Counties, whose costs were paid by government until 1772), or - as was increasingly the case in many places after the 1760s - imprisoned in locally-funded gaols and Houses of

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8GM 55 (1785): 150; Walpole Correspondence, 25:481-2; and 1784, 69-71 & 73-4.

Correction. In most places, these latter were structures originally built for other purposes and whose keepers were under no obligation to provide specific standards of care.

By 1810 government had acquired an indispensable directive and supervisory role in the disposition of the most serious non-capital offenders. A rapidly declining proportion of convicts was sent to the gallows and a steadily growing proportion laboured under sentences of imprisonment. But serious offenders who fell into neither category were either transported in government-hired vessels to the penal colony of New South Wales or imprisoned on board hulks under the government's direct supervision. This small group formed a core out of which came the beginnings of more determined and self-conscious moves toward a detailed central oversight of imprisonment during the nineteenth century.

This transition was by no means the product of activity enthusiastically undertaken by ministers of state. It was in part a by-product of necessity, generated by a nation-wide crisis of convict administration that burst upon government after 1775, and especially after 1782. However, ministers felt this need more urgently with respect to some parts of their nation than others. Nor did many of them believe that specific changes in penal practice necessarily followed from that crisis. New patterns of criminal justice administration had first to be mediated through the existing structures of the early modern state and the intellectual predispositions that accompanied them.

I. The Structure of the State

The late eighteenth-century British state was not a singular entity, but rather a conglomeration of institutions and actors. Its character crucially informed the manner in
which central direction and its accompanying practices developed.\textsuperscript{10} I am mindful of the need to describe changes in the character and range of the state’s functions with respect, not only to the institutions and individual actors that composed it, but also to the changing social and cultural contexts in and with which those constituent parts interacted.\textsuperscript{11} These contexts, which are outlined in the next section of this chapter, are certainly given much weight, but it is the former that is my immediate concern. This thesis is essentially a study of the factors that delimited changing penal practices - of the impediments to more than the impulses towards them.

I had originally expected to be able to trace coherent and proactive patterns of policy-making in the Home Department during the years following its creation in 1782. What I discovered, in both the institutional records of the Department and such collections of papers as its staff have left behind, was a more ambiguous and inconsistent record of initiatives and activity - indeed, as often as not, of inactivity. It became apparent that the nature of the central apparatus of the British state during the late eighteenth century was such that one could not explain patterns of administrative activity with regard to criminal justice - whether we characterize them as conservative and inactive, minimally reactive, or proactive (and even reformative) - by an approach that treated the Home Department in isolation from other institutional bodies or other individuals at the centre. Although the Home Department was assigned exclusive responsibility for domestic affairs by its creation in 1782, it by no means proved capable of exercising authority in them independent of other governmental departments and officials.


To make sense of this reality, I have structured my analysis around three crucial interactions in the late eighteenth-century British state. The prior history and development of each pattern of interaction since the mid- to late seventeenth century warrants brief comment.

(1) Ministers and Parliament

When William of Orange and Princess Mary assumed the British crown in 1688-9, they brought with them more than their army. They brought William’s active determination to bring the resources of Britain to bear in his struggle against Louis XIV’s dynastic and continental ambitions. The vast expense of that long struggle was met through a series of radically new modes of public funding, most notably the creation of a national debt underwritten by the taxation authority of parliament. This "financial revolution" gave parliament a permanence that neither the Civil War nor the Restoration had. After 1688 parliament met annually. Moreover the length of each session steadily increased. After 1739, sessions conventionally began in November and lasted until May. By the end of the eighteenth century they frequently extended into July. After 1689 then executive power was simply no longer possible without the fiscal capacity of the legislature.

The very permanence of parliament, accompanied by its growing self-consciousness and self-confidence as an active player in government, had consequences of far wider significance than financial administration alone. The emergence of parliament as a fixed and influential institution also marked the beginning of efforts by its members to legislate for a

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variety of social and economic problems.\textsuperscript{14} The volume of legislation grew with almost every passing year. Fewer than 3,000 Acts were passed during the two centuries preceding 1688; nearly 14,000 were passed during the one century that followed. "During this sessions his majesty has given the royal assent to 95 public bills, and 101 private," marveled The Gentleman's Magazine in 1766. "What an addition this, to the statutes at large, which, in time, at this rate of accumulation, must be carried with the judges in a baggage-waggan, if no method is contrived to digest the statute law into one body."\textsuperscript{15}

Most important for present purposes, parliament's will and capacity to legislate for social problems emerged well in advance of the capacity of governments to control the direction of legislation.\textsuperscript{16} Before the emergence of more fixed and reliable mechanisms of party organization and discipline after 1832, parliament was a dynamic and sometimes unpredictable body. Ministries sought to exert control by a variety of tactics: by appeals to loyalty - to individual ministers, to ideals, or to the King - and by promises, favours and patronage. But such managerial tactics never acquired the systemic quality that Sir Lewis Namier and his followers once attributed to them.\textsuperscript{17} Sometimes only strategic concessions on individual issues would do. Parliament could sometimes be quelled for a time, but it could seldom be altogether mastered. As we will see, one such issue that returned to haunt

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ministries again and again was the intermittent but often formidable determination of MPs to secure national standards of penal incarceration. 18

(2) First Lord, Secretary of State, and King

The de facto emergence of the Treasury as the most influential branch of the ministry after 1660 was promoted by both the systemic requirement of obtaining extra taxation authority from parliament and by Charles II's constant necessitousness. This process was subsequently reinforced by the "financial revolution." The Treasury and its subordinate bodies acquired a size, breadth, and degree of professionalization that far exceeded all other non-military ministerial departments, most notably the minuscule Secretariat of State. 19

However this by no means guaranteed the First Lord's ascendency amongst his fellow ministers. In the first place, with the revolution in the scale of the nation's finances came also the more frequent and critical scrutiny of their management by parliament. 20 A First Lord could obtain a more certain hold over parliament through alliance with other prominent politicians, any one of whom would generally settle for nothing less than one of the two Secretaryships of State. These offices carried immense prestige in their own right. It was not impossible for one (or both) of them to be the most important figure in a ministry and the First Lord largely a figurehead. 21 As Secretary of State for the Southern Department

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18 See below. Chapter 3, part II: Chapter 4, parts I-II: and Chapter 5.


between 1757 and 1761. Pitt the Elder was at least the equal of his First Lord in personal prestige and political status. (Five years later he led a ministry from the even less imposing office of Lord Privy Seal.) And the Duke of Portland seems to have made no impression when he served as First Lord in a ministry whose effective lead came from the Secretaries of State, Lord North and Charles James Fox.

Moreover, when the nation's finances were not of immediate concern, the fiscal importance of the First Lordship by no means guaranteed its preeminent favour in the eyes of the King. George III came to the throne determined to make the fullest and most strategic use of his undisputed authority to choose his ministers. Occasionally his exercise of that authority flew in the face of parliamentary realities. It could be argued that this was very much the case between 1782 and 1784. Indeed, as we will see, there is a case to be made that the very creation of distinctly defined Home and Foreign Secretaries in March 1782 had less to do with any new administrative realities than with the political ambitions of George III and Lord Shelburne.

By the last decade of the eighteenth century however, the preeminence of the Treasury was becoming more and more indisputable. The weight of larger developments favoured it, most notably the increasingly aggressive, detailed and regular parliamentary scrutiny of government finance after 1780. So too did the retreat of the monarch from any

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23See below, Chapter 2, part I.

sustained role in ministerial politics after 1790. In May 1827 George Canning considered the possibility of leading a ministry from the Foreign Secretaryship, but subsequently thought better of the idea.\(^{25}\) In a political atmosphere in which the King’s significance had been reduced to the largely symbolic, and in which the management of the nation’s finances was an issue that could make or break ministries\(^{26}\), there was no longer any serious doubt as to where the true centre of power lay in cabinet. The pre-eminent influence of Pitt the Younger amongst his ministers is an important factor in much of the analysis that follows in this thesis.\(^{27}\)

These considerations point up one more important theme: the central importance of individuals. In a governmental apparatus in which most offices, outside the realm of taxation, were staffed by small numbers of officials - all of them personally accountable to their superiors - the role of individual ministers in effecting (or thwarting) significant changes was not to be underestimated.\(^{28}\) To achieve a *lasting* change in state practice, however, was another matter. Any change that required legislative sanction or an expensive alteration in administrative practice might open its advocate to the opposition either of parliament or of

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\(^{27}\) See below. Chapter 2, part II(3); Chapter 4, part I; and Chapter 5.

influential colleagues, most notably in the Treasury. The newly created Home Department passed its first decade without implementing any major changes, either of internal bureaucratic organization and practice or of domestic administration for the nation at large. Changes only began to appear, and even then on a cautious and small scale, in the 1790s after the worst of the crisis in the administration of criminal justice had already passed. But when those changes came, the central role of individual Home Secretaries often seems to have been crucial.

(3) Central and Local Governments

The increasingly centralized oversight of social regulation has been the principal theme in the post-1960 historiography of British state development. Much of the debate has derived, not from any doubts about the crucial role in centralization played by the principle of inspection, but rather from the specific question of whether or not Jeremy Bentham could be said to have been its intellectual progenitor. Oliver MacDonagh, whose work dominates the historiography of early Victorian state development, prefers a perspective in which the need for central regulation became compelling as the character and scale of individual social problems became increasingly self-evident and the need to address them

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29See below, Chapter 4, part III; Chapter 5, part III; and pp.406-9.

irresistible.31

However, although MacDonagh's work remains seminal, many of the regulatory activities that he and his followers regard as characteristic of the more effectively centralized Victorian state - factory and mines regulation, public health reform, public education - involved issues that, in either character or scale, were almost entirely unknown a century before. Although MacDonagh provides an excellent account of why regulation of a certain type emerged when it did, his perspective gives short shrift to the range of regulatory activity that existed before the nineteenth century, almost all of it carried on by unpaid officials in the localities.32

More recent historians of eighteenth-century Britain view the nation as being already remarkably centralized, at least in so far its capacity to prosecute war on a large scale and to tax its citizenry in order to do so were concerned.33 Much of John Brewer's "fiscal-military" state was in fact anticipated in the work of P.G.M. Dickson and Geoffrey Holmes on the increasing professionalization of the military and financial arms of government under the impact of William III's wars.34 Profoundly impressive as these developments were however, these branches of governance were only a narrow band in the range of state activity in eighteenth-century Britain.


In fact, viewed from other perspectives, the British nation-state seems to have been remarkably homogeneous - if not exactly centralized in any sustained regulatory fashion - from the middle ages.\textsuperscript{35} Local communities varied in their willingness to embrace the directives of the central government, but there is no longer any serious doubt that a sustained interaction had existed between the two long before the advent of overtly regulatory centralization during the nineteenth century. The volume of scholarship analyzing this interaction during the seventeenth and early eighteenth centuries has been growing during the last decade or so.\textsuperscript{36} The periphery responded to the needs of the centre (and vice versa), and the ongoing dialogue between the two can be seen as constituting, in some character and to some degree, a form of centralized state. Although the legislative changes of the nineteenth century significantly altered the terms and extended the institutional framework of that dialogue (and certainly extended its subject matter), the dialogue itself had been going on long before.

One of the major concerns of this thesis is with interactions between central and local authorities during the last decades of the eighteenth century as they related to the administration of criminal justice. However, my understanding of this question is limited in at least two ways. First, in so far as the sources used are almost entirely confined to the


records of government and ministers. potentially significant developments at the local level
can only be observed incompletely, intermittently and at a distance. In the second place. the
records of government may not fully reflect the means by which the centre might bring
influence to bear in the localities. For example. letters from Home Secretary Sydney to the
second Earl of Hardwicke in the latter’s capacity as Lord Lieutenant of Cambridgeshire often
contain injunctions and instructions regarding such matters as the enforcement of royal
proclamations, but do not seem to have been preserved in any entry-books in the Home
Department. 37 The Lord Lieutenancy had sometimes proven to be a useful vehicle for
realizing governmental purposes in the localities during the seventeenth century, so a more
extensive analysis of such unrecorded correspondence (which was perhaps deliberately
presented as private rather than official) might prove worthwhile. 38

In early modern Britain the vast bulk of the administrative activity with which we
associate modern states - the upkeep of roads and bridges. poor relief, the administration of
criminal justice - was in the hands of local and largely unpaid officials. Those officials were
drawn overwhelmingly from amongst the members of the landholding classes, men who were
determined to uphold a tradition of local autonomy and independence. 39 The alternative -
large-scale bureaucracies and uniformed enforcement officials - was not merely fiscally
undesirable. It was also politically and culturally repellant during an age in which overtly and

37 For example. see Add MS 35682 ff. 383-4.


39 An excellent overview of the character and culture of local governance is given in D.Eastwood. Governing
great use on a technical level. though now somewhat dated in many of its judgments. is S. & B. Webb English
Peace in Social Administration.” in British Government and Administration. 155-68.
aggressively proactive governance was viewed as the *sine qua non* of tyranny. In particular, it was a reminder of England's near escape, on two occasions during the previous century, from the incipient absolutism of Stuart rule. Regulatory governance was seen as a French vice. It was the antithesis of English liberty as viewed through the ideological lens of an independent, parsimonious and (in theory) self-activating landed elite.

That said, by the mid-eighteenth century it was by no means the case that such views were still widely held in an unambiguous manner. In 1763, during a post-war crime wave, one commentator viewed French bureaucratic and militaristic policing - with its "order, discipline, and oeconomy" - as admirable in effect, although he conceded that "such an establishment is not to be imitated in our land of liberty ....." Similarly, after the catastrophic Gordon Riots in June 1780, Lord Shelburne remarked hopefully that government would recollect what the police of France was; let them examine its good, and not be blind to its evil. They would find its construction excellent, its use and direction abominable. Let them embrace the one and shun the other.

Yet in the event, even Shelburne himself, as Home Secretary and First Lord, would choose to adhere as closely as possible to a traditional, non-interventionary model of policing reform

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in so far as the central government was concerned.\textsuperscript{44}

Nor were the more straightforward objections of expense and parochial self-interest without their place on occasion. In 1772 Sir John Fielding, the senior magistrate of Westminster's Bow Street police office, devised a General Preventative Plan. His proposal was to render the detection and apprehension of offenders more certain by circulating detailed information out of Bow Street to magistrates and constables in all parts of the country. Although greeted with enthusiasm at first, the Plan was rejected after 1775 when Fielding sought to transfer the main obligation for the pursuit of offenders to the locally-appointed High Constables. Many provincial magistrates now believed that the Plan's principal effect would be to impose on them the costs of a service that benefitted London - the largest source of fleeing offenders - far more than it did any of them.\textsuperscript{45}

It would be wrong however to view the "failure" to adopt measures of criminal justice reform as being a product solely of the intransigence of local authorities. The central government itself does not seem to have been interested in taking on any regular and extensive role in most spheres of domestic activity. Indeed, as Joanna Innes has demonstrated, if anything, government was in retreat from the more proactive position assumed during the seventeenth century.\textsuperscript{46} Given both the degree of hostility toward such regulatory intervention in the localities and the overwhelming representation of landed interests in parliament, such an attitude was political commonsense as much as the product of disinclination. In 1761 Charles Jenkinson, who was then an Under Secretary, described the

\textsuperscript{44}See Chapter 3, part I.


vast bulk of the "domestic busyness" of the Secretary of State's office as being the issuance of routine instruments under the royal signature. There was little else because "domestic occurrences ... in peaceable times are very few ...."47 The eighteenth-century central government intervened in local affairs in a largely reactive rather than regulative fashion.

In the realm of criminal justice, government preferred to enjoin local authorities to take action rather than to coerce them into doing so. This attitude, moreover, was congruent with prevailing conceptions about the nature of criminality itself. Criminality was viewed as lying on a behavioural continuum with all other forms of immorality. The most serious criminality was the outcome of a lifelong moral descent in the individual offender, beginning with the most minor slippages in youth and building, by increments of immorality, towards the worst sorts of offences in maturity.48 The surest means of checking such potentially disastrous moral backsliding was determinedly to prosecute the laws regulating public houses, vagrancy and all other areas of nascent criminality. The burden of such enforcement fell on those local officials who were believed to exercise an immediate, paternal influence over their social inferiors. English governments confined themselves to setting standards of moral expectation, often by means of royal proclamations.49 A less common strategy, apparently favoured by the Secretaries of State in 1768-9 during a significant increase in the number of felony prosecutions in London, was the licensing of socially prophylactic literature. Lord

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48 This notion is a frequent feature of many biographies and memoirs from the mid-eighteenth and early nineteenth century; see for instance, T. Holcroft & W. Hazlitt, The Life of Thomas Holcroft, ed. E.Colby (1925; orig.ed. 1816), 1:18; Recollections of the Life of John O'Keefe. Written by Himself (1826), 2:216-9; Mary Hardy's Diary, ed. B.Cozens-Hardy (n.p., 1968), 24; and The Autobiography of Joseph Mayatt of Quainton, 1783-1839, ed. A.Kussmaul ([Aylesbury], 1986), 14-5.

49 For a list "Of Proclamations and Orders issued for punishing Prophaneness and Immorality, and for apprehending Street Robbers, Rioters &c." between 1689 and 1753, see SP 37/15 ff.383-90.
Shelburne granted an exclusive license to the four-volume *Tyburn Chronicle; or, Villainy Display'd* (1768) on the grounds that "by exhibiting the Gradation of Vice, and shewing the Picture in its native Deformity, it will effectually advance the Cause of Religion and Virtue."\(^{50}\)

Once the expected standards were set however, the onus was wholly on unpaid local authorities - private prosecutors and constables certainly, but perhaps above all the magistrates - to implement them.\(^{51}\) Concerns for morality and its inherent role in criminality had informed the intensive legislative and prosecutorial activity of the Reformation of Manners societies during the 1690s.\(^ {52}\) These appeared with renewed force during the evangelical revival of the late 1780s, and were underscored by the issuance of a new Proclamation against Vice and Immorality in 1787 and by the activity on a number of fronts - political, propagandistic, and (to a lesser extent) prosecutorial - of the new Reformation of Manners societies that sprang into being at that time.\(^ {53}\) A strategy such as this provided an intellectually coherent rationale for government to remain essentially passive

\(^{50}\)SP 44/378 pp.219-21; see also the text of the work itself, 1:i-ii. A second license was granted to the same publisher, John Cooke, a year later for *The Cheats of London Exposed*, "which Work, he most humbly apprehends will not only tend to the preservation of the Country People in particular, but likewise to Our Subjects in general ...." (SP 44/378 pp.367-9).


and distant in most matters of domestic administration. In fact, as we will see, it was fundamental to the government’s rejection of the penitentiary scheme during the 1780s and 1790s.\(^4\)

Government also had good pragmatic reasons for not acting in the vanguard of penal reform.\(^5\) During the period examined in this thesis, the exercise of criminal justice remained an essentially local phenomenon. There was only one criminal law in England and Wales, but its application had to be equally relevant in a variety of local community contexts. In felony cases the application of that law through trial and sentence was exercised twice-yearly at each county assizes under the oversight of two of the twelve high court judges. The elaborate ceremonials with which the judges were greeted by local officials at each assizes county’s boundary underscored the point that the criminal law was an external force being taken into the community.\(^6\)

The assizes provided an overtly theatrical venue for government’s concerns to be voiced to local authorities, most directly in the judge’s address to the Grand Jury, and perhaps also through the assize sermon.\(^7\) It is unclear however to what extent judges

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\(^4\)See below, Chapter 4, part I; and Chapter 5, part IV.

\(^5\)I have presented the argument of this and the following paragraphs - as of other components of this introduction - at greater length in "In Place of Death: Transportation, Penal Practices, and the English State, 1770-1830," in *Qualities of Mercy: Justice, Punishment and Discretion*, ed. C.Strange (Vancouver, BC, 1996; forthcoming).


received any explicit instructions from government as to the specific content of their addresses. I have found no written evidence of such consultation during the years examined in this thesis. This forms a sharp contrast with early seventeenth-century practice, when assizes judges received instructions from the Court of Star Chamber. Perhaps judges and ministers had informal contacts for such purposes; the Lord Chancellor may have been a crucial point of contact. However the very absence (so far as I have been able to determine) of any more systematic process of consultation may have been a de facto recognition of a process in which the dictates of a criminal law made in London interacted with local circumstances and imperatives.

Government was therefore obliged to act in a manner which recognized that, although the criminal law had application throughout the realm, the needs and perceptions that were brought to it might vary from one place to another. While some localities were in the vanguard of penal reform at the end of the eighteenth century, others saw little need for it and some - most notably the metropolis - were relatively hostile to it. Transportation remained necessary as a median punishment between death and incarceration. But whereas in London it seems primarily to have served as a substitute for death, in some localities it seems to have been conceived of as a means by which to reinforce the new discipline of reformed gaols. One of the challenges facing government was to ensure that measures of penal reform

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satisfied disparate conceptions of the nation's penal order.\textsuperscript{60} It is another major theme of this thesis that, although the central government's approach to penal change was cautious and conservative, this was not a function of indifference. Rather it was a sensible approach in a context in which social and administrative regulation continued to be locally-based and conceived.

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To sum up, there has often been a tendency in the historiography of changing penal practices to see those changes as emanating from an implicitly uniform and unitary governmental body. A principal aim of this thesis is to illustrate the wider range of complexity and conflict in the story. I hope, not simply to present a narrative of convict administration and of changing ideas about it - although I am concerned with those matters. I hope also to provide an institutional framework for understanding and interpreting the significance of those changes within the contexts of state-structure and the distribution of powers and responsibilities within it.

\section*{II. Forces for Change}

A study that views penal change primarily through the structures of central governance risks overlooking much else of importance. The forces inhibiting change must be given their due, but so too must the positive, impulsive factors that were at work. This returns us to the question of changing social and cultural contexts, matters about which it is difficult to derive direct and coherent evidence from the source materials on which this thesis is primarily based. I have already noted the need for more detailed study of local patterns of penal practice. Much important work also needs be done in contemporary periodicals -

\textsuperscript{60}See below. Chapter 3, part I; Chapter 4, parts II-IV; and Chapter 5, part IV.
perhaps especially in the increasingly powerful world of newspapers - in order to articulate
the complex, widespread and influential phenomenon that, through the work of Jürgen
Habermas, has come to be known as "the public sphere."\(^6^1\)

Closely bound up with this widening public sphere were changing cultural values and
mentalities. Until the 1970s the notion of rising "humanitarianism" as a factor in the history
of English penal change was viewed in largely unproblematic terms. Imprisoning a person in
a well-regulated penal regime was self-evidently more humane than hanging or transporting
them.\(^6^2\) Such a view was irrevocably qualified after 1978 with the English language
publication of Michel Foucault's *Surveilleur et punir* followed soon after by the appearance
of Michael Ignatieff's *A Just Measure of Pain*, a survey of the development of the
penitentiary in England that was informed by a similar sensibility. Both works challenged the
proposition that a closely-regimented prison regime was necessarily more "humane" than
capital punishment in any simple-minded way. Punishments were no longer inflicted on the
body in a public setting, but rather on the mind and in places hidden from public view.\(^6^3\) At
the same time, the joint appearance in 1975 of E.P.Thompson's *Whigs and Hunters* and of a
collection of essays by Thompson and his students at Warwick University, *Albion's Fatal
Tree*, focused the most serious attention of English historians on the social context of crime


\(^{62}\) The master-narrative of this perspective - which indeed largely overlooks the structured role of transportation in the British penal array - is Radzinowicz. *History*, vols. 1, 4 & 5.

and criminality rather than on more traditional questions of penal change.64

A more sophisticated understanding of the cultural shifts that informed penal change has therefore been relatively late in emerging. John Beattie has attempted to situate the decline of public punishments in the larger context of a growing distaste for all public displays of cruelty that was characteristic of a more commercialized and self-consciously "civilized" English society.65 Greg T. Smith has recently carried such concerns further in a wide-ranging consideration of its metropolitan context.66 And Randall McGowen has sought to place the essential shift - from the public punishment of the body to a secluded working upon the soul - in the broader context of a widening gap between religious aspirations and secular realities that was characteristic of Enlightenment thought in general.67 More recently Victor Gatrell has posed a strident challenge to the proposition that the last century of public executions in England reflects a public sensibility that was, in any unproblematic fashion, more humane than its predecessor.68

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An understanding of such changes is important to the larger portrait of penal change because, unlike much of what follows in this thesis, they were not necessarily informed by any pressure on established institutions and practices. Doubts about the moral acceptability of hanging were well-established in the minds of many observers long before the vast numbers of capital convicts brought to bear on the ritual in London during the 1780s revealed its practical limitations as a form of social discipline. By the same token there is evidence that imprisonment had been gaining favour as a means of punishing certain classes of serious offenders for some time before the cessation of transportation to America in 1775 prompted more intensive consideration of its merits.  

Changes in the nature of the law itself also had a significant role to play. We still have no full-scale study available in print of the massive and fundamental change wrought by the extension of summary jurisdiction between the 1790s and the mid-nineteenth century. By comparison with the situation that had prevailed over most of the eighteenth century, summary jurisdiction vastly reduced the range of offenses whose prosecution and punishment might ultimately come to the attention of the courts and, by extension, the central government. Although a desire to extend the summary powers of magistrates is apparent in the metropolitan policing measures of 1785 and 1792 that we will be considering, most of this important story lies outside the temporal parameters of this thesis.

Nevertheless in describing how an increased central supervision of criminal justice

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69 See below. Chapter 3. part I; and Chapter 4. parts III-IV.


71 See below. Chapter 4. part I; and Chapter 5. part IV(2).
emerged during the late eighteenth century - often against the immediate desires of government - three factors can be detected, all of which are apparent in the stories with which we opened this chapter.

(1) The Problem of Crime

The first factor was the problem of crime itself. The fact of crime, its perceived character, and the need to respond effectively to it were themselves principal factors in accounting for major changes in all aspects of criminal justice over the eighteenth century.\(^7\)

During the period considered in this thesis, the most self-evidently important factor for government was the sheer weight of numbers. The gaols of both the metropolis and the provinces contained unmanageably large numbers of people convicted of serious criminal offenses. This placed a great strain on established structures in not only a physical but also an abstract sense. The disposition of criminal offenders is never merely an administrative problem. It is also an ideological one. The criminal law functions to no useful effect if convicts are not disposed of in a manner that affirms the authority of the state without calling it into question on the grounds of disproportionate cruelty or lenience.\(^7\) I have already suggested that, then as now, many opinions existed as to what modes of punishment afforded the best means of fulfilling this mixed agenda, and that this is perhaps most readily to be seen in the relative emphases laid on the need for transportation.

During the late eighteenth century, it was all too apparent to statesmen at the nation's centre that there could be no doing away with transportation. The result was the adoption of the hulks as places of temporary incarceration for male transports from all over England and

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\(^7\)Beattie, *Crime and the Courts*, 267 & 637.

Wales until such time as their sentences could be carried into execution. Viewed as a temporary expedient during the 1780s, the hulks subsequently proved difficult to do away with altogether. After 1801 the government stopped trying.74

The administration of pardon was another area in which the pressure exerted by large numbers of criminal convictions drew government into more extensive and sophisticated realms of administration than it had ever anticipated or actively sought. The deployment of this royal prerogative power served a crucial ameliorative function in a criminal justice system whose characteristic punishment was death. The vastly increased number of convicted offenders during the 1780s promoted a search for new strategies in making the necessary decisions with that degree of dispatch that would best serve the interests of authoritative punishment.75

Finally we should bear in mind how many late eighteenth-century statesmen had personally experienced crime, often in its most threatening forms. For many of them the administration of criminal justice would have had an immediacy and self-evident relevance that is far less common amongst modern policy-makers. Whatever we may think or feel about their outlook on the questions of serious criminal offenses and how best to address them, we can have little doubt as to the seriousness of purpose with which they viewed those issues. "Failures" to reform the criminal law were the product, not only of bloody-mindedness or outright indifference, but also of genuine and all too vividly-informed convictions as to how best to achieve the principal end of punishment - the reduction of criminality.

74 See below, Chapter 4, parts II-IV; Chapter 5, part III; and Chapter 7.

75 See below, Chapter 6.
(2) The Problem of the Metropolis

The second prevailing theme of government involvement was the centrality of London. Recent work has demonstrated how the rapidly changing social and economic character of the metropolis in the years following the Glorious Revolution was an impulsive force behind new tactics in social discipline, particularly in the initial expansion of the capital code and in the systematization of transportation by an Act of 1718. It was only to be expected that eighteenth-century ministers and parliamentarians, who spent an increasingly large proportion of their year in London, should have felt that measures to suppress crime were of more immediate concern there than elsewhere. After 1718 government took upon itself the costs of transporting convicts from both the capital and the surrounding counties with whom its social and economic life was inextricably linked.

In the mid-eighteenth century the major roads in and out of the metropolis attracted the attention of highway robbers like no other place in the kingdom. To read the letters of Horace Walpole for the period is to experience his sense of the capital’s periphery as a kind of penumbra of potential violent crime. The young James Boswell’s account of his first transit of the region in November 1762 has something of the same air to it. By contrast The

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*Gentleman's Magazine* marvelled that there were only three men left for execution on the entire Home Circuit in June 1762 and deemed a street robbery in Chester the following year to be "a thing never known to have happened there before." The young Fanny Burney relished her early morning walks near Thetford in Norfolk. "Near the Capital I should not dare to indulge myself in this delightful manner for fear of [Robbers]," she noted, "but here, every body is known, one has nothing to apprehend."^{79}

Certainly the metropolis produced convicts on a scale far out of proportion to its share of the national population. This continued to be true even of the late eighteenth century, when other significant urban centres - with similar experiences of social and economic dislocation - had emerged in other parts of Britain. To some extent this may have reflected a somewhat lighter burden of private prosecution by comparison with the provinces. County assizes were held only two times each year (and only once on the Northern Circuit), so a victim might have to wait several months before being able to prosecute the accused offender. In order to do so, he might have to travel a significant distance to the assize town. He would also have to bear the costs of transporting and putting up both himself and any witnesses whom he might wish to produce, not to mention accept a substantial financial loss owing to time away from his work. By contrast felony cases were tried eight times yearly at the Old Bailey, which was conveniently located in the heart of the metropolis. It is possible that the vast expansion in the numbers convicted at the Old Bailey after 1770, which was often commented on by contemporaries, partly reflected the decision of parliament in 1778 to reimburse the costs of poor prosecutors in felony cases whether or not a conviction was

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secured. It may also have reflected improved detective measures in the metropolis by comparison with the rest of the nation (in which connection the young Liverpool’s account of the role of the Bow Street constable may be suggestive). Such factors may have eased the burden of private prosecution in London, and thus have exaggerated the distinction between London and the provinces in the number of convicts generated in each.

Whatever explains the large numbers of metropolitan convicts, the central government continued to regard the need to dispose of them as a more pressing problem than it did those of the provinces. There were growing doubts in some quarters about the uniqueness of London crime, but few were yet entertained as to the comparative scale and urgency of the administrative problems that resulted from its prosecution.

(3) Social and Cultural Homogenization

However it is difficult to make sense of government’s efforts to clear local gaols during the 1780s without reference to a widening conviction that similar difficulties in the provinces - in principle if not in scale - had also to be addressed. Evidence for such convictions is sparse in the papers of government and statesmen. It must be read indirectly, and often more on the basis of their actions than their words.

An important force in the emergence of such convictions must have been the vast increase in physical mobility and speed of communication that took place in Britain over the course of the eighteenth century. Intensive turnpike construction began in the early eighteenth century and continued into the nineteenth, but it was during the thirty years following 1750

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81 See below, Chapter 4, part III; and Chapter 7, part II.
that it had its greatest effect in reducing travel time. A coach-trip from London to York that took four days in 1754 took three by 1761, and one-and-a-half by 1774. A rapid growth in the volume of coach-travel was also apparent after 1780. In 1740 there was only one coach from London to Birmingham each day; by 1783 there were thirty. So novel and potent a phenomenon was this rapid expansion in physical mobility - for those, of course, who could afford to travel - that it rapidly generated its own literary genre. Several issues of the London Magazine between 1767 and 1769 featured maps of roadways from London to various towns, both near and far. Viscount Torrington, one of the most redoubtable of contemporary travellers, thought the work of road-building already virtually complete by the early 1790s: "our island is now so explored; our roads, in general, are so fine; and our speed has reach'd the summit." He recalled an old man of eighty-four whose "first astonishment was at the goodness of the roads, and to see fine upper smooth ways - which he remember'd hollows, hardly to be drag'd thro' by a set of horses!"

This awareness of enhanced mobility, coupled with the difficulties government experienced in determining a new destination for convicts under sentence of transportation after 1782, must have given the problems of local officials in transporting their convicts a far more immediate and alarming character for metropolitan-based statesmen than ever

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Government would almost certainly have recognized an obligation to facilitate transportation for the provinces purely on the grounds of maintaining the credibility of the criminal law. Nevertheless, the alarm that the prospect of hundreds of serious offenders housed in antiquated and often physically decrepit gaols throughout the nation is not to be underestimated. The contrast with the speed and efficiency with which such convicts had been dispatched from the country between 1718 and 1775 - during which time the capacity of individuals to move about the country at large had so greatly and rapidly expanded - must have been dramatic and profoundly alarming. Although I have found no direct evidence, it seems likely that such a concern must have powerfully reinforced a basic ideological conviction amongst statesmen that they were obliged to relieve provincial gaols of their burden of convicts for transportation.

Moreover the emergence of an extensive, nationally circulated periodical press by the early to mid-nineteenth century must have promoted the development of an increasingly uniform sense of criminality for the nation as a whole. The belief that London's experience of crime remained uniquely severe had been coming into question in many minds as early as the middle of the 1780s, although there is little evidence that it had any substantial impact on the thinking of ministers before the early nineteenth century. Moreover the few studies that have yet been produced of criminal justice in nineteenth-

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84See below, Chapter 4, part IV; and Chapter 5, part II.


86See below, Chapter 7, part II.
century Britain suggest the persistence of regional variation in both the character of crime and the extent to which the letter of the law was applied in punishing it. Nevertheless, in the realm of popular culture, certain crimes had come to be established in the public mind as the definition of "crime" throughout the nation as a whole. To this extent at least, the culture of localized governance - if not necessarily its operative reality - had been eroded by comparison with the preeminent status it had during the eighteenth century.

III. Convicts and the State: A Problem of Processes

The need to dispose of unprecedentedly large numbers of serious criminal offenders was one of the first issues of domestic regulation to acquire a fully national dimension. An analysis of the means by which it developed therefore forms a significant component of the study of state development as a whole. But an analysis that treats the problem in the abstract, without setting it in its institutional and ideological contexts, is insufficient. The pressure of convict numbers may answer the questions of why and when an increasingly centralized conception of criminal justice administration began to emerge. But we must investigate the context of a multi-valent state in order to understand who wanted (and who resisted) such a change, how such change could be realized, what characteristics it ultimately assumed, and why such change was more quickly and more fully realized in some places than others.

This thesis seeks to examine and explain the larger process of state-building that fundamentally informed the process of criminal justice "reform." It seeks more fully to contextualize a history of changing penal practices that is still too easily read either in terms

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of road-signs pointing the way toward the future, or as a series of inadequate way-stations on the road there. Such a narrative views reform almost exclusively as a response to abstract changes in human thought - which in part, of course, it was - but largely neglects the equally important roles of pressure upon established structures and of the often coherently reasoned resistance of established patterns of authority. Even as it clung to a traditional notion of local responsibility, government was nonetheless backing into a more involved and determinative role in the administration of criminal justice for the nation as a whole. This role was thrust on it by pressures from the localities that could not be ignored, by concurrent initiatives in parliament that could never be wholly controlled or suppressed, and by the simple pressure of numbers on a set of arrangements that was ill-equipped by its nature to deal with them. The government of late eighteenth-century Britain did not seek a more extensive role in the administration of criminal justice; it acquired one all the same.
CHAPTER 2

POLITICS AND ADMINISTRATION:
THE ORIGINS AND DEVELOPMENT OF THE HOME DEPARTMENT, 1782-1830

In March 1782, four months after British forces in North America surrendered at Yorktown, George III at last acceded both to the will of his Parliament and to the desire of his first minister, and accepted the resignation of Lord North as First Lord of the Treasury, Chancellor of the Exchequer and leader of the House of Commons. North's departure ended a twelve-year ministry whose strength and popularity had been drained by a war whose fiscal and psychological costs had become insupportable.1 But although widely seen by English statesmen as necessary, North's departure did not leave any political grouping with a commanding position in the House of Commons. The ministry that succeeded him was a coalition between two opposition groups. The larger one comprised the followers of the Marquis of Rockingham, who became First Lord of the Treasury. The Secretaryships of State were divided between the Rockinghams' leader in the Commons and the leader of the second party to the coalition, Charles James Fox and the Earl of Shelburne respectively.

At the same time, the character of the Secretaryships was fundamentally altered. Previously, the two Secretaries shared the administration of foreign and domestic affairs alike. The change of March 1782 was described in a letter from Edward Cooke, under secretary to Ireland, to William Eden: "Ld Shelburne takes the King's Dominions for his Department. ... M' Fox takes the whole foreign Correspondence."2 When put this way, the former office, embracing the affairs of all of Great Britain and her colonies, sounds more splendid than the other.

2Add MS 34418 ff.385-6.
In this chapter I will argue that, in the context of the moment, such a view was fundamentally correct. Historians have long recognized, first, that the division of March 1782 coincided with the establishment of a fragile political coalition and, second, that the King displayed a marked preference for the ministerial services of the first Home Secretary, the Earl of Shelburne, who was elevated to the Treasury upon Rockingham's premature death only three months later. Yet none of them has ever suggested that these two aspects of the situation were actually conjoined. Viewed purely from the perspective of administrative efficiency, the division of responsibilities between a Secretary solely responsible for domestic affairs and one solely responsible for foreign affairs seems so sensible that most historians take it to have been inevitable, largely ignoring either the immediate political imperatives which contributed to it or its subsequent consequences.

In the absence of any explicit comment on the decision from the key participants, it has generally been assumed that the growing pressure of simple administrative logic was the driving force behind the change. Such an imperative might have been reinforced by the long-standing commitment of the Rockingham Whigs to measures of "economical reform," that programme of fiscal and administrative reforms which they made one of the preconditions of their acceptance of office in 1782. Shelburne, too, had long been

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sympathetic to such proposals. Even the King is sometimes enlisted in a forward-thinking explanation. Historians invariably cite his suggestion, eleven years earlier, that one potential Secretary who lacked proficiency in French ("an absolute requisite for one who is to treat with Foreign Ministers") "might have the home departments which would be composed of all domestick affairs," while the other Secretary would "transact the whole department of Foreign affairs, ...." Indeed, only three months before the accomplished fact, George III suggested a possible arrangement to Lord North which sounds almost like the finished division:

Had Lord North thought the American Secretary might cease, Lord Stormont could with great [ease] conduct the correspondence with all the European Courts, Lord Hillsborough instead of the Southern Courts take the American business in addition to his remaining branches.\(^6\)

It is not clear in this second instance what the King intended should be done about the prevailing division of domestic affairs, but he had countenanced changes in the division of responsibilities between his Secretaries on a number of occasions before 1782.

As we will see, there is evidence to support the general belief amongst historians that the logic of administrative efficiency was a major component in the structured division between the offices. But efficiency need not have been the sole or even the primary consideration of the moment. It seems strange that, when outlining their proposed ministry to one another, neither Rockingham nor Shelburne ever mentioned the division of responsibilities between the Secretaries. Yet their lists were quite detailed, including the positions to be held by members of their parties and the measures which the King would


have to accept as the price of obtaining the Rockinghams' support in Parliament. They specified many items of "ecological reform," as well as the abolition of several offices - most notably the American Secretaryship of State (which had only existed since 1768). Yet there is not a whisper of any functional division in the two remaining Secretaries. In all the proposed lists of the new ministry, both Shelburne and Fox are identified - simply, neutrally and conventionally - as "Secretary of State."

It might plausibly be argued that the division was so obviously sensible and desirable that it did not need to be specified, were it not for another curiosity of the contemporary record. A few days after taking office, Fox referred the case of a capitaly convicted prisoner to a judge for his opinion - a task which supposedly was now the exclusive preserve of the Home Secretary. This action is the more striking for the fact that Fox had already issued two circulars to British representatives abroad, dated the 27th and the 30th, notifying them of the new division of responsibilities between the Secretaries. Why was Fox performing a task which presumably he knew was now Shelburne's alone? Either Fox had not yet been informed of all that the new division of responsibilities entailed, or it was already in place and he was testing its limits.

This latter might not have been out of character. One final matter which has been

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7Bowood MSS 28 ff.77-8; and Sheffield City Archives, Wentworth Woodhouse MSS, R 1-2019(a-c) & R 1-2020(a-c). The accompanying letters appear to be Bowood MSS 28 ff.51-2 & 53-4, drafts of which also exist amongst Rockingham's papers (Wentworth Woodhouse MSS, R 1-2005 & R 1-2008). See also Wentworth Woodhouse MSS R 1-2011, and Bowood MSS 28 ff.63-4 & 65-6.

8SP 44/96 p.209 (see also pp.209 & 210); and Corr. George III, nos.3614 & 3634.

suggested as a factor in the decision to split the offices was Fox and Shelburne’s mutual antipathy, to say nothing of that of the King for Fox. But the division of the offices did not improve the situation between the two new Secretaries. Both had still to remain in the same cabinet with one another, and they soon found themselves at loggerheads over the new ministry’s first major task - the settling of peace with France and America, the latter of which, being still a colony in the eyes of Britain, fell under Shelburne’s purview.

On the other hand, it may be that the division served in some measure to limit George III’s direct contact with Fox and the Rockinghams, and that possibility points toward what I believe to have been the primary intention behind dividing the tasks of the Secretaries from one another. Historians have discerned one other characteristic distinguishing the Home from the Foreign Secretary after 1782: that the former had precedence over the latter. This is invariably attributed to the momentary circumstance that Shelburne was a peer and Fox a commoner.

The argument presented here is that this precedence was not the accidental consequence of the Secretaries’ respective status in 1782. Rather it was precisely the intention of the division between their offices and functions. The King and Shelburne contrived a situation whereby the former could not only limit his personal contact with politicians of whom he fundamentally disapproved - and one in particular who was personally repulsive to him - but also one in which his influence could be brought to bear on Shelburne’s behalf in order to enable the minister of his choice to prevail within a ministry dictated by (hopefully short-lived) Parliamentary realities.

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11 Troup, Home Office, 19; Newsam, Home Office, 19; and Kynaston, Secretary of State, 167.
The creation of the Home and Foreign Departments was therefore not purely and simply a measure of administrative rationalization; it was also shot through with political considerations. It was a point of focus in the tension which dominated politics at the centre during the eighteenth century: the dynamic tension between the still formidable personal authority of the monarch on the one hand, and the political and economic power of Parliament on the other. The dual political and administrative character of the Secretariat was a fact of life both before and after March 1782. But the attempt to give one Secretary a structured precedence over the other, by giving him the primary access to the monarch’s person and prestige, had lasting implications for the capacity of the Home Department to defend (and to enhance) its administrative character and functions. This re-configuration of political and administrative priorities - and the practical difficulties that followed upon it - are the subjects of this chapter.

I. The Creation of the Home Department

(1) The Nature of the Secretariat before 1782

In March 1782 George III was a frustrated but still powerful King. No monarch could govern without ministers who were able to command the confidence of Parliament, but the actual choice of ministers remained indisputably the monarch’s own. During the 1760s, the inexperienced but assertive King had learned the limitations of his position the hard way, participating in the creation of no less than seven distinct ministries during one of the most volatile decades in English political history. But by 1770 he had found his man in Lord North, a politician whose fiscal acumen and deceptively casual demeanour in the Commons

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helped to sustain a stable ministry over twelve years.13

However the nature of the House of Commons was such that no one man commanded a sufficiently large following to remain confident of his position for long. Royal patronage and prestige could attract and hold some further number of supporters - the precise figure was a subject of dispute then and remains one to this day - but there also existed a large body of independent members who had to be won over virtually measure by measure. Divisions of character and loyalties amongst members of parliament must often have been reinforced by a conviction that it was the Commons' mission to guard against any attempt to expand executive authority, a proposition nicely captured at mid-century by Horace Walpole:

I never wish to see unanimity ....: unanimity is a symptom of monarchy; jealousy is constitutional; and not only constitutional, but the principle of our existence. If our ancestors had intended only an assembly of deliberation, the Privy Council, or that more compact body of wisdom, the Cabinet Council, might have sufficed to deliberate. We [ie.parliament] were calculated to suspect, to doubt, to check ....14

In such a volatile body, the most reasonable prospect for a stable long-term arrangement lay in the "broad-bottomed" ministries so often sought by both monarchs and ministers. A first minister sought to reinforce and to maintain his position by admitting into the ranks of government men who commanded significant personal followings in the Lords and especially in the Commons.

It is here that the irredeemably political component of the Secretariat becomes apparent. Samuel Johnson expressed the matter precisely: "Government has the distribution of offices, [so] that it may be enabled to maintain its authority."15 A stable government

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needed a Secretary with a substantial following and, what was more in a Commons in which divisions were seldom resorted to, a powerful speaker. This need was the more pressing when the first minister seeking reinforcement was a peer. Such a dilemma confronted the Duke of Newcastle in the mid-1750s. Two points, Lord Chancellor Hardwicke explained to him, were "fundamental .... The first is the general principle, that there must be a minister with the King in the House of Commons. The other is the personal one, that Mr Pitt must be Secretary of State." 16

However, in an era before the position of "Prime Minister" was fully recognized and associated with the First Lordship, a truly powerful and effective Secretary in the Commons might come to be perceived as - and even effectively to be - the first minister. 17 Thus Hardwicke anticipated risks on the admission of a man like Pitt:

... I have long been convinced that, whoever your Grace shall make use of as your first man and man of confidence in the House of Commons, you will find it necessary, if he be a man of reputation and ability, accompanied with the ambition naturally incident to such a character, ... to invest him with more power, than from the beginning you thought fit to impart, either to Mr Legge or Sir Thomas Robinson. 18

Similar concerns were expressed on the admission of George Grenville as Secretary of State in the Bute ministry in June 1762. 19 If longevity in office is a measure of success, then it is perhaps significant that all four of the most successful First Lords of the eighteenth century -

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18 Quoted in Yorke, *Life of Hardwicke*, 2:245. By March 1761, the political weight behind each Secretary was such that the preeminence of one of them - as opposed to the First Lord, Newcastle - seemed academic. “[W]hich of the two Secretaries of State is first minister?” Walpole wondered upon Bute’s appointment opposite Pitt in March 1761. “The latter or Mr Pitt? ... [T]he King said ... he would have a Secretary who both could act and would” (The Yale Edition of Walpole’s Correspondence, ed. W.S. Lewis [New Haven, CT, 1937-83], 9:340-1).

19 *Walpole Correspondence*, 22:92.
Walpole, Pelham, North and Pitt the Younger - were Commons men who presided over ministries in which the Secretaries were confined to the Lords.  

Yet if the eighteenth-century Secretariat’s character was inevitably a mix of the political and the administrative, the King himself generally viewed its character from the latter perspective. What were its administrative functions?  

Viewed from one perspective, there were scarcely any administrative functions which did not belong to the Secretariat. The office existed to provide the basic apparatus for the expression of the monarch’s will - so far as it was the monarch’s to exercise - in all matters: foreign, colonial and domestic. Indeed at law there was only one Secretaryship, the decision to divide them serving at once to lighten a heavy workload and, perhaps, to limit the capacity of one to gain ascendency over the other. One Secretary could act for the other when the other was temporarily absent or indisposed. Indeed, following the Earl of Suffolk’s premature death in March 1779, Viscount Weymouth served as sole Secretary of State for nearly eight months, a situation which, although inadvisable in terms of the work which it imposed on him, was not perceived as being improper.  

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20 There were two exceptions to this rule during Pitt’s great ministry. His cousin William Grenville was Home Secretary for just over a year before being elevated to the peerage in November 1790, and Henry Dundas was Home Secretary from 1791 to 1794. But since both of these men were absolutely committed supporters of Pitt, they are exceptions which prove the rule.  

21 In 1752 George II advised a new Secretary of State "to mind only the business of his province; telling him that of late the Secretary’s office had been turned into a mere office of faction" (Walpole, Memoirs of George II, 1:133).  

22 H. Butterfield, George III, Lord North, and the People, 1779-80 (New York, 1968; orig. ed. 1949), 28-41; P. Mackesy, The War for America, 1775-1783 (1964), 246-47; A. Valentine, Lord North (Norman, OK, 1967), 2:75-88 & 109-36; and Thomas, Lord North, 120-1. Similarly, the Earl of Halifax acted for both offices for almost three weeks following the Earl of Egremont’s death in August 1763. Nor was this practice unheard of after the reorganization of the Secretariat in March 1782. The Duke of Wellington occupied all three Secretaryships for a month in 1834, while the King awaited the return of Sir Robert Peel from Italy. Wellington defended this unusual arrangement in a manner which reinforces the point that the Secretaryship is not inherently defined by any assigned function: "Each of the Secretaries of State, as you know, can convey the King’s commands and it would have been curious enough to have had one ... conveying the King’s commands
Since all Secretaries were equally the King's servant, any functional character to the division between their offices was entirely at the monarch's discretion. Indeed, this continued to be the case even after March 1782. The descriptively neutral phrase "one of His Majesty's Principal Secretaries of State" continued to be used, both in the records of their swearing before the Privy Council on taking office and in the announcements of this in the London Gazette.23 When it was proposed in 1784 to include the phrase "the Secretary of State for the Home Department" in a Commission, the Attorney General pointed out that no such office existed in either formal law or established practice:

... I much doubt whether there is any such Officer known as Secretary of State for the Home Department. The two Secretaries of State are his Majesty's principal Secretaries of State and the distinction of Home and Foreign are mere arrangements of Office but either of them may as I apprehend do any part of the duty. ... [T]he insertion of such an addition in a Commission under the Great Seal may be productive of some Confusion with respect to the powers of the two Secretaries of State which it would be better to avoid.24

A decade later, Pitt the Younger reiterated the point that all Secretaries were equally valid channels for expressing the King's will: "the distribution of Departments is only a matter of convenience, settled by mutual understanding, with the King's approbation but without any formal authority."25

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in one sense and two others in another for three weeks certainly, possibly for a month" (Wellington: Political Correspondence, 1833-April 1835, eds. J.Brooke et al. [1975- ], 2:109).

23Oaths before the Privy Council are recorded in the Council's Registers (PC 2). Another technicality, which reinforces the continued uniformity of the Secretariat in law, is that ministers who transferred immediately from one Secretaryship to another were not obliged to take the oath again. Examples of this include Lord Grenville's move from the Home to the Foreign Office in 1791 (PC 2/136 p.154) and that of Lord Hawkesbury from the Foreign to the Home Office in 1804 (PC 2/165 pp.243-4).

24HO 48/1A (R.P.Arden to ?, 29 Aug 1784). The phrase "the duty" suggests that the Secretariat was still viewed as a singular entity at law.

25Quoted in J.H.Rose, Pitt and Napoleon: Essays and Letters (1912), 109. Later that same year, Pitt told the House of Commons that the home and foreign departments were entirely new arrangements, made by the Ministry by whom [Burke's Act] was passed. It was not a division of the business, for the King might signify his pleasure
The essence of the Secretariat’s power, and the source of its attraction to men seeking position in political life, was its close association with the executive’s power and prestige. Changing circumstances and priorities meant that certain functions were perceived as carrying more prestige than others, and this occasionally caused conflict between individual Secretaries. The terminological distinction between the Secretary of State for the North and that for the South reflected the geographical division in their responsibilities for the conduct of diplomacy with the powers of Europe. Diplomacy was the *sine qua non* of executive power in eighteenth-century England, and the latter years of George II’s reign often saw attempts by ambitious Secretaries to achieve dominion in that area despite the ostensible division of responsibilities. During the reign of the first two Georges, the Southern Secretary’s more or less exclusive administration of the colonies and Ireland was perhaps in part a compensation for his Department’s lesser importance by comparison with that which conducted affairs with those nations of greatest concern to a King who was also Elector of Hanover.

After the accession of the conscientiously "British" George III however, the affairs of northern Europe lacked the same urgency and precedence which they had once had. During the first two decades of the new reign, colonial affairs - particularly the growing crisis in America - moved to the front rank of executive concerns, and the Southern Department accordingly became the main source of contention amongst ambitious ministers. However the greater challenges posed to the Southern Secretary’s direction of colonial affairs came, not...
from his Northern counterpart, but from two other agencies. The first was the Board of Trade, which secured a large degree of control over colonial patronage during the eighteenth century. Even more significant was the creation of a third Secretary of State in January 1768 to supervise colonial (particularly American) affairs, and which soon superseded the Board of Trade. These latter offices were eliminated by the "economical reform" measures of the Rockingham government in 1782 (although the Board of Trade was revived not long after).

Nevertheless it is interesting that, all things considered, Viscount Weymouth still thought the Southern Secretaryship to be superior to the Northern. "[T]here is no difference between the two in point of Rank or Emolument," he wrote to the First Lord in September 1768, when he successfully requested transfer from the Northern to the Southern Department. "[T]he only reason I can have now for desiring to change, is, that I think the most material business to this country must go thro' the hands of him who has the Southern Correspondence." Perhaps this reflected the growing urgency of administrative difficulties in Ireland and India, which still remained in the Southern Department. Certainly diplomatic relations with the Bourbon states were of central importance. It may also have reflected a measure of success on the Southern Secretary's part in maintaining a hand in American

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29 Quoted in L.H. Brown, "The Grafton and North Cabinets, 1766-1775" (Ph.D. thesis, U. of Toronto, 1962), 216. One account from 1735 suggests that the Southern Department was usually held by the senior secretary (John Chamberlayne, *Magna Britanniae Notitia: or the Present State of Great Britain* [1735]; quoted in *English Historical Documents*, 10:270). Most historians have suggested otherwise, and Chamberlayne gives no reasons for his assertion.

affairs notwithstanding the creation of the colonial Secretaryship - for a time at any rate.31

(2) The Importance of Criminal Pardon

With regard to issues of domestic administration however, there is no evidence of any compelling jurisdictional quarrels between the Secretaries. Perhaps this was not surprising, as the range of responsibilities which the Secretariat bore for the conduct of domestic affairs was small and the business only intermittently demanding at best. Surveys of the eighteenth-century Secretariat have so little to say on this subject that the bulk of their analyses of it are given over to extended accounts of the Government's unfortunate attempts to muzzle Wilkes and to the issue of general warrants - interesting but hardly representative issues.32 The Secretariat bore the ultimate responsibility for sanctioning use of the military in supporting the authority of magistrates against unlawful crowd activity, but constitutional scruples on this issue were strong and the Secretariat did not authorize such interventions very often.33

In an attempt to dismantle the elder Pitt's historical reputation for administrative omniscience, Richard Middleton has argued that the eighteenth-century Secretary of State is better understood as "a channel of communication [amongst departments and authorities], rather than the source of all authority."34 Middleton perhaps underestimates the extent to which such a position makes possible the creation and direction of policy, but his characterization of the Secretariat is nonetheless accurate as a basic structural description of

31 When the Earl of Dartmouth was considering taking on the Colonial Secretaryship, Lord North warned him that new regulations might not bring to an end the interference of the Southern Secretary (Carr. George III, no.1115). For such conflicts see Spector, The American Department, ch.5.

32 Thomson, Secretaries of State, 117-26; and Kynaston, Secretary of State, 162-3.

33 Outside the capital, the decision to deploy troops against rioters was frequently left to the discretion of the Secretary at War; see T. Hayter, The Army and the Crowd in Mid-Georgian England (1978).

its domestic functions. In acting to suppress violent disorder, the Secretary was a crucial node of communication amongst local, ministerial and military authorities.35

Middleton’s description is also true of the only regular domestic function of obvious interest to most contemporaries: the administration of pardon in cases of criminal conviction. The King’s power of pardon was a particularly striking and potent manifestation of his personal prerogative power. By 1760, the interposition of the Secretariat was well-established, but appeals for the Royal Mercy were referred as a matter of course to the judge before whom the appellant had been convicted and - however deferentially expressed - the judge’s view in the matter almost invariably determined the outcome.36

Nevertheless, given the profound consequences of pardon decisions and the extent to which they reinforced the quasi-divine character of royal authority, a substantial degree of the dignity and prestige possessed by each Secretary’s office must have resided in the perception that he was the conduit through which that discretionary power flowed. The Criminal Entry Books from 1761 to 1782, which consist almost entirely of correspondence relating to pardons, suggest that a structured division was maintained between the Northern and Southern Offices in their issuance.

Appendix 2.3 illustrates the division between the Secretaries in the issuance of Circuit Pardons. These were issued in response to letters, returned to the Secretary by the circuit judges at the conclusion of each of the assizes circuits, which listed capital prisoners recommended for pardon on specific conditions.37 The table suggests a clearly delineated

35Hayter, Army and the Crowd, 47 & 52-3.

36See below, pp.375-9.

37The tables omit the northern and Welsh counties, which did not receive Circuit Pardons with sufficient frequency to be significant for these purposes.
pattern of responsibility over discrete periods of time. Like the Departmental division of responsibility for diplomacy, their basis was crudely geographical: the Northern Secretary issued the Circuit Pardons for the Norfolk and Oxford Circuits, the Southern Secretary those for the Home and Western Circuits. Although group pardons for London (Old Bailey) convicts were not, strictly speaking, Circuit Pardons, they generally appear to have been the business of the Northern Secretary, and the Midland Circuit Pardons those of the Southern. This specific pattern was reversed (and the others somewhat confused) in 1774 and 1775 - a fluctuation which may have been related to the enhanced and unusually concerted activity of the Northern Department in criminal justice matters at this time. For reasons that are unknown to me, the distribution of the Home, Norfolk, Oxford and Western Circuits was largely reversed from 1764 to 1766. More strikingly, there was a decisive swing in all Circuit Pardons toward the Southern Department beginning in 1779. In part this must simply have reflected the nine-month delay in appointing a successor to the Northern Secretaryship after Suffolk's death early that year. But the ultimate appointment of a successor, Viscount Stormont, seems to have had little impact; the Northern Department issued only the Western Circuit Pardons thereafter.

It might be tempting to see in this latter pattern a bureaucratic precursor for the final settling of the full responsibility for pardon on the Southern Department in March 1782.\(^{38}\) But such an interpretation is somewhat qualified by the evidence of Appendix 2.4, which lists pardons issued on each circuit in response to individual appeals to the monarch. Although there are few clear and sustained patterns for each circuit, there are many instances of a

\(^{38}\)H.M.Scott maintains that Stormont had the direction of the most important diplomatic relations and had little involvement in domestic affairs other than during the Gordon Riots; Hillsborough managed most of the domestic business, his foreign business being confined to those nations with whom correspondence was a matter of routine (British Foreign Policy, 293-4).
rough equality between the Secretaries. Perhaps the more telling point is that one or the other Secretary might issue any pardons at all for each circuit. The circuit judges must have understood beforehand which Secretary their Circuit Letters would be addressed to, so any division in response to individual pardons at all suggests an interference intended to ensure that neither Secretary might seem to possess a monopoly over this particular royal prerogative.39

Such divisions imply attention to bureaucratic form rather than a jockeying for position.40 They suggest one area in which there was self-conscious avoidance of any grounds for conflict. This reinforces the singularity of Fox's attempt to act in this area in March 1782. If the offices had already been divided, what other motive could he have had other than a concern for the power and prestige which the pardon function implied? In an era in which monarchical authority was still invested with a tincture of divinity - and perhaps nowhere more so than in the prerogative power of pardon - no Secretary confined solely to foreign affairs could have viewed the loss of apparent influence with regard to pardon without feeling that something substantial had been lost to his Secretarial prestige.

(3) The Secretariat after the Division

It is tempting to view the jurisdictional conflicts which we have noted as the immediate impetus to the division of the offices. Yet we have already noted the absence of

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39The division of pardon powers was noted by outsiders. In 1767 the High Sheriff of Lancaster had to be assured that a pardon "although signed by Mr. Secretary Conway in the absence of Lord Shelburne, is to operate equally as if it had been countersigned by his Lordship himself" (Cal. HO Papers, 2:175).

40Who was responsible for ensuring this division in the pardon business between the two offices? I have not been able to determine the answer to this question, which is complicated by the fact that the Northern and Southern Secretaries maintained their offices at different premises - occasionally, perhaps, at some distance from one another (E. Hertslet, Recollections of the Old Foreign Office [1901], 2-4 & 253-8). One candidate is the State Paper Office, which served as the repository of all material passing through both offices (Nelson, Home Office, 142-5). Perhaps the judges on circuit were simply instructed to inform potential petitioners that one Secretary or the other should be applied to, thereby achieving departmental parity in a rough-and-ready fashion.
explicit reference to that division amongst the participants most closely involved. We should also note the lack of evidence for any enhancement of the activities or ambitions of these newly defined Secretaryships during the subsequent decade.

Two issues dominated Britain’s foreign affairs between the American and the French Revolutions: the first were the negotiations for peace with America and its European allies; and the second was the need to rebuild, expand and protect overseas trade as a crucial component in restoring confidence in the nation’s fiscal capacities. Faced with an unprecedented national debt and the loss of a crucial market for manufactured goods in America, the British Government developed a more substantive commitment to peace and free trade during the 1780s than ever before. This might seem to imply the need for an expanded diplomatic corps, but the most substantial diplomatic and economic achievement of the decade, the Eden Treaty of 1786, was largely the work of a single individual - an individual, moreover, who answered primarily to the First Lord of the Treasury rather than the Foreign Department. British foreign policy between 1782 and 1792 was cautious and conservative, centering upon a concern to re-establish and protect trade, and emanating primarily from the First Lord and the cabinet rather than the Foreign Secretary.41 No component of British diplomacy during that decade clearly reflects any enhanced departmental policy-making vigour or integrity resulting, either intentionally or accidentally,
from that department’s creation in 1782.

Nor was the Home Department a locus for expanded government activity in domestic affairs during this decade. There had been some significant innovations in the administration of criminal justice during the 1770s, but the only significant domestic policy initiative of the 1780s was an attempt more systematically to enjoin local authorities to carry out the policing activities already expected of them. This was at best an enhanced application of energy to an existent structure of authority. More tellingly, it was intended as a structural compensation for the abandonment of the one substantial innovation in criminal justice administration which the central government had put forward: the Penitentiary Act of 1779. It is possible that the major domestic issue of the 1780s, the gaols crisis, could have been anticipated in March 1782 given the well-known relationship between post-war demobilizations and upsurges in levels of prosecuted crime. But the evidence suggests that no one had anticipated the sheer scale of the problem as it was ultimately revealed by mid-decade.

Finally, if the loss of America was a shattering blow in most respects, it must at least have raised the prospect of substantially diminished colonial responsibilities - so much so that Edmund Burke, in outlining his proposal to suppress the colonial secretarship as part of the Whigs' "economical reform" programme, anticipated that colonial and domestic administration could be united in a single department without compromising effective action on either front. Imperial historians have generally agreed that the years during which

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42See below, Chapter 3, part II; and Chapter 4, part I.

43See below, Chapter 4 passim. For the connection between war and crime levels, see Beattie, Crime and the Courts, 213-35; and D.Hay, "War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts," Past and Present no.95 (1982): 117-60.

44Parliamentary History 20 (1780-1): 55-6. Burke’s willingness to split at least one coherent administrative jurisdiction militates against any assumption that the division of March 1782 was tied to the "economical reform" programme (see also Cooper, "Home Department," 30-3).
colonial affairs remained under the direction of the Home Office were characterized by indirection and a lack of sustained purpose on the part of the government in London. This is not to deny that there were no dramatic imperial developments during this period; rather it is to emphasize that those developments had little to do with any coherent administrative policy formulated in and directed by the Home Department. Here, as elsewhere, it is difficult to detect any substantial innovation in policy, either behind the departmental division of 1782 or inherent in any subsequent departmental activity during the decade that followed.

(4) The Political Situation in March 1782

Forward-looking historians have perhaps been too easily distracted by the occasional administrative difficulties of the division of responsibilities between the pre-1782 Secretaries to appreciate the political advantages which those divisions might have afforded people other than the Secretaries themselves. One month after the jurisdictional division had taken place, the King re-emphasized that ministers were responsible to the monarch on an individual basis, not collectively as a cabinet:

Certainly it is quite new for business to be laid before the Cabinet and consequently advice offered by the Ministers to the Crown unasked; the Minister of the Department used always to ask the permission of the King to lay such a point before the Cabinet, as he couldn't choose to venture to take the direction of the Crown upon [himself]


44Harlow emphasizes continuities of policy between 1763 and the early nineteenth century, as well as the inadequacy of institutional structures and the centrality of Pitt's role (*Founding of the Second Empire*, esp. 2:233-53). More recently, C.A. Bayly has emphasized the range, significance and vitality of imperial development during the late Hanoverian era, but his discussion of increased activity at the centre really commences with the work of Henry Dundas starting in the 1790s - work which was largely carried on in response to the dramatically changed circumstances of war with revolutionary France (*Imperial Meridian: The British Empire and the World, 1780-1830* [1989], esp. chs.4-6).
without such sanction ....47

It might plausibly be argued that the ambiguity of jurisdictional divisions between the Secretaries served to maintain and enhance the centrality of both royal power in general, and of an active minister enjoying the King's special favour in particular.48 As long as the King's man enjoyed the monarch's unqualified confidence, and remained himself both politically and administratively active and alert, the sort of gains which were occasionally made by Secretarial challengers in the 1750s and 1760s could be averted. In short, narrowly conceived administrative considerations were invariably bound up with political ones which loomed at least equally as large.

This point can be made more apparent when we pursue an alternative thesis: that the division of the Secretaries in 1782 was a strategy devised by the King and one Secretary in particular to avoid domination by a First Lord and cabinet whom the King did not wish to see in office. In March 1782, George III and parliament were at an impasse: each one's choice of first minister was unacceptable to the other. Clearly the choice lay between the leaders of the two groups which had acted in opposition to the North ministry's conduct of the war. Of those two, only the Rockingham Whigs were numerically indispensable to a ministry that would be able to command the confidence of parliament. But the Whigs were


48Richard Middleton believes that, at mid-century, the full complexity of governmental business had already eliminated the capacity of any individual truly to direct policy. He locates policy-making in the cabinet as a whole, with its will being communicated through the Secretaries - a view which seems to me to reinforce the centrality of an active King's man (Bells of Victory, 20-1 & 49-50). The failure of anyone in the King's confidence to exercise a decisive lead could lead to paralysis, as frequently occurred in North's government after 1775 (Mackesy, War for America, 12-24). H.M.Scott notes that George III "was probably the most consistent influence on British diplomacy" before 1783 (British Foreign Policy, 15-9; quote at 15). C.R. Middleton suggests that a small circle of pre-eminent cabinet members dictated foreign policy, with the monarch's influence waning gradually into the nineteenth century (The Administration of British Foreign Policy, 1782-1846 [Durham, NC, 1977], 4-7, 99-102 & chs.2-3). Black notes the continuing importance of the King's influence during the 1780s but views it as intermittent and, after 1789, in decline (British Foreign Policy, 56, 88-9, 97, 126-8 & 473-6).
repugnant to the King for two reasons, the first one of principle and the second profoundly personal. The first was the Rockinghams' determination to force specific measures upon him as a precondition of their acceptance of office, including three measures of "economical reform" aimed at reducing "the influence of the crown" in the House of Commons, as well as the immediate recognition of American independence. To set any preconditions at all upon accepting an invitation to form a government - or at least in so open and explicit a fashion - was seen by the King as an attack upon his prerogative of choice.\textsuperscript{49} Yet, in the King's mind at least, the second of his objections to the Rockinghams was at least as potent as this. The Rockinghams were led in the Commons by Charles James Fox, who would inevitably be expected to receive one of the Secretaryships as a consequence. George III's hatred of Fox, whom he regarded as the primary corrupting influence upon the young Prince of Wales, was profound. Even worse, Fox was reputed to have reciprocated the King's hostility in public.\textsuperscript{50} George III could not contemplate with equanimity the admission of such a man to his innermost counsels.

In the event, the withdrawal of the entire North ministry - an event without precedent in eighteenth-century politics - left the King some room for manoeuvre. North's following in


\textsuperscript{50}Fox was said to have referred to the King as "Satan" and to have wished him dead. He may also have inherited some of the enmity which the King had for his father Henry, Lord Holland; see J.Brooke, \textit{King George III} (1972), 71-2, 95-7 & 224-8.
the Commons remained significant (indeed, no non-confidence motion against him had actually succeeded), so a stable ministry probably required more support than the Rockinghams alone could supply. The only other substantial grouping was that headed, since the Earl of Chatham's death in 1778, by the Earl of Shelburne. The followers of Rockingham and of Shelburne had often acted together in opposition to the North ministry, but had more recently diverged on several issues. One example which touches closely upon the principal subject matter of this thesis was the election of the Whig MP James Adair as Recorder of the City of London in October 1779. Adair, who only prevailed over the Shelburnite candidate Henry Howarth by a vote of 13 to 12, noted that the opposition of the "Shelburne interest .... gives me some concern, as it seems no very good omen of political union." 51

A more substantive issue dividing the opposition parties was Shelburne's advocacy of more extensive measures of parliamentary reform than the Rockinghams had ever contemplated during the political agitation over this issue in the late 1770s. For a time this made Shelburne anathema to the King, who expressed a commonly held view in contemptuously dismissing him as "the Jesuit of Berkeley Square." 52 But by March 1782, it had become apparent that Shelburne's ideas of enhancing the representative character of the Commons were not intended as an attack upon the "influence of the crown" - something which the Whigs' advocacy of "economical reform" explicitly presented itself as. And on the issue presently nearest the King's heart, Shelburne was closer to the King than any other leader of the moment: he believed that the independence of the American colonies should not

51 Sheffield City Archives, Wentworth Woodhouse MSS, R 1-1855.

be conceded prior to negotiations for peace. Only four months earlier, Shelburne had remarked that Rockingham's "attachment to the idea of independence ... must ever be a stumbling block between them, for he himself would never consent to it." In the exigencies of the moment, Shelburne was unquestionably the best possible first minister in the eyes of the King.

What sort of person was the first Home Secretary? He has not been very well served by historians, perhaps because his contradictory nature enables them to emphasize whichever component serves their purposes best. Those who are sympathetic to him tend to concentrate upon his ideas about administrative and parliamentary reform; those who are not, upon his reputation amongst contemporaries for duplicity and self-aggrandizement. Both were components of his nature and are relevant in explaining what he and the King had in mind by dividing the Secretarial responsibilities in March 1782.

In administrative matters, Shelburne was a constant advocate of enhanced efficiency. Government should be made less costly; decisions ought to be made upon the basis of the best possible information; and lines of responsibility for those decisions should be clearly and logically defined. Shelburne had actively sought to apply these principles during his two stints in office during the 1760s. As President of the Board of Trade in 1763, his moderation towards the American colonists was effectively undone because his innovative quit-rent

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34The Political Memoranda of Francis, Fifth Duke of Leeds, ed. O.Browning, Camden Society, 2nd ser., 35 (1884), 48; see also 49-50 & 59.
scheme could not be applied before the collection of adequate information.\textsuperscript{55} During his tenure as Secretary of State for the Southern Department (1766-68), he sought clarification as to the procedures and personal responsibilities involved in the administration of pardon, the most regular domestic task of the Secretariat.\textsuperscript{56}

But Shelburne’s concern for clearly delineated procedures also had an unattractive component to it: a hyper-sensitivity to his own jurisdictional prerogatives. This often led him to make claims on those of others - claims that were justified in the name of efficiency. During his tenure of the Board of Trade, he demanded the total direction of American affairs ("To render the Colonies still more considerable to Britain, and the management of their affairs much more easy to the King and His Ministers at home …"), as well as access to the King equal to that of the Secretaries of State (a measure "to His Majesty’s advantage as well as that of the whole system …").\textsuperscript{57} He did not get them. Shelburne lost virtually the same battle during his tenure of the Southern Secretaryship, when American affairs were removed to a new Secretaryship of State - a development which must have been the more galling to him for its correspondence with his professed notions of efficiency.\textsuperscript{58} It was this component


\textsuperscript{56}W.L.C.L., Shelburne Papers 168 ff.132-3 & 146-7; and \textit{Cal. HO Papers}, 3:188.

\textsuperscript{57}\textit{Life of William, Earl of Shelburne}, ed. Lord E. Fitzmaurice (2nd ed., 1912), 1:174-7 (quotes at 174 & 176; the first quotation is from a letter to Shelburne, but Fitzmaurice indicates it to be representative of Shelburne’s views). See also Norris, \textit{Shelburne and Reform}, 13-4; and Stuart, "Lord Shelburne," 247-8.

\textsuperscript{58}\textit{Life of Shelburne}, 1:326-33; Thomson, \textit{Secretaries of State}, 55-6; Spector, \textit{The American Department}, 18-20 & 164; Norris, \textit{Shelburne and Reform}, 26-7; and Stuart, "Lord Shelburne," 247-8. Chatham’s effective departure from the ministry had left Shelburne feeling isolated and he was uninformed as to recent developments because he was staying away from Cabinet meetings. He was apparently offered the new Secretaryship, but turned it down because he did not have the least idea till this moment that any change respecting the Southern Department ever was in the least agitation or thought of …. [and because] I see so many difficulties attending the framing & modelling any such New Office, however right & proper it may or may not be … (quoted in \textit{Life of Shelburne}, 1:328-9; and Bowood MSS 106 ff.7-8 [draft, the latter part of which differs from
of Shelburne's attention to administrative practice which contemporaries noticed most clearly. Attempts to expand or to maintain jurisdictional rights were not remarkable in themselves, especially amongst Secretaries of State, but Shelburne's insistence upon them as matters of principle and efficiency probably sounded a hollow, hypocritical note in the ears of men who had less closely considered justifications for similar ambitions.

For there could be no doubt that Shelburne was, quite probably, the most widely distrusted and disliked politician of his generation. "He was so fond of insincerity as if he had been the inventor," remarked Horace Walpole, "and practised it as if he thought nobody else had discovered the secret." The origins of this universal conviction remain obscure, although beginning his career under the patronage of the Earl of Bute made him a lightning rod for those charges of a malign, "secret influence" upon the throne which dominated opposition belief during the 1760s. Nor did his wide-ranging learning redeem him in circles where one might have expected otherwise. Samuel Johnson remarked that "his parts were pretty well for a lord, but would not be distinguished in a man who had nothing else but his parts." The Marquis of Carmarthen, a more sympathetic observer, stated the broad conviction about Shelburne succinctly: "Lord Shelburne possesses great talents for a Statesman, but he is not always to be trusted." These perceptions point toward Shelburne's critical inability as a minister: his

the final form given in Life of Shelburne). Under these circumstances, Shelburne's colleagues could be forgiven for thinking him inconsistent and unreliable.


incapacity to win and maintain political loyalty. A successful eighteenth-century minister - such as George III sought to make him - needed to hold an office with sufficient substance that he could exert influence from it. Yet this would come to nothing if he could not secure the confidence of enough followers to maintain control of parliament. But to many people, Shelburne's attention to the efficient management of government - to the exercising of power - always had an authoritarian air. "Power he loved in practice, and admired in theory," Lord Holland recalled. "The checks devised for the protection of freedom, he, in his heart, lamented as obstacles to the administration of the State." In 1780 The London Magazine remarked upon Shelburne's conspicuous inability to carry a debate, an inability which it located in a self-regard that overrode any consciousness of its effect upon his listeners:

[Lord Shelburne's] elocution and manner are calculated to command veneration, not to inspire affection; the force of his arguments, his extensive knowledge, and the importance of the subjects he brings before parliament are all calculated to astound his adversaries; but he wants that harmonious voice, and those winning graces of oratory, which please and persuade, at the same time that they attempt to enforce conviction by the strength of reasoning. His conscious feelings of superiority betray him into a smile of ineffable contempt for those whom he opposes, which strangers below the bar have sometimes mistaken for that disagreeable distortion of the features called a grin.62

In short, although Shelburne had many innovative ideas about how to exercise power, he had no taste or capacity for the winning of it. "The truth is," wrote Richard Pares, "that Shelburne was not a politician at all but had the instincts of a subtle and far-sighted administrator: he would have shone as the Prime Minister of a benevolent despot, as a Tanucci or a Turgot."63 Boswell wondered why the King had ever lighted upon him for first

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63Pares, George III and the Politicians, 78 n1.
minister. "Because, Sir," replied Johnson, "I suppose he promised the King to do whatever he pleased." In this, Johnson was not far off the mark.

Yet as attractive as Shelburne found power, and as sensitive as he was to the boundaries of his personal authority, he was sensible enough to perceive that he was unable independently to sustain the leadership of parliament as matters stood in March 1782. Only the active participation of the Rockinghams could do that. However, the King was unwilling to deal personally with men whose principles and demands were anathema to his understanding of his personal authority. From the outset, he refused to deal with the Rockinghams except through Shelburne. It is this refusal which forms the backdrop to the decision to divide the responsibilities of the Secretaries, a measure which - as we have seen - was never explicitly articulated in the negotiations between Shelburne and Rockingham, and whose full extent may not have been immediately apparent even to the new Foreign Secretary himself.

At the beginning of March, Shelburne had been considered the most likely candidate for forming a broad-bottom ministry with North. Once it had become clear that North himself must go, George III dispatched one of his closest political intimates, Lord Chancellor Thurlow, to determine whether Shelburne was willing to undertake the lead in a new ministry which must inevitably include the Rockinghams. He seems briefly to have contemplated a ministry with the "perfectly open and unconnected" Viscount Weymouth as its head - in order, significantly, "to keep the Treasury in hand" - but there is no evidence that these plans were ever seriously pursued. At this point, North expected Shelburne to be unwilling to act with the Rockinghams, and it is suggestive that Shelburne himself, conscious

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of "Mr. Fox watching them all the time. .... declined saying anything, except personally to His Majesty ...." The King ordered Thurlow to send Shelburne to see him on the evening of 21 March. Shelburne later recalled some of the things that were uppermost in the King’s mind at that meeting:

... the state of his [the King’s] health; his agitation of mind; his determination to risk anything rather than do an act of meanness; the cruel usage of all the Powers of Europe; the bad opinion of Ld Rockingham’s understanding; his horror of C. Fox; his preference of me compared to the rest of the Opposition; that it was unbecoming him to speak to many; that the general wish was for a Broad Bottom.

Shelburne agreed to act on the King’s behalf in forming a coalition, stipulating as conditions that the Rockinghams must be included, "cost what it would more or less," and that "Full power and full confidence" should be vested by the King in Shelburne himself. On 24 March, the King told Charles Jenkinson of the outcome of this meeting:

I have seen Lord Shelburne; his language is fair: he dreads the R[ockingham] party, and will I believe offer to take a secondary part if he can gain them. He knows I will not treat personally with Lord R[ockingham], and that he is therefore employed to see what arrangement on a broad basis can be formed.65

Shelburne now replaced Thurlow as the King’s principal agent in negotiations with the Rockinghams.66 The gist of his talks with Rockingham appears to have alarmed the King (they presumably confirmed Rockingham’s intransigence regarding American independence and economical reform), who saw Shelburne and Thurlow alone on the morning of 25 March.67

This was the situation when that meeting was held. Shelburne disagreed with the

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65 Corr. George III, nos.3542, 3545 & 3571; Eg MS 2232 f.47; Life of Shelburne, 2:87-9; and The Letters of King George III, ed. B.Dobrée (1935), 151-2 (emphasis in original).

66 Eg MS 2232 f.55; and Corr. George III, no.3575. On March 24th the King told Charles Jenkinson that “I have stood firm to the not then seeing Lord R[ockingham] at all the consequence of which is, that the Chancellor has persuaded Ld Shelburne to step forth and to form the Ministry” (MS Loan 72/1 f.61).

Rockinghams on some fundamental points and was uncomfortable acting with them, but recognized the prevailing political necessity of doing so. The King recognized that same force of necessity, but did not wish to accept the terms being imposed upon him by the Rockinghams or even to have to deal with any of their party in person. We should not underestimate the seriousness with which George III viewed his predicament. The period between the fall of North and the establishment of the Pitt ministry was perhaps the greatest crisis of personal authority which the King had ever to confront. He appears to have contemplated abdication on two occasions, something which he had never done throughout all the ups and downs, and occasional humiliations, of the 1760s.\(^5\) In 1782, the most successful ministry which the King had yet been able to obtain had been brought down by opposition to the further prosecution of a war whose principles he thought fundamental to the honour of his throne and of his country. The leading force in that opposition now sought to impose terms which compromised both. George III would rather have abdicated than suffer the humiliation of ministers dictating terms to him in the same fashion which George Grenville's ministry had done in May 1765.\(^6\) Whatever happened now, Thurlow observed, the King "Promised that He shall not be Prisoner."\(^7\)

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\(^5\) For draft texts of the abdication speeches, see *Corr. George III*, nos.3601 & 4259-60. For the abdication issue, see Brooke, *King George III*, 221 & 239-40. John Cannon has argued that these years marked "the political and constitutional climax of the reign of George III" (*Fox-North Coalition*, ix).

\(^6\) For accounts of this episode, see Brooke, *King George III*, 113-21; and P. Lawson, *George Grenville: A Political Life* (Oxford, 1984), 210-9. The King's humiliation at Grenville's hands was clearly on his mind in 1782. "L'd S[helburne] will grow as averse to yellow & black boxes as I was to visits from y' late G[eorge] Grenville," he wrote Shelburne on 8 April (Add MS 34523 f.365v). This brief note suggests both the degree of confidence that he vested in Shelburne (he is referring to the royal despatch boxes) and of his determination never again to be at the mercy of hostile ministers.

\(^7\) Eg MS 2232 f.47. George Selwyn (who feared the loss of his own position) viewed the Rockinghams' actions as a "storming" of the cabinet and hyperbolically observed that "I could have seen my R[oyal] master on the scaffold with less pain than insulted as he has been to-day" (*George Selwyn: His Letters and His Life*, eds. E.S. Roscoe & H. Clegue [1899], 191 & 222).
(5) The Political Pre-eminence of the Home Secretary

The only sensible action for the King was to seek to arrange matters in such a way that a minister amenable to him might serve, at least, as a screen between him and ministers whom he found repugnant but necessary, and perhaps also to exercise the influence of the crown independent of the other ministers. The outcome of his meeting with Shelburne and Thurlow on 25 March appears to have been "a final understanding" as to "further arrangements" between Rockingham and Shelburne. This "final understanding" included a remarkable characterization of Shelburne's position as the King understood it:

... I trust ... [that Lord Shelburne] has stood firm, and will have remembered that the Powers intrusted to Him in the Ministerial line, according to His own sentiments, gives him strength with more vigour to resist all others.

Significantly, in this same note, the King struck a note of personal warmth with his new minister for the first time, observing that he looked upon "Lord Shelburne's Note ... as an instance of personal attention, and feel it as such ...." That "final understanding" as to "further arrangements" must surely have included the new Secretarial division which had been so strikingly absent from the detailed correspondence between Rockingham and Shelburne only a few days earlier. There is no definitive evidence, but all of the circumstances and phrases suggest that, on 25 March 1782, Shelburne, Thurlow and the King must have settled between them an arrangement - including the new Secretarial division itself - which was overwhelmingly favourable to the new Home Secretary.

The advantages which the newly defined Home Secretary might have enjoyed must have seemed remarkable. I have already suggested that the identification of the pardon power

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72 See above at n7.
with a single Secretary could have carried with it a concentration of prestige and perceived influence that had no parallel in diplomacy. It may have been so remarkable that Fox simply did not expect a division between "domestic" and "foreign" responsibilities to encompass it. But the influence of the Home Secretary did not stop there. All addresses and petitions to the royal person had to pass through his office. Likewise the vast majority of warrants of office, both secular and spiritual, and other significations of royal approval or favour were transmitted through the Home Office. Some sense of the breadth of this responsibility is communicated by the description given by a Commons committee in 1797:

The Business of the Secretary of State's Office for the Home Department [consists] ... in receiving Intelligence, conducting Correspondence, and managing Transactions relative to the Executive Government throughout the British Dominion, (with the Exception of those in India) ... [and] also in preparing and issuing Warrants for all Commissions, Grants, Patents, Creations, and Appointments under the Crown (those in Revenue and Admiralty, and those in the Disposal of the Lord Chancellor excepted) ....

The King himself asserted Shelburne's control over the gates of the royal patronage when he pointedly instructed Fox that a warrant appointing a baronet had to emanate from "Lord Shelburne's Office." More significantly, Shelburne himself asserted such control even in the face of the strict constitutional unity of the Secretaryship. In June 1782 his Under Secretary informed his counterpart that, although "Mr. Fox's office can properly, as he is one of His Majesty's Principal Secretaries of State, sign the warrants to which you refer, I

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73 It certainly confused some petitioners for the royal mercy. Two Newgate convicts addressed their petitions to the Foreign rather than the Home Secretaries, presumably in ignorance of the division and its administrative consequences (HO 42/1 ff.223 & 299).

74 "Sixteenth Report from the Select Committee on Finance, &c.: Secretaries of State" (19 July 1797) in Commons Papers, 109:76-7.

have Lord Shelburne's commands to you to return them to this establishment."  

Finally, a rule arose that any powers not specifically assigned to another minister fell to the Home Secretary as a kind of "residuary legatee," meaning that his jurisdiction was left open and undefined in a way which the Foreign Secretary's clearly was not. In short, the Home Secretary enjoyed more access than any other minister to the King's person and prerogative. He was the principle conduit of all the benefits of status and reward which the crown was able to confer within Britain and its overseas possessions. He was indeed, as Edward Cooke said, Secretary for "the King's Dominions."

That said, real control over patronage is a difficult thing to measure, and it is possible that the advantages of the situation newly established under the Home Department were as much symbolic as real. But Shelburne, who needed every means at his disposal to enlarge his minuscule personal following in parliament, appears to have sought the most extensive measure possible of real influence over patronage. Nathaniel Wraxall recalled that "it was evident that Lord Shelburne could effect for his followers, objects of the highest importance, which proved to the Public his superior and exclusive Ascendancy at St James's ...." This impression was confirmed by an immediate quarrel between Shelburne and Rockingham over the issue. On 3 April, Shelburne alerted the King that "Lord Rockingham will probably attempt an explanation upon his want of Power in this arrangement, or at least his

76Quoted in Cooper, "Home Department," 62-3.

77Troup, Home Office, ch.3: Cooper, "Home Department," 53-4 & 397-400; and Newsam, Home Office, 12, 14-8 & 24-6. The impressive breadth of the Home Secretary's duties and their association with the monarch's prerogative is emphasized by Cooper, but he does not see any advantage in the arrangement beyond the end of the Rockingham ministry, at which point the crucial determinant - the King's favour - was returned to the First Lord of the Treasury ("Home Department," 145-201 & 405-6). This analysis neglects a crucial consideration: that neither the King nor Shelburne could have been sure how long the Rockingham ministry would last.

78Norris, Shelburne and Reform, 152-5. Norris estimates Shelburne's following in the Commons to have been from a half dozen to twenty at best in 1780 (p.137).
apprehension of a want of it in future." In two meetings with the King, Rockingham expressed a desire "to get all Patronage into his hands, to the exclusion of Lord Shelburne ...." In turn, Shelburne "expressed an uneasiness lest [the King] should yield to the importunities of Lord Rockingham, which would reduce him to a Secretary of State, acting under the former, instead of a colleague ...." Shelburne requested that the King "state something on Paper," imposing a degree of formality in the arrangement which, the King noted, "I fear is the real Object of an English Modern Minister ...."\(^79\)

George III's observations confirm the idea that Shelburne, the "English Modern Minister," wanted a clear statement of his newly established authority, with the object of ensuring that his position in the ministry should be considerably better than that of any mere "Secretary of State." He appears to have obtained it. The ambiguity of the King's ultimate response is strikingly in Shelburne's favour: "[the King] will receive the advice of both [Rockingham and Shelburne] separately with great attention, but certainly with the more if it meets with the concurrence of the other ...." This was a markedly weaker reassurance to Rockingham than that which the King had originally drafted, which bluntly stated that "all Ecclesiastical and Civil Preferments should be jointly recommended by the Marquis of Rockingham and [Lord Shelburne] ....," and which he appears to have held back (and perhaps even redrawn) in consultation with Shelburne.\(^80\)

Rockingham continued to be unsatisfied with the arrangements, again raising objections about patronage control only three weeks after the King's memorandum on the


\(^80\)*Corr. George III*, nos.3632 & 3639. The correspondence with Shelburne that implies his role in the final memorandum is at *Corr. George III*, nos.3637-8. My argument on this issue largely agrees with that of John Cannon, although I go further than him in suggesting the specific responsibility of Shelburne (*Fox-North Coalition*, 5 n1). See also O'Gorman (*Rise of Party*, 454-5), which views the outcome as equality between Rockingham and Shelburne.
subject. This time the King did not intervene at all, Shelburne merely asserting "the impossibility of [Lord Rockingham's] considering me as an ordinary Secretary of State, from our having always kept separate lines, as well as from the circumstances attending the formation of the present Ministry." At the same time, Shelburne was careful to reassert the traditional principle that ministers were individually responsible to the monarch for their departments - a position which underscored his independence of the ministry where access to the King was concerned.81

The precise extent of Shelburne's actual influence over the King's patronage is impossible to measure precisely. What is clear is the King's overwhelming preference for Shelburne as his point of contact with the ministry, and his determination to use Shelburne as a screen with which, as much as possible, to avoid direct contact with the Rockingham. The King's correspondence demonstrates that Rockingham and Fox were hardly ever in the royal presence at all and that the vast bulk of the King's official contact with the ministry passed through Shelburne. The incoming First Lord apparently was not even granted a private audience prior to kissing hands.82 All of this must have lent weight to the structures of authority put in place by the creation of the Home Office. Certainly Fox, who fought a frustrating battle with Shelburne in the cabinet for control of the Paris negotiations, was under no illusions about the Home Secretary's position and ambition after the first two weeks of the ministry: "Shelburne ... is ridiculously jealous of my encroaching on his department, and wishes very much to encroach upon mine. He affects the minister more and more every

81 Corr. George III, nos.3699-700 (emphases added). Wraxall gives an account of this incident, but the King's correspondence suggests that Wraxall was mistaken in believing the outcome to be that "the Rockingham Party [were] triumphant ..." (Historical Memoirs, 435-7; quote at 437).

82 Walpole Correspondence, 29:215.
day, and is, I believe, perfectly confident the king intends to make him so."\textsuperscript{83}

Since the Rockingham ministry lasted only three months, it is impossible to judge how effective the structural arrangements of the ministry would have been in the long term. Whether or not access to the King could be translated from merely symbolic to real influence depended on other factors, the first of which were the inclination and energies of the King himself. The structural arrangement was of no practical meaning if the King was not willing to invest his energy and attention into his relationship with the minister in question, or to defend it against the encroachments of a first minister whose services he preferred and whose ministerial colleagues were amenable. Rockingham's death only three months after the creation of the Home Department removed the pressing political imperative which had led to its creation by Shelburne and the King, who was again free to concentrate his energies and personal authority upon the First Lord of the Treasury. When George III at last offered Shelburne that office, he did so "with the fullest political confidence ...." Indeed, added the King, "[Lord Shelburne] has had an ample sample of it by my conduct towards him since His return to my Service."\textsuperscript{84}

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A study of the Secretariat during an earlier period asserts that the forces shaping its

\textsuperscript{83}Quoted in \textit{Memorials and Correspondence of Charles James Fox}, ed. Russell (1853-7), 1:316. Fox's Under Secretary remarked to the Foreign Department's representative in Paris on Shelburne's "cajoling manner to our secretary ... I grow suspicious of him in every respect, the more I see of every transaction of his" (\textit{The Letters of Richard Brinsley Sheridan}, ed. C.Price [Oxford, 1966], 1:148). The growing animosity between Shelburne and Fox was perhaps fuelled by that between their respective royal allies, the King and the Prince of Wales. "Fox holds the Language of a Premier," remarked one of William Eden's correspondents of the time. "L's Shelburne has the same. The former is gaining ground with the Prince - the latter keeps his with the King" (Add MS 34418 ff.426-7).

\textsuperscript{84}\textit{Corr. George III}, no.3827. The Lord Chancellor explained to a friend that "The King cut [negotiations with the Whigs] short by naming Lord Shelburne, explaining that such was his original idea in forming the new Administration ..." (H.M.C., \textit{Sutherland MSS}, 210).
development "can be summed up in two words: personality and prerogative." In creating the Home and Foreign Departments in March 1782, George III and Shelburne demonstrated that this remained true. The structural characteristics of the new Home Department clearly implied the superior influence of its Secretary within a ministry, provided that the King and the Secretary in question actively sought to make that influence a reality. Such an arrangement agrees with what we know of Shelburne’s convictions, temperament and behaviour, both during the 1760s at the Board of Trade and the Southern Department, and during the brief life of the Rockingham ministry. For his part, the King possessed both the will and the capacity to set him above the Rockinghams in the ministry. Shelburne’s predilections dictated that this superiority should be given a structural basis. It appears to have been he who suggested it, and he who then sought to ensure that its crucial patronage component was decisively reinforced by the King.

Whether this structural arrangement could ever successfully have been conjoined with real political power in the long-term is debatable. Indeed we know that it was not. The structural components which signified the Home Secretary’s superiority remained in place, but they quickly ceased to have any real meaning beyond the merely symbolic. How the Home Department lost both the power and the prestige which it had been intended to possess is the subject of the next part of this chapter.

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86 I have forborne any discussion of whether or not the King was acting unconstitutionally by so openly interfering in the arrangements of the Rockingham ministry. I suspect that ideas of limitations on the King’s power to choose ministers were as yet so ill-defined that it is safer to speak in terms of the political wisdom or practicality of a choice rather than its constitutionality. For an argument that, by this time, the one ought effectively to have been viewed as the other, see W.R. Fryer, "King George III: His Political Character and Conduct, 1760-1784: A New Whig Interpretation," *Renaissance and Modern Studies* 6 (1962): 68-101.
II. The Supersession of the Home Secretaryship

The formal precedence of the Home Secretary over the Foreign was asserted on a number of occasions during the five decades after 1782. During the formation of Perceval’s ministry in October 1809, George III expressed doubts about replacing the Earl of Liverpool with Richard Ryder at the Home Department "as it is the first in rank & therefore desirable on that account to be held by [Lord Liverpool] ...." A quarter century later, when William IV temporarily vested all of the main offices of government in the hands of the Duke of Wellington, he did so with the specific observation that "it is necessary to place the seals of the Secretary of State for the Home Department in those hands in which I can best confide ...." Clearly the Home Secretaryship continued to be more closely associated with the monarch’s person and dignity, if not real political power, than any other ministerial position.

(1) The Formal Precedence of the Home Secretary

In the most formal sense, the Home Secretary continued to be the principal means of communicating the monarch’s will. All petitions to the King from His subjects had to be transmitted to the throne through the Home Secretary; at the same time, most marks of royal patronage and recognition were transmitted from the Home Secretary’s office.

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87Later Corr. George III, no.4010. Five years earlier, the King had sought to mollify Liverpool’s resentment at being removed from the Foreign to the Home Department, observing that the latter was "a situation of more importance, and that it brought him into His Majesty’s presence, so that he should be more nearly connected with him" (C.D. Young, The Life and Administration of Robert Banks, Second Earl of Liverpool [1868], 1:150). At an earlier stage of the 1809 negotiations, when he feared that Canning might prevail, Spencer Perceval described the Home Department as "the only office I could possibly hold while Canning is First Lord of the Treasury and Chancellor of the Exchequer ..." (S.Walpole, The Life of the Right Honourable Spencer Perceval [1874], 1:365n).


89For a comprehensive listing of all the duties which this could entail, see Cooper, "Home Department," 156-67.
Secretary also ostensibly mediated the relations between the King and his ministers at the highest levels. By the time of George III, the King had ceased to attend those smaller-scale meetings of his principal ministers - the "efficient" cabinet - at which the essential business of government was conducted. However the King continued to attend two types of larger-scale, more formalized cabinets which were still held periodically. One provided an opportunity to review the King's Address to Parliament prior to its delivery; the other enabled him to hear and determine the cases of criminals convicted of capital offenses at the Old Bailey. Both of these meetings of the "nominal" cabinet were scheduled in consultation with the King via the Home Secretary. Indeed the evidence of the royal correspondence suggests that the Home Secretary was generally responsible for establishing the time and date of all Privy Council meetings at which the King's attendance was required. That nearly all instances of this practice follow George III's first attack of porphyria in the fall of 1788 implies that some such practice may have become a practical necessity given the increasing absence of the King from London. On one occasion in November 1785, when the Lord President was too ill to attend a Privy Council, the King noted that the Home Secretary "of course presides" in his place, although there are so few instances of this need arising that I

90 William Grenville apparently played such a role in the final dispute between Pitt and Lord Chancellor Thurlow, ending in the latter's resignation; see J.H. Jesse, Memoirs of the Reign of King George III: His Life and Reign (Boston, 1902), 4:357n.

91 A. Aspinall, "The Grand Cabinet, 1800-1837," Politica 3 (1938): 324-44; and see also below, pp. 368-71. The letters of George III and George IV contain many examples of the Home Secretary scheduling these cabinets.

92 Later Corr. George III, nos. 106, 359, 444, 495, 516, 545, 584, 760, 1117, 1119, 2328, 2459, 2487, 2643, 2663, 2726, 2732, 2757, 2768, 2832, 2925, 2973, 2982, 3004, 3013, 3110, 3120, 3162, 3206, 3592, 3805, 3855, 3908, 4006, 4052 & 4095; and Corr. Prince of Wales, nos. 2857, 3071, 3160, 3230 & 3313. Before 1822, the only exceptions to this rule appear to have been when the Home Secretary was indisposed. After 1822 the only examples (at least in the printed editions of the King's correspondence) are those set by the Prime Minister (Letters George IV, nos. 1143 & 1513).
am uncertain to what extent it was actually a rule. Another clear indication of the Home Secretary's unique access to the monarch was the rule that the resignations of ministers be communicated by him to the King. On the same principle, when Lord Liverpool suffered an incapacitating stroke in March 1827, his ministers "assembled at the Home Office, and agreed una voce that Mr. Peel sh[oul]d forthwith wait on the King at Brighton ..."

The Home Secretary was also the guardian of the monarch's personal dignity and physical integrity. He was the official conduit of information on the delicate matter of the monarch's physical well-being, bearing responsibility for issuing official bulletins during any serious illnesses, as well as for issuing the official notices when the monarch died. He was also responsible for summoning the Privy Council that proclaimed the successor - a particularly striking indication of the Home Secretary's status, since the Lord President would otherwise seem the logical person to carry out this duty.

Finally, when the Home Secretary was a peer - and this was almost always the case - there initially existed an expectation that he should be government leader in the House of Lords, presumably because the peerage was so closely associated with the monarchy. The rule still seems to have had weight in 1801 when the Colonial Secretary Lord Hobart, who

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93 Later Corr. George III, no.259; see also no.812 ("The moment a Secretary of State is not present at a Privy Council, in the absence of the Lord President, the first person of rank present is the proper person to state the business ...").

94 For instance, see H.M.C., Bathurst MSS, 175; Buckingham & Chandos, Memoirs of the Court of England During the Regency, 1811-1820 (1856), 2:399; and Add MS 40301 ff.299-300.

95 The Diary of Henry Hobhouse (1820-1827), ed. A.Aspinall (1947), 126.

96 The daily medical notices of George IV's final illness are preserved at HO 44/20 ff.4-122.

97 It seems to have come as a surprise to William IV, who was said to "be out of temper now & shews his dissatisfaction by finding out that it is the Sec' of State for the Home Dep' who ought to go & announce to him the death of the King" (The Journal of Mrs. Arbuthnot, 1820-1832, eds. F.Bamford & Wellington [1950], 2:358).
had been promised the lead in the Lords, conceded that "in point of strict official propriety and practice ... it would seem to belong to the Home Department."98 Up to this time, the royal correspondence includes many letters in which the Home Secretary informed the King of the progress of important debates and measures in the upper house, a duty which perhaps stemmed from the general likelihood that legislation under the Lords’ consideration was in the final stages of consideration before the King’s assent was requested.99 Viscount Sydney, Pitt’s Home Secretary from 1783 until 1789, appears to have been diligent in his organizational duties as leader in the Lords: there exist four letters from him, spanning a relatively brief period, in which he enjoined the Earl of Hardwicke’s attendance in the House. He once rescheduled a meeting of the "nominal" cabinet in order to ensure his own attendance in the Lords.100 However Sydney himself was singularly ineffective as a speaker in the Lords and, after a further year under the equally ineffective lead of the Foreign Secretary, Pitt sought to solidify his government’s position by elevating another Home Secretary, his cousin William Grenville, to the peerage in November 1790.101

98Journal and Correspondence of William, Lord Auckland, ed. Bath & Wells (1861-2), 4:139. A similar observation was made by Lord Liverpool to his son: "The Home Secretary of State has properly the management of the House of Lords, if he is a Member of that Body" (quoted in J.C. Sainty, "The Origin of the Leadership of the House of Lords," Bulletin of the Institute of Historical Research 47 (1974): 61).

99For instances of this during Sydney’s Home Secretaryship, see Later Corr. George III, nos. 29, 83, 102, 170, 226, 291, 353, 359, 416, 434, 436, 440, 459, 492 & 516. There are no published examples for Grenville’s, although Aspinall notes that there are many minutes of proceedings in the Lords amongst the King’s correspondence (no. 737 n4). Grenville retained the leadership in the Lords during Portland’s Home Secretaryship, but it returned to the Home Secretary under Pelham (nos. 2687, 2734, 2743 & 2746). Thereafter it was in Lord Hawkesbury’s hands until his death in 1827.

100Add MS 35622 ff. 200-1; Add MS 35623 ff. 165-6, 210-1 & 246-7; and Later Corr. George III, no. 444. 

101In 1787 the Government’s leadership in the Lords was so weak that Lord North remarked that “when any question of state arises in the House of Lords, and Lord Carmarthen [the Foreign Secretary] and Lord Sydney are looked to, or called upon, they will both arise, and like the two mutes in the Mourning Bride, point to Lord Hawkesbury” (Journal and Correspondence of Auckland, 1:171 emphases in original). See also A.S. Turberville, The House of Lords in the Age of Reform, 1784-1837 (1958), 57; and M.W. McCahill, Order and Equipoise: The Peerage and the House of Lords, 1783-1806 (1978), 130-1.
In practice however, the conjunction between the positions of Home Secretary and leadership in the Lords was at least partly dictated by the requirement for a senior minister in each House and, after Sydney’s retirement from the Home Department in June 1789, almost entirely so. Sydney himself had once been Home Secretary as a commoner, presumably because the First Lord and royal favourite Shelburne was a peer and therefore able to supervise government business in the Lords himself. The Earl Temple held the seals of both secretaryships during the crisis of the Fox-North Coalition’s dismissal. He quit both after only three days out of fear of impeachment for his role in the King’s infamous message to the Lords, but had been expected to continue as Home Secretary in Pitt’s government. The expectation that Lord North was to be elevated to the peerage as a component of his accepting the Home Secretaryship in 1783 is also suggestive, the failure to do so presumably being accounted for by the King’s refusal to accept and act with the Coalition.

After his appointment as Home Secretary in June 1789, William Grenville remained a commoner for more than a year before taking over the leadership of the Lords from the

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103 Wraxall, Historical Memoirs, 547; and The Correspondence of Edmund Burke, gen.ed. T.W.Copeland (Cambridge & Chicago, 1958-78), 5:78. See also Cannon, Fox-North Coalition, 75, 82-3 & 230. Nor by this time did Lord North enjoy the King’s confidence as once he had; see The Diaries of Sylvester Douglas (Lord Glenbervie), ed. F.Bickley (1928), 1:259.
Duke of Leeds.\textsuperscript{104} Grenville retained the leadership until the end of Pitt's ministry, even after a more senior peer, the Duke of Portland, assumed the Home Secretaryship in July 1794. So, after 1789 certainly, the actual leadership of the Lords was clearly determined by the strength and desires of the Prime Minister, in conjunction with the practical necessity that the Government lead in each House had to be in the hands of one of its leading ministers - either the First Lord himself or one of the Secretaries of State.\textsuperscript{105} After 1812 the rule was that the lead in the Lords belonged to the Prime Minister whenever he was a peer. Indeed Liverpool not only led the Lords throughout his fifteen-year ministry, but had done so continuously (save for the thirteen-month interlude of the 'Talents' ministry) since Pelham's resignation from the Home Department in August 1803 while serving sequentially in all three Secretaryships.\textsuperscript{106}

By the early nineteenth century then, there no longer seems to have been a coherent, systematic array of political duties attached to the Home Secretaryship. Indeed so minimal were any such expectations of the office that the King’s objections to Richard Ryder were overborne when it was suggested that Ryder’s chronic illness made him unsuited to the only other available Secretaryship (War and the Colonies) because that position required "constant


\textsuperscript{105}It was for this reason that Earl Cornwallis declined the Home Department when Pitt offered it to him in 1792; see \textit{Correspondence of Charles, First Marquis Cornwallis}, ed. C.Ross (1859), 2:144. For government leadership in the Lords, see Sainty, "Leadership in the Lords." 53-73. Sainty notes that there was a rule that no senior minister (that is, no Secretary of State) should serve in the Commons if the First Lord was a commoner. Under George III, it was established that the lead in the Lords belonged to the senior Secretary by service - a practice which perhaps anticipated the rule regarding the Home Secretary.

\textsuperscript{106}E.A.\textsuperscript{Smith,} \textit{The House of Lords in British Politics and Society, 1815-1911} (1992), 105; and McCAhill, \textit{Order and Equipoise}, 140-4.
attendance in the House of Commons ...." Less than a year later, when there was a
possibility that Ryder might have to be replaced, George Canning portrayed Ryder's office as
one of ease and advantage:

The Home Sec[retary] is the first of the three in rank - he writes to the King about his
comings to town, he reads his answers to addresses &c., has much patronage of
Ireland, and he may live at Ramsgate or Dorking nine months in the year.107

There may have been a degree of truth in Canning's characteristically cynical view. When
Lord Grenville moved from the Home to the Foreign Department in 1791, both Pitt and the
King were confident that the office that Grenville was leaving would be more attractive to
others than that which he was taking on - perhaps because, with Pitt in the Commons and
Grenville in the Lords, there would be no systematic political duties attached to it.108 So
perhaps the lingering advantages of status which the office conferred could be seen as
outweighing any obligations which it entailed.

(2) The Declining Role of the Monarch

The main advantage of the Home Secretaryship - serving as the principal point of
contact between the monarch and his servants and subjects - could not be translated into any
sort of functional political advantage for its incumbent without a regular, determined effort
on the part of the monarch himself. But with the general decline in the vigour, presence and
engagement of the monarchy in the decades following George III's first illness in 1788-9, no
such effort was forthcoming.

Indeed relations between George IV and Sir Robert Peel, particularly during the
King's final years, marked a nadir in relations between King and Home Secretary to that

107 Later Corr. George III, no.4015 (see also no.4014); and George Canning and His Friends, ed. J.Bagot
(1909), 1:363 (emphases added).

point. George IV's self-indulgent lifestyle, his chronic unwillingness to arrange his travel schedule to suit the administrative pressures under which his ministers operated, and (on occasion) his whimsical interventions in ministerial decision-making, must all have told upon the patience of a man whose attention to procedure and detail was as scrupulous as Peel's. The attention to form which his Home Secretary occasionally asserted provoked the King, although in his own eyes Peel was merely seeking to preserve the prerogatives of his office. The Prime Minister, Wellington, had forcefully to assert the "constitutional" rights of his Home Secretary when the Duke of Newcastle attempted to present a petition from the Livery of the City of London during a levee in March 1829.

No noble Lord who presents a petition to your Majesty can venture to communicate your Majesty's answer or your Majesty's sentiments upon such a petition. If he does so, he puts himself in the place of your Majesty's Secretary of State [for the Home Department].

Such a practice, the Duke observed, was a degradation of the Home Secretary's authority and, by extension, that of the King himself. On another occasion, during the onset of his final illness, the King appears to have been profoundly offended by Peel's concern for issuing regular bulletins on the state of his health. "Mr. Peel is cross, some want of etiquette about the bulletins," noted Wellington's confidante Harriet Arbuthnot,

& then he is dissatisfied because there are not bulletins enough. On the other hand, the Duke [of Wellington] says the King does not like to have bulletins & cannot be persuaded to have them. Naturally enough he does not like the newspapers speculating

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109 For the relevance of this to decision-making as to pardons for capital offenders, see Chapter Six below.

110 Wellington Despatches, 5:559-60. For an account of the cabinet meeting at which the matter was discussed, see A Political Diary, 1828-1830, by Edward Law, Lord Ellenborough, ed. Colchester (1881), 2:413-14. For a view which sees this as an invasion of the King's prerogative, see R. Huish, Memoirs of George the Fourth (1830), 2:86-8. Wellington does not clearly state that it is the Home Secretary of which he speaks, although there can be no doubt of this from the larger sense of the letter. It is possible that the Home Secretary alone, amongst the three that existed by 1794, was the only Secretary who could be referred to by the neutral phrase "the Secretary of State" (Troup, Home Office, 19), but I would hesitate to make the case solely upon the basis of those letters I have seen which imply it.
about his having water on his chest, and it was with the utmost difficulty the Duke prevailed on him to have any published.\footnote{Journal of Mrs. Arbuthnot, 2:351. Nor was Wellington entirely successful, finally inviting one of the members of the cabinet who was more aggressive about the issue, Lord Bathurst, to go to Windsor in his capacity as Lord President and to reason with the King himself; Bathurst declined (2:351-2).}

The instrumental role of the Duke of Wellington in these matters is a telling indication of how far the role of the Home Secretary as the formal link between monarch and subject had degenerated in practice during the 1820s.

They were only amongst the last of many such interventions between the King and Peel in what ought otherwise to have been formal exercises of administrative routine between them. Peel's correspondence contains several examples of "nominal" cabinets and Privy Councils being scheduled by other ministers during their visits to the King.\footnote{Add MS 40305 ff.56-7 & 58-9; Add MS 40307 ff.32 & 42-3; Add MS 40315 ff.181-2; Add MS 40316 ff.23-4; and HO 6/14 (? Dunglas to R.Peel. 13 July 1829; & E.Drummond to R.Peel, 8 Aug 1829).} In many instances this was simply a function of the King's unwillingness to settle matters of government business - in so far as his participation was required in them - until the last moment. It was also partly a function of the his preference for having others intercede between him and the ministers with whom he was obliged to deal. The extent to which George IV appeared to be susceptible to the advice of the members of his court in dealings with his government was a frequent source of concern to his ministers.\footnote{A. Aspinall, "George IV and Sir William Knighton," English Historical Review 55 (1940): 62-82.} But it is also clear that the King occasionally entertained an intense personal dislike for the minister who, in theory, ought to have been closest to him - although it can fairly be said that, with very few exceptions, he was as inconstant in his hatreds as he was in most other aspects of his
Thus, by the 1820s, the mere status of Home Secretary was being effectively compromised on many occasions by the unconsidered actions and frequent inactivity of a King who had no substantial engagement with the obligations weighing upon his ministers. Beyond the decreasing influence of the monarch after 1789 however, there were other factors which led to the reduction of both the power and the prestige of the Home Department as it had originally been conceived by Shelburne and George III. Several other developments, both in the balance of power amongst ministers and in the distribution of administrative responsibilities between departments, were also relevant.

(3) The Emergence of the "Prime Minister"

The most obvious factor in the reduction of any real power which a Home Secretary might exercise outside the administrative parameters of his department was the almost immediate re-assertion of the pre-eminence of the First Lord of the Treasury amongst cabinet colleagues - or, as he was increasingly (and increasingly more accurately) known, the "Prime Minister." This pre-eminence acquired a particularly stark clarity during William Pitt’s great ministry. One element was the monarch’s long-standing dependence on the First Lord as the organizing force of government. Other ministers continued to communicate the business of their departments individually with George III, but there is no doubt that only Pitt’s services were indispensable in the King’s eyes. In a letter to Lord Liverpool in July 1820, George Canning observed that, "next only to yourself and the Lord Chancellor," the Home Secretary

114The King’s distaste may have arisen from Peel’s opposition to the appointment of Sir William Knighton, the King’s physician and confidante, to the Privy Council in 1823 (Aspinall, "George IV and Sir William Knighton," 69; see also Journal of Mrs. Arbuthnot, 1:262; and Greville Memoirs, 1:188-9 & 375). After Peel’s return to the Home Department in January 1828, the King told Knighton that he "had given a very strong lecture" to Peel “respecting his conduct both as to the past, as well as to the future ...” (Corr. George IV, no.1480).
was the minister "with whom ... the King has a right to expect that he may communicate unreservedly on every point." - a striking statement which at once indicated both the original conception of the Home Secretary's position and political realities as they had now been confirmed.

The second element in the increasing dominance of the First Lord was the centrality of the Treasury in establishing the direction of - or at least the effective limits upon - government policy. This process was initiated by Shelburne himself after he assumed the First Lordship in July 1782, and reached fruition by mid-decade under William Pitt, abetted by his industrious Treasury Secretary George Rose. Indeed, Pitt and Rose not only deployed the patronage of the Treasury, but appear to have exerted much that was under the control of the Home Secretary and even some of the Lord Chancellor's.

Yet Pitt's leadership in cabinet was not confined merely to his monopoly of the King's favour and of the power of the purse, nor could it have succeeded solely upon their basis alone. A third component was his domination of the government's position in its most crucial defensive arena: the House of Commons. Indeed until 1789 Pitt was the only member

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117 Having conceded the Department's Indian patronage from the outset, Sydney wished to maintain control over the rest but specifically stated that Pitt could have access to the remainder "as I shall always look upon the patronage of my office as yours" (Sunhope, *Life of Pitt*, 1:229). By 1827 Robert Peel had conceded that, although "by his countersignature of the King's warrants [the Home Secretary] is personally responsible for the appointment of all the great officers in Church and State, ... their selection is in fact made (and ... ought to be made) by the Prime Minister" (*Diary of Hobhouse*, 128). Pitt's role in Chancery patronage is suggested by the indignation of one of Pitt's supporters, Michael Angelo Taylor, at not being able to secure a patent of precedence for the Northern Circuit. Taylor had been sent back and forth between Pitt and the Lord Chancellor, each invoking the other's authority in the matter, but to no avail; see *Boswell: The English Experiment, 1785-1789*, eds. I.S. Lustig & F.A. Pottle (1986), 243.
of his cabinet with a seat in the Commons. But his preeminence in the presentation and
defence of his government's policies was as much, if not more a function of his oratorical
power, and this continued unabated until his resignation in 1801. So great was his
reputation by then that he remained the most compelling figure in the Commons even outside
of office.

A fourth factor, and a necessary concomitant of Pitt's position as the primary
defender of government policy in the Commons, was that he maintained free access to the
functionaries of each department. Pitt's ambitions for administrative omnivorousness were
often remarked on by contemporaries. His former tutor and first biographer, George
Tomline, recalled "that Mr. Pitt was understood to be so much the active and directing
member of administration, that he was considered responsible for every act of every person
in every department ... during the whole of his administration." Pitt's control even had a
geographic correlative. In 1800 the Governor of Cape Town was determined to have all the
offices of local administration close by his residence because "Mr Pitt had them all near
himself, & ... he was a very Great Man! ... [T]he idea of Mr Pitt having all publick offices
within a step of Downing Street is not out of his head yet ...." During the formation of
his own ministry, Spencer Perceval, one of Pitt's last proteges, expressed the matter
succinctly:

Mr. Pitt must have felt, and his colleagues must have felt also, that he had such

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118Ehrman, The Younger Pitt (1969-96), 1:609-15. Many of Pitt's contemporaries have left us accounts of
the force of his oratory. To cite only one example of many, see Life of John, Lord Campbell, Lord High
Chancellor of Great Britain, ed. M.S. Hardcastle (1881), 1:106.


120The Letters of Lady Anne Barnard to Henry Dundas, from the Cape and Elsewhere, 1793-1803, Together
with Her Journal of a Tour into the Interior and Certain Other Letters, ed. A.M. Lewin (Cape Town, 1973),
214 (emphasis in original).
comprehensive talents and powers, that he was himself essentially the Government in all its Departments - that he could form a Government almost of himself, and each of his colleagues must have felt that Mr. Pitt could do without him, though he could not do without Mr. Pitt.\footnote{121}{English Historical Documents, vol.11:1783-1832, eds. A.Aspinall & E.A.Smith (1959), 129. See also Peel’s views as expressed forty years later to William Gladstone, in The Gladstone Diaries, eds. M.R.D.Foot & H.C.G.Matthew (Oxford, 1968-94), 3:559.}

In the latter part of this passage, Perceval had placed his finger upon a fifth component of Pitt’s administrative domination: above all, it was made possible by the amenability of Pitt’s colleagues. The crucial element of a modern Prime Minister’s centrality to the governmental process is "collective responsibility," the principle that all ministers are jointly accountable to parliament for the policy of government. But this principle did not have reliable structural underpinnings - in the form of external party organization, discipline over members, and whip votes - until the 1830s at the earliest.\footnote{122}{N.Gash, Aristocracy and People: Britain, 1815-1865 (1979), ch.6 (esp.163); G.W.Cox, “The Origin of Whip Votes in the House of Commons,” Parliamentary History 11 (1992): 278-85; and Cox, “The Development of Collective Responsibility in the United Kingdom,” Parliamentary History 13 (1994): 32-47. Ian Newbould has recently expressed doubts about a chronology which emphasizes the decisive character of the post-Reform parliament, at least as it applies to the Whigs: see Whiggery and Reform, 1830-41: The Politics of Government (Houndmills, 1990), ch.2.}

Before then, parliamentary backing for government policy had to be won on the basis of sheer rhetorical force and argumentative skill as much as anything else.\footnote{123}{In 1804 the King made reference to the practice of “Messrs. Rose and Long” - Pitt’s Treasury Secretaries - "collecting and watching the door of the H. of C. better than new men ...“ (Later Corr. George III, no.2884). This suggests a kind of whipping function, although we know little of what it involved. It seems to have consisted more of the practice, long associated with their forebear John Robinson, of listing and estimating the reliability of individual voters rather than any overt form of discipline; see Ehrman, Younger Pitt, 2:529 & 529n2; & 3:656, 666n3 & 722; and Commons 1790-1820, 4:448 & 452; & 5:46. Shows of force required a Call of the House, or roll-call of members; see P.D.G.Thomas, The House of Commons in the Eighteenth Century (Oxford, 1971), 105-14.} Pitt succeeded in dominating his government in large part because he succeeded in finding men of influence and talent who were willing to support him in his efforts to do so, both on the floor in parliament and in the conduct of their departments. No other First Lord who followed Pitt before the 1830s was
able to dominate both the political ambitions and the administrative activities of his fellow ministers to the same degree.124

This domination of policy by the Prime Minister covers the period analyzed in the body of this thesis. It must be emphasized, however, that Pitt's control of penal policy - the subject matter of this thesis - was essentially negative in character. It was an imposition of limitations rather than the provision of an active and coherent lead in policy formulation, and it did not altogether exclude a role for individual energy and initiative on the part of his Home Secretaries. At the outset at least, Sydney pursued issues of police experimentation and reform, an interest which he had apparently inherited from his predecessor Shelburne. William Grenville and Henry Dundas both expended considerable time and energy on the issue of the physical disposition of convicts, Dundas in particular showing some interest in Bentham's Panopticon project. But in all instances, Pitt's overall control of policy-making set practical limits upon what could be achieved.125

By contrast there is evidence of greater initiative and activity amongst Home Secretaries after 1801, much of it leading to substantial developments in the administration of penal policy by the central government.126 A possible exception to the rule of enhanced departmental initiative was Richard Ryder, the sickly Home Secretary of Spencer Perceval's ministry whom neither the King nor others believed to be up to the job.127


125 See below, Chapter 4, part I; and Chapter 5.

126 See below, Chapter 7, part I(2).

127 Ryder was Perceval's second choice at least, the position already having been declined by Charles Abbot, the influential and much respected Speaker of the Commons; see *The Diary and Correspondence of Charles Abbot, Lord Colchester, Speaker of the House of Commons, 1802-1817*, ed. Colchester (1861), 2:204-5. Perceval's biographer notes that Ryder was to have been Under Secretary had Perceval gone to the Home Department in 1807, and that Perceval was frequently obliged to reinforce his nerve in crises; see D.Gray, *Spencer Perceval: The Evangelical Prime Minister, 1762-1812* (Manchester, 1963), 293-4 & 452-3.
Canning, his chief rival for the First Lordship on Portland's retirement in 1809, Perceval revered the example of Pitt in almost all principles of governance. In particular, Canning and Perceval agreed that the government had to be led by a first minister in the House of Commons who would have the prevailing voice of government in that body. Under the circumstances of the moment - a war in which Britain's position was dire - the Prime Minister should also have the prevailing voice in all departments of government. Perceval conceded that the political strength and ambitions of many ministers had precluded this until now.

"The present Government [Portland's] is so constituted, with so many of equal or nearly equal pretensions ... that the Government, under whatever head, must to a great degree be and remain a Government of Departments. It is not because the Duke of Portland is at our head, that the Government is a Government of Departments: but it is because Government is and must be essentially a Government of Departments that the Duke of Portland is at our head, and is the best head possibly that we could have."

Perceval, like his rival Canning, preferred "a Government under an acknowledged head who upon the best view and judgment would select the best system and insist upon its being followed ...." In the event, the exclusion from Perceval's government of his two main rivals for the lead in the Commons, Canning and Castlereagh, the appointment of peers to the Foreign and Colonial Secretaryships, and the choice of the frail and frequently absent Ryder for the Home Department, left the field wide open for Perceval in the Commons, although ultimately he never succeeded in dominating the governing process to the same

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129 English Historical Documents, 11:129 & 130. It is testimony to the Home Secretary's continuing titular seniority that Perceval deemed it to be "the only office I could possibly hold [if Canning] is First Lord of the Treasury and Chancellor of the Exchequer ...." (Walpole, Life of Perceval, 1:365n). Much detail of the formation of Perceval's ministry can be found in the Memoirs of Robert Plumer Ward, 1:205-45.
extent that Pitt had.\textsuperscript{130}

(4) The Rise of the Foreign Office

The emergence of a "Prime Minister" in general, and Pitt’s activity in that position in particular, was the second factor in the eclipse of the Home Secretary’s status and influence. The third was the increase in the status of the Foreign Secretary and of his Department relative to that of the Home Secretary. Once the functional connection of the Home Secretary to the prestige of the monarch had been largely severed, the difference between the two departments increasingly came to be measured by the prestige and importance of the business which they conducted. In this, the Home Department had become the clear loser by the second decade of the nineteenth century. A generation of war with France, culminating in the emergence of a Britain which was the world’s pre-eminent power and the arbiter of Europe, gave foreign affairs an overwhelming centrality and prestige in political life which they had never so constantly had before. Nor was the conduct of foreign affairs so closely and frequently scrutinized by - indeed, fundamentally reliant upon - parliament as was the conduct of domestic issues. Substantial alterations in domestic practices necessitated legislation. Indeed, in some cases, legislation for new domestic practices could be pushed forward by parliament against a government’s will.\textsuperscript{131} So the Home Department and its functions were far more vulnerable to political and administrative vicissitudes than was the conduct of foreign affairs, which was neither subject to regular scrutiny by parliament, nor

\textsuperscript{130}In 1803 Pitt also demanded such control as a condition of his return to office. See in G.Pellew, \textit{The Life and Correspondence of the Right Honourable Henry Addington, First Viscount Sidmouth} (1847), 2:116.

\textsuperscript{131}See below, Chapter 5, part IV(1).
so immediately dependent on its authority.\textsuperscript{132}

(5) The Home Department’s Changing Jurisdiction

Moreover those administrative functions that did lend influence and prestige to the
Home Department were removed from it, beginning in 1794 and culminating in 1801. The
events of July 1794, when the Duke of Portland succeeded Pitt’s intimate friend Henry
Dundas as Home Secretary, require some explanation.\textsuperscript{133} By virtue of the patronage he
controlled, both as political master of Scotland and as President of the Board of Control of
the East India Company, as well as his close personal alliance with Pitt, Dundas had made
much more of his position as Home Secretary than the duties and prerogatives of the office
necessarily implied.\textsuperscript{134} By 1794 Dundas had effectively turned the office into a War more
than a Home Department. In part this reflected the Home Department’s responsibility for the
colonies, whose defence and furtherance Dundas believed should be the principal focus of
Britain’s war effort.\textsuperscript{135} The war-role of the Home Secretary may have been further
enhanced by the fact that the substantial new duties which he had assumed around the time of
the war’s outbreak - the supervision of aliens and the surveillance of potential subversives

\textsuperscript{132}Scott, British Foreign Policy, 19-22; and Black, British Foreign Policy, 491-5. Paul Langford suggests
that Parliament was influential, but that foreign observers exaggerated its potential obstructiveness (Eighteenth
Century, 7-10).

\textsuperscript{133}See also the accounts in C.Matheson, The Life of Henry Dundas, First Viscount Melville, 1742-1811
(1933), 201-5; and Ehrman, Younger Pitt, 2:411-4.

\textsuperscript{134}For Dundas’s role in Scottish politics, see J.A.Lovat Fraser, Henry Dundas, Viscount Melville
(Cambridge, 1916), ch.5; H.Furber, Henry Dundas, First Viscount Melville, 1742-1811 (1931), pt.II; and
M.Fry, The Dundas Despotism (Edinburgh, 1992). For his role in East India Company affairs, see Furber,
Henry Dundas, chs.2 & 5; and C.H.Philips, The East India Company, 1784-1834 (Bombay, 1961), chs.3-4.

\textsuperscript{135}Ehrman, Younger Pitt, 3:356-8 & 450-1; P.Mackesy, Statesmen at War: The Strategy of Overthrow,
1798-1799 (1974), 4-9, 37-40 & 315-9; Mackesy, War Without Victory: The Downfall of Pitt, 1799-1802
(Oxford, 1984), passim; Jupp, Lord Grenville, 187-9, 240-2 & 250-61; Mackesy, "Strategic Problems of the
British War Effort," in Britain and the French Revolution, 1789-1815, ed. H.T.Dickinson (Houndmills, 1989),
150-1 & 160-2; and Fry, Dundas Despotism, 208-28.
amongst the British citizenry - were central components of Britain’s overall war effort against revolutionary France, an enemy whose ideological threat was as imposing as its military strength. Less than six months after the outbreak of hostilities, Dundas asserted the circumstantial pre-eminence of his Department when he told the Foreign Secretary that "an alert and ready co-operation from other Offices is essential to the comfort of the Home Secretary, who is hourly acting in connexion with them."\[137\]

By July 1794 the major body of the Whig opposition was prepared to enter into a coalition with Pitt’s government in support of the war against Revolutionary France. As leader of the Whigs and a former First Lord, the Duke of Portland was entitled to a senior position in such a government.\[138\] Pitt was determined that Dundas should continue to oversee the direction of the war effort, for reasons which reflected Pitt’s own pre-eminence in policy-making in his government.

… I feel it quite impossible to venture the experiment of leaving the War Department in the Duke’s hands. You know the difficulty with other Departments, even with the advantage of Dundas’s turn for facilitating business, and of every act of his being as much mine as his; and therefore, if all the details of the war … were to be settled by communication with a person new both to me and to others, I am sure the business could not go on for a week. This is the leading consideration with me, and seems decisive. I own, besides, that though I have perfect confidence in the Duke of Portland’s intention to act cordially, and have no doubt of our being on the best terms, I could neither expect to establish the same sort of communication with him which I am used to with Dundas, nor could I be content, on the other hand, to leave

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\[137\] H.M.C., *Dropmore MSS*, 2:396 (emphases in original).

that Department to his separate management.139

Pitt had found in Dundas a colleague who at once accepted his pre-eminence in policy direction while continuing to provide him with a large measure of the practical support which was necessary to maintain his ministry. The solution that Pitt proposed was to create a third Secretaryship for Dundas which would enable him to continue to oversee both the war effort and the business of the colonies. However Portland was not prepared to accept a Home Department which was so obviously diminished in both influence and prestige, so the compromise was adjusted, with the colonies continuing in the Home Department under Portland.140

This was a workable solution, but still posed problems that reveal the mixed political and administrative considerations involved. Dundas opposed the division because decisions about the broad aims of war policy were cabinet matters, in which the first minister’s voice inevitably prevailed. This left only the administrative obligation of executing the detail of those policies - tasks which were already carried out by an array of military offices including the Secretary at War, the Admiralty and the Ordnance. Detached from the real administrative duties and the political status of the Home Department, the position of a Secretary of State for War carried no substantial public status. It would become an administrative redundancy

139H.M.C., Dropmore MSS, 2:595 (emphases in original).

140A summary of these difficulties appears in Later Corr. George III, no.1090 n2. An alternative which was offered Portland was to take the Foreign Department as is, with Grenville moving to a reduced Home Department (J.H.Rose, Pitt and Napoleon, 251). Grenville’s complete willingness to do so further emphasizes Pitt’s position in the ministry:

... I and my situation are, as you well know, entirely and always at your disposal .... Under these circumstances I do not ask myself whether what is proposed is or is not a sacrifice on my part, but am ready at once to say that no consideration could reconcile to my mind the standing for a moment in the way of your wishes, or of so great a public object as is in question (H.M.C., Dropmore MSS, 2:596). The new arrangement appears to have included “the West Indies being added to the Home Department,” although I am uncertain what department they could have been under before that time (Stanhope, Life of Pitt, 2:254).
which would soon draw the fire of an opposition constantly on the lookout for enhanced 
patronage in the executive - as indeed it did, although to no real effect.\textsuperscript{141}

The logic of these arguments re-emphasizes the ambiguities that could arise where 
political and administrative priorities became so closely interdependent as they had during 
Dundas’s tenure of the Home Office. Dundas believed that the War Secretaryship, which he 
had contrived on the back of the Home Department’s administrative duties, was both 
politically vulnerable and administratively redundant once separated from them. But Portland 
seems to have thought the office less attractive without the status which its colonial duties 
gave it. Yet it is not at all clear that the mere possession of those duties gave Portland the 
full prestige of the office as Dundas had held it, as one anonymous observer remarked:

You [ie. Portland] must assent, for you cannot controul: and it seems as if the official 
situation which you fill, were specially created to degrade and to mortify you. You 
have been made Secretary of State for the Home Department, without being permitted 
to transact the business. - Whatever it becomes the Home Secretary to do, respecting 
the war, you are forbidden to meddle with. ... [Y]ou are Secretary and no Secretary 
\textsuperscript{142}

What is perhaps most remarkable in all of this is the absence of any reference to the 
domestic duties of the Home Department\textsuperscript{143} - a striking indication of how little prestige 
may have been attributed to them by this time.

\textsuperscript{141}English Historical Documents, 11:123-4. The full text of this letter can be found at PRO 30/8/157 ff.172-9, which includes the further point that any attempt to separate correspondence with the colonies between the Home and War Departments according to whether or not the subject dealt with was an issue of war or peace "would [wreak] inexplicable confusion" (f.179). In fact, during the invasion scare several years later, Dundas complained that exactly such a situation had arisen (H.M.C., Dropmore MSS, 4:79). The question of whether a "Third Secretary of State" seated in the Commons was forbidden by Burke's Act of 1782 was brought up on at least three occasions in parliament - in December 1794, November 1797 and March 1801 - but was sidestepped by the government on all three occasions.

\textsuperscript{142}Letters to the Duke of Portland (1794), 11 & 13.

\textsuperscript{143}In fact, the Home Department's policing duties had an obvious relevance to the prosecution of the war, but that connection seems to have been ignored or set aside by everyone concerned, perhaps in the interest of settling matters. Portland's associate, Thomas Grenville, described the remodelled Home Department as being "upon the same footing as in time of peace ..." (H.M.C., Dropmore MSS, 2:397).
This situation became more explicit in 1801 when, at the beginning of Addington's ministry, the colonies were removed from the Home to the War Department, at last making the Home Department an office of purely domestic administration. It is unclear precisely why the colonies were removed to the War Department at this time. The new Home Secretary himself, Lord Pelham, was only notified of the change after he had accepted the seals from the King in late July. Addington assured the understandably surprised Pelham that "This arrangement was long since recommended and approved of, and has only waited (as you know) for the new arrangement to be carried into effect." But Pelham had not known of any such arrangement, and he requested that the King himself confirm the unexpected transfer. Perhaps, as the King suggested, it was purely a question of administrative efficiency: "The additional business which ought hourly to increase in the Home Department from the Union with Ireland, added to that of this island, is full employment for any man ...."144 Perhaps the belief that the efficient conduct of the war was inherently inseparable from the administration of the colonies, which Dundas had expressed both in 1794 and subsequently, was finally accepted.145

Presumably it was not intended as a deliberate insult to the new Home Secretary. Nevertheless the situation appears to have disgruntled Pelham and may have enhanced his sense of being an outsider in a frail ministry which needed as many friends as it could get.146 Like Portland before him, Pelham had wanted a cabinet seat with responsibility for

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144 Add MS 33107 ff.212-3; and Later Corr. George III, no.2500 & 2794.

145 See n141 above. But for an idea of how different ideas of efficiency can be, Lord Malmesbury recalled Pitt suggesting that the three Secretaryships should be "one for the Colonies (Lord Hobart), one for the Foreign affairs (Lord Hawkesbury), and one for the Home and War department (Pelham)" (Diaries and Correspondence of James Harris, First Earl of Malmesbury, ed. Malmesbury [1844], 4:39).

directing the war effort. It quickly emerged that Lord Hobart had already been promised the War Secretaryship. However, because it was believed that Pelham’s voice was necessary in the House of Lords (for which specific purpose he had been elevated to the peerage), and because Addington felt himself unable to withdraw a promise to him of a cabinet seat, his subsequent choice of the Home Department was agreed to. So it must have added insult to injury when, having first been made to wait in the wings while Portland held on to that office three months beyond the end of Pitt’s ministry, Pelham found that it had been stripped of the colonies - a major component of its prestige and influence. The general opinion of Pelham’s political and administrative talents was not high, but he was thought to be both hard-working and, perhaps more importantly, demonstrated a willingness to accommodate himself to the political requirements of a ministry which served the King’s interests. In August 1803 he exchanged the Home Office for the Duchy of Lancaster, apparently on the understanding that the Secretaryship would have to be vacated in order to strengthen the ministry by bringing Pitt in. In the event, Pitt remained out of office for

147 Diaries of Glenbervie, 1:165.

148 Portland delayed his departure from the Home Department because he had fallen in debt to the public purse to the tune of £30,000 and had not the means to repay it (Aspinall, Later Corr. George III, 3:xxi; and Diaries of Glenbervie, 1:241).

149 In a long, justificatory letter to the King on his departure from the Home Department, Pelham observed that “obedience to your Majesty was my sole motive for wishing for office” in the first place (Later Corr. George III, no.2794). See also Life and Letters of Gilbert Elliot, First Earl of Minto, from 1751 to 1806, ed. Minto (1874), 3:203. A less friendly observer, Lord Holland, noted that Pelham, "though somewhat timeserving, was a goodnatured and prudent man" (Memoirs of the Whig Party, 1:112). For Pelham’s character, see Diaries of Malmesbury, 4:6-57 passim. An opinion prevailed amongst the English governors in Ireland that he had grossly neglected its affairs; see The Viceroy’s Postbag, ed. M. McDonagh (1904), 305-6; and E.B. Mitford, Life of Lord Redesdale, ed. F.J. Weaver (1939), 73-8, 84-7 & 104-6. The appointment of the Lord Lieutenant’s brother Charles Yorke as Pelham’s successor may have been calculated to smooth over ill feelings in that regard, whether or not the charges were actually true.

150 It is unclear whether Pelham voluntarily withdrew or was effectively dismissed (Diaries of Malmesbury, 4:284-5; and Pellew, Life of Sidmouth, 2:220-1n). In any event, his lengthy farewell to the King indicates that he felt he had been unfairly treated, suggesting that it was unclear "Whether Mr. Addington has considered me more as one of your Majesty’s servants than his colleague ..." (Later Corr. George III, no.2794). The idea that
another year and, for the remainder of Addington's ministry, the Home Department was presided over by the relatively obscure Charles Yorke.

Thus, by July 1801, the Home Department had been administratively reduced to a rump of domestic duties - duties which, to judge from the controversies of 1794 and 1801, were not regarded as inherently important in the eyes of ambitious politicians governing a nation and empire in the midst of a war of unprecedented scale. Indeed they were perhaps uniquely undesirable. The most pressing tasks attached to the Home Department - the suppression of riots, the regulation of aliens, and the use of police and informers to ferret out sedition and treason amongst British citizens - did not merely lack prestige: they were downright disreputable. The Home Department, according to the biographer of its most notorious Principal Secretary, was "a most embarrassing Office; for, like the visitor of a college, the Secretary for the Home Department has to correct whatever stands in need of correction."\(^{151}\)

For all its potential unsavouriness however, the ruling classes of Britain viewed the maintenance of public order as the absolutely essential task of the Home Department, and substantial failures in this measure prompted vehement statements as to the inadequacy of the current Home Secretary to his job. The greatest anxiety about the maintenance of public order was felt in the period between the first onset of Luddism in 1811 and the social-economic disruption which followed the end of the Napoleonic Wars, climaxing in the 'Peterloo Massacre' and the Six Acts of 1819. The two Home Secretaries of this period

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\(^{151}\)Pellew, *Life of Sidmouth*, 1:v; see also Cooper, "Home Department," 406-7.
suffered particular disfavour amongst the political classes. The first, Richard Ryder, whom Robert Southey thought "a nervous man and very unfit for his office in such times," had the singular misfortune of being Home Secretary at the one and only time that a British Prime Minister was assassinated. The second, Viscount Sidmouth, was Home Secretary during the ten years that spanned one of the most turbulent decades in modern British history. His legendary reputation for severity did not spare him the knee-jerk contempt of Harriet Arbuthnot when she first learned of the Cato Street Conspiracy: "the Home Department .... is certainly in most inefficient hands, & it is very unfortunate at this moment." The remark was unfair - after all, the Plot had been thwarted. But, like those directed at Ryder, it suggests how little credit or reward was attached to the domestic duties of the Home Secretary when successfully executed, and how quickly apparent lapses drew profound condemnation. Substantial efforts at administrative improvement in other areas (of which there were many) went unseen; dramatic (and often singular) failures inspired contempt. In 1812 the Home Department’s prior history was contemptuously dismissed by The Times as proving that it provided "the sink of all imbecility attached to every Ministry for the last thirty years."

So when Robert Peel became Home Secretary in January 1822, he inherited a position which had lost much of its original political cachet and whose most obvious administrative duties were viewed as essentially disreputable. Much of Peel’s success as Home Secretary stemmed from the extent to which, largely through strategic concessions to public concerns,

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152 Selections from the Letters of Robert Southey, ed. J.W. Warter (New York, 1977; rep. of 1856 ed.), 2:273. See also A Series of Letters of the First Earl of Malmesbury. His Family and Friends from 1745 to 1820, ed. Malmesbury (1870), 2:277 & 283. Contempt for Ryder’s abilities was not solely motivated by Perceval’s assassination; a letter from Thomas Grenville, written only a week before that event, condemned him for his mismanagement of the Luddite disturbances the previous year (H.M.C., Dropmore MSS, 10:241-2).

153 Journal of Mrs. Arbuthnot, 1:14; and second quote in Gash, Aristocracy and People, 54.
he succeeded in inverting the reputation which had become attached to his Department’s functions. Shortly after the passage of his celebrated criminal law consolidation measures in 1826, one of Peel’s many congratulators remarked that “You have certainly made the office of Secretary for the Home Department of infinitely more consequence than it has ever been in the hands of any of your predecessors”\textsuperscript{154} - an indication of how low the Department’s reputation had sunk.

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The processes by which both the political and administrative distinctiveness of the Home Department had declined illustrate how closely the two were bound up with one another. This interdependence - and its implications for the Home Department’s development as an administrative agency - are the subject of the final section of this chapter.

III. Political and Administrative Practice: The Under Secretaries

I have emphasized the political elements inherent in the Secretariat both before and after the division of 1782, as well as in the division itself. But clearly politics was not all that was involved. One observer of the formation of the ministry in March 1782 was John Robinson who, as Lord North’s Treasury Secretary and \textit{factotum}, had extensive experience of administrative practices during the previous decade. "I do not hear word [of the American Secretaryship]," he wrote to a close colleague. "[It is] Probably sunk, and the arrangement made of the two old Secretaries as often tho[ugh]t of." Less than three weeks earlier, a correspondent of Robinson’s had given a projected reconstruction of the North ministry

\textsuperscript{154} Add MS 40386 ff.120-1. "[A]lthough the well managing of our foreign affairs & interests may be more striking & brilliant," he continued, "it is by no means more substantial or important ...."
containing Secretaries for "Foreign Affairs" and "Domestic Affairs." 155

These letters lend some substance to the broad impression of historians that a division between domestic and foreign duties had been at least contemplated before March 1782. Such an impression is perhaps enhanced by the much-cited suggestions of the King in 1771 and 1781 which I have noted above. H.M. Scott has even suggested that it had become an operational fact as of 1779, although there are some important qualifications to be added to such a view. 156 I have also noted the particular taste for clear delineations of administrative authority that Shelburne had demonstrated during the 1760s.

Nevertheless, it is surely hopeless to try to find an explanation which is purely administrative in character. Pitt invoked such reasons for the creation of a third Secretaryship for war in 1794, having first reiterated that the division of duties was strictly at the King's discretion: "The arrangements might be and were made as best suited the convenience of affairs, and as they were best calculated to produce facility and expedition into the conduct of the public business." 157 Yet the circumstances under which this particular division came about indicate that considerations of convenience, facility and expedition were inseparable from political imperatives.

That said, it would be a mistake to overlook administrative considerations altogether. After all, the fundamental division between the domestic and foreign duties was maintained after July 1782 and, by the time that significant new duties were added to the Home Department in the early 1790s, it is difficult to imagine how any division of the domestic business could ever have been reintroduced given the sheer weight and detail of the duties

155 MS Loan 72/29 f.86; and H.M.C., Abergavenny MSS, 50-1.

156 See above at n38.

157 Senator, 11:58.
coming to bear upon the Department's functionaries. Both a general concern for administrative efficiency and its interweaving with political considerations are apparent when we consider the rapidly evolving positions and duties of the most senior of these functionaries, the Under Secretaries of State.

(1) The "Permanent" Under Secretary

By 1782 it was common practice for there to be two Under Secretaries in each department, one of whom was usually inferior to the other in status. These positions, although they could involve heavy administrative responsibilities, were essentially political in character in so far as Under Secretaries received and maintained their appointment at their Principal Secretary's discretion. However, it was also true that the value of having an experienced senior administrator in the office was more and more frequently recognized in the continuing service of individual Under Secretaries under successive political masters, and perhaps increasingly so after 1760. In 1786 the Commission on Fees recognized the practical reality - indeed, the indispensability - of a "Permanent" Under Secretary:

The duty of the Under Secretaries is to attend to the execution of [the Principal Secretary's] orders, to prepare drafts of such special letters and instructions, as occasion may require; to transact themselves whatever is of the most confidential nature; and generally to superintend the business of the Office in all its branches. ... [W]e are of opinion that for the obvious reason of preventing the confusion and serious consequences that may arise in business of such high importance, from frequent changes, such Officers ought to be made stationary.

It was becoming apparent that the Permanent Under Secretary carried out a great deal of the

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158 Thomson, Secretaries of State, 130-4; L.Scott, "Under Secretaries of State, 1755-1775," (M.A. thesis, U. of Manchester, 1950), 310-8 & 340-8; J.C.Sainty, Officials of the Secretaries of State, 1660-1782 (1973), 8-9; and Kynaston, Secretary of State, 163-5. Indeed, after 1760 Under Secretaries who either stayed on under new Principal Secretaries or who later returned to Under Secretarysthip - presumably at least partly on the grounds of their experience - seem to have been becoming the rule rather than the exception (Sainty, Officials, 30-2).

159 "1st Report of the Commissioners on Fees, Gratuities, Perquisites, and Emoluments ... in the several Public Offices ...: Secretaries of State" (11 April 1786); in PP(HC) 1806.vii.4 & 10.
day-to-day business of the Home Department.

This development may have been given a heightened impetus when Shelburne took office in March 1782. At that time, the position of "the fix'd and Resident" Under Secretary in the Southern Department was held by John Bell, a former barrister who had surrendered his claim to a lucrative pension in anticipation of the salary and privileges of the Under Secretaryship. Bell quit Shelburne's employ within two weeks once he had learned just how much of a "Multiplicity of Business" Shelburne expected him to assume, "the Effects of [which] constant Exertion and Attendance ... would certainly soon end in Disappointment to Your Lordship and Unhappiness to myself."  

Admittedly his previous superior, Lord Hillsborough, was probably not a heavy taskmaster - George III thought him, "though an amiable man, the least man of business I ever knew."  But given Shelburne's long-standing interest in and attention to administrative detail, his expectations of his Under Secretaries in 1782 were probably heavy, as indeed they had been during his tenure of the Southern Secretaryship in the 1760s.

The Under Secretaries after 1782 were expected to carry much more of the

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160 W.L.C.L., Shelburne Papers 168 ff.387-90; and HO 42/2 ff.95-6.

161 Corr. George III, no.3588. Hillsborough later sought to intervene on Bell's behalf in getting his pension restored (PRO 30/8/130 ff.140-1 & 142-3).

162 It may also have helped to drive William Knox, the industrious Under Secretary of the now-defunct American Department, from Shelburne's service. See Spector, The American Department, 123-5 & 136-54; and L.J.Bellot, William Knox: The Life and Thought of an Eighteenth-Century Imperialist (Austin, TX, 1977), 182-4. Knox's recollection of the terror which Shelburne's reappointment to the Southern Secretaryship aroused in his former Under Secretaries and clerks is particularly suggestive: [William] Pollock's terror, and Sir Stanier Porten's exclamation of 'God be thanked I am not to be under you again' made me feel happy in the reflection that I was at liberty to withdraw from [Lord Shelburne's service]. ... Sir Richard Sutton had long ago told me that of all ministers, [he] was the most difficult to please. He was never satisfied with what anyone did, or even with what he did himself, but altered and changed without end. ... [Before one] letter was sent off, it had been nine times transcribed, and the Friday night's mails were detained for it till two in the morning. My own experience soon proved to me that it was not without reason that those who had served him in office abhor'd him as a principal

(H.M.C., Knox MSS, 283-4).
administrative burden of the office than had been the case before. However, the resultant pattern of work confirms not only the administrative character of the division of 1782, but also its political one. The Permanent Under Secretary’s function appears to have been to organize both the incoming correspondence and the information within the department relating to it, and then to transmit them to the Principal Secretary in order to enable him to make decisions upon each case. Such transactions presumably were face-to-face and usually took place on the office premises. But they could also be carried on through the mail with the relevant documents being dispatched to the Home Secretary for his perusal and decisions, a practice which should caution us against any simple assumption that the Permanent Under Secretary exercised wide discretionary powers of his own as a matter of course. This system minimized the volume of routine tasks to which the Principal Secretary would be subjected, enabling him to attend to his broader political duties without compromising his oversight of decision-making within his Department.

Evan Nepean seems to have established his usefulness in this capacity from the outset. Lord North’s correspondence with the King during his brief tenure of the Home Department regularly noted his activity in the business at hand. In turn, the King made his own unsavoury use of Nepean. Having determined to turn out the coalition, he despatched him in


164Extensive examples of such correspondence can be found in the letters of William Grenville to Scrope Bernard (Bucks R.O., D/SB/OE), John Beckett to the Earl Spencer (Althorp PP, G65 & G241), and Henry Hobhouse to Robert Peel (Add MSS 40344-94 passim). For statements of how the Under Secretaries in the various departments kept things going while their principals were out of town, see *Journal and Correspondence of Auckland*, 3:121; *Selections from the Letters and Correspondence of Sir James Bland Burges, Bart.*, Sometime Under-Secretary of State for Foreign Affairs, ed. J. Hutton (1885), 287; and *Greville Memoirs*, 3:102. However, leaving too much to an Under Secretary could invite the contempt of fellow ministers; see Wellington’s estimation of his Colonial Secretary, Sir George Murray (Journal of Mrs. Arbuthnot, 2:229).

165H. Parris, *Constitutional Bureaucracy: The Development of British Central Administration since the Eighteenth Century* (1969), 36-39. However Parris oversimplifies the division between the political and administrative components of the offices.
the middle of the night to retrieve North's seals of office "as Audiences on such occasions must be unpleasant."\textsuperscript{166} Lord Sydney probably did much to enhance Nepean's centrality to the Department's operations. Upon first assuming the duties of the office under Shelburne in August 1782, Sydney had already been alarmed by the breadth of its duties and concerns: "I find myself plunged into a Sea of Business - and of the most important Kind. ... But I will apply my best endeavours ...."\textsuperscript{167} His return to the Home Department under Pitt, in the sudden emergency of Temple's resignation, was a reluctant one, as he had found both the business and the expenses of the office excessive: "I certainly never wished, and have done all I could to avoid returning to it. But I am looked upon as one who is ready to go aloft in a Storm."\textsuperscript{168} Faced with a load of business for which he had no enthusiasm, Sydney probably did much to encourage the indispensability of the Permanent Under Secretary to office routine. Within a year of Sydney's resumption of the Department, a parliamentary commission noted of Evan Nepean that "he has the entire superintendance of the Office. His attendance is constant and unremitting."\textsuperscript{169}

Nevertheless, as vital as the Permanent Under Secretary came to be in organizing the routine business of the Department, he would not serve for long if he did not enjoy the Principal Secretary's favour. He was not truly a civil servant in that he still held the office only during the Secretary's pleasure, not during good behaviour. The Secretary's right to remove any particular "Permanent" Under Secretary was asserted in 1795:

\textsuperscript{166}Corr. George III, nos.4406, 4479, 4462, 4463, 4498, 4500 \\& 4546; see also Letters of Bland Burges, 64-5.

\textsuperscript{167}Add MS 35619 ff.234-5.

\textsuperscript{168}W.L.C.L., Sydney Papers 11 (Sydney to Shelburne, 24 Dec 178[3]); and see also Life of Shelburne, 2:281.

\textsuperscript{169}PP(HC) 1806.vii.19 (interview with Nepean, 1 Dec 1785).
On the Change of a Principal Secretary of State, it has frequently, but not always, happened, that the Successor has brought with him into Office One new Under Secretary, and has allowed One of the former Under Secretaries to remain: But it must be obvious, that however advantageous it may sometimes be to continue in Office a Person in Habits of Confidence, and acquainted with the Routine of the Public Business, Circumstances may occur which render it adviseable to make a further Change ....

Only five men served as Permanent Under Secretary to the Home Department before 1830, and four of them had occasion to worry about the security of their tenure under a new Principal. When Lord North replaced Thomas Townshend in March 1782, George Rose felt compelled to put in a good word for Evan Nepean, "a very honest, assiduous and attentive Officer, extremely pleasant in his temper and manner." In appointing John Beckett in February 1806, the Earl Spencer carefully noted that Beckett should not expect to receive it upon a "Permanent" basis because "the Nomination of the Under Secretary of State rests entirely with the Principal Secretary for the time being." Beckett was certainly relieved that he kept his position when Lord Hawkesbury resumed the office in April 1807, fulsomely attributing this to Hawkesbury's regard for Spencer rather than his own assiduity in his position.

Sidmouth's appointee, Henry Hobhouse, understood only too well that Robert Peel would be within his rights if he declined to offer him a continuance in the position in 1822. Hobhouse himself resigned a few months after Peel's first departure from the

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170 Committee of the Privy Council (27 Feb 1795), quoted in Commons Papers, 109:100.

171 Add MS 61867 ff.81-2. Rose's concern may have been well-founded; on the same day that he wrote on Nepean's behalf, Lord North's brother was soliciting one of the Under Secretaryships for a friend (Add MS 61874 ff.78-9).

172 Althorp PP, G66 (Spencer to R.Graham, 16 Feb 1806); G66 (J.Beckett to Spencer, 1 April 1807).

173 Devon R.O., 152M/C1821/OZ (H.Hobhouse to Sidmouth, 1 & 8 Dec 1821). "I well know your opinion of Hobhouse," wrote Peel to Sidmouth, "and I could not for a moment hesitate in expressing an earnest desire that he should continue in his present Office" (Devon R.O., 152M/C1821/OZ [14 Dec 1821]).
Home Department in April 1827, citing the failure of Peel’s successors to accord him the familiarity and confidence which he believed to be commensurate with his position and abilities. Upon his return in January 1828, Peel informed Samuel March Phillipps that he intended to reappoint Hobhouse. Phillipps protested that he had been told that his position was a permanent one and Peel subsequently dropped the issue, although “Peel treated him with great coldness and distance thereafter, always keeping him standing in his presence ….” Phillipps kept the position, but probably only because Hobhouse had in fact turned down a request from Peel to return to it. Peel presumably preferred an Under Secretary with some experience of the business of the office to one with none at all, but we are still some distance from the full acceptance of tenure during good behaviour as an established characteristic of the position. Nepean and Hobhouse both suffered serious bouts of illness near the end of their respective tenures, an indication perhaps of the strains of the job. Clearly they and the other “permanent” Under Secretaries strove hard to win the

\[174\] Hobhouse, who had been seriously ill, was particularly annoyed by the fact that Robert Wilmot Horton, Under Secretary in the Colonial Department and a man “far my Junior,” had become the first Under Secretary to be made a Privy Councillor. He had felt that Peel’s immediate successor William Sturges Bourne, Home Secretary in Goderich’s short-lived ministry, had not accorded him the confidence which both Sidmouth or Peel had, and that Canning’s incoming Home Secretary Lord Lansdowne “would probably … reduce me to a state little better than an article of office furniture” (Add MS 40394 ff.144-7; and The Formation of Canning’s Ministry: February to August 1827, ed. A.Aspinall, Camden Society, 3rd ser., 59 [1937], 247). He resigned before Lansdowne had assumed office, annoyed that Lansdowne had not indicated to him whether or not he intended to retain his service; Hobhouse’s cousin subsequently heard that Lansdowne had wanted to retain him, but that he had forgotten to deliver the letter inviting him to do so! (Recollections of a Long Life, by Lord Broughton (John Cam Hobhouse) with Additional Extracts from His Private Diaries, ed. Dorchester [1910-1], 3:210-11).

\[175\] “Excerpts from Lord Hatherton’s Diary,” ed. A.Aspinall, Parliamentary Affairs 17 (1963-4): 377; and Diary of Hobhouse, 146.

\[176\] Parris suggests that Beckett “should be reckoned the first of [the Home Office’s] permanent heads,” but I can see no criteria for distinguishing his position from that of his predecessors Evan Nepean or John King (Constitutional Bureaucracy, 43).

\[177\] Nepean’s condition appears to have been chronic. He rested in the West Indies between December 1791 and May 1792, but was again seriously ill within a few months (Commons 1790-1820, 4:653-4; and H.M.C., Dropmore MSS, 2:306). Later, as Under Secretary for War, he was again incapacitated for more than a month
favour of departmental masters who might subsequently help to advance their political ambitions and who, at any rate, retained power of dismissal over them.

(2) The Second Under Secretary

The expectations entertained of the second Under Secretary do not appear to have been so heavy or systematic. If the Permanent Under Secretary served as the Department’s principal administrative functionary, the character of the second Under Secretaryship seems to have been altogether more political. The term "Parliamentary" Under Secretary would be anachronistic. No such position was officially recognized until 1831 and, although most of the twenty-two men who served in this position before 1830 were members of parliament during their tenure, there is little evidence that any of them substantively advanced or defended the interests of the Home Department against the often aggressive questioning and initiatives of the Commons, particularly in the areas of criminal law and convict administration with which this thesis is concerned.178 This was a particular problem because, more often than not, the Home Secretary himself was a peer. Before 1822, only six of them sat in the Commons, of whom four - William Grenville, Henry Dundas, Charles Yorke and Richard Ryder - deferred to the lead of a Prime Minister who also sat in the Commons.179 The other two - Thomas Townshend and Lord North - served for less than a

(Add MS 38734 ff.93-4 & 95-8). Hobhouse’s decision to quit the office was influenced by a long-term deterioration in his health, and his subsequent refusal to resume it with Peel decided by it (Formation of Canning’s Ministry, 247; Add MS 40394 ff.144-7; and Hobhouse Diary, 146).

178 J.C. Sainty, Home Office Officials, 1782-1870 (1975), 12; Commons 1754-90, 2:87; and 3:212, 232-4, 487-9 & 553-4; and Commons 1790-1820, 3:196-8, 449-50, 455 & 578-9; 4:44-6, 96-7, 845-7, 300, 749-50, 764 & 845-7; and 5:219, 549-53 & 587-95. A possible exception to this rule was Hiley Addington, who seems to have managed some important criminal law bills (Commons 1790-1820, 3:47-50).

179 Grenville’s Foreign Office Under Secretary, James Bland Burges, observed of Pitt and Grenville that "these two friends are so inseparably connected that there is but one sentiment between them" and that, in Dundas, "they have complete possession of the Home Department, as he is guided by them in everything ..." (Letters of Bland Burges, 174). Charles Yorke cut a singularly unimpressive figure in the Commons during his short tenure of the Home Department. "Mr. Addington has ... the whole game in his hands," Lord Auckland
year and seldom seem to have spoken to any specific concerns of their Department.180

This state of affairs became particularly problematic in the early nineteenth century, as parliamentary procedure and activity grew more detailed and intensive. At the outset of his first tenure of the Home Office, Robert Peel outlined the tasks of his ideal Parliamentary Under Secretary:

... the mere official duties were light; ... the parliamentary duties would be by far the heaviest, and also of the greatest importance to me. ... [T]he Parliamentary Under Secretary would be like my right hand to me. I said these parliamentary duties consisted in the attendance on committees .... The Secretary of State could not attend all of these, and must devolve on his Under Secretary the charge of attending such as he could not, and watching the progress of the business from there. If at any time the Secretary of State were unavoidably absent from the House, the Under Secretary would have to conduct such business there as belonged to the office, for it would be a mortification for him to see that business in the hands of another.

But Peel’s expectations were to be disappointed. Three years later he had concluded that no Under Secretary could truly serve as his proxy: "I find it very difficult to transfer to anyone any portion of the business of my office which is to be transacted in the House of Commons."181 The point to be emphasized is that, by and large, the Home Department and its criminal functions do not seem to have been forcefully and effectively spoken for in the crucial arena of the Commons until Peel himself was carrying out this task virtually single-

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observed in December 1803. "It was thought by many that Mr. Yorke showed himself too sensitive for a Secretary of State, and too liable to be flung off his guard, and to be provoked into indiscretions" (Journal and Correspondence of Auckland, 4:188; see also Commons 1790-1820, 5:668). Ryder, the only other commoner in Perceval’s government besides the Prime Minister himself, was generally seen as ineffective, not least of all because his health was so poor; his resignation on those grounds had been anticipated for some months before Perceval’s assassination (Memoirs of Robert Plumer Ward, 1:420; and Holland (Perceval) Papers x.11). The Chief Clerk of the Commons recollected that "Poor Perceval used very unfairly to be forced to speak for all the departments of the Government" (O.Williams, Lamb's Friend the Census-Taker: Life and Letters of John Rickman [1912], 161).

180Commons 1754-90, 3:204-12 & 554-6. North was largely a sleeping partner in the Coalition. Townshend, as the only senior minister in Shelburne’s cabinet who was a commoner, had to defend his government on all policy issues in the House.

handedly after 1822.

Rather there appears to have been a broad understanding that the "Parliamentary" Under Secretaryship should serve primarily as a sinecure with which the Principal Secretary could reward his personal followers or those of others. To little is known of the careers and characters of four of the Under Secretaries to speak with confidence about how exactly they obtained the office. Another, Thomas Spring Rice, appointed in the midst of the crisis over Catholic Emancipation, appears to have got the office at least partially on the basis of his views about Ireland. But of the remaining seventeen, we know that two were the Home Secretary's son, three his brother, and six others closely connected to him by family or political connection. The remaining six appear to have been appointed as a favour to some other prominent minister in the government - in all but one instance, the Prime Minister himself (see Appendix 2.2). Almost invariably, "Parliamentary" Under Secretaries left the Home Department when their Principal did. A few remained in the office a month or two beyond his departure, but I suspect that the delay was occasioned only by the search for a new position for them. I know of no instance in which the incoming Secretary outrightly sacked an incumbent second Under Secretary, presumably because such an action would be an insult to his predecessor. It is therefore not surprising that a Commons commission of

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182 This was already apparent in 1795, when George Canning unsuccessfully sought the Under Secretaryship in the Home Office left vacant by the death of Thomas Brorderick:
   *I knew indeed that these offices had not of late years been considered as Parliamentary ones, having been filled chiefly by private men, but I considered that as no objection, or at least one of no great weight ...*  

183 George North remained 3 months beyond his Principal's departure, Edward Finch Hatton 1 month, Reginald Pole Carew 2 months, Charles Williams Wynn 8 months, Cecil Jenkinson 3 months, and Henry Goulburn 2 months. Goulburn's patron, Perceval, had been killed and his principal Ryder was incapacitated by grief. Sidmouth himself, who professed "perfect satisfaction ... in all my intercourse with him, I should part with him with regret," appears to have had a hand in securing his new position as Under Secretary to Bathurst in the War Office in order to give Hiley Addington his position (*Commons 1790-1820*, 5:81-2; and Devon
1786, seeking ways of economizing in government bureaucracy, thought the position of the second Under Secretary to be entirely dispensable.\(^1\)

This circumstance changed with the large and rapid expansion of the Home Department’s administrative burden after 1792. Before this time the Home Department’s duties were limited and the relevant correspondence, so far as we can tell, easily managed by its small staff. But after 1792, the Department acquired two entirely new ranges of administrative duties: the oversight of seven offices of stipendiary magistrates in the metropolis, and wide-ranging powers to supervise aliens within the nation.\(^2\) These activities were driven, in part in the first case and almost entirely in the second, by the anxiety amongst the ruling elites about the violent turn of events in France and their determination that radical democratic ideas should not gain a foothold in Britain. It is easy to overstate both the scale and certainly the effectiveness of the Home Department’s activity in these areas. Supervision of both the character and activities of the London magistrates appears to have been erratic at best, and an initial enthusiasm for prosecuting sedition and

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\(^1\)R.O., 152M/C1812/OZ [Sidmouth to J.H.Addington, 8 & 9 Aug 1812]). On Sidmouth’s departure, Peel was careful to inform him that "he understood it was Mr [Henry] Clive’s wish to retire from the Home Department at the time you did" and that "the report in the Courier that my brother in Law was about to succeed him was very premature at least" (Devon R.O., 152M/C1821/OZ [R.Peel to Sidmouth, 14 Dec 1821]). There was one departure from this pattern. Henry Dundas retained Grenville’s appointee, Scrope Bernard, for more than a year; perhaps Bernard’s performance during Nepean’s illness had shown him to be a valuable functionary. On his ultimate departure he was granted a pension and his duties transferred to John King, the Law Clerk (HO 42/21 f.550v; Nelson, Home Office, 33-4; and Commons 1790-1820, 3:196-8).

treason cooled rapidly after the failure to convict the leading radicals in the trials of 1794. As to the new Alien Office, although it was formally attached to the Home Department, it maintained a separate establishment and much of what was apparently its principal activity - the organization of espionage both at home and on the continent - was carried on by functionaries in other departments.

Nevertheless, the sheer volume of information and correspondence handled by the Home Department increased tremendously. Nor should it be forgotten that, until 1801, the Department still bore the main responsibility for colonial administration, as well as a continuing responsibility for the affairs of Scotland, the Channel Islands and the Isle of Man, all in addition to the usual - and now vastly increased - correspondence from local authorities, either requesting assistance in suppressing local disorders or, after 1792, zealously spotting both active and incipient disloyalty wherever they looked.

This thesis is concerned only with the principal, ongoing task of the Home Office from its inception in 1782: the disposition of serious criminal offenders in England and Wales, first in confirming or mitigating sentences, but increasingly in the actual physical disposition of convicts under sentence of transportation. This correspondence seems largely to have been organized by the Permanent Under Secretary before 1792. Indeed, his centrality in this business soon became so apparent that many petitioners for pardon, as well as local authorities seeking the relief of their gaols, dispensed altogether with the formality of addressing themselves to the Home Secretary, choosing instead to write to Evan Nepean by

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186See below, pp.345-9.

name. Oficials petitioning for the relief of Ely Gaol in November 1787 chose to err on the side of safety by addressing copies of the same request for relief to both the Home Secretary and Nepean.

After 1792 however, the amount of material pressing on other fronts necessitated a re-configuration of the Home Department’s internal clerical organization in order to manage the expanded load. In the first instance, the sheer volume and increased variety of correspondence made the need for a second, functional Under Secretary increasingly pressing. What the "Parliamentary" Under Secretary lacked in political duties, he quickly acquired in the administrative realm. During Nepean’s illness, the second Under Secretary Spencer Bernard carried out his functions, but some of the slack was taken up by the appointment of John King as Law Clerk, an old position under the Secretariat which had been left vacant after 1774. After Bernard’s resignation in August 1792, King received an Under Secretary’s salary, although he was not officially accorded Under Secretary status until Nepean quit the Home Department in July 1794. About the same time, there developed a new degree of specialization in the tasks undertaken by each Under Secretary, the second Under Secretary bearing principal responsibility for such new tasks as the administration of the Alien Office and, after 1801, the distribution of statutes to local magistrates. But each Under Secretary was empowered to act for the full range of

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188 See the request of Reading Gaol for relief in September 1784 (HO 42/5 f.202), as well as Nepean’s explicitly personal promise to “endeavour to release the County [of Nottingham]” of its convicts in September 1786 (HO 43/2 p.167).

189 HO 42/12 ff.329 & 330-1.

190 Nelson, *Home Office*, 33-5 & 59. See also above at n183.

191 William Wickham’s exclusive attention to the business of the Alien Office is described in Sparrow, "Alien Office," 361-84. Charles Abbot, the active force behind the promulgation of the statutes, addressed the second Under Secretary by name in detailing “Your Duty” in that task (HO 42/61 ff.359-60). Reginald Pole Carew was responsible for Irish and home defence correspondence, the Permanent Under Secretary taking police and aliens
Departmental business, and the evidence of the entry-books is that they did so freely as the occasion required. Thus a 1795 Privy Council Committee, appointed to review the recommendations of the Fees Commissioners of 1786, rejected the latter’s assertion that only one Under Secretary was necessary: "no less than Two efficient Under Secretaries ... are absolutely necessary for the Management of the Public Business ...."

* * * * *

Responsibility for organizing the correspondence that forms the subject matter of this thesis - convict administration - seems to have passed into the hands of a compact, initially undefined internal sub-bureaucracy after 1792. The Permanent Under Secretary’s role in fielding pardon petitions and requests for gaol relief seems initially to have passed to the Chief Clerk, William Pollock; the actual drafting of references, replies and warrants was undertaken by the Law Clerk; and, by 1794, a lawyer named William Baldwin was employed to supply the Home Secretary with preliminary readings of material relating to

(commons 1790-1820, 4:846). Hiley Addington appears to have had the exclusive responsibility for the Department’s military business: see Devon R.O., 152M/C1818/F (J.H.Addington to Sidmouth, 19 April 1818).

192 Henry Hobhouse and George Dawson appear to have spelled one another in exercising general oversight of the Department during the 1820s (Add MS 40352 f.65; Add MS 40368 ff.174-5; and Add MS 40390 ff.143-44).

193 Quoted in Commons Papers, 109:100.

194 Indeed it is a peculiarity of Home Office history that the staff of the Criminal Department - responsible for carrying on the business which had the longest lineage of any in the Office - remained outside the officially "established" Home Office bureaucracy even in the mid-nineteenth century: see A.P. Donajgrodzki, "New Roles for Old: The Northcote-Trevelyan Report and the Clerks of the Home Office, 1822-48," in Studies in the Growth of Nineteenth-Century Government, ed. G. Sutherland (1972), 86 & 90-1.

195 In November 1792, when James Boswell first sought a pardon for some convicts who had escaped from New South Wales, he dealt with Nepean; a year later, he was dealing with Pollock. See Boswell: The Great Biographer, 1789-1795, eds. M.K. Danziger & F. Brady (New York, 1989), 198 & 247. A letter requesting gaol relief was addressed by name to Pollock as early as September 1792 (HO 42/21 f.488).

pardon petitions. I will reserve for later a full discussion of the clerical body that eventually became the "Criminal Department," as also of the innovations in administrative practice which accompanied its development.

For now, the principal point to be noted is that the increasing pressure of business rapidly clouded any simple distinctions between the political and the administrative character of the Under Secretaries. On the one hand, the first Under Secretary was clearly an administrative functionary from the outset, but his position was not yet a "permanent" one in so far as it was always potentially vulnerable to political imperatives. On the other hand, the second Under Secretaryship was primarily a political appointment, but one which nonetheless increasingly became an administrative necessity, first to the internal workings of the Department and later to the defence and advancement of the Department's interests in the House of Commons. In the Under Secretaryships, as in the founding and subsequent development of the Home Department, political and administrative imperatives were intertwined.

IV. Conclusion: The Home Department and Criminal Justice

The new division of the Secretariat in March 1782 has traditionally been viewed as a self-evidently desirable measure of administrative improvement. On closer consideration however, that division was not even administratively coherent. Although the Foreign Secretaryship was explicitly confined to diplomacy, the Home Secretaryship embraced not

197Baldwin's activity in this respect was noted in 1797 by a parliamentary critic of the expansion of the Secretariat; see Parliamentary History 33 (1797-98): 968.

198See below, Chapter 6, part III. The emergence of this sub-bureaucracy presumably explains the disappearance of letters from local officials requesting the relief of their gaols from the main series of Home Office Papers (HO 42) after 1792.
only domestic but also colonial affairs.\textsuperscript{199} Even more strangely, until 1803 the Home Secretary also conducted diplomatic relations with the Barbary states.\textsuperscript{200} Indeed, so muddled was the administrative character of the Home Department in 1782 that, in explaining the functional division of secretarial responsibilities to Queen Victoria sixty years later, Lord Melbourne initially misdated it to 1794.\textsuperscript{201} Moreover, the division of 1782 did not signal the beginning of any significant departures in government policy in foreign, colonial or domestic affairs during the ensuing decade.

In fact, the new division in the Secretariat was shot through with political considerations. Before 1782 Secretaries of State were not only (or even primarily) administrators but also senior ministers in governments whose balance of power could be delicate and contentious, a situation which was not definitively resolved until the pre-eminent authority of the Prime Minister was established by the mid-nineteenth century. The principal purpose behind the new division of secretarial responsibilities in 1782 was to provide King George III with a structured means by which to minimize his contact with and dependence upon a group of ministers who were personally and politically distasteful to him. There is evidence of both the King's determination not to become the prisoner of such ministers and of the readiness of his first Home Secretary to abet him in that goal. Lord Shelburne had

\textsuperscript{199} Cooper, "Home Department," ch. 7. Cooper also points out that the Home Secretary had an important role in communicating the royal prerogative in military matters (see ch. 6). The full extent of Home Department duties is easily missed by the subsequent re-classification of many of its records as Colonial and War Office material.

\textsuperscript{200} Nelson speculates that the Home department retained this responsibility because of the strategic relevance of the Barbary states to Gibraltar (\textit{Home Office}, 6 & 138-9). To confuse matters further, the affairs of Gibraltar were only transferred to the Colonial Department in 1803, two years after the rest of the colonies (\textit{Later Corr. George III}, no.2785).

\textsuperscript{201} \textit{The Letters of Queen Victoria: A Selection from Her Majesty's Correspondence Between the Years 1837 and 1861}, eds. A.C. Benson & Esher (1907), 1:447-8 & 450-1. The error is the more interesting for having been made by a man who had himself been a Home Secretary.
always been interested, not only in improving administrative efficiency in the departments in which he had served, but also in enhancing their direct access to the monarch. The Home Secretaryship was defined in such a way as to maximize the latter, not only at the expense of the new Foreign Secretary, but potentially at that of the First Lord of the Treasury as well.

It is not at all clear that such a structured advantage could have lasted. Shelburne sought to give the exercise of power a rigidly defined character in an age when power was a dynamic phenomenon, to be defined and exercised day-by-day in the relationships amongst political actors rather than through any static structure of authority. In the event, the death of the Marquis of Rockingham only three months later meant that the new system was not put to the test. With the return to the Treasury of men in whom the King placed his trust, the immediate necessity for the Home Secretary’s pre-eminence lost its main impetus. The formal pre-eminence of the Home Secretaryship, resting upon its primary access to the person of the monarch, continued. But this distinction further served to limit the capacity of individual Home Secretaries either to introduce administrative innovations or to defend their department against the ultimate authority of the Commons. Almost all Home Secretaries were peers, partly because the position’s pre-eminence might logically dictate this, and partly because the defence of government policy - on all fronts, not merely that of domestic policy - often dictated that the Home Secretary must act in the Lords on behalf of a leading minister in the Commons. Thus, even though the Home Department had acquired a purely domestic administrative orientation by the early nineteenth century, its interests and concerns were seldom directly and effectively represented in the political arena in which they were most vulnerable. In the absence of any truly effective "Parliamentary" Under Secretaries, domestic policy was usually explained and defended to the Commons by the Treasury, a body more often characterized by fiscal caution and control than by innovative domestic
administration.

It was not until the Home Department gained a forceful head with a strong voice in the Commons - Robert Peel - that substantial administrative development first became apparent, both to contemporaries and to historians. In the remaining chapters, I hope to illustrate, not so much the basic accuracy of this perception, but the many ways in which it needs to be qualified. On the one hand, Peel carried to fruition attempts to improve the central administration of criminal justice which had been initiated by his predecessors. On the other, his own views on the basic issues of crime and punishment were not so forward-looking as we might be inclined to think, not only by the standards of his own time but also by those of his predecessors in the Home Department.

Throughout the period under examination in this thesis, the Home Department - like the ministry of which it was a part - played a fundamentally reactive rather than an interventionary role. Even the adoption of expanded policing activities after 1792, which marks the onset of a more active and interventionist role on the part of the central government in domestic affairs, was seen at the time as reactive and defensive in nature rather than a self-conscious expansion of the power of the state. In the narrower realm of criminal justice administration, Home Secretaries and their Prime Ministers recognized the indispensable necessity for a full range of penal practices, but they resisted any attempt to be drawn into a permanently fixed role in the physical disposition of serious convict offenders until 1801. As far as possible, transportation was to be paid for by the localities it served. Similarly, although the role of imprisonment as a desirable and appropriate penal practice

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202 This view has been advanced most explicitly in the work of David Mackay on the colonial element of the Home Department's work; see "Direction and Purpose," 492; and A Place of Exile: The European Settlement of New South Wales (Melbourne, 1985), 6-8.
grew apace during these years, the government continued to believe that the responsibility for building and operating the institutions in which it was to be carried on belonged to local authorities. The hulks, in which many convicts awaiting execution of sentences of transportation were housed under the (extremely loose) supervision of the central government, continued to be viewed as a temporary expedient, to be eliminated once the next ship or fleet cleared Britain's gaols and prisons of their excess convicts.

In one sense, this limited, reactive oversight was simply a continuation of the ambitions and intentions of the central government as they had developed over the course of the eighteenth century. In the shorter-term however, it was also a departure from those that had been articulated during the late 1770s. For a brief period, Westminster had been a proponent of a more active and centralized administration of criminal justice throughout England and Wales. This brief period of intense experimentation left behind a legacy of institutional devices and raised expectations with which the government was obliged to wrestle. Both its limited realization and its self-conscious scaling back were largely the work of one man: William Eden.
### APPENDIX 2.1

The Senior Staff of the Home Department, 1782-1830

<table>
<thead>
<tr>
<th>Date</th>
<th>Secretary</th>
<th>Under Secretary</th>
<th>2nd Under Secretary</th>
</tr>
</thead>
<tbody>
<tr>
<td>27 March 1782</td>
<td>Shelburne</td>
<td>J. Bell</td>
<td>E. Nepean</td>
</tr>
<tr>
<td>April 1782</td>
<td></td>
<td>E. Nepean</td>
<td>T. Orde</td>
</tr>
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<td><strong>Rockingham-Shelburne Ministry</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>July 1782</td>
<td>T. Townshend</td>
<td>E. Nepean</td>
<td>H. Strachey</td>
</tr>
<tr>
<td><strong>Shelburne Ministry</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>April 1783</td>
<td>Lord North</td>
<td>E. Nepean</td>
<td>G. A. North</td>
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* King replaced Bernard but did not gain Under Secretary status until Nepean’s departure.
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APPENDIX 2.2

The Second Under Secretary, 1782-1830

1) Unknown Connections:

(1) Thomas Broderick (July 1794-1795[d]).
(2) Edward Finch Hatton (Feb-Aug 1801).
(3) Henry Clive (April 1818-Jan 1822).
(4) Spencer Perceval (April-July 1827).

2) Policy Appointee:

Thomas Spring Rice (July 1827-Jan 1828). A committed Whig, he had radical views on Irish government and his appointment was viewed as a declaration of the ultimately short-lived Goderich ministry’s intentions on the matter (D.N.B. 18:835-7; and Journal of Mrs. Arbuthnot, 2:129-30).

3) Sons of the Home Secretary:

(1) George Augustus North (April 1783-Feb 1784).
(2) John Thomas Townshend (Feb 1784-June 1789).

4) Brothers of the Home Secretary:

(1) Charles Cecil Cope Jenkinson (Nov 1807-Feb 1810; actually Liverpool’s half-brother, subsequently the third Earl).
(2) John Hiley Addington (Aug 1812-April 1818). Addington’s health was generally poor, but he seems to have been occasionally active in introducing Departmental legislation in the Commons (House of Commons, 1790-1820, 3:49; and P. Ziegler, Addington: A Life of Henry Addington, First Viscount Sidmouth [1965], 316-7).
(3) William Yates Peel (Jan 1828-Aug 1830).

5) Personal Connection to the Home Secretary:

(1) Thomas Orde (April-July 1782), who began his career as a protege of Henry Dundas and was taken on by Shelburne, possibly in a bid to cement access to Dundas’s patronage power during the Rockingham ministry (Commons 1754-90, 3:232-4; and Burke Correspondence, 4:448-9).
(2) Scrope Bernard (June 1789-c. Aug 1792), a client of the Grenville connection; William Grenville’s Oxford companion and fellow MP for Buckinghamshire (Commons 1754-90, 2:87; Commons 1790-1820, 3:196-8; and Jupp, Lord Grenville, 11-2 & 101-2).
(3) Charles Francis Greville (March 1796-March 1798), Portland’s son-in-law, who only held the position until a diplomatic posting came available (Commons 1790-1820, 4:96-7).
(4) Sir George Shee (Aug 1801-Aug 1803), a friend of Lord Pelham and held in the lowest
esteern by the few others who noticed or recollected him (see Glenbervie Journals, 1:392 ["a person of nothing"]; and A.D.Kriegel, ed., *The Holland House Diaries, 1831-1840: The Diary of Henry Richard Vassall Fox, third Lord Holland* [1977], 40 ["let his principle(s) into innumerable awkward scrapes"]).

(5) George R. Dawson (Jan 1822-April 1827), a follower of Peel and, after 1816, his brother-in-law (*Commons 1790-1820*, 3:578-9).


6) Political Connection to the Ministry:

(1) Henry Strachey (July 1782-Aug 1783), an administrator with remarkable survival instincts, serving every ministry from North's to the Coalition, but apparently holding the Under Secretaryship as a client of Shelburne, whom he served as a negotiator in the Paris peace talks (*Commons 1754-90*, 3:487-9).

(2) William Wickham (March 1798-Feb 1801), a lifelong intimate of Grenville's who had sought the post for at least three years before attaining it, only to abandon it a year later for an extended continental spy mission (*D.N.B.*, 11:177-78; *Commons 1790-1820*, 5:549-53; H.M.C., *Dropmore MSS*, 3:70-1; and H.Mitchell, *The Underground War Against Revolutionary France: The Missions of William Wickham, 1794-1800* [Oxford, 1965], ch.12).


(4) John Henry Smyth (July 1804-Feb 1806), whose father was closely connected with Pitt (*Commons 1790-1820*, 5:219).


(6) Henry Goulburn (Feb 1810-Aug 1812), one of the small number of personal followers of Spencer Perceval (*Commons 1790-1820*, 4:45; and B.Jenkins, *Henry Goulburn, 1784-1856: A Political Biography* [Montreal & Kingston, 1996], 11-2, 19-20 & 56-8).
### APPENDIX 2.3

The Secretarial Division of Circuit Pardons, 1761-March 1782

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= = even split  
X = - or - = X = uneven split favouring one Department

"London" = group-pardon letter indicated as "Old Bailey"

Sources: *Cal. HO Papers*, vols.1-4; and SP 44/92-96.
APPENDIX 2.4

The Secretarial Division of Individual Pardons, 1761-March 1782

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Sources: *Cal. HO Papers*, vols. 1-4; and SP 44/92-96.
CHAPTER 3

PENAL DEVELOPMENTS BEFORE THE HOME DEPARTMENT, 1760-1782

The debates over and alterations in the infrastructure of punishment between 1760 and 1782 form the context within which the presuppositions and activity of ministers thereafter must be considered. The central government inherited not only a legacy of penal practices - transportation, the hulks, and the penitentiary idea - but perhaps also an expectation amongst local authorities that it was committed to helping them to realize new arrangements of penal practices within local jurisdictions. This situation was further complicated by the fact that local authorities might have needs which, though perhaps not of a different kind from one another, were often of a very much different scale. This difference was nowhere more apparent than in the metropolis itself, where a reliance on the large-scale transportation of convicts would continue to play a central role in the minds of both local and central officials long after 1782.

Until relatively recently the debates and measures of the 1760s and 1770s have been viewed as a single, immediately ineffective line of development. In fact, there were two distinctive threads of development proceeding at the nation’s political centre. The first followed what we might think of as a traditional pattern of penal reform, with local authorities making the necessary alterations to local penal arrangements at their own expense and initiative. The second, triggered by the abrupt elimination of an established destination for transportable convicts in 1775, was a far more ambitious plan for a national set of penal institutions under the direction of the central government. These plans were largely the work of the North ministry itself which, guided by the activity and ambitions of William Eden, briefly adopted an unprecedentedly interventionist and centralizing posture in the process of penal change. However it is clear that, even before the Penitentiary Act of 1779 was passed,
profound reservations about the nature and extent of these ambitions had arisen in many circles. Recognizing this distinction between locally- and nationally-based lines of development is crucial because, as we will see, it gives to the subsequent activity of the government a coherence of thought and practice which traditional, reform-minded accounts of penal change either have not perceived or have misunderstood.

I. Penal Debates and Structural Problems, 1760-1775

The end of transportation to America in 1775 triggered the most substantial intervention by the central government into penal arrangements since the 1718 legislation which had first fixed and routinized that practice. However the punishment of serious criminal offenders had been debated, considered and, to some extent, acted on for almost two decades beforehand. These developments by no means constitute a unilinear narrative of penal "reform" headed towards a particular, centrally directed system. The presuppositions underlying England’s massive capital code had been challenged but not overturned, and its expansion was far from over. The effectiveness of transportation as a penal practice was seriously questioned in some circles, yet it was also reinforced and nationalized in a striking new way. Finally, although many gaols were rebuilt in various counties and towns, the extent to which such reconstruction was explicitly or even primarily motivated by ideals of reforming offenders probably varied from one place to another.

(1) Capital Punishment

If the number of articles and letters appearing in The Gentleman’s Magazine, The Annual Register and The London Magazine is a reasonable yardstick, concern about the ends and effect of capital punishment was widespread during the 1760s. A question posed by one reader of The Gentleman’s Magazine indicates a crucial discomfort about execution:
I was in company, some time ago, at Wye, with several gentlemen, when ... a gentleman present made the following remark, viz. that he had heard the absent gentleman say, 'It was his real opinion, that if a person had been guilty of any crime, such as would be deemed capital by our laws, and subject the criminal to the loss of his life; if he should voluntarily surrender himself up to justice for that crime, it would be a sufficient atonement to the Almighty; and he actually believed he would have nothing more to answer for, on that account, at the grand tribunal of justice;' which opinion was unanimously agreed, by the whole company, to be very absurd.¹

The tension between the unidentified gentleman and this writer exposes doubts about the ability of human justice even to influence, much less to realize its underpinning religious ideal. Human beings could not consign the final disposition of an offender's soul to its maker in the confident expectation of "justice" being done. It was this same conviction which underscored a growing discomfort during the following decades about punishments which, for the sake of public example, subordinated the offender's bodily well-being to their spiritual regeneration - a discomfort which has been analyzed in the work of Randall McGowen. The necessary work of punishment on the individual offender's soul, the central assumption underlying reformatory prison regimes, was increasingly seen in some circles as something to be achieved in this world rather than the next.²

The most fundamental and widely-read challenge to the capital code was Cesare Beccaria's Of Crimes and Punishments, first published in 1764 and in English translation three years later. Beccaria did not dispute the primarily deterrent purpose of punishment, but he believed that deterrence would be more regularly achieved by punishments that were both scaled to the severity of the offense and therefore more certain of being applied than were

¹GM 31 (1761): 203.

capital punishments. Few people in England endorsed Beccaria's principles so far as to suggest doing away with capital punishment for all crimes. Indeed many probably shared James Harris's conviction that, although there were

\[\text{[many great and humane sentiments in [Beccaria, o]ne might almost say of the number of objections he finds to all the practised modes of punishing, &c., that were they to be adopted there would be no way left of administering justice.}^4\]

But Beccaria's arguments nevertheless struck a deeply resonant chord with the long-standing conviction amongst some English observers that many crimes, perhaps particularly those against property, were less likely to be prosecuted if there was any serious possibility of the convicted offender actually being hanged for the offense.\(^5\)

Beccarian assumptions and arguments seem particularly to have motivated the parliamentary activity of Sir William Meredith, a Whig MP and advocate of legal and religious reforms.\(^6\) In November 1770 Meredith moved for a Committee on Criminal Laws, noting that "in a well-regulated state, nothing is more requisite than to proportion the punishment to the crime, and to satisfy the minds of the people that equal justice is administered to every delinquent.\(^7\) His intention was "to except, by way of experiment, a few crimes from the heavy list; say five or six." If the experiment confirmed his belief that criminality would actually be reduced by less severe but more certain punishments, then

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\(^4\)Diaries and Correspondence of James Harris, First Earl of Malmesbury, ed. Malmesbury (1844), 1:1.


\(^6\)Commons 1754-90, 3:130-3.

\(^7\)Parliamentary History 16 (1765-71): 1124.
"Parliament can hereafter ... confine the punishment of death to the crime of murder." The Committee subsequently recommended that four minor capital statutes be repealed, but the Commons delayed further consideration on the matter for a week - presumably in the knowledge that they were to be prorogued only two days later. Meredith and his Whig colleagues fared only slightly better the following session, when the same proposal, extended to two more capital offenses, passed the Commons, only to be deliberately put off beyond the end of the session by the Lords.

Meredith's most significant achievement was the unanimous passage in the Commons, in January 1772, of a resolution "That no Bill, or Clause in any Bill, do pass this House, by which Capital Punishment is to be inflicted, unless the same shall have been referred to a Committee of the whole House." This resolution certainly did not act as a block to the further creation of capital offenses, but it at least suggests the existence of a general unease amongst many MPs about the possibility of injustices being committed under an extensive capital code. Nevertheless the work of Meredith and his allies did not actually lead to any reduction in the capital code. Almost certainly the main reason for this was a general concurrence with the powerfully-stated counter-argument, recently presented in the final

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10J.H.C. 33 (1770-72): 695. After its second reading on May 26, the Lords committed the bill "for this day Two Months;" parliament was prorogued on June 9 (J.H.L. 33 [1770-73]: 434). See also Radzinowicz, History, 1:427-46. It is worth noting that the offenses in question were so infrequently prosecuted that their de-capitalization could not have had any significant measurable effect on execution levels.


12Meredith did succeed, however, in defeating a 1777 motion for a bill to render dockyard thefts a capital offense. His speech on that occasion was an extensive restatement of his Beccarian ideals; see Parliamentary History 19 (1777-78): 234-41; and Radzinowicz, History, 1:473-6.
volume of William Blackstone's *Commentaries on the Laws of England* (1765-9), that the routine, discretionary application of secondary punishments to capital offenders served at least as well to ensure the certain and proportionate punishment of the guilty as would a fixed scale of punishments.¹³

(2) Transportation

The practice of transporting convicts to America, regularized by an Act of 1718, was also coming into question after 1750. By providing a punishment secondary to death which could at once be seen as both severe and ultimately reformative, and which had at least the preeminent virtue of altogether ridding communities of many classes of offenders (including many non-capital property offenders), transportation had rapidly become the central supporting element of eighteenth-century English penal practices.¹⁴ Less than fifty years later however, doubts about its efficacy as a punishment had arisen, in part because of the apparent improvements in the conditions of life in the American colonies and in the speed of transatlantic passage. Many critics now believed that hardened and determined convicts might quickly return home to renew their depredations, while those who did serve out their time in America did not face as onerous a punishment as they should.¹⁵ Some of these doubts reached as high as officials who were prominent in the administration of criminal justice. One circuit judge, in refusing to mitigate sentence of death for a housebreaker in 1766,

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¹³See below, pp.372-3.


lamented that "Transportation now in the Case of Common Offenders has almost ceased to be a Punishment." Similar sentiments were expressed in 1773 by the government's principal legal officer in Scotland, who also thought that "It is much to be regretted that the law, as it stands at present, does not admit of a greater diversity of punishments according to the different nature of crimes and circumstances of the offenders." He subsequently observed that many labourers found the prospect of emigration positively attractive, thereby expressing a concern - shared by many other critics of transportation - for the loss to the nation of useful labour.

Yet for all of these reservations, the evidence of both continuing practices and of legislative intentions strongly suggests that transportation continued to play an indispensable role in punishment. It was only as late as 1766 that the provisions of the Act of 1718 had been extended to Scotland, a measure which was presided over by the full contingent of Scottish legal officials and MPs, presumably in alarm at the rising levels of highway robbery and housebreaking which were later remarked on by the Lord Justice Clerk. In 1768 parliament sought to reinforce the now nation-wide system of transportation by "An act for the more speedy and effectual transportation of offenders," a measure specifically directed against those capital convicts whose sentences of transportation had been a condition of

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16 SP 37/5 f. 88. Nonetheless the convict in question was pardoned on condition of transportation for life, the government apparently feeling that it was obliged to do so as he had revealed a conspiracy amongst the prisoners in Suffolk gaol to murder the keeper: see Cal. HO Papers, 2:36 & 117.

17 Cal. HO Papers, 4:92-3.

18 Cal. HO Papers, 4:204-6 & 229-30. See also Beattie, Crime and the Courts, 541-3.

19 6 Geo. III, c. 32. See also J.H.C. 30 (1765-66): 739. For the practice of Scottish transportation before 1766, see A.R. Ekrich, "The Transportation of Scottish Criminals to America during the Eighteenth Century," Journal of British Studies 24 (1985): 366-74. The post-1767 arrangement did not include the £5 bounty provided by the government for transporting the convicts of the metropolis and Home Circuit. In 1771 the Lord Advocate reported that only about seventeen convicts were being transported from Scotland each year (T 1/487 ff. 276-7).
pardon - that is to say, the most serious class of offenders subject to transportation. Such
convicts were now to be immediately turned over to contractors for transportation rather than
be allowed to linger in gaols, thereby dissipating the intended impression of their punishment
on the public and corrupting those prisoners who were susceptible of reformation. It also
re-confirmed death without benefit of clergy as the punishment for returning before the
expiry of sentence. Finally, although the central government ceased in 1772 to pay merchants
the bounty of £5 for each London and Home Circuit convict shipped to America, that
decision perhaps reflected not reservations about the penal efficacy of transportation, but
rather the continuing profitability of the trade in indentured convict labour.

Indeed the absolute numbers of convicts transported yearly from metropolitan London
rose to impressive new levels during the last few years before the abrupt cessation of
transportation to America. So the ultimate significance of the reservations about
transportation expressed by some observers after 1750 perhaps concerned, not so much the
practice itself, but rather the need to find a new, suitably intimidating destination with which
to be more confident of realizing its aims. Roger Ekirch has detected several hints that
ministers were seeking such a new locale between 1769 and 1773, including Africa or the
East Indies. The former was in fact seriously proposed in parliament in April 1770, but
dismissed as being too cruel, too expensive, and a dangerous provocation to African

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20 Geo.III, c.15.

21 A.E.Smith, Colonists in Bondage: White Servitude and Convict Labor in America, 1607-1776 (Gloucester,
MS, 1965; orig.ed. 1947), 115 & 122-3; and Ekirch, Bound for America, 228. The last government contractor,
Duncan Campbell, reported in 1779 that he had received from £10-25 per convict depending on their gender and
skills (J.H.C. 37 [1778-80]: 310-1). In 1785 he reported an average of £13 per convict (HO 7/1 f.79). For the
continuing profitability of the convict trade, see K.Morgan, "The Organization of the Convict Trade to
201-27.
natives. However serious attention would not be given to the problem of finding an effective new destination until the dramatically different - and to many minds far more alarming - alternative of keeping serious offenders at home became a real possibility after 1775.

**TABLE 3.1**  
**Metropolitan Convicts Transported to America, 1750-1775**


(3) Imprisonment

This apparent ambiguity regarding transportation can partly be explained through consideration of the third component of penal debate and change after 1760: the reconstruction of gaols and, in some instances, the reform of their internal regimes. From at least the mid-eighteenth century, imprisonment was of far greater significance as a penal option than was once believed. John Beattie’s close study of sentencing practices in Surrey reveals a decided numerical swing away from transportation and toward imprisonment as the secondary punishment of choice for offenses against property after 1772. This departure in

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22Ekirch, *Bound for America*, 228-9; and *Parliamentary History* 16 (1765-71): 941-3. These arguments would reappear in the 1780s; see below, Chapter 5, part II(1).

penal practices was made possible in part because, without any apparent prompting from the centre, many local officials were rebuilding their gaols.

One striking indication of this activity was the number of statutes passed in order to facilitate such projects. No fewer than ten such Acts were passed between 1768 and 1781, providing for the county gaols of Essex, Pembroke, Warwick, Hertford, Westmorland and Gloucester, the town gaol of Coventry, and a House of Correction in Southwark. Such legislation could provoke quarrels amongst local interests, who sometimes played out their conflicts during the legislative process itself. The last and most combatively achieved of these measures, that for the county of Gloucester in 1780-81, initiated a rebuilding project which would prove to be of major significance for future patterns of development.

Nor does this constitute the full list of prisons that were rebuilt or whose internal regimes were in some way reformed during these years. In 1767 the Privy Council ordered the Bishop of Ely to make repairs to both the physical structure as well as the internal regimen of Ely gaol, including dietary limitations and the use of irons. A visitor to York Castle in September 1775 noted "The employment of the prisoners in waveing [sic] laces & netting garters and purses." At the same time, the magistrates of Sussex set about building a

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25This was true of the bills relating to Coventry in 1767-8 (J.H.C. 31 [1766-68]: 463 & 470), Essex in 1769-70 (J.H.C. 32 [1768-70]: 323, 364, 371, 378, 386, 694, 722, 814-5 & 819), and Gloucester in 1780-81 (J.H.L. 36 [1779-83]: 131, 138-9, 156, 157, 162 & 279-80; and J.H.C. 38 [1780-82]: 39-40, 61, 304, 325, 539-40). Another venue at which local interests might thwart the attempts of others at prison reform was the Quarter Sessions. An Act of 1739 required that any money to be spent on the repair of prisons, gaols or Houses of Correction be first presented to the Quarter Sessions; see N.Chester, The English Administrative System, 1780-1870 (Oxford, 1981), 23-4.

26See below, Chapter 4, part IV.
new gaol at Horsham on principles of useful labour and separation. And, in addition to that legislated for Surrey, new Houses of Correction were also built in Kent, Essex and Hertfordshire, and that of Middlesex was largely rebuilt. Houses of Correction, or "Bridewells," differed from gaols and prisons in that, whereas the latter generally served only an explicitly custodial function, the former were smaller-scale affairs in which minor offenders were set to useful labour. Of long-standing importance to the punishment and reclamation of petty offenders, they were soon to acquire a wider role in the disposition of more serious offenders as well.

So impressively large a number of reconstructed prisons and prison regimes within a relatively short space of time might easily - and often has been - taken to imply at least a common source of inspiration, and even a degree of central direction. In fact neither of these was unambiguously the case. The common source of inspiration was long thought to have been John Howard's tours of the English gaols and his subsequent publicization of the often appalling conditions which prevailed within them. A devout Baptist, Howard first came into contact with gaol conditions following his appointment as Sheriff of Bedfordshire in 1772. He advocated a programme of prison reform which included cleanliness of accommodation, a basic scheme of classification according to gender and severity of offense, useful labour during the day, and separation at night for purposes of spiritual reflection. But the


decisions of some local authorities to rebuild their gaols pre-dated Howard's important testimony to the Commons committee which produced the Health of Prisoners Act in 1774, not to mention publication of his *State of the Prisons in England and Wales* (1777).\(^{30}\) Indeed it is arguable that Howard's reputation did not achieve its greatest prominence until the 1780s, by which time (as we will see) a movement had sprung up amongst several local, reform-minded magistrates to achieve a centrally-directed reform of prisons rooted in explicitly Howardian principles.\(^{31}\) Before that time however, as Margaret DeLacy has demonstrated in her study of Lancashire, many prisons had to be rebuilt simply because they were no longer large or secure enough to hold the numbers required to be put in them - the one factor cited in every local gaol bill without exception.\(^{32}\)

We should not entirely minimize the impact of Howardian notions on early local gaol building and reform programmes. Most local gaol bills considered after Popham's Act of 1774 do cite a concern for the health of the prisoners, perhaps reflecting the stated intentions of that measure to ensure basic levels of care for prisoners in all public gaols.\(^{33}\) The

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\(^{30}\) See, for example, *Prison Reform in Lancashire, 1700-1850: A Study in Local Administration* (Stanford, CA: Stanford University Press, 1986), pp. 58-69.\(^{31}\) Although *The State of the Prisons* did receive extensive coverage in *The Gentleman's Magazine*: see *GM* 47 (1777): 444-7 & 596-7; and *GM* 50 (1780): 481-3. See also below, pp.265-72.\(^{32}\) See also *J.H.C.* 35 (1774-76): 138, 176 & 545-6 (Hertford & Pembroke); *J.H.C.* 36 (1776-78): 130-1 & 637 (Warwick & Cornwall); and *J.H.C.* 37 (1778-80): 107 (Pembroke). The announced intention to rebuild the county gaol of Gloucester noted the need to separate male from female prisoners, although it does not clearly
October 1775 decision of Sussex JPs to build Horsham Gaol was taken specifically "in pursuance of the powers and direction given and proscribed in and by the several statutes made out and now in force relating to the building and repairing gaols publick ...." It is also striking that, when the new county gaol for Essex was completed in 1777, it was reported as having adopted "Mr. Howard's plan," although no such intentions were explicit in the legislative process leading up to it. On the other hand, in the case of the Surrey House of Correction, a stated concern for both the health and the reformatory separation of prisoners actually predated both Popham's Act and Howard's *State of the Prisons*. And a concern for the general levels of health in particular county gaols (Worcester and Hampshire) had been expressed in *The Gentleman's Magazine* on at least two occasions during the 1760s. In fact, as Joanna Innes has demonstrated, Howardian ideas were a spur to what was, in one sense, only the latest wave of interest in setting minor offenders to productive and regenerative work in the now numerous Houses of Correction throughout the country - and one whose effective consequences were far from uniform. So local concerns for both the health and (to some extent) the separation of prisoners were not necessarily contingent on new or immediate external influences, either intellectual or legislative. Above all, a concern for the basic security of increasing numbers of prisoners - including, it should be noted, not only the felons in whom government might be expected to take an interest, but also increasing numbers of both petty offenders and debtors - was self-evident during a time of

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34West Sussex R.O., QAP/4/WE1; and GM 47 (1777): 550.


36Innes, "Prisons for the Poor," 97-100.
sharply rising committals.\textsuperscript{37} The ultimate impact of Howard's ideas stemmed, in large part, from the confluence of long-established ideas about the punishment of prisoners by hard labour with a growing inability to house as many as were now being committed to custody.

The potential insecurity of many gaols throughout Great Britain must have been increasingly apparent at the nation's centre after 1760. London magazines reported large-scale escapes by convicted felons out of gaols in Whitechapel, Bath, Winchester and Salisbury between 1763 and 1767 alone.\textsuperscript{38} The dangerously dilapidated or otherwise insecure state of many other local gaols was coming more directly to the attention of ministers during the 1760s and 1770s. Between 1765 and 1771, the government was informed of an escape from the Edinburgh Tollbooth, a mass-attempt at York Castle, and of large-scale breaks from the county gaols for Lancaster and Kent, the latter entailing the murder of the keeper.\textsuperscript{39} Even the keepers of such smaller-scale prisons as the Tower of London and the Isle of Man wrote to the government to express their concerns about the physical deterioration of their buildings and the potential consequences for both the security and health of the inmates.\textsuperscript{40} The Quarter Sessions of Cornwall petitioned the Treasury, largely in vain, for relief in regard to the ruinous state of the county gaol seven years before that county's MPs finally passed enabling legislation for its reconstruction in 1778.\textsuperscript{41} Nor


\textsuperscript{39}Cal. HO Papers, 1:624 & 2:28; T 1/449 ff.116-7; SP 37/4 f.88; and HO 49/2 pp.133-5.

\textsuperscript{40}T 1/516 ff.175-6; T 1/546 ff.381-2; and SP 48/2 pp.314-7.

\textsuperscript{41}T 1/486 ff.266-7; and T 1/487 ff.37-8, 39-40, 74-7, 230-1 & 328-31. The Treasury Lords recommended a royal bounty to aid rebuilding, but asserted the general principle that "his Majesty is not obliged to repair" the county gaol (T 1/487 ff.39-40).
were these gaols the only ones subject to the threat of escapes. In March 1781 Parson Woodforde noted a near-successful attempt by four convicted highwaymen to escape from Thetford Castle.  

The one notable exception to government’s general rule of refusing to intervene in what was taken to be the responsibility of local officials was the military guard provided for the dilapidated gaol at Coventry in order to prevent the escape of the felons confined there. This guard was supplied in the first instance, in 1763, because many of its inmates were thought to be returned transports and government was determined to make an example of them. But in 1765, when the local magistrate John Hewitt reported the need wholly to rebuild the gaol, the guard was restored, partly out of a professed regard for Hewitt’s “vigilance and activity in having secured so many dangerous felons who have for so long infested your country,” and perhaps also because the permanent stationing of a army detachment nearby meant that such service provided to the county was not viewed as an undue burden on government. This was just as well because, despite the passage of enabling legislation in 1768, progress on the gaol’s rebuilding was sufficiently slow that troops were still required there as late as 1776.

Ministers were well aware of the difficulties pressing on many gaols during the 1760s and 1770s, as well as the reformative aspirations of many local authorities, but there is little evidence that they sought to encourage - much less to direct - local gaol rebuilding toward a common and reformed end. The willingness to allow the local gaol bills for Pembroke and

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43 SP 44/139 pp.250-9; and HO 49/1 pp.70-3.

44 Quote at SP 44/138 p.331. See also SP 44/141 p.342; and SP 44/196 p.327.
Gloucester to stagger unresolved across sessions suggests that neither ministers nor many other MPs regarded them as being a pressing responsibility for anyone other than their local sponsors. This would particularly seem to have been the case in the latter instance, where the bill was approved by both Commons and Lords but still lost by the prorogation of parliament.\textsuperscript{45} So little oversight of local measures was exercised that, as Lord Eldon later noted, a glaring inconsistency existed between the two Acts passed for the reconstruction of the county gaol of Essex: "by one Enactment the New Gaol was to be built by the Materials of the Old Gaol: by another the Prisoners were to be kept in the Old Gaol till the New Gaol was finished."\textsuperscript{46} Finally, we should note that the first prison Acts which had explicit ambitions of imposing uniform prison conditions throughout the nation, passed in 1773 and 1774 - which clearly did reflect Howard's ideas, and do appear to have had some influence on local authorities - were not government measures.\textsuperscript{47} So the role of ministers, in both the advocacy of local gaol reconstruction and the implementation of reformative ideals in local gaol regimes, was at best intermittent and haphazard before 1775.

(4) Transportation vs Imprisonment

Nevertheless, the absence of coherent and defined health and penal regimens for all gaols and bridewells throughout the nation did not preclude local officials and circuit judges from expanding the application of imprisonment to those convicts whose offenses were no

\textsuperscript{45}The measure for Pembroke failed to progress beyond introduction in the sessions of 1774 and 1775, only passing in 1779 (\textit{J.H.C.} 34 [1772-74]: 474, 508 & 554; and \textit{J.H.C.} 35 [1774-76]: 545-6). For the conflicts over Gloucester Gaol in 1780-1, see the references above at n25. Moreover, although the Act for rebuilding the county gaol of Cornwall enjoyed a trouble-free passage in 1778, the measure had first been broached without sequel ten years earlier (\textit{J.H.C.} 32 [1768-70]: 81). Clearly no one in parliament was going to advance the measure if not the responsible local authorities.


\textsuperscript{47}See the discussion of Popham's measures below, pp.157-8.
longer deemed to be so serious as to warrant transportation (much less execution), or who showed promise of potential reclamation. This brings us back to the shifting proportion between transportation and imprisonment as the secondary punishment of choice as demonstrated in Beattie’s work on Surrey. It now seems clear that we should not think of transportation as having been restricted as a punishment *tout court*, but rather only in its application to less serious offenders. As we will see in the following chapter, local officials during the 1780s very much desired a regular and effective system of transportation: not as a means of avoiding the development of their imprisonment regimes, but rather as a means of reinforcing them. To some extent, this pattern of practice can be detected even before the cessation of transportation to America in 1775. In an undesigned fashion, using whatever range of custodial resources was available to them, both judges and local officials were shrinking the scope of transportation back toward only the most serious classes of offenders - that is to say, toward that pattern of application which would prevail once it was actively revived as a penal option after 1782.

This growing sense of both restriction and continuation is further suggested by the fact that the Transportation Act of 1768 applied only to convicts who had been pardoned from capital offenses. There were never any serious doubts about the continuing need to transport particularly serious offenders, but only about whether or not a destination could be found for them from which they might not return so easily as from America. As to the lesser offenders who once had been subject to transportation, some ministers may actively have believed that local gaol regimes should be reformed so as to facilitate the changing distribution of penal practices. Perhaps they endorsed Popham’s measures as a model on which to proceed. But the responsibility for fulfilling this aim rested, firmly and completely, with the leaders of the local communities on which punishments were intended to have their
effect and into which, eventually, any putatively reformed convict would be released.

This complicated pattern of changing attitudes and practices was particularly apparent in the metropolis, the seat of national government itself. The number of London and Middlesex convicts transported to America continued to rise during the decade following the end of the Seven Years War (see Table 3.1). This increase disguises an actual decline in the proportion of transportation sentencing from about three-quarters to two-thirds of all convicted felons at the Old Bailey. However the sheer volume of capital convictions in the metropolis, coupled with the ongoing threat of robbery on the many busy roads both within and leading to it, created a situation in which a desire to ensure the most severe punishment of the most serious property crimes - highway robbery and burglary - tended to dominate the terms of penal debate and practices at the nation's centre in a way which would not be the case for other regions for several decades.

Indeed a parliamentary committee was struck in the spring of 1770 to investigate the causes of the great increase in burglaries and robberies in the capital. It made several recommendations regarding the watch, the gaol of Westminster, and the licensing of wineshops, but it also made two specific recommendations about ensuring the severe punishment of serious offenders. First, it recommended that the receiving of jewels or of gold or silver plate that had been stolen in the course of a burglary or highway robbery "should be made more penal," a measure which drew criticism from Meredith and others on the general grounds that Beccarian principles ought to be implemented rather than the capital system extended. (The recommendations of this committee in fact mark the starting point of

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48Ignatieff, Just Measure of Pain, 81; and Ekirch, Bound for America, 227-8. The persistent enthusiasm for transportation in the metropolis is perhaps suggested by the fact that, during the early 1760s, The London Magazine occasionally reported the number of convicts dispatched that month (LM 31 [1762]: 623; and LM 32 [1763]: 445 & 672). Was this symptomatic of relief?
Meredith’s legislative activity.) Their opposition was overcome in a division, but since the resulting Act only made the offence punishable by transportation to America for fourteen years, it is possible that they had scored a point.49 It was also this committee which recommended, unsuccessfully, the implementation of transportation to Africa or the East Indies - an indication perhaps that transportation to America was not perceived as sufficiently severe to meet the intention that receiving "should be made more penal."

However the extent to which metropolitan authorities favoured an extension of the prison option to such offenses is at best unclear. For both the City and Middlesex, Newgate prison was the main repository for serious criminal offenders awaiting either trial at the Old Bailey or subsequent execution of sentence to death or transportation.50 Living conditions in the old gaol had long been notoriously bad. They had indeed been the direct cause of the death of four judges and several other officers of the court during the "Black Assizes" of May 1750, when the "gaol fever" (a form of typhus) was communicated into the adjacent court house during sessions-time. But no serious moves were made to commence work on a refurbished structure until a fire in September 1762 actually jeopardized the security of the building.51 Initial attempts to obtain financing by Act of parliament in both 1764 and 1765 foundered over disagreements between City and Middlesex authorities as to a reasonable

4910 Geo.III, c.48. See also J.H.C. 32 (1768-70): 883; and Parliamentary History 16 (1765-71): 941-2. One pamphleteer of the time had suggested that receiving ought to be a capital offense in those cases where the theft preceding it had been as well; see [F.Hargrave.] A Review of the Laws against the knowingly receiving of Stolen Goods: and a proposal for making a new law on that subject (1770), 39-41.


51Attempted escapes were reported on at least three occasions in 1762-3; see GM 32 (1762): 89; GM 33 (1763): 255; and LM 32 (1763): 333.
division of the costs of reconstruction.\textsuperscript{52} The matter was finally settled in 1767 by legislation which authorized the City to raise the £50,000 deemed necessary by a new coal tax, and which circumvented further disagreements by designating Newgate as "not only the County Gaol of Middlesex, as well as London, but the general prison for smugglers and debtors to the crown from all parts of the Kingdom ...."\textsuperscript{53} Yet the new prison, begun in 1769, was divided into only three wards, each of which would contain debtors, male felons, and female felons respectively, and embraced no more elaborate scheme of separation than that. It might better be described simply as a larger, albeit cleaner, custodial institution than as a reformed prison in any meaningful sense. No work was attempted on the City's small and generally decrepit compters and Houses of Correction before the 1780s, by which time Middlesex's refurbished House of Correction in Clerkenwell was overburdened and the new House of Correction of Southwark had been destroyed during the Gordon Riots.\textsuperscript{54} In general then, the metropolis did not enter the gaols crisis of the 1780s in a strong position from the point of view of institutions for the punitive custody of criminal offenders.

Such structural limitations perhaps influenced the debate between the relative merits of imprisonment at hard labour and those of transportation which seems to have arisen on the Middlesex bench in 1772. The chairman of the bench, Sir John Hawkins, announced the unanimous intention of the magistrates "to rebuild their prisons and ... to exert their utmost endeavours to substitute actual hard labour as a punishment, instead of transportation ...."\textsuperscript{55}


\textsuperscript{53} 17 Geo.III, c.37.


\textsuperscript{55} SP 37/9 ff.217-8.
However the most famous Middlesex magistrate, Sir John Fielding, with whom Hawkins subsequently clashed over the question of the location and extent of the new prison, continued to view transportation as

the wisest, because most humane and effectual punishment we have, [one] which immediately removes the evil, separates the individual from his abandoned connexions, and gives him a fresh opportunity of being a useful member of society, thereby answering the great ends of punishment, viz., example, humanity, and reformation.

Fielding thought the application of the death penalty to returned capital transports to be too "harsh and severe," and argued that it should be reserved only to those who had returned a second time, given that he had "heard several criminals declare that they had rather be hanged than transported a second time; and from the accounts they have given of their sufferings, has believed them." In general, Fielding seems to have preferred preventive measures, in the form of various patrol schemes and the more certain and the severe punishment of guilty offenders, to new forms of institutionalized punishment. It is interesting to note that the vast proportion of the annual funds which Fielding's office in Bow Street received from the Treasury were expended on the pursuit, detection and prosecution of offenders rather than on any obviously modern preventive functions such as patrols on horse or foot. In the Earl of Suffolk, who became a Secretary of State in June 1771, Fielding felt that he had found his most sympathetic ear in the ministry since the Earl of Bute.

Suffolk, of whom we shall say more shortly, was subsequently the target of a number of

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57 T 1/413 ff.270-99; T 1/414 ff.125-35; T 1/437 ff.66-77; T 1/449 ff.29-47; and T 1/454 ff.76-94. In September 1774 two major London journals both lamented the absence of more active preventative measures. "[W]hile the police employ their time in detecting, without regard to preventing thieves and robbers," lamented one. "we may hang and transport, but we shall never walk or travel with security, or sleep in peace" (quote in LM 43 [1774]: 457; see also GM 44 [1774]: 443).
suggestions from Fielding that both a General Preventative Plan, Fielding's last scheme to promote the pursuit and capture of criminals, as well as various preventive patrols should be taken up.\textsuperscript{58}

It was here that matters stood when the outbreak of war in America abruptly brought to an end transportation as a means of punishing serious offenses short of death. The use of execution to punish most offenses against property was, as it had long been, in serious doubt. So too was the use of transportation to America, although it seems that transportation to some place continued to be regarded as the minimally appropriate punishment for certain offenses, particularly those against property which involved the threat or actual use of violence. Such offenses as burglary and highway robbery were thought to have reached near epidemic levels in the metropolis after 1760, with the result that very large numbers of offenders continued to be transported from London and Middlesex up to the eve of the American War. "It is said that voluptuousness, evil, and debauchery have never been so rampant in London as they are at present," wrote one foreign observer to a friend in January 1775.

Not an evening passes when not only one, but three, four, or five robberies are committed by footpads, not to mention burglaries and other thefts. Dozens are hanged and batches of fifty sent off to America, but all this makes no impression on them. Nor did the war seem to cause much of a dent in this. "Robbery indeed continues at high-water mark," noted Horace Walpole in 1780, "though the army and navy have drawn off

such hosts of outlaws and vagrants. The number of such convicted offenders from other parts of the country was considerably smaller, and the use of imprisonment to punish lesser offenders against property in such places was growing, even in a county such as Surrey which might be expected to have been somewhat influenced by metropolitan patterns of crime and prosecution. The increasing number of prisoners of all classes placed heavy pressures on an aging infrastructure of local gaols and Houses of Correction, with the result that many local authorities set about rebuilding their gaol facilities. Some of them even did so with explicit ideas in mind of creating both a physically healthier and psychologically

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**Sources:** Ignatieff, *Just Measure of Pain*, 81; and Beattie, *Crime and the Courts*, 532 & 546.60

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59 Lichtenberg's *Visits to England, as described in his Letters and Diaries*, trans. M.L. Mare & W.H. Quarrell (Oxford, 1938), 78; and The Yale Edition of Horace Walpole's Correspondence, ed. W.S. Lewis (New Haven, CT, 1937-87), 25:99. For general observations on the extraordinarily and consistently high levels of violent property crime in the metropolis, see *AR* 4 (Chron 1761): 189; *AR* 15 (Chron 1772): 81; *GM* 31 (1761): 599; *GM* 32 (1762): 41; *GM* 40 (1770): 234-5 & 342; *GM* 42 (1772): 145; and *LM* 32 (1763): 278 & 502. For comparisons emphasizing the relative lack of criminality outside the metropolis, see *GM* 32 (1762): 386; and *GM* 33 (1763): 515.

60 My figures from Beattie are somewhat distorted. Those for death sentences actually run between the years 1764-70 and 1771-75, and I have interpolated the numbers for other sentences before reconvoking for percentages.
more penal regime. Some of them did so as a consequence of the work and ideas of John Howard, although clearly the basic notion of reformative labour in a penal regime long pre-dated them, particularly in the case of Houses of Correction. What was new was the application of this notion to classes of offenders who would previously have been transported.

Most importantly, none of these developments involved any direct action on the part of ministers. Members of government were naturally concerned about the levels of serious crime in the metropolis in which they spent a considerable (and growing) part of their year, and so might be roused to specific actions on behalf of the metropolitan system of punishing offenders. But there is no evidence that ministers ever sought to direct gaol reform on a national scale, or even that they thought such centralizing ambitions appropriate. Such few and minimal measures of direction as were legislated stemmed, not from the government, but from a small number of parliamentarians who, although able to secure their passage into law, were nonetheless unable to ensure that this legislation was followed in the localities. It was in the midst of this situation that the central government, after 1775 and primarily under the influence of William Eden, came to propose an extraordinarily ambitious and centrally-imposed scheme of punishment by hard labour.

II. William Eden and the Origins of the Penitentiary Act

The story of the alternative penal regimes devised by the North ministry after 1775 - the hulks, the Hard Labour bill, and finally the Penitentiary Act - has been told several times, so another re-telling of it requires some justification. Both in retrospect and at the time, these proposals seemed a dramatic departure from established penal practices in England. These departures have been interpreted in two ways. The first, associated with
historians of gaol reform and the development of the penitentiary, views it as a forward-looking penal movement which was subsequently abandoned through short-sighted adherence to transportation, governmental parsimony, managerial incompetence, or some combination of these factors. Historians of transportation have often read it as a momentarily necessary diversion from an established practice which was resumed as soon as it could be after the end of the Revolutionary War.61 Both perspectives have some measure of truth to them, but such emphases tend to promote a picture of English penal practices in which transportation and imprisonment have been artificially separated from one another. That this picture has now given way to a more complicated conception of the interdependence amongst capital punishment, transportation and imprisonment is almost entirely due to the work of John Beattie.62

In recounting the story of this five-year period of experimentation, thrust upon the English by the abrupt cessation of transportation, I want to emphasize continuities as much as departures. We have already noted the extent to which prison regimes had already gained favour as the preferred mode of punishment for less serious offenses against property. It is equally true that most authorities never surrendered their desire to continue to transport the most serious classes of offenders. The desire to maintain this system is apparent in both the difficulties encountered in implementing alternatives to it after the outbreak of the


62Beattie, Crime and the Courts, ch.10; and Innes, "Role of Transportation," 1-24.
Revolutionary War, and in the speed with which authorities at both the centre and in the localities sought to resume the pre-war system of practices after its end.

(1) William Eden: His Rise to Influence

One reason that the penal experiments of 1775-9 have sometimes been viewed in a forward-looking light is the identity of their principal architect. Neither contemporaries nor later historians have been kind to William Eden. Although his extensively preserved correspondence has proven to be a gold-mine of informative gossip about the late eighteenth-century political world, they seem also to confirm his contemporary reputation as a graceless time-server.63 He is perhaps best-remembered now, first, as the principal architect of William Pitt's Commercial Treaty with France in 1786 and, secondly, as the father of the one woman upon whom, for a time, Pitt's tortuous and ambiguous affections were fixed. Yet there was little hint of Eden's future reputation in the early 1770s. At that time he seems even to have enjoyed a measure of public esteem as the author of the provocative and widely-read Principles of Penal Law (1771). With its emphasis on the more certain and proportionate punishment of offenders, and rejection of capital punishment for all but the worst offenses and most incorrigible offenders, the Principles reflected the influence of Beccaria. Its unique achievement was to set Beccarian ideals within the English constellation of penal practices. Like Beccaria, Eden did not dispute the fundamentally deterrent purpose of criminal punishments, but he cast serious doubt on the belief that either transportation or unregimented incarceration achieved such an effect.64

63See for instance, Selections from the Letters and Correspondence of Sir James Bland Burges, Bart., Sometime Under-Secretary of State for Foreign Affairs, ed. J.Hutton (1885), 77; Walpole Correspondence, 33:214 & 39:496; and N.Wraxall, Historical Memoirs of My Own Time, (1904; orig.ed. 1815), 1:440.

64Phillipson, Three Criminal Law Reformers, 90-1; Radzinowicz, History, 1:301-13; O'Brien, Foundation of Australia, 70-1; Heath, Eighteenth Century Penal Theory, 195-200; and Bolton, "Eden and the Convicts," 32-5.
Yet if the general tendency of Eden’s proposals was clear, his specific solutions were somewhat less so, and it would be a mistake to read the *Principles* as a straightforward blueprint for the penal measures which Eden subsequently sought to put in place. In particular, Eden’s position on the sorts of serious property offenses that continued to be punished by transportation was more ambiguous than any simple description of his work as a "reform" tract would imply. Eden was even in favour of retaining the death penalty for burglary, albeit according to a more restricted reading of the relevant statutes. Finally, although he thought employment on public works and disciplinary incarceration to be the best modes of punishing criminals, since the former would serve an admirable deterrent purpose and both might ultimately reclaim the offender for society, he nonetheless conceded no alternative to transportation to some suitably unpleasant destination as the only solution for recidivists. The ambiguity of Eden’s proposed reforms for serious offenses - indeed, their rather close match to what appears to have been prevailing practice at the time that he published his book - perhaps accounts in part for its success. A second edition appeared within a year, and received an approving review in *The London Magazine*. The young George, Lord Herbert was obliged to read it, along with Blackstone and Beccaria, during his time on the Grand Tour between 1775 and 1777 - an indication of how widely-read works on the criminal law and its reform may have been amongst the governing classes.

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66*LM* 40 (1771): 271-2; and Henry, *Elizabeth and George (1734-1780): Letters and Diaries of Henry, Tenth Earl of Pembroke and His Circle*, ed. Herbert (1939), 1:54 & 96. "His Lordship seems to approve much of this kind of reading," Herbert’s tutor noted, "and makes occasionally some excellent remarks" (p.96). Another reader of Blackstone at this same time remarked of the fourth volume of Blackstone’s *Commentaries* that "its precision in ascertaining Crime, and annexing Punishment is consider’d the most perfect; tho’ perhaps the Capital Punishment may be thought too frequent, and annex’d in many cases to crimes which hardly deserve it;" see *A Later Pepys: The Correspondence of Sir William Weller Pepys, Bart., Master in Chancery, 1758-1825*, ed. A.C.Gaussen (1904), 1:229.
It was perhaps on the strength of the *Principles* that, in June 1772, Eden was taken on as Under Secretary of State in the Northern Department by the Earl of Suffolk. Suffolk is a largely mysterious figure in the politics of the period. He represented himself as the inheritor of George Grenville’s parliamentary following after the latter’s death in 1770, although both Grenville’s biographer and Horace Walpole thought this more an assertion than a reality. Whatever the case, Suffolk’s claims seemed substantial enough that Lord North made him Secretary of State in June 1771.

Eden’s appointment by Suffolk in 1772 corresponds with the beginning of a number of improvements in the general manner in which the Secretariat oversaw criminal justice, particularly in the metropolis. Suffolk himself seems to have taken some satisfaction in granting pardon to convicts whenever the occasion permitted. “Mercy is always pleasing,” he wrote soon after Eden had joined his office, “and doubly captivating when such Bloodhounds as attend an Execution are disappointed - may Perdition seize the wretch that rejoices in his Brother’s Blood!” A year later, when the Keeper of the New Gaol in Surrey received a

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69 Suffolk’s inability to read and speak French made him an object of ridicule in the popular press. “Our fathers were taught by Swift to say, *I know no more than my Lord Mayor,*” said John Wilkes at the time. “This reproach on the city is now done away, for the common expression is, *I know no more than my Lord Suffolk*” (*The Speeches of John Wilkes ... 1774, to ... 1777* [1777-8], 3:111n [emphases in original]). Nor did he seem to cut a particularly effective figure in debate. “If he be well informed in his office, or in the great line of politics in which he is engaged,” observed *The London Magazine* at about the same time, “he is certainly one of the best secret-keepers we know in Parliament” (*LM* 45 [1776]: 638). Burke’s epitaph after Suffolk’s premature death in 1779 was the unkindest cut: “dead to the state, long before he was dead to nature ...” (*Parliamentary History* 21 [1780-1]: 55).
respite while in a state of intoxication, Eden issued a stern letter to the county sheriffs, drawing their "strictest animadversion" to this issue, "As such misconduct may, on other occasions, in matters of Life, be attended with most serious consequences ...." Eden and Suffolk seem also to have sought to regularize the practice of the Recorder of London's making his Report of all capital offenders before the King and the Cabinet Council. At the same time, they also made efforts to secure better information as to the past character of convicted offenders, so as to ensure that, as far as possible, convicts receiving conditional pardons were punished in a manner which fitted the crime of which they had been convicted and their past character.

In a bureaucratic world in which the execution of government policy was a largely personal affair - dependent on face-to-face relations, personal initiative, and individual mastery of documents - Eden's personal industry and political connections helped him to achieve centrality in the administration of criminal justice matters. Such a position was clearly implied by the King's own direct instruction to Lord North, in April 1775, that he should "direct M' Eden to have [the convict] respited and the punishment transmuted to transportation ...." This was a striking metamorphosis for a man who, only three years earlier, had quit the legal profession with much trepidation about "the daily confinement and regular attendance at the office, [as well as] the affected reserve which a man must adopt on all subjects, whether ignorant or otherwise ...." On the other hand, Eden noted revealingly

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70 See below, Chapter 5, parts I-II. After February 1773 it became a regular obligation on the Recorder to supply the Secretary of State, ahead of time, "with a list of the convicts who are to be reported ... in the order in which their cases are to be considered by the Cabinet Council" (SP 44/91 p.187).

71 Add MS 34412 f.181; SP 44/141 pp.353-4; and Cal. HO Papers, 4:10-1.


that "I love politics better than law .... I also love business, and am conscious that I possess the spirit of perseverance." But finally, he "could not bear such a situation unless honoured at the same time by [Lord Suffolk's] unlimited confidence, because I am sure that I should endeavour to deserve it." Nevertheless Suffolk's first notes to his new Under Secretary contain a mixture of encouragement and cajoling, enjoining the latter to a close attention to the duties of his office.

Eden may have developed his work ethic under Suffolk's tutelage. He certainly benefitted from his Principal's patronage. Within days of Eden's assuming office, Suffolk had exerted influence with Lord North to prevent his "most confidential counsellor" from losing the auditorship of Greenwich Hospital and its income. Two years later, he sought to secure for Eden the newly vacant position of Law Clerk in the Secretarial offices, a largely ceremonial position which would have netted Eden £500 per annum. But despite Suffolk's plea to the King about Eden's "merits" and that he "certainly deserves particularly well," the position was allowed to lapse.

By this time Eden had already drifted from Suffolk's orbit. When he entered parliament in 1774, he did so not under Suffolk's patronage (though this had been offered) but rather that of the Duke of Marlborough. Soon after he was gravitating toward the heart of all influence and power within the ministry: Lord North and John Robinson.

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74 Journal and Correspondence of William, Lord Auckland, ed. Bath & Wells (1861-2), 1:xiii. Eden's close friend and fellow lawyer, the MP Thomas Lockhart, was more sceptical, alluding to "A Certain degree of Impatience & Vicissitude natural to your disposition" which he doubted that Eden would master in his new career (Add MS 34412 f.171).

75 Add MS 34412 ff.172-3 & 174.

Robinson was nominally North's junior Secretary at the Treasury but more generally his factotum, famous in particular for his often extraordinarily accurate projections of the government's strength in the Commons at a given time. In early 1775 Robinson fell gravely ill and Eden (who had already moved to a house close by North's) quickly stepped into the breach, fulfilling Robinson's Treasury and parliamentary duties and acting in effect as North's personal Secretary. For a time it even seemed that Robinson might die and Eden succeed to his position but, by May, Robinson had sufficiently recovered to resume his duties.

Nevertheless Eden had now acquired wide experience of both the highest levels of administration and of the supremely important issue of Commons management. More importantly he was now on intimate terms with the first minister and leader of the House. By mid-1775 then, Eden had achieved a degree of confidence and influence that was unprecedented for an Under Secretary. It was perhaps as well that Eden had become so closely tied to North by this time because most recollections of his early career indicate that he was an unimpressive orator, and this was a talent which would soon become vital given


78 He was, Walpole noted, "the new confidential agent of Lord North in the House of Commons ..." (Last Journals of Walpole, 1:435). Both William Knox, the influential Under Secretary in the American Department, and the King himself later recalled that Eden's convergence with North began as a project of Suffolk's to acquire greater influence within the ministry (H.M.C., Knox MSS, 266; and The Diaries and Correspondence of the Right Hon. George Rose, ed. L.V. Harcourt [1860], 2:193). If this is so, it is unclear what benefit Suffolk ever actually derived from it.


80 L. Scott, "Under Secretaries of State, 1755-1775" (M.A. thesis, Manchester U., 1950), 84-6. In October 1775 one of the Under Secretaries in the Colonial Department complained to his colleague that "Eden knows a great deal more and does a great deal more of the American business than your faithfull servant. ... Whether this proceeds from any personal dislike [of Lord North] in me or from some fascination in Lord Suffolk and his secretary I cant tell ..." (H.M.C., Knox MSS, 122; see also 266-7).
the degree of controversy which his proposed penal measures would arouse.\textsuperscript{81}

Eden was therefore in an excellent position to attempt to implement changes when the transportation crisis came upon the ministry in 1775. The process by which this occurred after the first shots were fired at Lexington and Concord in April may only have been a gradual one, though the paucity of surviving in-letters for the 1770s makes this difficult to determine. By June, Suffolk's counterpart in the Southern Department, the Earl of Rochford, observed to the King that "pardoning anybody in these times is a cruelty instead of an act of Justice," an allusion perhaps to the experiences liable to befall anyone who might still be transported to America.\textsuperscript{82}

By November the ministry had decided that some intervention into the interrupted process of transporting convicts was necessary. Circular letters were dispatched to the High Sheriffs of all counties (and also to the Lord Justice Clerk of Scotland), requesting that they transmit to the Secretaries of State the name, age and gender of all convicts under sentence of transportation currently in their custody, as well as the dates on which they were first committed, the offenses for which they were convicted and the term of years (seven, fourteen, or life) for which they were sentenced to be transported. "It is also material," each letter added, "that you should mention (so far as it can be learnt) the several Trades and Occupations followed by the said convicts previous to their imprisonment."\textsuperscript{83} Clearly this circular was designed to provide the Secretariat with the minimal degree of information necessary to settle conditional pardons on those convicts still awaiting execution of their

\textsuperscript{81}See the references above at n63.

\textsuperscript{82}\textit{Corr. George III.} no.1659.

\textsuperscript{83}SP 44/141 p.406; SP 44/143 pp.37-9; and HO 104/1 p.154. I have not been able to locate a reply to the letter regarding Scottish convicts.
transportation sentences. The resultant figures were probably small enough - only sixty men and six women in the case of the Southern Department's circular - that the ministry may well have believed that only the metropolis and the Home Counties, which had regularly accounted for about half of all convicts actually transported to America, presented an immediately pressing problem.  

Indeed, in response to the anxieties of the Lord Mayor that the number of transports still confined in Newgate posed a threat to the health of the other inmates, the government ordered them removed on board a ship in the Thames "as if in due course for transportation." By itself, this group of approximately 140 convicts was probably larger than the total number who were presently languishing in all other British gaols. Sixty of these men were pardoned between January and March 1776 on various conditions of military service, as well as ten women on no condition whatsoever. The remaining forty-three men and fourteen women received free pardons between May and December, having been deemed to have been confined long enough under extremely unpleasant conditions to have atoned for their crimes. That most of this activity was largely directed by Eden is suggested by a memorandum he wrote at the time. Eden explained to Secretary of State Weymouth (Suffolk was out of town) that the numbers on board the ship had to be reduced immediately because, given the combination of the cold weather of the season and the illnesses that some of the

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84Ekirch, *Bound for America*, 47-9; and SP 44/92 pp.520-6. In fact only ten counties of twenty-three reported transports still in custody. I have not found a list of the replies to Suffolk's letter.  

85SP 44/91 p.437. Many of the convicts were from the Home Counties; it had been standard practice to use Newgate as a staging gaol for the combined transportation of London and Home County convicts.  

86SP 44/93 passim. See also T 1/521 ff.161-79, which lists a total of 110 men and 19 women placed on board, and which gives slightly different totals for their final disposition. It also indicates that 32 men had escaped on October 6th!
The memorandum also makes clear Eden's recognition that some more long-term solution was necessary with respect to that class of offenders who were normally subject to transportation - that there was a need for some "new Law in the Place of that which is now become inconvenient." He himself had already drafted "the Heads of the Act of Parl" which would be required, secured the approval of both Lord North and Lord Chief Justice Mansfield to them, and been told to "send it to M' Justice Blackstone to be put into form."  

(2) The Hulks Act, 1776

This new mode of punishment was to consist of hard labour in the form of dredging sand from aboard prison hulks moored in the Thames. Eden anticipated that the measure would arouse opposition and therefore took steps to ensure that the bill might have as easy a passage as possible. Not only did he have Blackstone review it before its introduction, but also Sir William Ashhurst and several of the other judges, presumably in order to reinforce the arguments that would ultimately have to be made for the simple necessity of the measure in the absence of the transportation option. 

He also sent a draft to at least one of its anticipated enemies in the Commons. Eden's exchanges with Edmund Burke indicate, first, the lasting appeal of transportation that Eden had to take into account. Burke confessed himself to be somewhat dubious about "penal Labour" as a mode of punishment:

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87 Add MS 34413 ff.11-2. The King had already sanctioned the use of his pardon prerogative in order to achieve this (Add MS 34460 f.503).

88 Add MS 34413 ff.11-2.

Transportation always seemed to me to be a good expedient for preventing the cruelty of capital Punishments, the danger of letting wicked people loose upon the publick, or the infinite charge and difficulty of making those useful, whose disposition it is to be mischievous. If Nova Scotia, the Floridas, or Newfoundland are not to be adapted to the reception of these unhappy wretches, to be sure, some contrivance of this kind will become necessary at whatever cost or trouble.\(^90\)

Noting Burke's reluctance to concede the loss of transportation altogether, Eden hastened to assure him that the measure was only a temporary expedient, made indispensable by the pressure of circumstances:

\[\text{[W]e shall not introduce an eternal establishment to palliate the inconvenience of the day. The fact is, that our prisons are full, and we have no way at present to dispose of the convicts, but what would be execrably bad; for all the proposals of Africa, desert islands, mines, &c., mean nothing more than a more lingering method of inflicting capital punishment.}\(^91\)

The same reassurance was subsequently deployed in the House of Commons, where the first reaction of one MP was facetiously to wonder if the real reason that the ministry would not designate a new destination for transports, such as the West Indies or the Falklands, was that it had already given away such islands to the Spanish.\(^92\) In response to more serious concerns that some other destination should be found for transports, not to mention the cost to which Houses of Correction (in which female transports at least would have to be confined) would put many local authorities, the Solicitor General repeated the argument that Eden had made to Burke:

\[[I]t was intended as a bill of experiment, more particularly to answer the spur of the occasion. When tranquillity was restored to America, the usual mode of transportation might be again adopted. The nation would at the end of a year or two be enabled to

\(^{90}\) *Burke Correspondence*, ed. Copeland. 3:252-3.

\(^{91}\) *Correspondence of the Right Honourable Edmund Burke*, eds. Fitzwilliam & R.Bourke (1844), 2:95. Burke's sympathies were sufficiently enlisted that he was named as one of the bill's sponsors, but he later opposed it, both "in general" and in particular for the for the powers which it granted the Middlesex justices (J.H.C. 35 [1774-76]: 694; and *Parliamentary Register 1774-80*, 3:401-2).

\(^{92}\) *Parliamentary Register 1774-80*, 3:219.
judge of its propriety.

Eden also held out the prospect of continuing transportation by other means, in so far as some offenders "might be sent to garrison places situated in unwholesome climates," and later reiterated the purely temporary nature of the hulks measure, which would be reviewed after two years.93

Eden further sought to ensure the success of the bill by having North himself lead it in the Commons, thereby throwing all the force which government could muster behind it. This strategy was reinforced by introducing the bill late enough in the session that members would be forced to accept it, partly under the pressure of time and lack of practical alternatives to transportation, and partly because the attendance of MPs was invariably low near the end of the session, leaving the Commons vulnerable to determined action on the part of government.94 One MP who actually supported the Hulks bill nevertheless objected to its having been introduced so late in the session and recommended putting it off until the next, as a notion prevailed without doors, that everything transacted in that House was hurried through without consideration or enquiry; and that the whole tenor of our recent acts of legislation have a tendency to abridge the liberties of the people.95

With their overtones of the sorts of prison galleys employed in absolutist states on the continent, the hulks were liable to offend the libertarian sensibilities of both the opposition and the public out of doors. Horace Walpole believed the failure of such arguments to make more headway than they did was solely attributable to a general weakening of opposition at

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94P.D.G.Thomas, The House of Commons in the Eighteenth Century (Oxford, 1971), 112-13 & 123-4. Thomas notes that attendance invariably fell after March; the Hulks bill was introduced on 1 April.

95Parliamentary Register 1774-80, 3:390.
the outbreak of the Revolutionary War. It is far more likely that the perceived need to do something with convicts subject to transportation - a need on which Eden must have been relying - coupled with the low attendance so late in the session carried the day. A division on a motion to put the bill off until the next session was defeated 18 to 97, as was a subsequent motion simply to kill it by putting off further consideration for two months.97

One other potential difficulty presented itself, but from another direction. Eden hinted at this consideration when, in enlisting Burke's support, he claimed to "have as little predilection for introducing a system of penal labour into this country as you can have," but added that

Such a system would, however, have many advocates in the House of Commons, and would, I believe, have been proposed by some gentlemen in the course of the session, if they had not been informed that a plan of a limited and temporary kind, in the nature merely of an experiment, would be brought forward.98

This can only be an allusion to those MPs who, between 1773 and 1774, passed three short but significant Acts meant to establish basic rules of conduct in local gaols. An Act of 1773 obliged magistrates to provide clergymen to officiate in county gaols. Two others (which began life as a single bill) were passed the following year and are generally associated with the activity of Alexander Popham, the MP for Taunton.99 The first relieved prisoners who

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97 J.H.C. 35 (1774-76): 776-7 & 791-2. For the general correspondence between division lists and actual attendance, see Thomas, House of Commons, 120-2. "[T]he plan was rather a popular one," Henry Dundas later recalled, "and any objections to it were not listened to" (H.M.C., Dropmore MSS, 1:556).

98 Burke Correspondence, eds. Fitzwilliam & Bourke, 2:94-5.

99 13 Geo.III, c.58. They might as fairly be associated with Sir Thomas Clavering, who presided over the committee stages of the Popham legislation and was also the only MP known to be directly involved in introducing all three of these Acts. Popham handled only the final committee of the Act which traditionally bears his name, and subsequently carried it to the Lords (J.H.C. 34 [1772-74]: 229, 469, 535, 545-6, 581, 585-6, 605-6, 607, 732 & 740).
had been acquitted or discharged without trial from having to pay gaolers' fees before their release. The second required local officials regularly to clean and ventilate their gaols, as well as to make basic provisions for the personal cleanliness of their charges. The significance of the latter is often attributed to the fact that Howard himself had testified before the Commons during its consideration.\textsuperscript{100}

These Acts seem to have aroused no controversy, perhaps because their provisions were in fact pretty minimal. It is also possible that they had not attracted very much attention; when an attempt was made to prevent the Popham legislation going to a committee of the whole, the resultant division revealed only forty-four MPs present and voting.\textsuperscript{101} The most important theme which these Acts shared was the strategy which they adopted, which can be characterized as decentralized uniformity. They defined uniform standards of prison regimen, but their provisions were minimal and left entirely to local authorities to enforce.\textsuperscript{102} Without applying a heavy hand from the centre, they perhaps also aspired to provide some sense of direction to the pattern of gaol rebuilding and regimen reform that was going on in some places at the local level.

By 1776 one MP was beginning to stand out above all others for his consistency in advocating penal reform in general, and prison reform in particular: Sir Charles Bunbury. A county MP for Suffolk since 1761, he entered parliament as a follower of the Earl of Bute but seems to have followed no consistent political line before committing himself to Fox in

\textsuperscript{100}14 Geo.III, c.20; and 14 Geo.III, c.59. The text of the preliminary bill, encompassing both measures, as well as a measure which had failed the year before, is in Commons Papers, 23:231-4 & 24:133-6. See also J.H.C. 34 (1772-74): 138, 142, 288 & 535.

\textsuperscript{101}J.H.C. 34 (1772-74): 535.

\textsuperscript{102}In fact the one proposed amendment which would actually have created a form of mandatory labour for the prisoners - one hour each day operating the ventilators - was negatived without division (J.H.C. 34 [1772-74]: 740).
the early 1780s, a move that cost him his seat in the general election of 1784. He is perhaps best-remembered for his role in high society, first as the estranged husband of Lady Sarah Lennox and, secondly, as the owner of the first Derby-winner. In the early 1770s Bunbury had been involved in Meredith’s attempts to restrict the capital code. He had no recorded involvement in the gaols legislation of 1773-4 but, from 1776 until 1784, and again after 1790, he was repeatedly in the front lines of penal reform motions. 

This prior existence of an alternative stream of thought on centrally directed prison reform helps to explain an oddity of Eden and North’s legislative activity in 1776. With the session ten days from its end and the Hulks measure through committee, the government suddenly introduced a bill directing local authorities to establish Houses of Correction which would receive transportable offenders and punish them by hard labour regimes. Since the Hulks bill already contained a provision for imprisoning such offenders at hard labour within existing institutions, the addition of this measure - and so late in the session - seems odd. So too does the fact that it was allowed to die at the end of the session, despite having been introduced by a ministry that fixed the date of prorogation. At least one MP knew of some such bill’s existence and of the ministry’s intention to circulate it amongst local authorities. Why, he wondered, had it not been presented at the same time as the Hulks bill?

The answer is that Eden and North knew enough to wait until the timing was more propitious for a truly comprehensive substitution of penal labour for transportation. The Hulks bill already contained an article which provided that any prisoner, either females in

103 Commons 1754-90, 2:136-40; Commons 1790-1820, 3:300-1; and The Life and Letters of Lady Sarah Lennox, 1745-1826, eds. Ilchester & Stavordale (1901), 1:x-xi. Bunbury left no papers of his own and does not figure significantly in any monograph that I have found. For his later activity, see below pp.294 & 339-43.

104 J.H.C. 35 (1774-76): 796 & 809; and Commons Papers, 27:311-42.

105 Parliamentary Register 1774-80, 3:389; and Thomas, House of Commons, 89-90.
general or men who were unable to undergo the rigour of hulks labour, could be imprisoned at hard labour in any place of confinement in the country, as well as a instructions to local officials to prepare their Houses of Correction for the reception of such convicts.\textsuperscript{106} Most other male convicts who would otherwise be subject to transportation could be taken on board the hulks or pardoned on condition of military service. And the number of female convicts liable to so serious a degree of punishment had always been sufficiently small that such a provision could not be expected to pose a pressing need to adopt more elaborate systems of penal labour in the existent Houses of Correction.\textsuperscript{107}

The Houses of Correction bill therefore embodied both a more substantial commitment to hard labour as a full-fledged substitute for transportation and a more substantial imposition on local authorities than either Eden or North believed could yet succeed. Indeed, the text of the bill - prefaced by the observation that Houses of Correction "are at present n[ot] of sufficient Extent to contain so many Offenders as may hereafter be convicted of the Crimes at present liable to the Punishment of Transportation," and containing no reference to the hulks - reads as a direct a substitute for rather than a complement to the Hulks Act.\textsuperscript{108} Eden's correspondence with Burke indicates that, as the MP noted above had suspected, there already existed in draft form "a Sketch for a more permanent Establishment at some future Period, if it is found that we can employ our

\textsuperscript{106}16 Geo.III, c.43, preamble & ss.10 & 12-3. Two earlier versions of the Hulks bill appear in Commons Papers, 27:257-68 & 269-80. Its actual title was the "Hard Labour bill/Act." I refer to it as "the Hulks bill/Act" in order to distinguish it from the more substantial "Hard Labour bill" of 1778.

\textsuperscript{107}At most females made up only 20\% of those who had actually been transported to America since 1718 (Ekirch, Bound for America, 48-50).

\textsuperscript{108}Commons Papers, 27:311-42 (quote at 312).
Criminals at Home with Humanity towards them, and with security to the Public."\textsuperscript{109} Eden had also clearly indicated to Burke his doubts that such a measure would be accepted while the sentiment for transportation still ran so high. Burke in turn warned him that, in an era in which justice remained essentially local in orientation and in which parochial authority in general was fiercely defended, local officials would not accept the imposition of so heavy a fiscal burden from the centre. Penal labour, noted Burke, fundamentally involved "the execution of municipal justice and provincial economy."\textsuperscript{110} On two important counts then, a measure like the Houses of Correction bill was not to be proceeded in lightly. As such it seems likely that, as Eden later claimed, it had never been intended for anything other than circulation to local officials in order to sound out their reactions to such a project.\textsuperscript{111}

The Houses of Correction bill reflected the sort of decentralized uniformity which the Bunbury group sought to achieve and small measures of which had been enshrined in the Popham legislation. Bunbury is listed as one of the MPs charged with bringing in the Hulks measure, but his absence from the list of those bringing in the Houses of Correction bill six weeks later suggests that tensions had opened up between him and the ministry. This supposition is reinforced by the evident controversy which had prevailed only the day before the Houses of Correction bill was introduced, when the Hulks bill was in committee. The outcome was an amendment (s.18) which required that those convicts who were sent to Houses of Correction should be separately confined from those inmates confined there only for petty offenses. The effect of this amendment was to reconfirm the broad distinction which

\textsuperscript{109}\textit{Burke Correspondence}, ed. Copeland, 3:252.


\textsuperscript{111}"Observations on the Bill to Punish by Imprisonment and Hard Labour certain Offenders; and to provide proper Places for their Reception;" in \textit{Commons Papers}, 28:334-5.
continued to exist in the minds of many officials between convicts who ought to be transported and those lesser offenders who were deemed to be more susceptible of reclamation. It also forced Eden’s hand by implying, if not actually establishing, a de facto obligation on many local authorities actually to rebuild their Houses of Correction in order to meet the physical specifications of the Act, despite the fact Eden probably knew there to be little immediate necessity for such an obligation. So it is possible that the introduction of the bill was necessary, not simply for purposes of circulation and discussion during the recess, but also to ensure that Bunbury and others of like-mind would not oppose the Hulks bill in a Commons whose numbers, in the dying days of the session, must rapidly have been shrinking. Eden and North went along with the immediate presentation of the Houses of Correction bill, drove it forward by providing its first and second readings on the same day and bringing it to committee (and printing), only to end the session the same day that the Hulks bill received the Royal Assent.112

It is unclear whether Eden ever believed the Houses of Correction bill to be the model on which to proceed. But it seems likely that he was aware that, in legislating alternatives to transportation, he had to steer a course between those who opposed hard labour for transportable convicts at all, and those who supported it as a complete substitute for transportation - so much so that their support might actually jeopardize the attainment of any measure of hard labour at all.113 I have already noted Eden’s ambiguity in his Principles of Penal Law about the application of hard labour to all offenses and offenders. We should also bear in mind his sensitivity, whatever his personal enthusiasm for penal labour, to the


113Some sense of the divisiveness the Act aroused can be gleaned from articles which appeared in The London Magazine that year (LM 45 [1776]: 369, 424-7 & 477-9).
political necessity of acknowledging that body of opinion which was determined that transportation would ultimately be resumed. The Hulks Act was not merely a striking innovation in itself. It was also a deliberate attempt to pre-empt an even more extensive innovation that Eden, the politically ambitious protege and intimate of Lord North, was too shrewd to think could yet succeed. Eden was biding his time and establishing his credentials with those penal reformers whose support might become more necessary than ever when the time came for the truly ambitious measure of penal labour which, perhaps, he was already contemplating.

(3) The Hard Labour bill, 1778

Eden hoped that this moment had arrived two years later when the Hulks Act came up for renewal. At the opening of the previous year’s session, Bunbury had immediately secured an order for "a Bill for better regulating the Gaols and Houses of Correction" in England but subsequently failed even to introduce it.114 Since Bunbury does not seem to have even attempted to carry this bill forward, it is likely that Eden must have taken him into his confidence as to his own plans. By 1778 Eden was clearly working in close alliance with Bunbury and his allies. The groundwork for the Hard Labour bill of that year was laid by a parliamentary committee of 1778 which reviewed the success to date of the hulks establishment. Its report, delivered by Bunbury himself, noted that there had been heavy mortality on board them initially, owing to crowded and unsanitary conditions as well as a poor dietary regimen, but that circumstances had substantially improved since then. The committee therefore endorsed a one-year extension of the Hulks Act which was passed into

114 J.H.C. 36 (1776-78): 36. Presumably this would have been some version of the Gaols and Houses of Correction bill from the previous session.
law under Bunbury's supervision and with no apparent controversy.\textsuperscript{115}

It was soon after the committee stage of this bill was completed that its sponsors introduced their remarkable new measure. The Hard Labour bill proposed the division of England and Wales into nine districts, in each of which would be erected two or more "Houses" to be designated "'The Houses of Hard Labour,' and [which would] be wholly distinct and separate from the Common or Gaols, and from all Work Houses, or Houses of Correction ...."\textsuperscript{116} The bill was calculated to steer a middle course on two issues which might prove objectionable. The first of these was the attempt to replace transportation with hard labour altogether. For the very worst of those "atrocious and daring Offenders" who were still routinely transported as of 1775 - that is, those convicted either of grand larceny or "Robbery or other Felony" - the bill explicitly preserved the option of the hulks, some of which might even be established on any "River navigable for Ships of Burthen, or any Port, Harbour, or Haven" in England rather than just the Thames (pp.312-13). However it was clearly intended that any such case would be the exception rather than the rule because, although the bill did not require that all transportable convicts be sentenced to the new Houses of Labour, it did require that each district provide sufficient space in its House (or Houses) to accommodate three times as many offenders as it had on average annually transported (pp.301 & 310-1). There could be no mistaking the long-term intention of the legislation.

The second potential area of controversy addressed by the Hard Labour bill was the expense that so decisive a change from transportation to penal labour would impose on local

\textsuperscript{115}18 Geo.III, c.62. See also J.H.C. 36 (1776-78): 926-32, 949, 963 & 967.

\textsuperscript{116}The text of the bill is in Commons Papers, 28:291-330 (quote at 293); bracketed references in this and the following three paragraphs follow this pagination. See also the commentary provided in the "Observations on the Bill to Punish by Imprisonment and Hard Labour ..." (28: 331-42, esp.336-8).
officials, in terms of both their fiscal and social authority. Both the Houses of Correction bill and s.18 of the Hulks Act, by requiring the separation of transportable from petty offenders, had potentially imposed substantial costs on local officials by obliging them either substantially to revise or entirely to rebuild their Houses of Correction. The Hard Labour bill sought to minimize this imposition by creating an aggregative system which treated each English circuit as a separate district, London and Middlesex as one each, and the two Welsh circuits as a ninth (pp.340-1). The costs of the construction and administration of each district House were to be borne by the constituent counties according to their relative proportion of the offenders confined there (pp.293-6). At the same time, the principle of local authority was to be upheld by placing each district under the supervision of county magistrates, representation being apportioned according to a set rule (p.297). The conduct of each House was to be supervised and enforced by a system of Visitors who would be empowered to discipline the officers of the Houses for any misconduct, as well as to recommend for reduced sentence or pardon those prisoners whose behaviour might seem "so meritorious as to deserve to be rewarded ..." (pp.319-20 & 329-33).

However, although the architects of the Hard Labour bill sought to maintain a structure of local authority, there was no disguising the extent to which it was a centralizing measure in effect. No matter how reasonably it sought to apportion the costs and responsibilities involved in building and administering these new Houses, it nevertheless imposed on local authorities both the initial cost of building and the subsequent costs of running them. In the first instance, the internal regimen which it prescribed for these locally administered Houses vastly exceeded the absolutely minimal standards of conduct required by the three Acts of 1773 and 1774. From the point of view of physical structure, the bill required that the Houses be built in a healthy location, provided with airing yards in which
the prisoners might take exercise, and that they include a sufficient number of cells to enable both the separation of prisoners at night and the minimum level of associated labour during the day (pp.299-300, 315 & 319). The prisoners were to be kept "to Labour of the hardest and most servile Kind," fed on "inferior food, and Water, or Small Beer," and clothed in a manner "as well to humiliate the Wearers as to facilitate Discovery in case of Escapes ..." (pp.314-6). They were also to be classified according to a three-fold system in which they would be subjected to declining gradations of harshness of both the labour they engaged in and the conditions under which they did so. Particularly well-adjusted members of the Third Class might be given duties as overseers or assistants (pp.317-8). Offenders against the internal regime of the House of Labour were "to be moderately whipped, in Proportion to the Nature of the offence," or confined to the dungeon on a diet of bread and water for a maximum of ten days. Harsher penalties could be prescribed only by Visitors and District supervisors (pp.321-2). First attempts at escape were punished by an addition of three years to the prisoner's sentence; second attempts were deemed felony without benefit of clergy (pp.326-7).

Such extensive and precise specifications would have imposed substantial and regular costs on the localities which they served. The day-to-day running of each House was to be in the care of a number of salaried officials, the costs of whose employment would arise, the bill noted hopefully, "totally, if possible, or at least in great Measure, ... from the Profits of the Work" done by the prisoners (pp.306-7). Finally, having imposed such potentially large costs on the localities, the bill reserved the final apportionment of each county, town or division's share of them to the circuit judges (p.308), a means of proceeding which might well have been highly objectionable to local officials striving to control the levels of their own rates. Many localities had transported relatively few offenders to begin with. Perhaps
they, as well as some others, were already able either to send such offenders to the hulks or to confine them in their own local penal institutions without substantial difficulty. Local officials in such a position must have viewed the extensive obligations imposed by the Hard Labour bill with particular scepticism, if not outright hostility.

They might also have suspected that it was being thrust on them in an indirect, even conniving fashion. In retrospect the Commons report that sanctioned the renewal of the Hulks Act seems also to have been intended to pave the way for the Hard Labour bill, even though no mention of it is made in the Committee's recommendations. In his testimony John Howard had noted that, in a full tour of the kingdom during the last two years, he had not found a single place where Houses of Correction were being prepared to receive transportable offenders as the Hulks Act had required. If true, this was a clear indication of local reluctance to engage in expensive institutional ventures.

The Committee also noted, on the basis of those returns of such offenders that had been collected the year before, that the hulks only took on about half of the healthy male offenders they might have been expected to house given the number of offenders transported from England between 1769 and 1776.\(^\text{117}\) Significantly, it did not suggest one obvious solution: simply extending the hulks establishment from two to three or four ships in order to make up the difference. Nor did it invoke, or even seek to obtain, the more pertinent information as to how many healthy transportable men there were now in the kingdom who had not been taken on board the hulks. (They might well have expected there to be less, given both the widespread admission of pardoned felons into the military services and the

\(^{117}\)J.H.C. 36 (1776-78): 15, 322, 930 & 932.
widely known connection between war and declining crime levels.\textsuperscript{118} Nonetheless, having been read twice and committed within three days of its introduction, the Hard Labour bill - like its forebear, the Houses of Correction bill - died with the session.\textsuperscript{119}

This time however there were significant differences from the legislative pattern of 1776. Whereas Eden clearly had never intended that the Houses of Correction bill should pass into law, he initially intended that the Hard Labour bill should. Eden himself was not there to oversee its passage. He had left for America in April as a member of the abortive Carlisle peace commission, pursuing wider political ambitions than might be served by a career confined to penal legislation. But he had not neglected the Hard Labour bill. Once again he had drafted the measure in close consultation with Blackstone and Ashhurst.\textsuperscript{120} He had also produced a long list of the MPs whom he thought should sponsor the bill - including not only Bunbury and his associates but also Burke, Sir William Meredith, and the Recorder of London - as well as an implicit plea to North himself once again personally to lead the measure in the Commons:

I beg that you will bestow a serious perusal on my Preface to the draught of the Convict Bill, for I am proud of it, and am at least sure that the subject on which it

\textsuperscript{118}In fact John Howard's surveys revealed a total of only 994 felons in all English and Welsh prisons in 1776 - not all of whom would ultimately have been subject to transportation - and, in 1779, no more than ten prisoners of all classes in each of 130 prisons (quoted in O'Brien, \textit{Foundation of Australia}, 89). On the admission of convicts into the services see S.R.Conway, "The Recruitment of Criminals into the British Army, 1775-81," \textit{Bulletin of the Institute of Historical Research} 58 (1985): 48-50. For contemporary perceptions of the relationship between war and crime-levels, see Beattie, \textit{Crime and the Courts}, 225-34; and D.Hay, "War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts," \textit{Past and Present} no.95 (1982): 156-8.

\textsuperscript{119}J.H.C. 36 (1776-78): 970, 972 & 977.

\textsuperscript{120}B.F.Stevens's \textit{Facsimiles of Manuscripts in European Archives Relating to America, 1773-1783} (1889-98), 4:369 & 398. He also corresponded with Jeremy Bentham, who confirms that "the 12 Judges had a hand in the bill," and who later claimed that "about the half of my suggestions" were incorporated into it, "but I would give you a good while to guess which they were" (\textit{Bentham Correspondence}, 3:211; see also 2:123-4). For Bentham's role in the Eden legislation, see J.Semple, \textit{Bentham's Prison: A Study of the Panopticon Penitentiary} (Oxford, 1993), ch.3.
treats deserves & indeed must engage your Lordship's best and most serious attention. ...
There should surely be a private meeting upon the Bills with the Attorney and Solicitor General on Sunday evening, that we might settle what to admit and what to refuse.  

Eden had clearly put at least as much effort and thought into both the form of this bill and the means of securing its passage as he had the Hulks Act two years before.

In the event however, North stood aloof from any direct involvement other than the renewal of the Hulks Act, and even here the actual lead was left to Bunbury. In part this may have been a consequence of the King's discovery of "a scheme of wanting to trick me into a pension for life for M' Eden," as well as Eden's rather undignified pursuit of Privy Councillor status as a member of the Carlisle Commission, the granting of which the King felt "would give offence to many and be of no utility, [as] parade is not the object of the [peace] mission but business." North may well have been reluctant to be too closely associated with any potentially controversial project of Eden's. On the ministry side, only Sir Richard Sutton and Eden's brother-in-law Gilbert Elliot were explicitly involved in the Hard Labour bill, and both were inconstant ministry-supporters at best.

More importantly, North was probably dissuaded by the temper of the initial debates over the renewal of the Hulks Act. These indicated that hard labour remained deeply objectionable in principle to some MPs and that the expectation of an ultimate renewal of transportation, far from dissipating after two years' experience of the hulks, had continued unabated. And many of those objecting to the hulks, including Burke and Meredith, were

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121 Add MS 34416 f.194; and Add MS 61863 f.59 (emphasis in original). The former, Eden's list of proposed sponsors for the Hard Labour bill, indicates that he wanted the motion for the bill to be made by North and seconded by the Solicitor General. Its placement in the Auckland Papers incorrectly implies that it dates from December 1778.

122 Add MS 38564 f.1; and Corr. George III, no.2201. See also H.M.C., Knox MSS, 266-7.

123 Commons 1754-90, 2:394-6 & 3:512-3.
amongst those whose sponsorship Eden had hoped to have for his more ambitious Hard Labour bill. On the eve of his departure for America, Eden appears to have known that North was now pulling the plug on the bill. In a letter to Jeremy Bentham written only four days after the preliminary debate in the Commons, Eden stated that it was no longer proposed to carry it ... in the present Session unless it should be found absolutely necessary; but the public Observation will be drawn to it by some essential Enquiries that will be made in the House of Commons; and the Result of the whole with the Bill will be printed and circulated for consideration during the Recess.

No such absolute necessity emerged and, in the end, the bill made it no further than a committee stage chaired, not by North, but by Popham. Like the Houses of Correction bill, the Hard Labour bill was introduced only in order to be printed for purposes of circulation and discussion.

(4) The Penitentiary Act, 1779

If Eden and his allies had hoped that the ultimate result would be the disgrace of the hulks and a nation-wide acceptance of penal labour as the only alternative to transportation, they were to be disappointed in the following session. They sought to bring the same tactics to bear as had been used in 1776 and attempted in 1778. The Committee report which was to set the new legislation in motion was not made until 1 April, by which time it could be hoped that a declining Commons population, or at least the need to replace a Hulks Act scheduled to expire on 1 June, might ease the passage of potentially controversial legislation.

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124 Parliamentary History 19 (1777-78): 970-1; and Add MS 34416 f.194.

125 Bentham Correspondence, 2:91-2.

126 J.H.C. 36 (1776-78): 977. A letter written by Blackstone to Alexander Popham, now an ally of Bunbury, explicitly notes North's failure to move the Hard Labour bill following the Committee's report on 15 April. "IIndeed," he added, "I have seen so much Tergiversation in the professed Patron of this Measure [ie.Lord North], that I am quite sick of it; and should not be surprised if it be made a Excuse for ... at length ... intirely dropping it ..." (British Library, RP 2070).
A letter to Eden from Gilbert Elliot indicates that, at this time, their plan was to introduce an only slightly amended version of the Hard Labour bill. It also indicates Elliot's concerns about the objections to costs that the measure would arouse amongst local authorities. Elliot recommended that they should perhaps restrict themselves to only one House of Labour for each district, which would be enough to meet the immediate pressure of numbers on local Houses of Correction without arousing undue opposition to a full-blown establishment: "One is certainly enough for an Experiment, and an experiment should certainly be made before any general plan of such expense and importance ought to be adopted." Letters to Eden from Sir William Blackstone further indicate that the latter had been at work on a revision of the Hard Labour bill during Eden's absence in America.

They also indicate that Lord North continued to withhold his active participation from the measure. "I know your own promptitude on [this] subject," said Blackstone; "I also know the Vis Inertia of Him who is the primum Mobile, or rather Immobile, in these matters." Matters were further complicated by the onset of North's longest crisis of confidence during his twelve-year ministry. This crisis was triggered by the Earl of Suffolk's death in March 1779, which was followed by an eight-month period during which North failed to summon up the nerve to pick his successor and thereby risk alienating large blocks of opinion within the Commons at a time when the psychological downturn following Saratoga and the entry of France into the war had revived the full hostility of opposition. To make matters worse,

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127 Add MS 34416 ff.301-3 (emphasis in original). This letter is extremely informative on many counts. It indicates that Elliot and Eden intended to emphasize the large number of convicts in order to secure only a small concession for purposes of experiment. It is also interesting for Elliot's extended comments on - and reservations about - the nature and purposes of hard labour as the bill intended to apply it.

128 Add MS 34416 f.256 (emphases in original); see also ff.147 & 27, the latter of which indicated that "The corrected Draught of the Hard Labour Bill" was now available "for the Inspection of such Members as might chuse to interest themselves in the Fate of it ...."
Eden himself figured largely in these difficulties. The distaste which he had already aroused in the King was now compounded, first, by his open association with opposition in the particularly offensive form of the Shelburne circle and, second and even more dangerously, by his various manoeuvres to secure the vacant Northern Secretaryship for either himself or his long-time ally in the ministry, Attorney General Alexander Wedderburn.\(^\text{129}\) The political circumstances of the 1779 session therefore formed a highly inauspicious environment in which to introduce any potentially controversial penal measures.

In fact, even before it could be introduced, the Hard Labour bill was dealt a decisive blow by a Commons committee report of 1 April 1779. The Committee's condemnation of the system of hard labour prevailing under the Acts of 1776 and 1778 might have been expected, and even hoped for, by supporters of the Hard Labour bill. But the Committee went on to advocate a resumption of the transportation "of certain Convicts ... to any other Part of the Globe [than America] that may be found expedient." This Committee had been struck in order to consider the returns of convicted felons imprisoned in the gaols and Houses of Correction of the metropolis and the Home Circuit which had been ordered by the Commons in both the 1778 and 1779 sessions. In February 1779 its terms of reference were expanded to consider the 1778 Commons report on the hulks and imprisonment, the renewed Hulks Act of that same year, and the laws relating to transportation in general.\(^\text{130}\) The debates which accompanied this expansion strongly suggest that its conclusions were pretty


much foregone in the mind of its chairman, Sir Charles Bunbury.131 The long-standing ideas of the West Indies or Africa as destinations were reiterated in the Committee's investigations, supplemented now by both Gibraltar and by Sir Joseph Banks's suggestion of an obscure antipodean destination called Botany Bay.132

Few historians of the subsequent Penitentiary Act have emphasized, or even noted, that it actually had three purposes, the first of which was to re-assert the place of transportation in the English array of penal practices. This fundamental shift in attitude - from an exclusive orientation toward hard labour to the reintegration of transportation - can be followed in the changing preambles to the three successive versions of the bill. In the first, as in the Hard Labour bill of 1778, transportation was described as having

become inconvenient, and frequently impracticable; and ... [having] at all Times been found insufficient, both for the Reformation of Criminals, and also for the deterring others by Their Example:

In the second bill it was "now become impracticable" and, finally, in the third it was merely "attended with many Difficulties."133 Each alteration can be read as an enhanced stage of optimism about and determination on the ultimate resumption of transportation, proceeding from outright condemnation of it as a penal practice back to implicit acknowledgment of its inherent desirability. The very first provision of the Penitentiary Act was that, henceforth, those offenders formerly sentenced to be transported to America could be sentenced to "be

131Parliamentary Register 1774-80, 10:233-4. After reading the latest version of the Hard Labour bill, Sir John Fielding also told Eden that he thought "it would be better to have a farther trial of 2 Years of the last Lighter Bill with ... before it be taken up in the Extent your Bill proposes," and that "I hope you will still keep Transportation in your [Eyes] for some of the most atrocious Offenders" (Add MS 34413 ff.20-1; this letter is placed with letters for 1776 in the Auckland Papers, but its content dates it to 1779).


133The text of the three versions of the bill is in Commons Papers, 29:171-204, 205-40 & 241-82 (quotes at 171, 205 & 241).
transported to any parts beyond the seas, whether the same shall be situated in America, or elsewhere" in the same manner and for the same term.\textsuperscript{134}

The essential substance of the Penitentiary Act was largely the work of Sir William Blackstone who, after hearing of the Committee's resolutions, set about transforming the Hard Labour into the "Penitentiaries" bill over the course of the two weeks between 19 April 1779 and Bunbury's presentation of it to the Commons on May 5th. In a letter written on the former date, Blackstone sketched out for Eden the three principles of revision which he would follow. The first was the resumption of transportation. The second was the establishment of two Hard Labour Houses to be erected somewhere in Middlesex, Surrey, Kent or Essex, one to hold 600 men and the other 300 women. Blackstone emphasized that these were to be national institutions, the spaces in them to be allotted to convicts of the English circuits according to a fixed proportion. And the third was the retention of the hulks option for the worst classes of offenders, as the Hard Labour bill had originally contemplated and as might be necessitated by both the delay in finding a new destination to which to transport convicts and the perhaps more limited scale on which it might have to be carried on. Most importantly for future developments, Blackstone also noted that, in the absence of the full-scale Houses of Hard Labour establishment which he and Eden had originally contemplated, many lesser offenders "must be sent to the Houses of Correction in each County, which Houses the Justices must be compelled to enlarge and render commodious."\textsuperscript{135}

\textsuperscript{134}19 Geo.III, c.74, s.1.

\textsuperscript{135}Add MS 34416 ff.322-3. The timing of Blackstone's re-draft and the critical role of "an ingenious Report ... made by a select Committee," is confirmed in his last letter to Eden on the subject (Add MS 34416 ff.341-2). It was in another letter to Eden that Blackstone coined the term "Penitentiary," describing the Houses he contemplated as [experimental Houses of Confinement & Labour; which I would [wish] to call Penitentiary Houses, as
Most of the new Act was given over to describing the internal regime of the two "Penitentiary Houses" that would be built. These provisions were largely lifted intact from the Hard Labour bill. Yet we should not allow the extensive detail of the Penitentiary Act to obscure the fact that it specifically contemplated the use of the two houses for only a small proportion of English convicts. Moreover the scrupulousness with which it allocated a set number of places to all English and Welsh circuits ensured that it would indeed have been an experiment only, rather than a substantial application of an elaborate philosophy of hard labour to that number of capital convicts who were already subject to sentences of imprisonment, much less the vastly increased number that would be after the end of the war.136

Finally, even before the Act's passage, Blackstone himself affirmed that the two institutions it contemplated would never be realized unless the central government shouldered their costs entirely: "this Experiment, being national, must be carried into Execution (if at all) under the immediate Direction of Government." The Act therefore required that government foot the initial expense of erecting the buildings, and that any costs which could not be recouped by the labour conducted within the Penitentiary Houses must be covered by parliament (ss.14 & 64). Blackstone took it for granted that it would be some time before so detailed a regime could be expected to be applied in all English prisons. But he also believed

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136 The Act specified a yearly maximum of 32 convicts from London, 72 from Middlesex, 32 from the Home Circuits, 24 each from the Oxford and Western Circuits, 20 each from the Midland and Norfolk Circuits, 16 from the Northern Circuits, and 4 from the combined Welsh and Chester sessions (s.25). These were the figures originally contemplated by Blackstone, except that he had not included any from the Welsh and Chester sessions; these were added to the bill at the committee stage (Add MS 34416 f.322-3; and Commons Papers, 29:218-9 & 258).
that the same parsimony which made local officials unwilling to build Houses of Labour in accordance with centrally determined standards might ultimately motivate them to find some useful fashion in which to employ those convicts who must inevitably be imprisoned in their Houses of Correction. "As for the Employment of the convicts [in Houses of Correction], it must be left to the Direction of the County Magistrates. If they do no Work, their expenses will fall the heavier on such Counties as neglect to employ them."\(^{137}\) So perhaps Blackstone anticipated that the Penitentiary Act might indirectly motivate local officials to adopt the essentials of the Hard Labour bill without the central government overtly, and offensively, requiring them to do so. For this reason, too, government must ensure the success of this experimental venture.

The conviction that this was an insufficient measure seems to have animated the man who had, in effect, risen from the role of Eden's ally to that of a principal instigator in the events of 1779. This was Sir Charles Bunbury, who had chaired the Commons committee which enunciated the return to transportation for the most serious offenders. Eden had appreciated the strength of sentiment behind a resumption of transportation from the beginning, and had always proceeded cautiously in his ultimate ambition of substituting hard labour for it in the case of the worst classes of convicts. Like the experienced circuit judge Blackstone, caution was his watchword. "The Matter," he had told Jeremy Bentham, once opposition to the Hard Labour bill of 1778 had become apparent, "is too complex to be brought to any degree of Perfection except by continued Attention and repeated Alterations."\(^{138}\) Confronted with objections to the principle of a penal philosophy

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\(^{137}\)Add MS 34416 ff.322-3 (emphases in original).

\(^{138}\)Bentham Correspondence, 2:91.
exclusively focused on hard labour, as well as to the costs which its institutionalization posed to local authorities. Eden and Blackstone had chosen to preserve in a pristine form the ideal of their Hard Labour regime at the cost of the national scale which they had intended for it.

In direct contrast, Bunbury and his followers sought to maximize the scale on which a reformed, hard labour regime could be imposed. In March 1779, even before their Committee reaffirmed transportation and prompted Blackstone’s redraft of the Hard Labour bill, they had introduced and brought to committee stage their own separate bill to achieve general measures of reform and hard labour in all places of criminal confinement throughout England and Wales.139 This intention was made clear in its preamble, which declared that "the Health, Cleanliness, and proper Separation and Regulation of Prisoners confined in the public Gaols and Houses of Correction are great Objects of National Humanity, as well as of sound general Policy ...."140 It sought to achieve these aims by requiring local magistrates to ensure that the standards of health and cleanliness required by the Acts of 1773-4, as well as the physical requirements of separating classes of offenders which had been implicit in the Hulks Acts, were now actively enforced by a system of quarterly inspections by local magistrates and upheld by the imposition of fines for delinquencies. Its tactics were reminiscent of those which Eden and Blackstone had attempted in the Hard Labour bill; uniform penal standards in locally-based institutions were to be maintained through a local structure of authority.

Yet it also persisted in the critical failing of the Hard Labour bill: the inability to do this without simultaneously imposing burdens of both duty and cost on those local officials.

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140The three draft versions of this bill are in Commons Papers, 29:75-82, 83-94 & 95-108 (preambles at 75, 83 & 95).
Unlike Eden and Blackstone however, Bunbury and his allies were not deterred by this problem. Indeed they sought even further to intrude a measure of direct central supervision in all English prisons by requiring the submission to the House of Commons of annual returns of the prisoners kept there and the cost of their upkeep. Moreover, once the vast scale of Blackstone’s reduction of the Hard Labour scheme into the Penitentiary bill became apparent to them at the end of April, the Bunbury group actually sought to enhance the standards to which local gaol regimes would be held by further requiring that these annual reports specify the sort of labour to which prisoners were being put. Finally, and most ambitiously and cunningly, they eliminated in the third and final draft of the Penitentiary bill itself the phrase which explicitly stated that the new Penitentiary Houses "shall be wholly distinct and separate from the Common Gaol or Gaols, and from all Workhouses, or Houses of Correction, ... and from all Houses of Industry, Hospitals, Workhouses, and Almshouses ..." The effect of this, if their Prisons Regulation bill had become law, would have been to imply that the regime detailed in the Penitentiary Act was the standard by which all such local prison regimes would be judged. Bunbury’s committee also inserted into the Penitentiary bill a clause requiring the regular inspection of the Penitentiary Houses by county magistrates, further enhancing the congruence between the two measures.

The Bunbury group’s alterations to the Penitentiary bill and their Prisons Regulation bill might together have antagonized local interests, thereby jeopardizing the realization of any measure of hard labour at all. They so offended and alarmed Blackstone - expressing

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141 *Commons Papers*, 29:88-90 & 100-2.

142 *Commons Papers*, 29:245. The potential implications which this designation had for poor policy are too extensive to be gone into here.

143 *Commons Papers*, 29:267.
ambitions which, he said, were so "totally repugnant to all the Ideas which I have so long been forming on the Subject" - that he declared to Eden that he was now "totally abandoning [the Penitentiary bill] at present, and perhaps forever." The indirect tactics employed by Bunbury and his allies in seeking to move beyond the carefully circumscribed intentions of Hard Labour's principal architects probably also account for the reservations demonstrated in the House of Lords, first by calling for all its members so late in the session, and then by debating and putting off the Penitentiary bill until the Commons had quelled the Bunbury group's national measure. The Lords let the Penitentiary bill go forward only after it became apparent that the latter was now only to be printed for circulation during the recess.

The Lords' hands would, in fact, have been tied. The Penitentiary Act had to take over from the Hulks Act on 1 July. Indeed both the final one-month extension of the Hulks Act, and the Penitentiary Act which replaced it, received the Royal Assent only on the respective days before they took effect. Blackstone's carefully re-drafted measures had so nearly come to grief at the hands of Bunbury's impetuosity that Blackstone attributed the near disaster in part to the danger of leaving the passage of complex and combative legislation to the last minute. He vowed "never again [to] concern myself in a Measure of this Kind, unless it be taken up before Christmas; when Gentleman's Heads are cool & nothing else interferes with the Business." For now, Blackstone might have consoled himself with the knowledge that his carefully circumscribed measure of productive penal labour was safely passed into law. He could look forward to a time - surely not far off -

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144 Add MS 34416 ff.341-2.


146 19 Geo.III, c.54. See also J.H.C. 37 (1778-80): 428 & 458; and Add MS 34416 ff.341-2.
when his Penitentiary Houses would be built and their example might serve as a model to encourage the spread of their system throughout the country.

* * * * *

William Eden largely fades from the narrative of both English politics and penal reform after 1779. The King continued to oppose his elevation to the Privy Council "as a wanton increase of the English Privy Council and lowering its dignity ...."[147] Eden reconciled with North in time for the latter's Coalition with Fox in 1783, only to abandon him for Pitt soon after. His role in negotiating the Commercial Treaty of 1786 briefly gave him a new status in the political world, but that status was short-lived. During his last twenty-five years, Eden's political life acquired an odd, phantasmic quality. On at least four occasions he was rumoured for the Home or Foreign Secretaryships, only again to lapse into the political background.[148] In the end, Lord Auckland (as Eden became in 1793) rose no higher than President of the Board of Trade in the short-lived "Talents" ministry, and his declining years were to be saddened by the sensational suicide of his eldest son in 1810.[149]

Eden's work of the 1770s was his most enduring legacy. Jeremy Bentham, who prided himself on a belief that he had never compromised a principle in order to satisfy political niceties, condemned him for distorting the principles of Hard Labour legislation in order to secure any measure of it at all:

I write from system: and it is the fashion to hate systems. I labour to learn and to instruct: [Eden] writes secure of pleasing. He swims with the current: my struggle is


[149] Commons 1754-90, 2:375-9; and Commons 1790-1820, 3:662-664.
to turn it. ... He is one of the ornaments of the court. I have long sequestered myself from the face of men, in the fond hope that I might one day do them service. 150

But Bentham clearly romanticized their respective positions in a way that was only possible for someone who had not experienced the limitations and complexities involved in instituting controversial administrative reform during the late eighteenth-century. William Eden was not only an innovative penal thinker; he was also a shrewd and ambitious politician. He was committed to realizing the principle of hard labour as a penal practice in some institutionalized form, and perhaps even looked forward to a day when it might altogether supplant transportation as the sole secondary punishment for violent property offenders.

But Eden also recognized the limitations that circumstances imposed on him. A broad commitment to transportation as the secondary punishment of choice for even the worst classes of capital offenders persisted throughout the years in which Eden sought to implement Hard Labour. Nor could so large and expensive a scheme as a national network of Hard Labour institutions be simply imposed on either the time of local officials or the pocket-books of the rate-payers whom they served. We do the creators of the hulks system and the Penitentiary Act the most justice when we view those measures, not simply as imperfect realizations of an abstract commitment to hard labour as a secondary penal option, but also as the best that could be achieved given both the penal desires and the institutional pressures that militated against its full realization. In fact, it was to be a long time before another explicitly reform-minded politician or group of politicians would enjoy as much success as had William Eden during the late 1770s.

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150 Quoted in Semple, *Bentham's Prison*, 59. Bentham, too, would learn these same lessons, but far more painfully and incompletely (see *Bentham's Prison*, passim; and the discussion below, Chapter 5, part III[3]).
III. Conclusion: The Situation in 1782

Long before 1760, English ministers, legislators and local authorities had recognized the necessity for some practical alternative to the death penalty with which to punish the vast array of crimes to which that punishment might be applied. However, secondary punishments by no means constituted a coherent or unified category. Some convicted offenders, such as those convicted of property crimes accompanied by violence or the threat of violence, were thought best transported if not executed. But by the 1760s, rather than being dispatched to America, those convicted of less serious offenses against property were often punished by terms of imprisonment. The decline in the overall proportion of convicts being transported should not be read as a declining preference for the practice as a whole, but only with respect to punishing offenders of this latter category. The desire to continue to transport the most serious classes of capital offenders explains both the difficulty which Eden and Blackstone encountered in attempting to implement their Hard Labour alternative, and the speed with which transportation was re-embraced (if not carried out) after being reinstated by the Commons Committee of 1779.

The lynch-pin of these two penal practices after 1775 was the hulks. The absence of the transportation option explained the adherence of many authorities to the hulks; the renewed promise of it after 1779 helps to explain the turning away from them soon after. The attraction of the hulks stemmed less from their status as an experiment in penal labour and more from their retributive severity and expected deterrent character. Unfortunately, the hulks did not seem to hold the dangerous offenders confined to them with any reliable

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131 As early as 1770 one MP had suggested that parliament "institute public works, and have the criminals confined to them, as permanent examples" (Cavendish Debates, 2:13). He may also have been recalling the Dockyards Labour bill of 1751, for which see Beattie, Crime and the Courts, 522-3.
degree of security. *The Gentleman's Magazine* reported no fewer than four uprisings during the first two years of the system and a total of about sixty escaped convicts.\(^{152}\) The situation on board the hulks subsequently improved, but it seems likely that the failure of the Commons Committees of 1778 and 1779 to condemn them stemmed less from any inherent value placed on the system as a penal practice and more from an understanding that, in the eyes of many, they provided the only acceptable face of hard labour as a punishment in place of transportation - at least until genuine Hard Labour institutions could be established which might then confirm or disprove the credibility of that penal philosophy in even the worst cases.

With the passage of the Penitentiary Act, many observers must have felt that the usefulness of the hulks was almost at an end. The average population on board Duncan Campbell's two-ship establishment at Woolwich dropped from about 500 in 1779 and 1780, to 410 in 1781, and then 270 in 1782. By 1783 there were only about 200 convicts still on board.

### TABLE 3.3
The Hulks, 1778-1783

<table>
<thead>
<tr>
<th>Year</th>
<th>Avg.Sick</th>
<th>Dead</th>
<th>Escaped</th>
<th>Pardoned/ Discharged</th>
<th>Avg.Pop.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1778</td>
<td>17.6</td>
<td>133</td>
<td>27</td>
<td>37</td>
<td>436</td>
</tr>
<tr>
<td>1779</td>
<td>19.3</td>
<td>96</td>
<td>10</td>
<td>89</td>
<td>508</td>
</tr>
<tr>
<td>1780</td>
<td>15.1</td>
<td>27</td>
<td>3</td>
<td>111</td>
<td>488</td>
</tr>
<tr>
<td>1781</td>
<td>17.2</td>
<td>29</td>
<td>3</td>
<td>235</td>
<td>416</td>
</tr>
<tr>
<td>1782</td>
<td>18</td>
<td>89</td>
<td>4</td>
<td>185</td>
<td>272</td>
</tr>
<tr>
<td>1783</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>71</td>
<td>199</td>
</tr>
</tbody>
</table>

**SOURCES:** T 1/539 ff.255-310; T 1/548 ff.246-311; T 1/558 ff.184-207 & 209-40; T 1/564 ff.304-51; T 1/578 ff.282-315; T 1/594 ff.15-20; & T 1/594 ff.203-6, 347-50 & 353-56.

\(^{152}\) *GM* 46 (1776): 480 & 528; and *GM* 48 (1778): 284 & 494.
board the hulks. The vast proportion of those convicts who left the hulks during these years did so by pardon or some other form of discharge, and the rate at which they were being replaced by further removals from local gaols was clearly slowing. Both judges and local authorities must have felt that the usefulness of the hulks as a penal venture was coming to an end. Perhaps they were looking forward to a resumption of transportation and to the construction of the male Penitentiary House.

Many observers now took it for granted that, by failing to distinguish sufficiently between the irredeemable and the reclaimable, the hulks served only to ensure that the former corrupted the latter beyond hope of redemption. Horace Walpole probably spoke for many when he characterized the hulks as "colleges" in which undergraduates in villainy commence masters of arts, and at the expiration of their studies issue as mischievous as if they had taken their degrees in law, physic, or divinity, at one of our regular universities - but having no profession, nor testimonial to their characters, they can get no employment - and therefore live upon the public.

Metropolitan authorities, concerned about so large a concentration of dangerous offenders being held so close by, might also have felt that the hulks served to concentrate the nation's villainy on their doorstep. Sir John Fielding once remarked to Eden that "I begin to fear that collecting the Rogues of different Counties into one Ship may instead of begetting Reformation occasion Friendships and Connexions which should be cemented by their fellow-suffering, and make them unite when discharged," presumably to prey on the rich pickings of

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133 In April 1782 Campbell acknowledged that "The Numbers in the Hulks have been lately rendered much below the usual Compliment owing chiefly to a great many discharges of Prisoners whose time expired within a few months past," but anticipated that "the present Assizes will no doubt increase them very considerably" (T 1/578 ff.15-6). However Treasury minutes of the ensuing summer indicate that the government was undecided for some time as to whether or not to renew his contract; see W.L.C.L., Shelburne Papers 162 (17, 24, 26 & 31 July, & 2 Aug 1782); T 1/577 ff.302-3; and HO 35/3 (G.Rose to E.Nepean, 3 Aug 1782).

134 Walpole Correspondence, 25:316.
the metropolis rather than to return to their home counties. As a penal option in their own right, the hulks therefore appear to have become largely discredited and even to have been falling into disuse by the early 1780s. The last such punishment for Old Bailey convicts was ordered in February 1782. The subsequent continuance (and expansion) of the hulks stemmed from new and very different circumstances.

One final observation needs to be made about the role of the hulks during this period. They have often been said to have "relieved" the pressure on local gaols of untransported felons. Such an assertion does not entirely agree with the facts so far as they can be ascertained. Certainly, Eden made this argument to Burke in advocating the creation of the hulks in the first instance. But the entry-books for the late 1770s do not indicate that any letters were received from local officials who found the numbers of prisoners they were forced to incarcerate to be causing undue strain - with the exception of Newgate, where the problem of the sheer number of metropolitan felons must have been compounded by the ongoing reconstruction of Newgate between 1769 and 1783. As we have seen, the survey conducted by the Secretariat in 1776 implied that the immediate number of transportable convicts still held in the gaols of the local circuits was rather small. Moreover, the attempt of one MP to delay passage of the Hulks Act for a year does not suggest that feeling of pressure upon institutions which most historians of the first hulks establishment have invoked. And, when they sought to measure the effectiveness of the hulks in "relieving" the gaols, MPs

155 Add MS 34413 ff.20-1.

156 See below, Chapter 4, parts II-III.


158 SP 37/12 ff.197-9; and SP 44/93 pp.300-1.
who sympathized with Hard Labour schemes were careful to buttress their arguments using figures for transportees only from before the Revolutionary War. They also conspicuously avoided the rather obvious strategy of simply making up the difference by extending the hulk establishment. No doubt the pardon of nearly one thousand convicts on various conditions of military service helped to relieve any pressure that might have come to bear on local gaols. But it scarcely seems likely that, if the hulks had existed solely to fulfill so pressing a function, they would have been as systematically trimmed back as they were after 1779. The principal significance of the hulks during the Revolutionary War was not their role in relieving gaols of their individually rather small burdens of untransported convicts, but rather as a particularly harsh and degrading - and therefore acceptable - mode of punishing such offenders by hard labour. They only became more explicitly a measure of "gaol relief" during the very much altered circumstances of the 1780s.

Imprisonment had clearly become the secondary punishment of choice for less serious offenders against property even before the outbreak of the Revolutionary War ended the transportation of offenders to America. Many local officials had already set about reforming the internal regimes of their gaols, and even altogether rebuilding them. Some of them even did so out of explicitly Howardian concerns for the physical and spiritual health of the inmates, as well as for the basic separation of broad classes of offenders for purposes of effecting their reformation. Certainly all of them must have acted from the recognition that the number of convicts whom they could now expect to have to incarcerate, rather than be rid of through either the gallows or transportation, was now going to be, and would remain, larger than ever before. Despite the activity of William Eden in seeking to convince ministers and MPs of the value of a fully-realized regime of Hard Labour throughout the nation, the latter were unwilling to sanction an institutional basis for such ideals in anything other than
the limited-scale of two Penitentiary Houses to be built in the vicinity of the capital.

Most explanations of the ultimate failure to build the Penitentiary Houses emphasize indifference on the part of government and the fractious inactivity of the committee appointed to supervise their construction. In fact, although the latter appears to have had some measure of truth to it, there are strong indications that government fully intended to proceed with the Penitentiary project for at least three years after the Act was passed. The formal appointment of a new supervising committee in March 1781 was specifically justified on the grounds that "no progress has been made by the [former] Supervisors toward carrying into Execution the proposition of the said Act." And between August 1779 and May 1782, at least seven convicts were granted conditional pardons which explicitly anticipated the construction of the Penitentiary Houses.\textsuperscript{159}

The authors of the Penitentiary Act were hopeful that its example might at least reduce the opposition in many minds to hard labour as the principal, even sole secondary penal option. But there were as yet few statutory provisions defining and requiring any system of care for the prisoners held in the rest of the nation's gaols and Houses of Correction - which is to say, the vast proportion of all convicts who would be incarcerated. Independent action by MPs in 1773 and 1774 had established minimal requirements for the presence of clergymen and of basic standards of cleanliness in county gaols. Sir Charles Bunbury and his parliamentary allies attempted to secure broader measures, first in 1777 and then, more boldly, in 1779. Bunbury's attempts to realize uniform standards of practice throughout the nation's prisons, not only in terms of the physical and spiritual condition of

their inmates, but also the internal labour regimes to which they might be set, were blocked by the determination of more influential and pragmatic reformers such as Eden and Blackstone, who were prepared to trim the scale of their ambitions in order to preserve the integrity of the Hard Labour principles which they were attempting to institute.

Ironically, despite the setbacks which Bunbury and his allies faced, the story of the first two decades of penal administration under the Home Department suggest that the immediate future belonged, not to the Penitentiary project, but to something like the sorts of decentralized schemes of uniform practice which they were striving toward. We should also remind ourselves that it was Bunbury who, perhaps to the surprise of his ministerial allies in 1779, championed the resumption of transportation. Bunbury may already have had in mind, and was attempting to realize, that dynamic interdependence between a reformed prison regime and the reliable transportation of the worst classes of convicts (short of death) which became the ideal of many reforming magistrates of the 1780s and 1790s.

It was also Bunbury who, in sharp contrast to Blackstone's attempts to make the Hard Labour legislation a universally applied and carefully-scaled fiscal burden for England as a whole, reconfirmed the unique status and needs of the metropolis with respect to punishment. Metropolitan observers continued to believe that the level of serious crimes against property which prevailed there far exceeded any other place in the nation. Certainly no other place prosecuted such crimes in the same numbers. In 1779 William Mainwaring, the chairman of the Middlesex magistrates, complained that the Hard Labour legislation put his county to great expense in finding places in which to confine those convicts who could not be put on board the hulks and also that, until the new Houses which it contemplated were actually
built, the Penitentiary Act would have a similar effect. The result, as Mainwaring had requested, was the addition of a clause which made available to Middlesex an annual sum of up to £300 for those purposes. It may also have prompted the inclusion in the Prisons Regulation bill of a physician-inspector for all the gaols of the metropolis, to be provided at government expense.

However Bunbury had still to overcome the central weakness in his mode of proceeding: finding some means of ensuring that local officials actually administered their prisons in accordance with statutory obligations. But, by holding forth some credible ideal of encouraging local officials to reform their gaols for themselves, Bunbury and his allies would provide a key rationale by which the central government felt justified in abandoning the ambitions of Eden and Blackstone and, for two decades, resumed that general pattern of reaction to immediate problems which had broadly characterized the role of the central government in domestic administration for decades beforehand. What the government did not anticipate was how difficult the resumption of transportation would prove to be, and how broad would be the scale of problems that would result throughout the country.

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160 Greater London R.O., MJ/SPT/4/4 (my thanks to Greg T. Smith for this document). Mainwaring's complaints suggest that, whether or not the Middlesex bench had altogether abandoned its 1772 determination to replace transportation with imprisonment, it had made little headway in expanding its overall prison capacity.

161 19 Geo.III, c.74, s.69. This clause first appears in the "Bunbury" revision of the Penitentiary bill which Blackstone found so offensive (see Commons Papers, 29:278).

162 Commons Papers, 29:90-1 & 102-3. It is also worth noting that the final version of the bill specifically exempted the City of London's gaols, workhouse and hospital from its provisions, save for the physician-inspector (p.104). This latter clause was almost certainly instigated by one of Bunbury's allies, Sir Charles Whitworth who, in 1776, had encouraged a physician and gaol-reform advocate named William Smith to make regular visits to the gaols of the metropolis to care for the sick, and who now sought to provide Smith with some remuneration for his activities. The matter had been brought to the attention of government earlier that year (T 1/550 ff.43-4). Subsequent attempts to legislate compensation for Smith in 1779 and 1781 failed, in the first instance because the Surrey magistrates claimed that Smith had already been compensated for his trouble, and in the second because the Lords deemed such remuneration to be a local charge and wholly inappropriate, both in principle and during a time of fiscal restraint (J.H.C. 37 [1778-80]: 868-9; and Parliamentary Register 1780-96, 4:355-8).
CHAPTER 4

CENTRE AND PERIPHERY: THE CRISIS OF THE 1780s

The broad outlines of English penal developments during the 1780s are well-known to historians of criminal justice. The Penitentiary initiative of 1779 was abandoned. After some fruitless attempts to resume transportation to the Americas and a protracted search to find a new destination, transportation to New South Wales commenced in 1787. In the meantime convicts from throughout the nation were confined on board prison hulks until ships were commissioned to transport them. In the metropolis large-scale executions were carried out, while a measure to establish a centrally-funded police force was thwarted by the opposition of the City of London. Meanwhile the government continued to believe that its role in these matters ought, at best, to be a loosely directive rather than a regulatory one, acting only when circumstances seemed to force it to do so.

However, this is not to say that the government made no attempts at innovation, much less that there were no coherent perspectives animating such activity as it took on. The first part of this chapter argues that, far from being a sudden and reckless initiative, the Metropolitan Police bill of 1785 was the logical outcome of a set of initiatives that had been contemplated by ministers since 1782. (Indeed, the assumptions about the nature of criminality that underpinned them can be found much further back.) More importantly, the policing initiatives of the early 1780s were meant to be a credible alternative to the penitentiaries contemplated under the 1779 Act. A major contention of this chapter (and much of the next) is that, although historians of criminal justice invariably treat penal and policing reform as separate streams, no such clear-cut distinction existed in the minds of contemporaries.

Moreover, although government’s role in the physical disposition of the nation’s
convicts remained an essentially reactive one - as is clear from the haphazard pattern by which the hulks establishment, far from being discontinued, was expanded - that position did not stem from either a simple unwillingness to act or outright inhumanity. It also stemmed from the need to ensure the preservation of a range of penal options wide enough to meet the needs of local officials who might have widely differing views on how best to punish different classes of offenders. The sharpest contrast in this respect was that between the severity of criminal justice in the metropolis on the one hand and the wide-ranging use of imprisonment by reform-minded county benches on the other. Penal practices in many other areas of the country probably lay somewhere along the spectrum defined by these two extremes. In such a situation, reinforced by the anxiety that inevitably surrounded high levels of criminal convictions, an aggressive lead from the centre was neither possible nor politically advisable.¹

Nonetheless, outside the realm of legislative change, the scope of government's role in the disposition of convicts was being expanded by pressures whose full scale had not been anticipated and which could not be ignored. The problems of the metropolis came first, as had long been the case. Ministers (as well as many MPs) were convinced that, by comparison with the rest of the country, the problems of crime and punishment in London continued to be unique in terms both of their scope and the immediacy of the threat posed by them. By the mid-1780s however, the crisis of convict numbers in gaols throughout the country had become the first chronic problem of domestic administration whose breadth and implications acquired a truly national character. The sheer number of convicts for

¹For a more detailed statement of this argument, see my article "In Place of Death: Transportation, Penal Practices, and the English State, 1770-1830," in Qualities of Mercy: Justice, Punishment and Discretion, ed. C. Strange (Vancouver, BC, 1996; forthcoming).
transportation, most strikingly from the metropolis but also from the provinces as a whole, militated against the government's desire to avoid a structured organizational, supervisory, and - ultimately (as we will see in the last chapter) - custodial role in the disposition of the nation's convicts.

I. From Penitentiary to Police:
The Home Department under Shelburne, North and Sydney, 1782-1789

The first seven years of the Home Department's administration of criminal justice were dominated by the ideas and activity of the first two Home Secretaries, the Earl of Shelburne and Thomas Townshend (from March 1783, Baron Sydney). In fact, the only substantially proactive role that they sought to adopt involved policing measures for the nation's capital, and these initiatives largely collapsed with the failure of a culminating measure, the Metropolitan Police bill of 1785. The other activities in which the Home Department concerned itself - the renewal and direction of transportation, and the extension of the hulks establishments - reveal an essentially traditional, reactive conception of central administration. In both instances, government took on no larger a role in administering the national convict problem than it could avoid. This traditional outlook on the role of the central government reflected and was reinforced by a combination of Treasury control and limited initiative from Home Secretaries. It was only after Sydney's departure in June 1789 that Home Secretaries first gave serious consideration to the national penal arrangements in which their Department now found itself deeply implicated.

Our first and most substantial area of concern is with the Home Department's London policing initiatives between 1782 and 1785. This is by far the most interesting of the Department's activities during the 1780s, not only because it is the only one in which an attempt at some administrative activity above the level of mere reaction is visible, but also
because it provides an explanation for what is often taken to be one of the most short-sighted
decisions of the government - the abandonment of the Penitentiary project. This explanation
was explicitly stated by Shelburne himself in 1785 and has long lain, unnoticed for what it is,
in the published papers of one of his later protegees:

Mr. Blackburne’s plan was stopped during my time at the Treasury. I was
assured that if the number of ale-houses could be lessened, the Vagrant Act inforced,
and the general administration of justice as it stood invigorated, a great deal might be
done without having recourse to any new institution. As Parliament was not sitting
nothing could be done about the public-houses; but a proclamation was issued, and
every method tried to bring about the two last, and the effect answered the most
sanguine expectation. ... Under these circumstances, it was impossible to consent to
so great an expenditure upon a plan which I plainly saw had been partially taken up,
and the whole of the subject not properly considered.²

Shelburne’s letter clearly indicates that the context of his government’s decision to cancel
construction of the penitentiaries was the profound fiscal crisis in which government found
itself after the Revolutionary War.

In the 1780s, ministerial control of parliament still depended on the allegiance an
instinctively frugal class of independent backbench MPs. These backbenchers tended to
support the king’s ministers so long as government policy did not conflict with their
interests.³ This duality was nicely captured by Lord Sheffield in 1784: “It is the interest of a
country gentleman that [Government] should not be embarassed and made expensive.”⁴

²Marquis of Lansdowne (as Shelburne had been since December 1784) to S.Romilly, 25 Dec 1785; in Memoirs of the Life of Sir Samuel Romilly, Written by Himself; with a Selection from His Correspondence, eds. W.Romilly et al. (1840), 1:328-9. William Blackburne was the architect whose plans had been commissioned for the penitentiary houses, and who subsequently went on to design many of the local "reformed" prisons of the 1780s; see R.Evans, The Fabrication of Virtue: English Prison Architecture, 1750-1840 (Cambridge, 1982), 126-30, 135-9, 237 & 284.


Concern for the level of the national debt was a regular feature of English political life during the eighteenth century. By the end of the Revolutionary War, the debt seemed to have reached crisis proportions. Worse still, this particular war - which had massively inflated the debt in only a few short years - seemed to reflect failure and ignominy on both the government and the nation. So intense was this conviction that the 1780s marked the beginning of a half-century during which ministerial success depended, perhaps more explicitly than ever before, on maintaining the appearance of fiscal probity in the conduct of government. The parliamentary scrutiny of administrative finance which characterized these years began in 1780 with the sanctioning of a Committee to Examine Public Accounts.

However, the Committee's reports were not completed until 1786. Before this time, Shelburne and his twenty-four-year-old Chancellor of the Exchequer, William Pitt the Younger, had extensively overhauled the internal procedures of the Treasury. After 1784, Pitt would oversee further reforms in other fiscal departments, both as to modes of tax imposition and collection, and the internal practices of the revenue departments. It is therefore Pitt who has come to be associated most closely with the first major wave of economic revitalization and fiscal retrenchment in government. Indeed, it is generally accepted that these were defining elements of his political success during the first, pre-Revolutionary phase of his seventeen-year ministry.

It would be little surprise if Pitt had played a role in the Shelburne ministry's decision

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to discontinue the Penitentiary project in September 1782.\(^7\) It is striking that, when Richard Price appealed to his old patron Shelburne to preserve the project, his letter wound up amongst the papers, not of Shelburne, but of Pitt.\(^8\) However, in recounting the matter to Bentham several years later, Shelburne claimed that the decision had been taken by himself and Townshend:

... with regard to the cause that *suspended* the execution of the original plan: it was precisely the terrific aspect of the expense: ... 'We talked the matter over fully one day, Ld Sydney and I at this table, ... and we agreed the country could not bear it.'\(^9\)

But whether or not he played a major role in the original decision, Pitt determinedly adhered to it during his own ministry. His influence was confirmed in January 1786, when the Manchester magistrate and prison-reformer Thomas Bayley appealed to William Eden, fresh from the triumph of the trade treaty he had negotiated with France (a major plank in Pitt's schemes of economic revival), to advance the project that Eden had abandoned seven years earlier. Eden's reply was almost entirely discouraging. He recalled his concerns in 1779 "that the Country would (from the fear of Expence) be very unwilling to carry the Plan into execution upon the great scale which was proposed" and protested - perhaps somewhat disingenuously, given his friendship with Pitt at the time - that "I do not yet even know

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\(^7\)A parliamentary committee appointed in March 1784 to investigate progress on the Penitentiary Act reported "that in the latter End of September 1782, the Secretary of the Treasury returned for Answer, that new Measures were about to be taken with respect to felons, which made the Hastening the Penitentiary Houses less necessary" (*J.H.C.* 39 [1782-84]: 1041 [emphasis in original]). These measures were the decisions, first, to suspend pardons for all violent offenders against property (see below, pp.238-9) and, second, to enjoin the London magistrates to be more determined in prosecuting petty offenders (see below, pp.201-3).


whether M’ Pitt agrees with me respecting its general Expediency. "10 In fact it seems that the issue had again been brought to Pitt’s attention soon after, perhaps by two of the project’s committee-members, who protested

that no consideration of oeconomy can be with justice opposed to the great purposes which Parliament had in view, of National reformation, Public Security, and so far as is compatible with these, of Humanity towards the unhappy Class of men themselves who are the immediate objects of the plan.11

But there is no evidence that the matter was extensively or seriously discussed at this time, either in the Home Department or in parliament, and Pitt’s final words on it to William Wilberforce in June 1788 seem a placatory brush-off: "Of the Penitentiary Houses what can I say more? But in due time they shall not be forgotten."12

The government’s aversion to the anticipated expense of the Penitentiary project was probably enhanced by a perception that the two new institutions would largely house prisoners from the metropolis alone. We have already seen that such a notion clearly violated Blackstone’s specific intention that occupancy in the Penitentiaries should be carefully apportioned to the various circuits. We have also noted the countervailing expectation of the

10 Add MS 34420 ff.413-4 & Add MS 34460 ff.238-9; and Add MS 34420 ff.421 v-22. Eden dissembled, or was perhaps simply ignorant, on two other counts. He alluded to the large scale of the 1779 project, when he might equally have pointed out how reduced it was from his original intentions (see above Chapter 3, part II). He also suggested that "the different [permutations] which for a considerable Period then took place in the Government of the Country, were alone sufficient to check and disappoint" it. Clive Emsley has given pride-of-place to this factor; see his Crime and Society in England, 1750-1900 (2nd ed., 1996), 264-5. In fact, a specific and reasoned decision was made before the Shelburne ministry fell to the Fox-North Coalition, and the latter made no efforts one way or the other in the matter.

11 W.L.C.L., Sydney Papers 13 (G. Elliot & T. Bowdler to W. Pitt, 7 July 1786). Elliot and Bowdler estimated the minimum cost to be £150,000. For some sense of how significant this sum was, the total civil expenditure in 1780 was only £1.2 million (Chester, English Administrative System, 71).

12 Private Papers of William Wilberforce, ed. A.M. Wilberforce (1897), 21. Both an earlier letter from Pitt which implied that construction might be about to begin, and the appointment in 1784 of a Commons Committee to investigate proceedings therein suggest that the government’s 1782 decision either was not widely known or that it was not accepted by some (see ibid., 16; and J.H.C. 39 [1782-84]: 844, 982-3 & 1040-6). Citing the Committee of 1784, Jeremy Bentham later observed that "though suspended the plan was never given up ...." William Blackstone told Bentham that he had been summoned to meetings with Pitt and the Lord Chancellor on the subject in 1789-90 (Bentham Correspondence, 4:451 & 462).
Middlesex bench that they would inevitably be dominated by the convicts of their county.\textsuperscript{13}

To this latter could be added a growing notion that the two projected penitentiary houses \textit{ought} to be specifically metropolitan institutions. Such sentiments had been expressed by Henry Zouch, in terms which many cost-conscious local officials would have appreciated, when the Penitentiary Act was before parliament in 1779:

\begin{quote}

it is a Matter of common Prudence, first to try such an important Experiment in \textit{London} or \textit{Middlesex}: lest, after every County in the Kingdom hath submitted to the inordinate Expence of erecting such Houses, it should be found either that public Health is endangered by them, or that some unforeseen Cause requires them to be discontinued: it is surely better, that the consequent Evils should be confined in one County, rather than spread throughout a whole Kingdom.
\end{quote}

A similar idea appeared in the writings of Jonas Hanway, one of Howard's allies in advocating prison reform:

\begin{quote}

\textit{Middlesex} is the grand rendezvous of our dangerous intestine enemy [ie. crime]. This county ought to be the primary object, though it is by no means the only pass we have to guard. ... That the evil has spread, and drawn a dark cloud over the land, is apparent beyond all dispute!
\end{quote}

Finally one of the members of the three-man committee entrusted with overseeing the project, Sir Charles Bunbury himself, informed Shelburne that the penitentiaries "would be very beneficial to the Public, as a commodious and well-regulated Prison is much wanted in a County so abounding in Robbers."\textsuperscript{14} However, this theme of prison reform would not fully coalesce for another decade or so.\textsuperscript{15}

\textsuperscript{13}See above, pp.188-9. Blackstone may have avoided any regional identification for the Penitentiary Houses precisely \textit{because} he feared that it might become a rationale for cancelling them.

\textsuperscript{14}[H.Zouch.] \textit{Observations Upon a Bill now depending in Parliament} [1779], x (emphases in original); J.Hanway, \textit{Distributive Justice and Mercy} (1781), 16-7 (emphases in original); and Bowood Muniments 37 ff.22-3.

\textsuperscript{15}The return of initiative in prison-reform from central to local authorities during the 1780s, coupled with the obvious inadequacy of metropolitan prisons, would promote in the minds of many prison-reform advocates a conviction that national prison reform demanded a lead from the nation's capital. See below, pp.256-9, 353-9 & 463-4.
Finally it should also be remembered that, by 1783, government had already spent £30,000 rebuilding Newgate prison after its destruction in the Gordon Riots. These expenses, which were only sanctioned by parliament "After some debate," followed on expenses in the region of £70,000 for rebuilding that same prison between 1769 and 1780. Thus government had already spent the immense sum of £100,000 in only fifteen years, merely to enable the metropolis to maintain a pattern of criminal justice administration based primarily on capital punishment and transportation.

Thus, in the eyes of fiscally-conscious ministers, a preventive strategy was clearly preferable to an institutional one in the suppression of crime. One obvious and long-standing means by which to achieve this was to attempt to enhance the criminal law's deterrent capacity by maximizing the number of serious offenders who were subjected to its most severe sanctions, death and transportation - the latter, hopefully, in a manner as profitable to merchants and inexpensive to government as the pre-1775 system had been. Indeed it is clear that, in the face of the greatest wave of violent criminality in living memory, metropolitan officials particularly desired that a policy of maximum severity be pursued (see Part III). However the preventive strategy in which both Shelburne and Sydney took the most active and sustained interest was the policing of the metropolis.

The historical literature surrounding the emergence of the first centrally directed, "modern" English police force in London is now extensive. Many assumptions that once

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16 Three grants of £10,000 each were made between 1781 and 1783 (21 Geo.III, c.57; 22 Geo.III, c.67; and 23 Geo.III, c.78; debate over the first of them is noticed in Parliamentary Register 1780-96, 3:348-9). For the overall costs of rebuilding Newgate since 1769, see C.W. Chalklin. "The Reconstruction of London's Prisons, 1770-1799: An Aspect of the Growth of the Metropolis," London Journal 9 (1983): 23-4. Thomas Holcroft, who witnessed Newgate's destruction by the Gordon Rioters, invoked its expense in describing its destruction: "Thus was the strongest and most durable prison in England, and in the building of which the nation had expended immense sums, demolished, the bare walls excepted, ... in the space of a few hours" (quoted in J.P. De Castro, The Gordon Riots [1926], 90).
were taken for granted must be seriously re-considered. The work of Ruth Paley and Elaine Reynolds casts doubt on any simple acceptance of the proposition that a centrally-directed force was necessarily any more effective in detecting and preventing crime than the parochial forces that preceded it.\textsuperscript{17} At the same time, revisionist historians have questioned the notion that English police reform can be viewed in the unambiguously positive light that traditional accounts have placed it.\textsuperscript{18} The latter's comfortable assumption - that the new police forces of the nineteenth-century constituted a happy compromise between public order and individual liberty - has been severely qualified by the recognition that those forces spent a large proportion of their time either arresting or intimidating groups (such as vagrants and prostitutes) whose overtly "criminal" character is at least debatable.\textsuperscript{19} Another influential arm of the revisionist school argues that a crucial role was played by the desire of ruling elites to exercise control over crowd activity in England's growing number of densely populated urban centres.\textsuperscript{20} Such an argument has seemed particularly persuasive in the case


of London in so far as the Gordon Riots prompted a number of critics, including the future Home Secretary Lord Shelburne, to question the means by which public order was maintained in the metropolis.21

This latter emphasis on the maintenance of public order has perhaps tended to reinforce the conviction that prevention was the principal element of all modernizing efforts in policing.22 Such an assumption underestimates the greater emphasis which late-eighteenth-century observers placed on the detection of wrongdoers. Indeed detection and prevention were (and are) not necessarily separate considerations. The more certain detection and punishment of offenders can be assumed to have a deterrent effect, and this idea may have been gaining ground by the 1780s. Elaine Reynolds identifies it as an underlying element of the 1785 Metropolitan Police bill, the Pitt government’s attempt to provide a centrally directed, government-paid network of magistrates and patrols for the greater metropolitan area.23 Yet even Reynolds, who has written the most detailed account of metropolitan policing during the eighteenth century, misses the more specific intentions behind this comprehensive centralizing measure.24


22In fact the Metropolitan Police did not develop a detective force until thirteen years after it was founded; see P.T. Smith, Policing Victorian London: Political Policing, Public Order, and the Metropolitan Police (Westport, CT, 1985), 23-5 & ch.3 (which otherwise argues that the prevention of crime was the main reason for creating the force and that its role in riot control came later).


24On the other hand, David Philips’s path-breaking analysis of metropolitan policing reform emphasizes the concern of traditional elites that a police force under the direction of the central government would violate traditional rights and liberties. Philip is less clear about what exactly these new forces were expected to do. See D.Philips, "A New Engine of Power and Authority": The Institutionalization of Law-Enforcement in England, 1780-1830, in Crime and the Law: The Social History of Crime in Western Europe since 1500, eds. V.Gatrell, B.Lenman & G.Parker (1980), 155-89. Although he recognizes the strengths of the revisionist position, Philips has tended to favour a more complicated view of matters; see both "A Just Measure of Crime, Authority, Hunters and Blue Locusts": The ‘Revisionist’ Social History of Crime and the Law in Britain, 1780-1850," in Social Control and the State: Historical and Comparative Essays, eds. S.Cohen & A.Scull (Oxford, 1983), 50-74; and "Crime, Law and Punishment in the Industrial Revolution," in The Industrial Revolution and British
What I want to argue here is that the 1785 bill was not as sudden an innovation as both traditional and revisionist police historians have tended to see it. Rather it was the culminating measure in a coherent, essentially conservative policing strategy that was taken up in 1782 by Shelburne and his Home Secretary, Thomas Townshend, as a substitute for the extensive, publicly-funded penal institutions which the Penitentiary Act both proposed and sought to legitimate. At the risk of invoking a cliche, Shelburne and Townshend had decided that prevention was a far better strategy for reducing crime than cure. This notion was not to be applied to the worst classes of offenders: such convicts ought properly to be left to their fate. Rather their emphasis was on those petty offenders who, if checked now, could be prevented from developing into more serious ones.

This was a time-honoured idea writ large. In Chapter 1 I described the politico-cultural imperatives which helped sustain the appeal of this conception of criminality during the eighteenth century. The crisis of the Revolutionary War once more brought concerns for the nation’s moral well-being to the forefront. At the end of 1775, the Privy Council ordered the chief magistrates of England and Wales to put "into strict Execution" the laws regarding rogues, vagabonds, and other idle and disorderly persons, noting that their number "daily increases to the great Scandal, Loss, and Annoyance of the Kingdom ...." Such measures reflected not only an instrumental concern for the immediate problem of disorder and criminality, but also a more general conviction that such behaviour in turn reflected God’s judgment on a sinful nation. This conviction derived strength in some minds from the nation’s poor performance and ultimate defeat. "The Scriptures teach us to consider national


judgments, as punishments for national sins," Sarah Trimmer noted in September 1783; "our nation at present, is notorious for so many vices, that we may expect calamities at every turn." A concern for plebeian immorality probably informed the North government’s sabbatarian legislation of 1781, by which keepers of public houses in London (including debating clubs) could be fined £50 for opening on Sunday. However the debates surrounding its passage do not indicate that the general concern for public morality reflected in it was tied to a more specific concern for potential criminality.

Nevertheless, in 1782 Shelburne and Townshend were clearly falling back on a long tradition, with both distant and more immediate precedents, of seeking to prevent serious crime by the more certain punishment of petty offenders. Such a structurally conservative notion of governmental activity was not merely time-honoured: it was now also fiscally imperative. Shelburne and Townshend believed that government could act so as to reinvigorate the magistracy of the metropolis without being put to any new measure of expense or institutional innovation. In late October 1782, Townshend wrote letters to the senior magistrates of the City and Westminster, as well as to the chairmen of sessions for the Tower Hamlets and the counties of Middlesex and Surrey. These letters began by invoking "the frequent Robberies and Disorders of late" in the metropolis, and attributing them in large measure "to the Corruption of the Morals of those of an inferior Rank" in "night houses and cellars ..., Gaming Houses, [and] the Places where strong Liquors are drank to


27 21 Geo.III, c.49. See also J.H.C. 38 (1780-82): 435-6; and Parliamentary History 22 (1781-2): 262-90. There are documents preserved in the State Papers which could be taken to imply that the North government was actively considering such linkages, but none of them are dated and at least one of them is clearly from the 1750s (SP 37/15 ff.367-74, 375-80 & 381-90).
Excess ...." The magistrates were enjoined to increase their attention to the licensing of gambling and public houses, and to step up the enforcement of the laws relating to "Rogues, Vagabonds, idle and disorderly Persons," both by arresting them and by increasing the number of petty sessions at which such offenders were prosecuted. The one innovative element in this strategy was that the magistrates would now be required to draw up written accounts of their proceedings in these matters and submit them "from time to time" to the Home Department. 28 To the extent that magisterial activity in the metropolis was now subject to some closer (if vaguely defined) degree of central oversight, the instructions of 1782 may be said to have been a step towards the centralization of London policing. Nevertheless the traditional decentralized structures of authority were being rigorously adhered to and respected. A slightly new wine was being placed in old bottles.

Shelburne and Townshend reinforced this policy by promoting legislative measures that were designed to expand both the obligation and the capacity of the magistrates to act against potentially villainous classes of petty offenders. During Shelburne's brief time at the Home Department, an Act was passed making the receiving of stolen goods a misdemeanour punishable by fine, imprisonment or whipping. It also gave magistrates the authority by warrant to search any places where they suspected stolen goods might be concealed, and constables and watchmen the authority to arrest anyone carrying or suspected of carrying them during the night-time hours. 29 Less than a year later, in February 1783, Townshend introduced a second Receivers bill, this time seeking to impose sentence of death on

28 HO 43/1 pp.43-4, 45 & 46-8. See also GM 52 (1782): 545.

29 22 Geo.III, c.58. The particular role of the Home Department is suggested by the fact that one of its movers was Shelburne's Under Secretary, Thomas Ord. However it was subsequently introduced and managed by Thomas Stanley, MP for Lancashire (J.H.C. 38 [1780-82]: 984, 988, 1035, 1047 & 1056; and House of Commons 1754-90, 3:472-3).
receivers of goods stolen in the course of a burglary or highway robbery. He presented it in conjunction with a bill that would impose six months' imprisonment on any "Idle and Disorderly Persons, upon whom Implements for Housebreaking, or Offensive Weapons, shall be found in the Night Time." This latter, Townshend explained, was specifically meant to intercept any returned soldier who "might have in his possession every implement necessary for plundering his fellow subjects" before he could actually put them to use. Although the latter of these two measures aroused some debate, the failure of the first was probably as much a consequence of the political disruption surrounding the collapse of the Shelburne ministry and the accession of the Fox-North Coalition as of any perception that it constituted any undue extension of magisterial powers at the expense of personal liberties.

Indeed, however violent the political passions of 1782-4 were, there appears to have been a general consensus amongst parliamentarians concerning both the need for these particular measures and the appropriateness of the general strategy which they embodied.

Although no attempt was made under the Fox-North Coalition to revive Townshend (now Sydney)’s second Receivers bill, the Commons continued to debate the bill for imprisoning those caught carrying housebreaking implements, finally substituting and passing a new measure which made such offenders subject to the provisions of an Act of 1744 that allowed the imprisonment of "rogues, vagabonds, and other idle and disorderly persons." It is striking to note that Sydney himself oversaw this revised bill’s passage through committee in

30J.H.C. 39 (1782-84): 181; and Parliamentary History 23 (1782-83): 364-5. The text of the two bills is at Commons Papers, 35:87-90 & 91-4 respectively. Townshend’s close engagement in and concern for these measures is suggested by his referral of the draft bills to the law officers (HO 49/1 p.237).


3217 Geo.II, c.5. This Act allowed the imprisonment at hard labour of the "idle and disorderly" for a period of up to one month, and that of rogues, vagabonds and incorrigible rogues for 6 months to two years. Any of the latter who attempted to escape were subject to seven years transportation (ss.1 & 9).
the Lords, despite the fact that he was out of office at the time and that normal procedure required that the Lords' Chairman of Committees perform that task.\textsuperscript{33} Consensus on policing measures was further demonstrated when the Treasury, under first Portland and then Pitt, sought to eliminate the expense of the very small-scale preventive horse and foot patrols for London supervised from Bow Street. North and Sydney alike defended them on the grounds of their presumed effectiveness in preventing crime, the same philosophy underlying the attempts to revitalize the magistrates.\textsuperscript{34} Finally, although it did not originate with government, an Act of 1784 is worth mentioning. This measure, which built upon an Act of 1757, extended the power of JPs to regulate pawnbrokers, through whose shops a significant volume of stolen goods was believed to pass. Introduced by two Aldermen and MPs of the City of London, it appears to have enjoyed general support in the Commons both before and after the election of spring 1784 which had interrupted its first attempted passage.\textsuperscript{35}

The relative conventionality of Shelburne and Townshend's legislative programme was illustrated by their determination that these measures be carried into execution by established parochial officials. It was further suggested by its close correspondence to a series of measures which had been proposed thirty years earlier during another post-war


\textsuperscript{34}HO 35/4 (R.Burke to E.Nepean, 26 May 1783; R.B.Sheridan to Nepean, 31 May 1783; Nepean? to Burke, 23 June 1783; & Sheridan to Nepean, 8 Aug 1783). Pitt showed even greater determination, his original inquiry being supplemented by a personal letter from the Under Clerk of the Treasury; see HO 35/5 (T.Steele to Nepean, 31 July 1784; & J.M.Leake to Nepean, n.d.). Sydney conceded "the propriety of pursuing some mode for the regulating the Expense" of the patrol by confining to a fixed allowance (HO 36/4 pp.149-50). For the patrols, see Radzinowicz, History, 3:54-62. The Treasury seems ultimately to have prevailed, although the patrol was revived in 1789 (see below pp.343-4).

crisis of crime in the metropolis. The 1751 House of Commons Committee on Criminal Law produced a large number of proposals for dealing with the problem of crime in London, including an Act to render capital punishment more punitive for murderers and a failed bill to impose hard labour in the dockyards as a secondary punishment in place of transportation, a sanction which many observers felt lacked a sufficiently exemplary character. 36 Only more recently has it been emphasized that the Committee also made many recommendations for the prevention of serious crime by a more scrupulous attention to the punishment of morals offenses and the regulation of disorderly houses, as well as to proposals in the following year for the closer regulation of pawnbrokers (leading to the Act of 1757). 37 Henry Fielding, the reform-minded Westminster magistrate, was involved in drawing up these proposals, and it is highly suggestive that his brother's successor at Bow Street, Sampson Wright, had reiterated them at length in a letter to the government as recently as August 1782. 38

However it was one thing for Home Secretaries first to enjoin and then to seek to oblige magistrates to prosecute petty offenders and regulate their haunts. Actually getting them to do so proved to be entirely another. It was in this gap between aspiration and fulfilment that the Metropolitan Police bill of 1785 had its origins.

Evidence as to the success of the circulars of October 1782 and legislation of 1782-4

3625 Geo.II, c.37. See Radzinowicz, History, 1:206-9; and Beattie, Crime and the Courts, 520-30.


38H. Amory, "Henry Fielding and the Criminal Legislation of 1751-2," Philological Quarterly 50 (1971): 175-92; and HO 42/1 ff.95-7. All of this suggests that the 'morals regulation' which historians have viewed as a characteristically Victorian element of policing activity has a much longer lineage than has usually been acknowledged.
is extremely hard to come by. Only one extant copy seems to remain of the reports of prosecutions which metropolitan magistrates were expected to submit to the Home Department "from time to time," so it is difficult to say how dedicated in making them the JPs proved to be. Shelburne himself believed that the whole effort had fallen into desuetude after his ministry lost office in February 1783, although soon after supporters of the Fox-North Coalition such as Burke and Sheridan, expressed a conviction that magisterial inactivity in Westminster was chronic. That difficulties in making the measures work were apparent by March 1785 is suggested by a Home Department circular to the most active magistrates in Middlesex, requiring them to submit lists of

such Rogues and Vagabonds as you suspect are now at large within and near this Metropolis, classing them according to their different occupations - whether Highwaymen, housebreakers, &c. - particularly distinguishing those who have been confined in the Hulks, and, if possible, the places of their permanent residence, or where they are most likely to be met with.

That this circular was addressed by name only to those magistrates who were known to be active in their attention to duty implies that Sydney's hopes of securing wider co-operation were perhaps already flagging. But it also suggests that he was still pursuing the lines of thought he had first developed with Shelburne two-and-a-half years earlier. Whatever their extent, these problems clearly fed into a larger, long-standing suspicion about the quality of magisterial character and activity in the metropolis, more

\[39\] HO 42/2 ff.98-103.

\[40\] "Upon the change of ministry these measures were dropped; and a number of persons confined under the Vagrant Act were immediately set at liberty; who have made, if I am rightly informed, a material part of those who have infested London since" (Lansdowne to S.Romilly, 25 Dec 1785; in Memoirs of Romilly, 1:329). For Burke and Sheridan, see Parliamentary Register 1780-96, 9:676 & 677.

\[41\] HO 13/3 p.23. The Rotation Offices were a number of offices (including Bow Street) in which magistrates could reliably be found on duty during set hours of the day; see Radzinowicz, History, 3:36-41; and R.Paley, "The Middlesex Justices Act of 1792: Its Origins and Effects" (Ph.D. thesis, Reading, 1983), 187-99.
particularly the Middlesex bench. The conviction that propertied gentlemen possessed both an inherent public-spiritedness and a duty to act in the interests of those less fortunate remained a cherished belief amongst the propertied elites of eighteenth-century England. Despite the self-evident (and widening) distinction in the problems of urban and rural society, this conception remained sufficiently powerful that expressions of concern often took the form of charges that the Middlesex bench had come to be dominated by men from the lower, more self-interested classes of urban tradesmen - men who were, in Burke’s famous phrase of 1780, "the scum of the earth."

But not all observers of the changing social character of the magistracy saw the magistrates themselves as being solely to blame for the failings of the institution. By the 1780s, the range of regulatory duties that had been assigned JPs by statutory authority over the course of the century, and particularly in the boroughs, had become very large indeed. Given the further expectations which Shelburne and Sydney had brought to bear in the circumstances of increased criminality in London, the burden of magisterial office there must have come to seem particularly onerous. On at least two occasions, the justices of the Kensington Division sought remuneration for the costs they were put to in following the

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directive of October 1782. Professionalism, in the form of a government-paid salary, must have seemed the inevitable and unavoidable solution. This would have been the case, not only in the larger sense of having to serve as a substitute for that natural social authority which most metropolitan JPs no longer seemed to possess, but also more simply as fair recompense for an increasingly heavy burden of expectation which was coming increasingly to fall on men of less leisure than their country counterparts.

The notion that the increasingly active metropolitan magistracy desired by Shelburne and Sydney would have to be paid may have been anticipated from the outset. Less than two weeks after Shelburne assumed power as first minister in mid-July 1782, Sampson Wright, the chief magistrate at Bow Street, requested that government should "give a Degree of Weight and Dignity to the Office I have the Honour to preside in," adding (lest personal gain seem his sole motivation) that he was "convinced that it would be attended with great public Utility, by conveying a Consequence to the Office itself and giving a personal Influence over the Minds of the lower Order of People." A less prominent Middlesex JP, David Wilmot, submitted to the Home Secretary what may be read as a preliminary sketch for the

45 HO 42/2 ff.112-3; and HO 42/4 ff.109-11. If these were "yearly" submissions, they imply low energy on the JPs's part: the costs submitted were only £11 and £10/8s. respectively. A perceived need to recompense the Middlesex JPs may account for the Secret Service fund payments to William Mainwaring, the Chairman of the Middlesex bench, which began in 1783 and which aroused the Webbs's suspicions of deep-set corruption (Parish and County, 562-6).

46 Paley, "Middlesex Justices Act," 200 & 207-19; and Paley, "Imperfect, Inadequate and Wretched System," 107-8. Paley points out that there was difficulty in finding suitable men to fill even those stipendiary positions that already existed. In fact, neglect of magisterial office by the "responsible" classes had been a noticeable problem in the country at large from the beginning of the century. In the provinces, this was most obviously manifest in a growing trend toward the appointment of clergymen as magistrates in the place of an increasingly neglectful gentry. Despite the obloquy attached to "squarsons" in some circles, many of them proved to be peculiarly dedicated in their attention to their duties (Webbs, Parish and County, 350-60; Landau, Justices of the Peace, 319-32; Langford, Public Life, 410-36; Skyrme, History of JPs, 2:29-36; and Eastwood, Governing Rural England, 77-82). For the growing conviction in some places that the problems of the urban experience were not confined to London, see below Chapter 7, part II.

47 W.L.C.L., Lacaita-Shelburne Papers (S.Wright to Shelburne, 1 Aug 1782).
Metropolitan Police bill, possibly as early as 1782 and almost certainly by mid-1783.⁴⁸

There also exists a less detailed but similar proposal, submitted to Richard Sheridan in 1781 in anticipation of the creation of "3 or 4 public Offices with an Allowance of good Salaries to the presiding & acting Magistrates ...."⁴⁹ So both the notion of a paid magistracy, and perhaps even a perceived need for it, had been known to Home Secretaries almost from the outset in 1782. But presumably it was decided not to have resort to so striking (and expensive) an innovation before first trying to invigorate that which already existed.

Having at some point decided on its necessity, however, its attempted execution was clumsy in the extreme and withdrawn in quiet embarrassment three weeks after its introduction in late June 1785.⁵⁰ If the possibility of attempting such a measure had been so long anticipated by the Home Secretary, why did it prove such a dismal and immediate failure? At least two, and perhaps three answers were involved. In the first instance were the complaints of those like Thomas Bishop, who maintained that the introduction of stipendiary magistrates (the bill proposed thirty, three in each of nine divisions plus three supervising commissioners) would only further reduce the quality and effectiveness of the Middlesex magistracy because "the few remaining respectable Justices who continue to act properly will

⁴⁸ "A PLAN for establishing a certain number of offices in Westminster and Middlesex under the auspices of Government for the administration of justice by a certain number of Magistrates to be appointed thereto with salaries or stipends annexed." Copies of Wilmot's "Plan" may be found at HO 35/5; HO 42/1 ff.431-2; HO 42/5 ff.330-2; and W.L.C.L., Shelburne Papers 152/45. Only the third copy bears a cover letter and precise date. However Shelburne's fall from both office and favour after February 1783 was so rapid and complete that it is unlikely that anyone would have submitted a project to him for consideration thereafter, so Wilmot's "Plan" probably predates the Metropolitan Police bill by more than two years at least. Note that Wilmot sought to confine the stipendiary magistrates to Middlesex alone.

⁴⁹ SP 37/15 ff.391-2. This is probably the same plan that was again brought to the Home Department's attention in 1782, and again in 1785 (HO 42/1 ff.416-20; and HO 42/6 ff.383-4). The latter precisely captures the essential philosophy underlyng the Home Department's policing efforts: "a continued attention to the detection of smaller Crimes, and to the providing for those Youth, whose evil habits and bad connections leave them no alternative from Thieving, will prove in time effectual preventives" (f.383).

immediately withdraw themselves from an office which they think cannot be executed with effect by hirelings.\textsuperscript{51} Second, and far more immediately compelling, was the preference of many metropolitan authorities, faced with what seemed unprecedented levels of violent crime, for a decisive emphasis on deterrent punishment as a preventive strategy rather than more determined petty prosecutions.\textsuperscript{52}

The principal explanation for the failure of the Metropolitan Police bill, however, is to be found in the indifference and incompetence of the government which so completely mismanaged it. The measure might have passed in the first place had it not been so ineptly drafted, and for this Sydney himself must bear the principal blame. It should be recalled that Sydney had only re-entered the Home Department under Pitt with extreme reluctance after the Earl Temple's panicked resignation during the ministerial crisis of December 1783, when Sydney was "looked upon as one who is ready to go up in Storm." His primary political loyalties appear to have been to the King and to Shelburne. Having originally entered parliament under the Duke of Newcastle in 1754, Thomas Townshend had drifted toward the Chathamites over the course of the American crisis.\textsuperscript{53} So far as any proclivity for penal reform was concerned, it perhaps boded ill that he had been prominent amongst the sceptics regarding Eden's Hard Labour legislation of the late 1770s.\textsuperscript{54} Many observers ranked Sydney's abilities lowly, and attributed his relative longevity in office under Pitt solely to the

\textsuperscript{51} Bishop felt that, instead, Pitt should "use his influence to prevail on Men of Rank and Character to devote a little time to an Object of so much importance ..." (HO 42/6 f.147v). Some MPs also expressed concerns for what might prove to be the further degradation of the Middlesex bench; see \textit{Parliamentary History} 25 (1785-86): 896-7 & 908.

\textsuperscript{52} See below, Part III. It is also possible that the City was simply content with its own policing arrangements, for which see D. Rumbelow, \textit{I Spy Blue: The Police and Crime in the City of London from Elizabeth I to Victoria} (1971), esp. ch.5.

\textsuperscript{53} \textit{Commons} 1754-90, 3:554-6.

\textsuperscript{54} \textit{Parliamentary Register} 1774-80, 3:388-9 & 402; and \textit{Parliamentary History} 19 (1777-78): 970.
fact that one of his daughters had married Pitt's elder brother, the second Earl of Chatham.

James Bland-Burges thought Sydney

a good-natured, heavy man, whom family connections, perseverance, and strength of lungs had brought into a sort of notoriety, quite disproportionate to his talents and acquirement, either literary or political. He had a sort of technical knowledge which in some measure qualified him to discharge the functions of Home Secretary of State, which, for the most part, demand a smaller share of splendid abilities than is necessary in the other principal departments of the Executive Government.  

Not much kinder, but more accurate, was the estimation of Nicholas Wraxall: "[A]s secretary of state, under Lord Shelburne's government, Tommy Townshend displayed very considerable talents. Lord Sydney, when removed to the upper house of parliament, seemed to have shrunk into an ordinary man."

In following the course of the policing measures which Sydney had originally conceived with Shelburne, we can see a measure of truth in Wraxall's perception of his declining engagement with policy from one ministry to the next. With the exception of the limited circular to the Rotation Offices noted above, there is no evidence that Sydney was pursuing the policing strategy of 1782-3 with the same energy that he had done in association with Shelburne. He seems to have left the drafting of the Metropolitan Police bill largely in the hands of John Reeves, a young barrister and author who sought to make a career for himself as a self-appointed "expert" adviser to government on a variety of subjects. In this he would succeed more than most. He had first contacted Townshend in May 1784, seeking

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55Bland-Burges did not scruple to limit his distaste to Sydney's official conduct: "He had, moreover, a kind of absurd pomposity - perfectly natural, and well assorting with his large, clumsy figure and broad, meaningless face, in which not a ray of intelligence was discernible - that sometimes was inestimably comical;" see Selections from the Letters and Correspondence of Sir James Bland Burges, Bart., Sometime Under-Secretary of State for Foreign Affairs, ed. J.Hutton (1885), 66-7.

56N. Wraxall, Historical Memoirs of My Own Time (1904), 1:155 (emphases in original).
"some permanent situation," after failing in similar efforts with the Lord Chancellor.\textsuperscript{57} He later would serve as Chief Justice of Newfoundland (1791-2), founder of the Loyalist Association (1792), Receiver for the Westminster Police Offices (1792-9), and finally in the office of the King's Printer (1799 on).\textsuperscript{58} In 1785 however, Reeves's youth and inexperience perhaps went a long way toward explaining the central blunder of including the fiercely independent City in the Metropolitan Police bill’s provisions - something which, it should be noted, its earliest proposers had already explicitly avoided.\textsuperscript{59}

However we do City officials an injustice if we neglect to note - as they themselves did in their Petition - that many of the bill’s provisions in fact gave startlingly wide search and arrest powers to the officials it created. Reeves's bill contemplated much larger extensions of magisterial power than Shelburne and Sydney ever had.\textsuperscript{60} The charge that the bill would introduce anti-libertarian, French-style policing in the metropolis did not seem

\textsuperscript{57}Brotherton Collection (Leeds U.), Sydney/Townshend Papers H39. Reeves was pressing the completed draft of the bill on Sydney’s attention, for distribution to the Lord Chancellor and the Law Officers, more than two months before it was actually introduced in the Commons (HO 42/6 f.183). Payment to Reeves of £300 for drafting the bill is recorded at HO 36/5 p.1.


\textsuperscript{59}See the references above at nn48-9. Reeves at least anticipated City defensiveness over its local authority. He was careful to specify that no warrant issued by the new police commissioners would be valid within the City of London without a similar warrant from either the Lord Mayor or one of the Aldermen (see the text of the bill in Commons Papers, 46:515-6).

\textsuperscript{60}Paley, "Middlesex Justices Act," 221-6. The City’s petition may variously be found at J.H.C. 40 (1784-85): 1112; Parliamentary History 25 (1785-86): 900-1; and GM 55 (1785): 486 & 589. The full provisions of the bill are too extensive to be summarized here; see the secondary sources noted in n61 below, and the bill itself in Commons Papers, 46:503-34. One example will serve to illustrate how far beyond Shelburne and Sydney’s original measures Reeves sought to go. Whereas Sydney carried an Act of 1783 for the arrest and imprisonment of people caught carrying implements of robbery and burglary during the night, the Police bill sanctioned similar treatment for "all Persons in the Day Time loitering about, without having any visible Means of maintaining themselves, all Persons notoriously suspected of being Thieves, and all Persons gaming in the public Streets, Bye Places, or Fields ..."(p.521).
incredible to its critics, and not merely those in the City.\textsuperscript{61} The bill was all the more easily portrayed as subversive in so far as - like so many other potentially controversial measures of legal reform - it had been presented late in the session, when many of its most likely opponents, the country backbenchers, had already departed for the summer.\textsuperscript{62} Be that as it may, it was above all in arousing the City's ire that the bill became politically controversial.

This inevitably made its success critically dependent on Pitt himself. As the leading government spokesman (and only cabinet member) in the Commons, the ultimate responsibility for defending it fell to Pitt. But outside the fiscal realm, Pitt demonstrated little interest in substantial measures of domestic policy during the 1780s. He appears to have taken only the most minimal and distant part in the debates on the Police bill. Indeed he seems to have offered no comment on it at all until after it had already been withdrawn, something which occurred almost immediately once the opposition to it of the City of London - the principal site of the mercantile interests on whom so much of Pitt's policy and security depended - became vociferous and intransigent.\textsuperscript{63} The ever-cautious Pitt, conscious of his political dependence on mercantile interests and presiding over a session that had already run deep into the summer, took the shortest way with the measure at hand.

By the time the reintroduction of a revised version was being considered the following

\textsuperscript{61}For the full provisions of the bill and the opposition to it, see Radzinowicz, History, 3:108-21; Philips, "New Engine of Power and Authority," 165-71; Paley, "Middlesex Justices Act," 221-6; Palmer, Police and Protest, 89-91; and Reynolds, "Night Watch and Police Reform," 290-6.

\textsuperscript{62}This was pointed out in debate by both William Eden (who had made such wide use of the same tactic himself a decade earlier) and Lord Beauchamp; see Parliamentary History 25 (1785-86): 894-6. See also Philips, "New Engine of Power and Authority," 172-4.

\textsuperscript{63}Parliamentary History 25 (1785-86): 906-7.
year, Pitt had decisively rejected it, probably because of the expense it would entail. The paucity of extant personal correspondence for both Pitt and Sydney makes it impossible to know exactly what reasoning went into Pitt’s final rejection of the bill in 1786. That same year, as we have already noted, he appears to have been re-evaluating the Penitentiary scheme (although not, I suspect, with any great seriousness). It seems more likely that Pitt, like his allies in the City, expected the imminent resumption of transportation on a regular basis to preclude the need for any extensive - and expensive - measures of regulatory activity on the part of government.

An active and engaged Home Secretary, and particularly one who was personally close to Pitt, might have made some inroads against Pitt’s temperamental inactivity. But Lord Sydney had never been engaged and, after 1785 - indeed, perhaps 1783 - he was no longer active either. His last, minimal contribution to the policing philosophy he had formed under Shelburne was to endorse and distribute the 1787 "Proclamation for the Encouragement of Piety and Virtue, and for the Preventing and Punishment of Vice, Profaneness and Immorality," marking the largest revival in reformation of manners activity since the 1690s. Sydney circulated it to the Custodis Rotolorum and High Sheriffs of the counties, lamenting "the Depredations which have been committed in every Part of the Kingdom" and declaring that "the exertions of all Persons in Authority are now become absolutely and indispensably necessary even for the preservation of the Lives and properties of His Majesty’s Subjects." His circular thereby indicated the government’s specific concern that "the strict execution of

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64“Rose [Pitt’s Treasury secretary] says he knows nothing of the [new] Bill," wrote J.T.Townshend to his father, "although he has had it two or three months in his hands; and he objects to the money which it will cost" (Brotherton Collection [Leeds U.], Sydney/Townshend Papers K9). The debates of 1785 set the estimated cost at £20,000 per annum. A handwritten copy of the bill is preserved amongst Pitt’s papers at PRO 30/8/234 ff.117-65. Reeves regarded the bill, not as having been defeated, but as having been "not passed" and dated that failure from 1786 (S.R.O., GD 51 1/264/4).
the Laws... against the profanation of the Lords day, Drunkenness, Swearing and Cursing and other disorderly Practices" should serve to prevent the worst sorts of criminal offenders ever developing - a far more narrow view of the matter than many members the Proclamation Society took - and he subsequently expressed his expectation of its having "the best effect." However the Proclamation’s appearance also marked the return of initiative in such activity from government to the public-minded citizen. There is little or no evidence of substantial or sustained government involvement in any of the subsequent activities of the Proclamation Society. Sydney himself seems to have been biding his time thereafter, and his retirement in June 1789 was attended with few tributes or regrets, official or otherwise.

For his part, John Reeves had been unable to conceal his dismay at the abandonment of the Metropolitan Police bill. "This happens to be a subject that has been more agitated, & is better understood, than most subjects of executive government, particularly since 1780. ... [T]he Plan was nothing new, for it was in agitation in Ld Shelburne’s Administration ...." Reeves erred in his belief that his bill embodied the same propositions - in either geographic extent or overtly authoritarian reach - that Shelburne and Sydney first conceived. But in the latter assertion, as we have seen, Reeves was largely correct. The basic idea had at least

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65The text of the Proclamation can be found at GM 57 (1787): 534-5. Copies of Sydney’s circular can be found in Add MS 35682 ff.383-4; and W.M.Godschal, A General Plan of Parochial and Provincial Police (1787), 101-3 (see also HO 42/7 ff.63-6). For Sydney’s hopes for "the best effect" from the Proclamation, see HO 13/5 pp.333-4. For a graphic illustration of the persistent linkage between moral backsliding and the worst sorts of criminality, see GM 59 (1789): 399.

66For the activities of the Proclamation Society and its allies, see M.J.Quinlan, Victorian Prelude: A History of English Manners, 1700-1830 (New York, 1941), chs.2-3; Radzinowicz, History, 3:141-207; and Innes, "Politics and Morals," 57-118.

67In 1791 John Robinson reported a rumour that "Ld Sydney is again Secretary of State ... Better any one than him" (Add MS 38226 ff.161-2 [emphases in original]).

68HO 42/7 f.258r.
been contemplated by Shelburne and Sydney, and to an extent that has been insufficiently appreciated by historians who often view the Metropolitan Police bill as a precipitously conceived measure of centralization. That it was, moreover, the outcome of a deliberate decision to discontinue the Penitentiary project suggests that there was an interaction between ideas of policing and penal reform that has yet to be articulated in its full depth and extent.

II. The Crisis of the 1780s (1): Treasury and Home Department

By comparison, the remaining activity of government in criminal justice administration during the 1780s was largely unsophisticated and undirected, and can be summarized briefly. As with the cancellation of the Penitentiaries and the failure to carry the Metropolitan Police bill, the shadow of Treasury constraint hangs heavily over both the resumption of transportation and the extension of the hulks establishment. But whereas the Home Secretary actually sponsored some degree of innovation in the form of metropolitan policing initiatives, there is little evidence of any initiatives or even a clear sense of purpose regarding an established governmental role in the physical disposition of the nation’s convicts. If the Home Department seemed merely reactive in these matters, this appears to have owed as much to a lack of initiative on the part of Home Secretaries as to the Treasury’s ultimate control over money. All contracts to transport and supply convicts, as well as all quarterly payments to the managers of the hulks, were vetted and determined by the Lords of the Treasury after consultation with the Home Department.

Indeed it is no great exaggeration to characterize the Home Department as serving an advisory function to a financial department which might properly be viewed as the true determiner and director of domestic policy. And again, it must be emphasized that the degree to which this was true was as much a function of personality as structure. Pitt achieved
command over the details of his government as much by force of personality as by any comprehensive attention to the details of administration. We should speak more properly of "government," as a collective noun embracing both Treasury and Home Department, than of the latter as the clear determinant of criminal justice administration during Pitt's ministry - at least in so far as the disposition of convicts was concerned.

With this in mind, we may offer a brief overview of government involvement in the three non-capital modes of convict disposition - imprisonment, transportation and the hulks - during the 1780s.

It must be emphasized in the first place that the government's cancellation of the Penitentiary project did not constitute a rejection tout court of imprisonment as a mode of punishment. The belief that certain classes even of serious offenders could be fully rehabilitated had made large inroads on English penal practice even before 1775. Although Sir Charles Bunbury's bill to impose comprehensive standards in all English prisons had failed in 1779, similar but more limited measures came before parliament during the next five years. The first such Act, passed in 1782, was the second of three extensive, ambitious and co-ordinated measures for addressing the associated problems of poverty, vagabondage and criminality. The others, one regarding poor relief and another (which failed) regarding the detection, pursuit and imprisonment of rogues and vagabonds, had first been introduced by Thomas Gilbert late in the 1781 session for the consideration of MPs during the summer recess.69 Gilbert's Houses of Correction Act set basic conditions for such buildings in

69 J.H.C. 38 (1780-82): 482, 502 & 512; and Parliamentary Register 1780-96, 3:372-5. See also T.Gilbert, Plan for the Better Relief and Employment of the Poor; etc. (1781), esp. 15-9 & 24-5. The unsuccessful bills regarding rogues and vagabonds are in Commons Papers, 33:307-24 (1781); and 34:167-88, 189-218 & 219-34 (1782). The "Act for the better relief and employment of the poor" is 22 Geo. III. c.83. Only this latter is well-known to historians, but the larger sense it reveals of the problem and its connections to idleness and crime is a reminder of how central such a mental framework was to eighteenth-century legislators and commentators. The Gentleman's Magazine likened Gilbert's efforts to those of John Howard; see GM 51 (1781): 529.
England and Wales - but only if, on inspection by one of their own number, the magistrates of Quarter Sessions deemed them not to have been already fulfilled. These conditions included the requirement that "felons and thieves" be housed separately from mere vagabonds and other prisoners, as also male and female prisoners from each other; that a defined regimen of hard labour be imposed on all those imprisoned for felony and theft; that the governor be salaried (as also might be a clergyman); and that the county Quarter Sessions nominate inspectors to ensure that these provisions were carried out. However, to rebuild Houses of Correction - as would have been necessary in many instances to meet the standards of Gilbert's Act - would take both time and money. Moreover, many local authorities were slow to carry out even the initial inspection. In the summer of 1784, Gilbert introduced and carried an amended version of the Act which obliged them specifically to do so at the next Quarter Sessions, allowing also for the borrowing of money and sale of old Houses of Correction should that prove necessary.

Meanwhile, by the late spring of 1783, it was becoming apparent to many MPs that their county gaols were now so crowded, and in many cases so dilapidated, that they could no longer be expected to hold prisoners with any reliable degree of health or security. This provided the impetus for a bill of that year whose primary purpose was to suspend the requirement that county magistrates await a presentment before sanctioning the reconstruction of their gaol. It also made provision to relieve them of the penalties to which they would be subject should any prisoners escape in the course of being held elsewhere during

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70 22 Geo.III. c.64. Initial, largely similar versions of the Act can be found in Commons Papers, 33:191-202 (1781); and 34:1-12, 13-26 & 27-38 (1782).

71 24 Geo.III. s.2, c.55. After surviving a motion to block it, the bill passed through a sparsely populated Commons in less then a month, receiving the royal assent the day before parliament was prorogued on August 20th (J.H. C. 40 [1784-85]: 367 & 450; and Parliamentary Debates 1784-92, 3:212-4).
reconstruction. In terms of regimen, the bill’s provisions were quite minimal, requiring only a tripartite classification of prisoners (male and female felons, and debtors - the Newgate model) and permitting (but not requiring) magistrates to purchase any extra land that might be required to achieve this.\textsuperscript{72} The bill encountered opposition in the Lords where, although its principle was welcomed, it may also have been recalled that the practice of presentment was specifically intended to ensure that all interested parties in the locality be heard before the Quarter Sessions proceed in any major building projects. (It was perhaps for this reason that local gaol rebuilding proceeded by individual act rather than by any comprehensive measure.) The Lords returned the bill with amendments, but the session lapsed before the Commons could consider it further.\textsuperscript{73}

By the time parliament met again late in the fall of 1783, petitions were flowing in from all over the country pleading the urgent need to relieve the gaols of their burden of untransported convicts.\textsuperscript{74} The County Gaols bill was re-introduced only two weeks into the new session, but was almost immediately stalled by the political crisis which followed the dismissal of the Fox-North Coalition less than a month later. When the matter was resumed in March 1784, permission was secured to add "a Clause or Clauses for the internal Regulation of Gaols." The new bill featured slightly more elaborate, essentially Howardian principles of separation and classification - "namely, Debtors, Accused Felons, Convicted Felons, [and] Inferior Criminals." It further empowered local authorities to divert petty

\textsuperscript{72}Parliamentary Register 1780-96, 9:678. No text of the bill exists, but it seems safe to assume that the measure introduced almost immediately in the following session, and which was subsequently much altered and expanded, follows it closely (Commons Papers, 35:377-84).

\textsuperscript{73}J.H.L. 36 (1779-83): 701, 707 & 713-4; and Parliamentary History 23 (1782-83): 1046-9. For the rules of presentments, which dated from 1739, see Chester, English Administrative System, 23-4.

\textsuperscript{74}J.H.C. 39 (1782-84): 731, 733-4, 744, 888-9, 906 & 988-989.
offenders from the county gaols to the Houses of Correction, thereby minimizing the population of the former and enabling some degree of specialized function in each. It also gave local authorities the option of introducing salaried keepers and a specified dietary regime to ensure the health of inmates. In tandem with Gilbert’s Houses of Correction Act, such a measure leaned in the direction of that extensive national system of reformed prisons attempted by Sir Charles Bunbury in 1779, and it was surely Bunbury’s prominent involvement in this second County Gaols bill that ensured that this was the case. But parliament was dissolved less than two weeks after the revised version was introduced, and Bunbury was to lose his seat in the ensuing election, not returning to parliament until 1790. It was therefore not until the summer of 1784 that a revised version of the bill was finally passed, this time under the sponsorship of the government. The County Gaols Act of 1784 was essentially a tidied-up version of Bunbury’s bill, incorporating the health provisions of Popham’s Act of 1774 and also making more detailed allowances for local authorities to raise the necessary funding to rebuild their gaols.

By comparison with the Penitentiary Act, both the Houses of Correction and the County Gaols Acts set out extremely limited prison regimes. Indeed, other than requiring a very basic system of classification, the latter specified no regimens of hard labour or discipline. And both were voluntary in character, depending on magisterial initiative for their fulfilment rather than central supervision. Local magistrates were at liberty to decide for

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75 J.H.C. 39 (1782-84): 740, 984 & 993; Commons Papers, 35:385-96; and Commons 1754-90, 2:140. For Bunbury’s bill of 1779, see pp.176-9; for his prison reform activity after his return, see pp.339-43.

76 24 Geo.III, s.2, c.54. The text of the bill is at Commons Papers, 46:29-40 & 41-64. The principal movers behind the bill were William Selwyn (a cousin of Home Secretary Sydney), the law officers, and Lord Mulgrave, a Pittite. The Chairman of the Middlesex bench, William Mainwaring, was also active at the committee stage, as was Thomas Gilbert (J.H.C. 40 [1784-85]: 222, 254, 304 & 415; Parliamentary Debates 1784-92, 3:213; and Commons 1754-90, 3:277-8 & 421).
themselves whether their Houses of Correction were wanting in the terms that Gilbert's Act stipulated. Nor were they actually required to rebuild their county gaols along the newly specified lines unless they felt compelled to do so.

If all of this seems short-sighted from the point of view of penal reform, such a perspective may not be that which best applies in this matter. Both the Houses of Correction and the County Gaols Acts were largely the work of MPs who were careful not to impose on all counties a heavy financial and administrative burden that might not seem equally necessary to all. Some local officials were intensely interested and active in penal reform (see Part IV), but many - perhaps most - were merely interested in securing an arrangement by which they could at least muddle through in the way they always had. We must not artificially impose a narrative of reform on what was, for many, merely a story of survival.

That said, although they did not seek to establish more than the minimal standards of health, security and classification, the Acts nevertheless reflected a broad recognition of the growing role of imprisonment in penal practice throughout the country. To some extent, they also reflected Blackstone's recognition that, in those jurisdictions unwilling to undertake the expense of purpose-built penitentiary houses, Houses of Correction - rather than the county gaols, in which serious offenders awaited trial and execution of sentence - would inevitably be the buildings in which sentences of imprisonment were carried out. Finally, and above

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78 See above at p.174. See also the observations of Henry Zouch at the same time: "If the Houses of Correction are insufficient for the purpose, why not enlarge and regulate them? Why raise separate and distinct buildings, and subject them to a new, uncertain, and expensive polity?" Like Gilbert, Zouch also felt that such a project should proceed in association with larger ambitions about poor relief and workhouses (Observations
all for present purposes, it should be emphasized that, with the exception of the County Gaols Act of 1784 - for which most of the groundwork had already been laid - the impetus behind these measures came from individual MPs rather than government.

This does not mean that government entirely rejected the principle of reformatory incarceration. Pitt's Home Secretaries frequently offered words of encouragement to those magistrates who sought to implement prison regimes along the lines of the Penitentiary Act, most notably those of Gloucestershire, Lancaster, Oxfordshire and Dorset, the former of which became a model for prison-reforming magistrates throughout the nation after the mid-1780s (see Part IV). Rather government clung adamantly to the traditional belief that the cost of erecting and administering such institutions was properly to be borne by the officials of those localities in which the offence had been committed and into which the "reformed" offender would be released.

In other words, government clung to the belief that the administration of criminal justice remained fundamentally the task of local officials. Indeed, although there is no evidence on the matter, it may be that the placing the direction of the Penitentiary project of 1779 under the supervision of a three-man committee with no direct connection to government - a principle which would again be followed, albeit on a larger scale, with the construction of Millbank in the 1810s - may have reflected the continuing conviction that certain administrative tasks were properly the province of voluntary authorities. It reflected a desire to place the London penitentiary under the supervision of an independent board, a sort of faux magistracy.

Turning from the question of imprisonment, we must in the second case remind

*Upon a Bill ..., 13-4*.
ourselves that, from 1779, few ministers or MPs had seriously doubted that there must be a resumption of transportation. However the determination of a permanent destination proved elusive and, in the meantime, the need to relieve the nation's gaols became ever more pressing. Between 1782 and 1785, government felt compelled, in piece-meal fashion, to sanction four individual voyages as temporary stop-gap measures: one to various forts on the African coast, two to America, and one to Honduras.79 These vicissitudes could only be met by adopting the inelegant tactic, in an Act of 1784, of leaving the fixture of individual convicts' destinations to the Privy Council. By 1785 Pitt's government had determined on an African site, only to face a revolt in the Commons against the choice. This led to further delays and, by the time that New South Wales was tentatively chosen the following year as the new site for transports, a fleet of six convict ships was necessary to perform the - as it proved, very much incomplete - task of clearing the hulks and gaols in 1788.80

In seeking to renew transportation, the government again clung to traditional, reactive principles of organization and response. On the most basic level, as we will see, it was faster to perceive the needs of the metropolis than those of the rest of a country. It had always provided and paid for the transportation of the convicts of the capital and the Home Circuit. It also continued to entrust the task of actually transporting convicts to private contractors. This had been an unproblematic proposition in the latter years of transportation to America, when a merchant's profit on the venture was assured. But in the absence of a fixed


80The government was unwilling to commit to Botany Bay from the outset because of the uncertainty that any settlement there would succeed; see below, Chapter 5, part II.
destination with a large, established market for indentured labour - and consequently of the ability to dispatch convicts in large numbers - contractors' costs were steep. Moreover, so far as the necessary involvement of government was concerned, the geographic scale of the problem had vastly increased. Whereas transportation to America had largely proceeded from two centres, London and Bristol, the need to establish a fixed destination of extensive capacity had the de facto effect of concentrating the entire task in government's hands. The piece-meal manner in which government approached these problems reveals an inability, or outright unwillingness, to recognize and come to grips with the fundamentally transformed context and scale in which transportation had now to proceed.

The crisis in gaols space, generated by the forestalled renewal of transportation, brought into play a third and final feature of reactive government activity in the sphere of convict administration. We have already seen that the hulks had become completely discredited as a penal measure in their own right by 1779, and that their actual use was declining sharply by 1782. The first re-extension of the hulks on the Thames, authorized by the Treasury at the end of 1782, explicitly identified it as a stop-gap measure ("a temporary

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81 In 1772, when government ended its contract with Duncan Campbell for transporting convicts to America, the cost was £5 each (see above p.128). In 1783 Mason, Blundell & Masterson received £7 10s. for each convict they carried to Africa (SP 44/330 p.171). In 1783 George Moore charged approximately £3 10s. for each convict transported to America; the following year he asked five Guineas - nearly £2 more (SP 44/330 p.313; and HO 36/4 pp.48-9). Anthony Calvert proposed to carry convicts to Africa in 1785 for £12 12s. each (HO 36/4 pp.238-9; and HO 42/6 f.30). In 1785, when Botany Bay was rapidly becoming one of the few options remaining to government, Campbell estimated that it would be impossible to take convicts there "for less than £30 a Man" assuming 300, or £40 if only 200 (HO 7/1 f.81v).

82 This point was asserted by a Commons Committee on Transportation of 1785, which observed of transportation to America: That the Climate [of America] being temperate, and the Means of gaining a Livelihood easy, it was safe to entrust County Magistrates with the discretionary Power of inflicting it - [and] That the Operation of it was thus universally diffused over the whole Island, as well as This Metropolis - (J.H.C. 4û [1784-85]: 1161) This was to prove compellingly true in 1789 when government was confronted with the enormous added problem of Irish convicts for transportation; see below, pp.316-9.
place of confinement") to provide for an overcrowded Newgate gaol until such time as the transports confined there could be dispatched overseas.  

The passive and reactive approach of government to the administration of the hulks was also apparent both in the pattern of their extension and in the character of their management and oversight. There seems never to have been any question that Duncan Campbell might lose the management of the hulks on the Thames after his original contract had expired in July 1782, probably because the arrangement was only countenanced "till future regulations are known." But when a single hulk was established at Plymouth in March 1784, it was placed under the management, not of Campbell, but of William Cowdry. The Dunkirk only ever held a maximum of 85 convicts, and Plymouth appears to have been selected primarily because it was the nearest appropriate site at which to house most of the sixty-seven convicts who had escaped from the convict ship Mercury during the first attempt to transport convicts to America after 1775. It seems to have come as a surprise that the services of the Dunkirk continued to be necessary beyond 1784, and Cowdry was specifically directed to ensure that the unanticipated purchase of clothing for the coming winter be conducted "in the most oeconomic means ... that may be proper for that purpose."

83 W.L.C.L., Shelburne Papers 163 (Treasury minute, 28 Dec 1782); copy at Add MS 42775 ff.178-9. See also HO 35/4 (G.Rose to E.Nepean, 3 Jan 1783), which repeats the text of this minute in which the Treasury gave its sanction for the extension.

84 Add MS 42775 ff.18, 22-3, 24-5, 64 & 86. In the event, no action seems to have been taken in the matter until another year had passed, by which time the national scope of the problem had become apparent (see HO 13/1 pp.233-4; and Part IV below). Campbell's first contract, as required under the Removal of Offenders Act (1784), emphasized "the unusually great number of offenders now under sentence of death and order of transportation in the Gaols within England and Wales ..." So too did its renewal under the Transportation Act (1784); see HO 13/2 pp.118-9, 298-302 & 302-4.

85 SP 44/232 pp.176-7; HO 13/2 p.129; HO 36/4 pp.165-6; and HO 42/4 ff.139, 186 & 269-70. William Cowdry had previously had the care of prisoners of war at Plymouth, and had more recently been recommended by government to the authorities of Kent as an expert in the healthy administration of gaols (HO 13/1 pp.350-1).

86 HO 13/2 pp.292-3.
Another factor, purely external to considerations of central direction if not to some degree of administrative efficiency, was the potential usefulness of the convicts as cheap labour on the massive fortifications projects at Plymouth and Portsmouth. This was clearly the main reason for the subsequent removal to Portsmouth, late in 1785, of the hulk at Plymouth. A frugal government hoped in this way to secure some "return" on the expense of its temporary expedient, and perhaps particularly after February 1786 when the government’s proposal for full-scale funding of the fortifications project was defeated in parliament. Only a few weeks before this, Pitt had defended the use of the hulks on the grounds that it necessarily became incumbent on Government to dispose of the convicts in such a manner, as should at once serve to free the jails of their company, and to keep the felons employed in a way most likely to be felt by them as a punishment, and to conduce, in some degree, to the public service. These works were carried on by the Ordnance Board and it is surely relevant that its Master General from 1783 to 1795, the Duke of Richmond, was both an advocate of Howardian prison reform and a patron of the new gaol at Horsham in Sussex. For Richmond, the application of hulks labour to his massive fortifications projects must have seemed a happy confluence between his conviction that even serious offenders could be reformed by hard labour and his grandiose military schemes. His largely successful requests that the most able artificers amongst the hulks convicts be kept back from transportation must also constitute a

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87 HO 13/3 pp.262-4; and HO 13/4 pp.116-8. The Thames convicts had been put to work a year earlier (HO 13/2 pp.302-4; and HO 13/3 p.249). In June 1789 they were redirected from Woolwich Warren to the Dock Yards (HO 13/7 pp.71-2).


89 Parliamentary Register 1780-96, 19:54-5.
serious qualification to the proposition that the foundation of Botany Bay was, first and foremost, a determined imperial venture.90

It is unclear however how far Pitt’s government shared Richmond’s enthusiasm for the redemptive penal value of large-scale public works projects. More importantly for present purposes, the immediate oversight of the hulks continued to lack clear and consistent central direction. Duncan Campbell’s advice was sought in forming the establishment at Portsmouth, and he was assigned the oversight of a new hulk, the Fortunée, in Portsmouth Harbour late in 1785.91 But when the Dunkirk was transferred from Plymouth to Langston Harbour near Portsmouth at the same time, it was placed under the direction, first, of James Hill and then, soon after, of Henry Bradley.92 In June 1787 one of Campbell’s hulks, the Ceres, was moved from the Thames to Langston Harbour to meet the increased demand for labour on the fortifications.93 The third of Campbell’s Thames hulks (the others were the Justitia and the Censor), the Ceres had been commissioned in mid-1785 as an immediate response both to overcrowding in the gaols of the nation and the realization that parliament’s objections to the government’s plans for an African destination meant that there was no immediate prospect

90In the fall of 1786 Richmond secured the removal of twenty hulks convicts from the Thames to Langston Harbour (HO 13/4 p.214; HO 42/9 f.3; and HO 43/2 pp.166-7). In 1787 he sought specific information as to numbers of hulks convicts that had been dispatched in the First Fleet to Botany Bay, the number left, and the cost of their upkeep (HO 13/6 p.10). In the fall of 1789, all but 42 of 280 artificers that he requested be kept back from the Second Fleet were retained (HO 42/15 ff.264 & 257-60, 333 & 350; and HO 43/3 p.92). For the debate over the origins of Botany Bay, see the references below, pp.303-4 n59.

91PC 2/130 pp.392 & 400; HO 13/3 pp.281-4 & 321-5; HO 36/5 pp.15-7; and HO 42/7 ff.103-4, 172-4 & 177.

92HO 13/3 pp.258-9, 265, 280, 326 & 351-5; HO 35/7 (G.Rose to Nepean, 22 Feb 1786); HO 42/7 ff.170-1 & 172-4; and HO 42/8 ff.100-1. William Cowdry appears to have lost the contract for the Dunkirk against his will, and subsequently pleaded the financial loss this had caused him (HO 13/3 p.356; HO 42/7 f.146; HO 42/8 ff.80 & 119; and PRO 30/8/222 ff.261-2).

93HO 13/5 pp.213-5 & 249-51.
for the resumption of transportation. When the departure of the First Fleet in May 1787 proved insufficient to clear the gaols and hulks, Campbell's Thames complement was restored to three by the addition of the Stanislaus. The following spring, yet another hulk, the Lion, was placed under his direction in Portsmouth Harbour. In both instances, the Home Department's letters to the Treasury emphasized both the force of necessity given "repeated accounts of the crowded states of the gaols" and the merely "temporary relief" that the hulks were to provide. The result was that, by 1788, government was paying for the upkeep of seven hulks, three on the Thames and four at Portsmouth. Save for one at Portsmouth, all were under the management of Duncan Campbell.

The lack of any systematic, inspecting authority positioned between the contractors and the Home Department confirms the absence of a coherent, centrally directive vision at work. Nor is the reason for this lack of direction hard to find. Pitt and his Home Secretaries clung to the belief that the hulks would be a temporary measure, that there would come a day when the nation's gaols had been both sufficiently relieved in numbers and reformed in practice that the hulks expedient would be altogether eliminated and the self-activating pre-1775 mode of procedure restored. In planning the Second Fleet in September 1789, Home Secretary Grenville expressed the hope that the one thousand convicts that government planned to dispatch would "be sufficient to enable us to clear all the Gaols," adding that "it will be expected in future that the Counties should defray the expence of transporting their

94 HO 13/3 p.195; and HO 36/4 pp.267-8 & 311. For parliament and the government's African plans, see below Chapter 5, part II(1).

95 For the Stanislaus, see HO 35/8 (T.Steele to E.Nepean, 29 Oct 1787); HO 36/5 p.319; and HO 13/6 p.32. For the Lion, see HO 35/9 (T.Steele to Nepean, 15 April 1788); HO 36/6 pp.41-2 & 141; and HO 43/2 pp.295-6 (quotes at HO 36/5 p.319 and HO 36/6 pp.41-2). See also Oldham, Convicts to the Colonies, ch.3, which however crucially errs in assuming that the Lion and Stanislaus were added before the departure of the First Fleet (p.62), thereby understating the scale of the problem with which the government was still faced as late as 1788.
Convicts, except those on the Home Circuit - This having been the usual practice at the time that the Convicts used to be transported to America.96

Such hopes and expectations informed the two Acts passed by the Pitt government in the spring and summer of 1784. The first, passed before the dissolution and election, seems primarily to have been intended to allow government the freest possible hand in meeting the crisis of overcrowded gaols. It gave legal sanction to the recourse of removing to the hulks prisoners sentenced to transportation until such time as their sentence could be carried into execution. (In fact, the Act simply sanctioned removal without specifying to what place [ss.1 & 3], but the choice of the hulks was already well-understood.) This was by no means acceptable to many MPs, including Bunbury, Charles James Fox, Lord North and Lord Beauchamp, who feared that the effect might be to alter a prisoner’s sentence to a punishment potentially worse than that prescribed by the letter of the law. They were presumably pacified by the clause which stipulated that such convicts could not be set to labour against their will (s.5). Expenses incurred in this manner were to be laid before parliament annually for its approval, a provision which affirmed the necessarily close tie between the Treasury and the Home Department in monitoring the system (s.12). Provision was also made to further relieve local gaols by the removal of petty offenders to a House of Correction (s.9). The ongoing inability to find a fixed destination for transports was obviated by a clause enabling the sentencing court "to order that such offender shall be transported to any other part beyond the seas, which shall appear to such court proper for that purpose" and for the same number of years (s.11). Finally, supervision of conditions on board the hulks was to be exercised through the medium of quarterly returns to the Court of King’s Bench

96HO 42/15 ff.182-3 (draft).
in the event, an utterly minimal and ineffective mode of regulation. 97

This Act was replaced early in the new session by a more comprehensive measure which combined the relevant provisions of the old transportation laws, including the provisions granting contractors property in the service of the offender (ss. 1-4), and incorporating the temporary removal provisions of the Act it superseded (ss. 6-12 & 14).

There were some alterations and additions. The final determination of the actual place to which individual convicts would be transported was now left to the decision of the King, "by and with the advice of his privy council," (s.1) a requirement that would continue in effect until 1824. 98 And once again, as in the Transportation Act of 1768, the death sentence was specified for all those who might return to Great Britain or Ireland before the expiration of their sentence, as well as a £20 reward for those who prosecuted such offenders to conviction (s.5). 99 The following year, government once again extended these provisions to Scotland. 100

One final provision of the Transportation Act of 1784 warrants comment. It also continued the non-transportation provisions of the Penitentiary Act (which was to expire after

9724 Geo.III, s.1, c.12. The bill is at Commons Papers, 35:427-34. See also J.H.C. 39 (1782-84): 963 & 1032 (which indicates that Thomas Steele, one of the Treasury Secretaries, managed the bill at the committee stage); Parliamentary History 24 (1783-85): 755-7; and GM 54 (1784): 289, 292 & 295. For conditions on board the hulks before the nineteenth century, see W.B. Johnson, The English Prison Hulks (rev.ed., 1970), chs. 2-4.

98 The end of this practice coincided with the passage of the Transportation Act of 1824 (5 Geo.IV, c.84). However, since this measure preserved that power (s.3), why exactly it ceased to be exercised remains a mystery to me.

9924 Geo.III, s.2, c.56. See also J.H.C. 40 (1784-85): 380; and Commons Papers, 46:205-16. The bill appears to have been drawn up by Sydney’s cousin William Selwyn, who was specifically added to the drafting committee a few days after the bill was ordered and who then immediately presented it (J.H.C. 40 [1784-85]: 395). Selwyn may also have been the author of a summary of previous Transportation measures that is preserved amongst Sydney’s Papers; see W.L.C.L., Sydney Papers 11 (untitled paper, n.d. [c.Aug 1784]). See also HO 42/5 f.46. Campbell’s views were also solicited (HO 42/4 f.258).

10025 Geo.III, c.46. See also J.H.C. 40 (1784-85): 1026, 1032 & 1066.
June 1784) until June 1787. But we have already seen that government had decisively abandoned the Penitentiary project in September 1782. The continuation clause (s.18), which appears as an afterthought to the main body of the Transportation Act, was presumably included only to appease those MPs such as William Wilberforce (a close friend of Pitt’s) who remained ardent supporters of the project. That many still supported it, and were either ignorant of or opposed to its decisive rejection by government, was clearly indicated by the Commons Committee of 1784 that had been appointed to investigate what progress had been made in its implementation. 101 Historians of penal reform, who sometimes point to this provision in identifying or implying an unbroken line of development following on the Penitentiary Act of 1779, are correct only in so far as Pitt continued to experience difficulties in containing the ardency of its supporters.102

The legislation of 1784-5 clearly demonstrated the desire of government to return, as soon as possible, to that pre-1775 system in which local authorities managed the disposition of their own convicts, either through transportation by private contract or incarceration in local prisons. The hulks were a temporary stop-gap, to be abandoned as soon as they were no longer necessary. It was only by the late 1790s, as the hope of returning to any situation like that which prevailed before 1775 became more and more chimerical, and an ongoing custodial role for government a de facto reality, that attitudes amongst ministers towards convict administration would begin to change from a reluctant and reactive outlook to a

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101 J.H.C. 39 (1782-84): 844, 982-3 & 1040-6. Two of the Penitentiary project’s foremost champions, Sir Charles Bunbury and Sir Gilbert Elliot (both of whom were commissioners for carrying the Act into effect), had lost their seats in the summer election, the former not to return until 1790 and the latter 1786 (Commons 1754-90, 2:140 & 396). For Wilberforce’s activity on the matter, see above at n12.

102 O’Brien, Foundation of Australia, 106; and McConville, English Prison Administration, 109. See also below, Chapter 5, part IV.
growing acceptance of an influential and directive supervisory role on a nation-wide scale.\footnote{See below, pp. 328-33 & 447-9.}

Above all, to understand convict administration during the 1780s, we must remember that Pitt’s government was faced with not one but two compelling crises. The first, which only truly became apparent after 1783-4, was a convict crisis of unprecedented proportions, with gaols in many corners of the nation reporting more prisoners than they could safely manage. But the second crisis, which had been perceived and engaged first and which took precedence over all, was that of national finance. A politician as shrewd and an administrator so careful as Pitt was not liable to sanction any broadly conceived, financially open-ended modes of administration under such circumstances. Rather Pitt’s government adhered to a traditional model of national administration, one in which both justice and the basic responsibility for carrying it out remained a local affair. Moreover, like Eden and Blackstone before him, Pitt was by no means certain that all local authorities desired (or even perceived a need for) uniformly far-reaching and expensive obligations in the realm of penal reform. The most sensible policy was therefore to maintain the status of government as a passive and reactive centre, acting only when circumstances seemed absolutely to force it to do so.

Such a force of necessity was nowhere more strongly to be felt than in London. In order to deepen our understanding of how government viewed the problem of criminal justice administration during the 1780s, we must now turn our attention to the administration of justice in the nation’s capital.

III. The Crisis of the 1780s (2): The Metropolis

Nowhere was the punishment of serious criminal offenders more severe than in the conurbation which was home to government itself. Perceiving themselves to be confronted
with a problem of violent crime that had no parallel in the nation, metropolitan officials continued to be more severe than their provincial counterparts in terms of both the numbers and the overall proportion of offenders whom they sentenced to death or transportation. Indeed, during the 1780s, the distinction between metropolitan and provincial practices widened rather than narrowed. Moreover this was a distinction in which the Home Department was more actively complicit than with any other jurisdiction.

The key players in determining the character and conduct of criminal justice for the metropolis as a whole were the officials of the City of London. It was within their jurisdiction that the accused felons, not merely of the City but also of the far more populous county of Middlesex, were confined until their trials were heard and their sentences could be carried into execution. The accused offenders of both jurisdictions were held in Newgate prison until the next sessions of Gaol Delivery and of Oyer and Terminer were held at the Sessions House (or Justice Hall, more popularly known as the "Old Bailey" after the street in which it lay), which was immediately adjacent to Newgate. These sessions were held eight times a year and followed the City's mayoral calendar: the first sessions was held in December and the last the following October. The Lord Mayor of London and his fellow Aldermen were the senior judges at the Old Bailey in law, although the actual conduct of trials was mainly left to the judges of the realm. More importantly perhaps, it was the Recorder of London - an official appointed by the City Aldermen - who served as chief sentencing officer at the Old Bailey and who, in his presentation of the cases of all capitaly condemned felons before the King in Council, played the largest and most immediate role of any metropolitan official in determining the final punishment of its most serious offenders (see Chapter 6). Finally, the two Sheriffs of the City had charge of the final disposition of all convicted offenders, either in overseeing the conduct of their public execution or carrying out
their removal from Newgate either to be transported out of the realm or to be imprisoned at length elsewhere.\textsuperscript{104}

City officials were therefore in a powerful position to influence penal policy, not just in the City itself, but for the metropolis as a whole.\textsuperscript{105} Their anxieties about the levels of crime in greater London and how best to address them could not easily be ignored by a Home Department which had no desire to exert central direction. It is important that we bear this in mind in analyzing the responses of both groups of officials to the apparent upsurge in violent crime after 1780.

Concern for levels of robbery and burglary - that is, theft with the threat or actual use of violence - had been endemic to the metropolis for most of the eighteenth century. By the early 1780s however, contemporaries thought they had detected a number of alarming new developments. It now seems clear that the age of the highway robber was nearing its end. To some extent this may have been a function of improved methods of detection, particularly in the use of newspapers to circulate widely information as to the appearance and identity of both men and horses.\textsuperscript{106} It is more likely to have been a product simply of the ongoing physical and economic expansion of the metropolis. By the 1780s, urban development was

\begin{footnotesize}

\textsuperscript{105}The Home Office Papers are not especially revealing on this subject. I have detected no examples of outright clashes between the City, Middlesex, and/or the Home Department on the disposition of offenders, but the precise nature of these interactions warrants closer study.

\end{footnotesize}
extending into the open stretches of land lying between the metropolis and its surrounding residential villages, reducing that isolation which had made the highwayman's task feasible and closing off some of his richest pickings. That same essential isolation was also being severely circumscribed outside the enlarged boundaries of the metropolis by the increased volume of road traffic which accompanied the economic growth of the era.\textsuperscript{107}

London's changing physical and economic environment increasingly favoured, not the mounted highway robber, but the footpad and the burglar. A German visitor of 1782 thought footpads "the lowest and vilest class of criminal," more prone to murderous violence than any other class of thieves "because they are unable to take flight like the highwayman on his horse, and so, should anyone live to give information, they can be pretty easily overtaken by a hue-and-cry."\textsuperscript{108} Indeed, because immediate physical cover was a crucial element of the footpad's activity, the growth of the metropolis might actually have been seen as promoting this type of theft. Footpads brought the threat of violent robbery right outside the houses of the most substantial residents of London - often quite literally so. The letters of Lord Townshend to his wife record many robberies in and about Portman Square during the late 1770s.\textsuperscript{109} Fear of burglaries - often closely linked to a perennial concern about the reliability of servants - also figured extensively in both periodicals and the letters of prominent Londoners. The break-in at Lord Grantham's home and his near-injury in 1783, one in a string of such incidents at that time, prompted him to have his porter sleep in the


\textsuperscript{108}C. P. Moritz, \textit{Journeys of a German in England in 1782}, trans. R. Wettel (1965; orig. ed. 1785), 105 (see also 120-1).

\textsuperscript{109}John Rylands University Library of Manchester, Eng MS 940 (n.d. & 3 Dec 1778).
hall and two more servants beneath the staircase.\footnote{Add MS 35621 ff.210-1.}

Some observers, including even the King himself, had noticed a particularly ominous change in the character of violent property crime in the metropolis: its levels had apparently remained high throughout the war, rather than falling away as previous experience had suggested they should. "Robbery continues at a high-water mark, though the army and navy have drawn off such hosts of outlaws and vagrants," noted Horace Walpole in 1780, although he also added that "That they have successors, proves the increase of want."\footnote{The Yale Edition of Horace Walpole's Correspondence, ed. W.S.Lewis (New Haven, CT & London), 25:99 (see also 33:352-3 & 39:391) Not everyone agreed. Richard King believed that military impressment had reduced the numbers of foot-pads in the metropolis by nine-tenths; see The New Cheats of London Exposed; or, The Frauds and Tricks of the Town Laid Open to Both Sexes ([1780]), 22-3.} By 1782 these newly sustained levels of violent crime were believed to be further swollen by two other factors. The first of these, inevitably, was the influx of men recently discharged from the forces and either unable or unwilling to find honest employ. "[T]he increase of Highway Robberies has been very great even during the War," the King observed to his Home Secretary in the spring of 1783, "and now will naturally increase from the Number of idle persons that this Peace will occasion ...." At Twickenham, Walpole braced himself for worse still: "I now expect that one shall be robbed and murdered two or three times a day, aye, and a night, more than ever, on disbanding the army ...." His letters record further outrages during the summers of 1784 and 1785, including an armed robbery by three footpads right outside his gate.\footnote{Corr. George III, no.4354; and Walpole Correspondence, 33:382 (see also 31:234-5; 33:445 & 476; & 39:420).}

The conviction that the metropolis was under a criminal siege of unprecedented proportions was, for some observers, better explained by recent penal developments. Many
commentators were convinced that the hulks had served only to school potentially redeemable offenders in greater and more intractable ways of vice and criminality. Once such men were released, whether they came from London or the most distant provinces, the dubious fruits of their learning were sure to be practised on the hapless citizens of the metropolis. This belief, expressed by Sir John Fielding as early as 1779, had acquired common currency by 1782.13 Most strikingly, it was expressed by one of the High Court judges. "[S]ending to hard Labour on the Thames proved to be very inexpedient," Sir Francis Buller informed Lord Shelburne, only a few days after the latter had become the first Home Secretary, "as Offenders come from thence more hardened than they went, form themselves into Gangs, are ripe for all Kind of Iniquity, & engage in it immediately on their discharge." Buller concurred with the Recorder of London in recommending the resumption of transportation as soon as possible for all "offences of a Certain magnitude."14 The last actual sentences to penal servitude on the hulks were handed down at the Old Bailey in February 1782. The following year, when it was becoming apparent that resort to the hulks would still be necessary for purely temporary purposes of incarceration rather than purposive penal ones, the Recorder nonetheless took care to remind another Home Secretary, Lord North, that the King himself had "declared personally to me, his royal approbation of the determination of myself, and I believe all the Judges who sit at the Old Bailey not to pronounce that sentence upon any convicts in future, from a persuasion of its mischievous effects ...."15

Thus, for many members of the ruling elite at the nation's centre, the seemingly vast

13W.L.C.L., Shelburne Papers 152/46; Walpole Correspondence, 25:316-7; HO 42/1 ff.138-9; and Add MS 35619 f.309. For Fielding, see above pp.184-5. For its persistence, see W.L.C.L., Sydney Papers 12 (H.Sloane to E.Nepean?, 22 April 1785).

14W.L.C.L., Shelburne Papers 152/39 & 42; for a copy of the latter, see Add MS 53804 ff.75-6.

15HO 42/3 f.221.
and intractable problem of violent crime in the metropolis promoted an equally intractable conviction of how best to deal with it. In the minds of City officials and Home Department alike, one immediate tactic was simply to refuse to grant pardons for all robberies "attended with acts of great cruelty" and to ensure their speedy execution for the purposes of deterrent effect. Such a strategy had been advocated by City officials as early as 1781 and was officially sanctioned by Home Secretary Townshend in September 1782, a year which the officials of two Westminster parishes later recalled as having been particularly characterized by "several very daring Robberies and Burglaries ...."116 At the same time, the Court of Aldermen resolved that no sentence should be passed on any Old Bailey convicts "but by the Consent and Approbation of the Majority of the Judges and Aldermen present during the trial, after previous deliberation" - an attempt, presumably, to ensure that the City's preferences in sentencing practices would prevail.117

This determination to refuse pardons for burglars and robbers surely played a fundamental role in the decision of the City sheriffs to abolish the procession of the condemned from Newgate to Tyburn in favour of a more strictly regimented execution spectacle held immediately outside the prison.118 Until December 1783, the condemned were drawn in a cart, past often boisterous crowds along Newgate Street, Oxford Street and the Tyburn Road, to the execution site at Tyburn, located roughly at the present-day site of


117 C.L.R.O., Rep 186 p.251. However one cannot rule out the possibility that this was the opinion only of a majority.

118 C.L.R.O., City Lands 75 f.153 (my thanks to Greg T. Smith for this reference); and Journal of the Committee for Rebuilding Newgate 1767-85, p.525. See also GM 53 (1783): 990, 1008 & 1060; LM N.S. 1 (1783): 559; LM N.S. 2 (1784): 160; and HO 42/3 f.273.
Marble Arch. Execution proceeded simply by tying the condemned to one of the three arms of "the Triple Tree" and rolling the cart out from under them. By contrast, executions at Newgate were intended to be more removed and impressive. The condemned were executed on a gallows which was erected outside the debtors' door to Newgate Prison. The solemnity of the occasion and the majesty of the law were underscored by elevating the gallows well above the heads of the crowd, by draping it in black, by tolling the hour of execution (nine a.m.), and by subsequently leaving the bodies on display until seven p.m. The adoption of "the drop" ensured that large numbers of condemned could be executed at once, with all the psychic force that this sight was expected to have upon its audience. The use of a gallows which could then be removed altogether until next required - Old Bailey, after all, was a heavily travelled street - was expected to lend even greater force to the immediate impression of the spectacle.

Many considerations were at play in this dramatic departure. Historical accounts have emphasized the desire of authorities to reassert control over a rowdy, even festive execution crowd. It was perhaps bad enough that execution days had become "holidays" that kept labourers from the work which they should be about. More fundamentally, the crowd's often raucous behaviour seemed to defeat the purpose of the public execution ritual for both audience and condemned alike. The former were clearly insufficiently awed by state power in its most brutal and awful manifestation. A year earlier, one observer had urged Home Secretary Townshend to authorize a new execution ritual in London in which

the Place of Execution should be much nearer the Gaol, for the length of the

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119 The notion that this consideration played a role is not supported by any immediately contemporary sources that I have found, although both a visiting Frenchman of 1789 and an Alderman of the 1840s believed it to have been the principal motive. See Quarrell, ed., "A Frenchman in London, 1789," 269; and The Croker Papers: The Correspondence and Diaries of the Late Honourable John Wilson Croker, LL.D., F.R.S., Secretary to the Admiralty from 1809 to 1830, ed. L.J.Jennings (2nd ed., 1885), 3:16.
Procession diminishes very much the horror of the Ceremony in the Eyes of those Wretches who are the constant attendants upon this occasion ....

At the same time, the procession sometimes encouraged defiance rather than the necessary and appropriate contrition on the part of the condemned. The urgency of these issues may also have been increased by a recent, perceived growth in the size of the execution audience. It was observed of one of the last Tyburn processions that "The concourse of spectators on this occasion was hardly ever exceeded." The new execution ceremony outside Newgate was thus meant to ensure that a briefer, but more solemn and fearful impression was made on the minds of both condemned and audience alike.

That executions outside Newgate clearly did not achieve these aims has perhaps promoted idiosyncrasy in more recent accounts of the procession's end. Thomas Laqueur has argued that execution scenes invariably revealed the inadequacy of state authority in the face of the crowd, a perspective which - whether or not it is true - essentially misses the self-conscious distinctiveness of the changes of 1783. In contrast, Steven Wilf has produced a detailed study of the many aesthetic considerations which clearly were at play in the decision to create a impressive new execution ritual. But Wilf surely goes too far when he suggests

\[120\] HO 42/1 f.138v; and GM 53 (1783): 714. See also the letter of "Amanda" cited in n130 below. Similarly John Howard once observed that "an execution-day was too much ... a day of riot and idleness, and it was found by experience that the minds of the populace were rather hardened by the spectacle rather than affected in any salutary manner:" quoted in J.B.Brown, Memoirs of Howard, Compiled from His Diary, His Confidential Letters, and Other Authentic Documents (New York, 1973; orig.ed., Boston, 1831), 221. One need only follow the brief accounts of executions provided in The Annual Register and The Gentleman's Magazine to acquire a sense of the perpetual scrutiny of - and uncertainty about - the reactions of the condemned and (sometimes) of the crowd to the execution ritual.


that 1783 be understood as a major step in the privatization of punishment.\textsuperscript{123} Finally, the most recent account of capital punishment during these years ascribes the change solely to the anxieties of middle-class residents about property-values in the increasingly genteel vicinities of Tyburn.\textsuperscript{124} There may be some element of truth to this. Two decades later, the Home Secretary twice authorized the removal of gibbeted corpses to more appropriate spots in order that respectable residents nearby not have their sensibilities offended (or developers their property values reduced).\textsuperscript{125} But the only other evidence of such considerations stems from the 1760s, at which time Horace Walpole knew one socially eminent resident of the area who regarded the proximity of the execution site more with amusement than offense.\textsuperscript{126} We should also note that some provincial jurisdictions were both implementing the drop and removing their executions to new sites - the latter sometimes in the face of the objections of respectable residents nearby.\textsuperscript{127} So in fact, although the decision to end the


\textsuperscript{125}HO 13/13 pp.397-8; and HO 13/16 pp.157-8.

\textsuperscript{126}Walpole Correspondence, 22:165. The Tyburn ritual was a source of amusement to more than one peer. In 1774 the Earl of Carlisle promised George Selwyn "a good place at the execution" for Gloucester assizes, adding that "though our Tyburn may not have all the charms which that has where you was brought up and educated, yet it may be better than no Tyburn:" quoted in J. H. Jesse, \textit{George Selwyn and His Contemporaries; with Memoirs and Notes} (1843-4), 3:85.

\textsuperscript{127}The drop had been implemented a few months earlier in Dublin, "whereby a very disagreeable procession is avoided;" see \textit{GM} 53 (1783): 260; and quote at \textit{GM} 54 (1784): 329. It subsequently appeared in Glasgow in 1784. Essex in 1785 and Oxford in 1787: see D. Sprott, ed., \textit{1784} (1884), 272; \textit{Essex People, 1750-1900: From their Diaries, Memoirs and Letters}, ed. A. F. J. Brown (Chelmsford, 1972), 31; and Wilf, "Imagining Justice," 76. The idea that a portable gallows created a more striking impression than a permanent one was also catching on. In 1792 John Byng wondered why the authorities of York still preferred the latter; see \textit{The Torrington Diaries: Containing the Tours through England and Wales of the Hon. John Byng [Later Fifth Viscount Torrington] Between the Years 1781 and 1794}, eds. C. B. Andrews & J. Beresford (1934-8), 3:34-5. Thomas Laqueur notes the objections of nearby residents of Aylesbury to the removal of executions to the County Hall, on the grounds that the resultant crowd disorder would actually be greater than it had been in the past. He also
Tyburn procession was perhaps informed by concerns for the respectability of
neighbourhoods, and certainly by changing aesthetic values in public spectacle, neither of
these factors is sufficient to account for the timing of it.

The essential explanation for this lies in the overwhelming anxiety of metropolitan
officials after 1780 to assert order and authority by the sternest possible application of the
capital code. This ambition brought two potential difficulties into conjunction with one
another, the first a specific problem of numerical limitations and the second a more general
one of the exact image of 'public justice' - a phrase much-used by contemporary officials -
which authorities hoped to convey.

In the first instance, the desire after September 1782 to maximize the number of
violent offenders put to death must have exposed the physical limitations of the Tyburn
ritual. It may simply no longer have been possible, on one execution day, to hang the
numbers who were now being condemned at the end of some sessions. At the penultimate
Tyburn hanging in October 1783, eleven people had to be executed on the same day, and The
Gentleman's Magazine noted with foreboding that "Notwithstanding these numerous
sacrifices to the justice of their country, no less than 160 criminals were to be tried at the
sessions at the Old Bailey, that were to begin the next day." Looking at Table 4.1, it is
striking that, whereas the 50 hanged in 1780 constituted slightly more than half of all capital
convicts, by 1783 a nearly identical number constituted less than one-third. More

maintains (without revealing his source) that residents living near Newgate made similar complaints in 1783
("Crowds, Carnival and the State," 312-3).

128 GM 53 (1783): 973. On the same page may be found a lament concerning the "pitch of audacious villainy
[to which] the robbers about London [have] arrived," and notice that the subsequent sessions at the Old Bailey
had produced twelve capital convicts for Middlesex alone. For impressionistic comments on the increase of
capital offenders during the months immediately preceding the end of the Tyburn procession, see AR 26 (Chron
1783): 218; and GM 53 (1783): 710, 802, 891 & 974.
revealingly, the proportion of those executed which was composed of robbers and burglars leapt from 53% in 1783 to 79% in 1784, falling only slightly to 76% in 1785. These figures clearly suggest an connection between the desire to hang the maximum number of violent property offenders and the decision to remove executions to Newgate. That the decision of September 1782 was much on the minds of observers is confirmed by the comment of The Gentleman's Magazine, on the final Tyburn execution, that "Carrying those criminals to execution, as soon as convicted, who commit cruelties with their robberies, it is hoped will

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have a good effect."\textsuperscript{130} If no means were settled whereby the large numbers of condemned which this policy involved could be executed at once, then two or more execution days after each sessions would have become the norm - with their attendant processions through an increasingly respectable neighbourhood and their resultant "holidays" for labourers who ought better to be at work. Both of these, in turn, would have sharpened the pressure of concerns for respectability. City officials no doubt felt that it was more desirable simply to hang all the condemned offenders of a single session at once.\textsuperscript{131}

It must certainly have been expected to restore the intimidating effect that executions were supposed to have if they were to achieve their purposes. The second factor which explains the timing of the switch in execution practice to Newgate was the substantive completion of repairs to the gaol following its gutting in the Gordon Riots of June 1780.\textsuperscript{132} Both government and metropolitan authorities, as well as many contemporary observers, had viewed the destruction of the newly rebuilt Newgate and Sessions House, as well as the attacks on the other gaols of the metropolis, as a resounding blow to the authority and credibility of the criminal law in the eyes of the public. Samuel Johnson was horrified by the site of the gutted Newgate ("with the fire yet glowing") and Sessions House, as also by the collapse of lawful authority which they so vividly symbolized:

As I went by, the protestants were plundering the Sessions house at the Old Bailey. There were not I believe a hundred, but they did their work at leisure, in full security, without Sentinels, without trepidation, as Men lawfully employed, in full

\textsuperscript{130}\textit{GM} 53 (1783): 974. Similarly, an anonymous writer a year earlier had lauded the King's determination "to put a restraint on the mercifulness of his disposition" with respect "to any who shall be convicted of those atrocious crimes [i.e. robbery and burglary]," but also urged the need "to add some circumstances of terror to the public Executions ..." (HO 42/1 f.148).

\textsuperscript{131}I know of only two occasions on which there were two execution days held closely together, but there may have been more; see \textit{GM} 32 (1762): 395; and \textit{GM} 49 (1779): 99 & 100.

Walpole too felt that, beyond indiscriminate plunder, the rioters had no specifically Protestant aims: "To demolish law and prisons was [the crowd's] next great object; and to release prisoners, the only gospel work they performed." Next to the restoration of public order, the government's priority - both during the riots and immediately after them - was to restore the regular operation of criminal justice in the metropolis. The destruction of Newgate on June 6 appears to have been the direct motive behind the more active and determined intervention of government the following day. Indeed, the decision to intervene was taken by the Privy Council only after eight of the twelve high court judges had been summoned before them and instructed that

if the Rebellious Insurrection ... shall at any time appear so great as totally to obstruct the Administration of Justice, ... such Measures shall be taken for adjourning the Courts, as may be least inconvenient to public Justice.

So appalling did the breakdown in order and justice seem that the government subsequently took steps to prosecute the Lord Mayor of London for failing, in his capacity as chief magistrate of the City, to act with sufficient speed and firmness to quash the riots before they had spread so far as the destruction of Newgate and far beyond. The riots - and presumably their symbolic implications for the administration of justice - remained vivid in the minds of many for a long time thereafter. A German visitor noted them "to be still a

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134PC 2/125 pp.133-4, 137-42, 150-1, 155, 157, 166-73, 426 & 437-9; and PC 4/5 (minute of 7 June 1780).
current topic of conversation" two years later.135

The removal of executions from Tyburn to Newgate, and the attempt to remove all elements of crowd disorder from their conduct, were therefore part of a self-conscious effort by City officials to ensure the most effective display of a severe and certain punishment for the worst classes of offenders. The Old Bailey became a closely circumscribed space in which all elements in the spectacle of criminal justice - from the confinement of the accused, to their trial, to the execution of the condemned - were to be enacted within the imposing confines of a restored Newgate prison and Sessions House.136 Nor was physical staging the only new element in the self-consciously public drama of capital punishment. Greater play was now given in the public press to speeches which the Recorder of London made in sentencing the condemned to death, speeches which emphasized both the irredeemable character of the condemned and the inflexible requirement of the law that they should die as a warning to others.137 Finally, capital justice was not only to be certain and severe, but also swift. The Home Secretary and City officials hoped to minimize the amount of time that would elapse between the conviction of capital offenders and the final determination of their cases by the King in Council, so that there should be no breakdown in that association between the condemned and their crimes which was vitally necessary for deterrent effect.138

135Moritz, German in England, 33.

136This impression would have been reinforced by the newly imposing facades of both Newgate and the Sessions House after their reconstruction during the 1770s. For the former, see Kalman, "Newgate Prison," 58; and J.Bender, Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England (Chicago, 1987), 238-47. For the latter, see S.Devereaux, "The City and the Sessions Paper: 'Public Justice' in London, 1770-1800." Journal of British Studies 35 (1996): 487-8.


138See the Home Secretary’s letter of September 1782 in AR 25 (Chron 1782): 220. For the immediate limitations to which this policy became subject given enormous case loads, see below pp.387-90. The notion had also been advocated by John Howard himself (Brown, Memoirs of Howard, 221-2).
In short, the removal of executions from Tyburn to Newgate, with all its attendant aesthetic and ritualistic changes, was less about restricting than about refining the public character of capital punishment in the metropolis. It was not an attempt by City officials to render executions more private. Indeed, in 1787 the City took further measures to ensure that the full volume of traffic would continue to flow unimpeded through Newgate Street and the Old Bailey. Presumably they were determined, not only that the now closely-defined physical locale of capital punishment would be preserved intact, but also that it should continue to have the highest possible visibility. The abolition of the Tyburn procession was an attempt at once both to expand the scale of public execution in the metropolis, while also focusing and refining its deterrent impact. Both things seemed necessary during the 1780s, the former because of the long-term problem of crowd discipline at executions, and the latter because of the immediate one of rising levels of violent crime.

In ordering the restriction on pardons in September 1782, the Home Department was actively involved in these attempts to ensure maximum severity for robbers and burglars in the metropolis. Nor did this way of thinking necessarily contradict, at least in the short run, that preventive policing strategy which the Home Department had adopted as the justification for cancelling the Penitentiary project. The Home Department’s policing measures were predicated on the belief that levels of serious crime would be reduced by nipping future serious offenders in the bud. But for the all too many convicts who had already reached their fullest measure of moral decrepitude, little else seemed possible or desirable other than the most effective public display of the wages of their sins. Both the long-term strategy and the

139Straw was to be laid in the Old Bailey during sessions-time (and picked up again immediately afterwards) so that the sound of traffic would not distract proceedings in the Sessions House. Shortly thereafter, a more efficient and portable gallows were devised for executions outside Newgate. See C.L.R.O., Jor 70 f.277; and City Lands 79 ff.197, 206, 208, 226, 229 & 243 (my thanks to Greg T. Smith for these references).
immediate, short-term expedient had significant roles to play in reducing levels of crime. However, those policing measures which Home Secretary Sydney pursued ultimately had little discernible impact; the ongoing role of deterrent severity remained far more apparent to observers than did any preventive strategies that might have been at work. As the Duke of Richmond only half-jokingly remarked to Sydney the year after the Metropolitan Police bill had failed, "nothing can be more unjust than any outcry against you for not hanging people enough!"140

It comes as little surprise then that, in retrospect, the 1780s formed the apex in the later history of English capital punishment. It was in 1785 - in absolute terms, the bloodiest year of the century for executions in the capital (see Table 4.1) - that the two most famous defences of the capital code as deterrence were published. In his Thoughts on Executive Justice, Martin Madan argued that, since the possibility of pardon was an inducement to crime, the only means of ensuring the law's intentions was to execute all capital wrong-doers without exception. In short, it reads like a treatise on the position of metropolitan officials regarding violent property offenses. More influential - and certainly more sophisticated - than the unexceptioned brutality of Madan were the arguments presented in William Paley's Principles of Moral and Political Philosophy. Whereas Madan approached the issue very much from an immediate concern for ensuring the effectiveness of capital punishment, Paley provided a more widely-conceived justification for the system as whole. He argued that capital punishment was not intended to be enforced in all cases where the law sanctioned it, but rather only in those where it was difficult to detect the offender or where the danger posed to the community at large was great. Paley's arguments were sufficiently persuasive

140Brotherton Collection (Leeds U.), Sydney/Townshend Papers K22.
and well-known that, by the time the sustained parliamentary battle over the issue was joined after 1808, they were the acknowledged orthodoxy for many defenders of the capital code.  

It should also be noted that the ambition to hang violent property offenders in large numbers was not confined to the metropolis, although - to the extent that the Home Department had a say in matters through the pardon system - the experience of the capital may have been indirectly felt in the provinces. Detailed rejections of pardon petitions were uncommon, so it is striking that Sydney sent out no less than eight of them to various parts of the country in the space of a single month following the failure of the Metropolitan Police bill. More striking still was the fact that these rejections were by no means confined to violent robberies. In two cases they extended also to horse theft. And they were justified by a general conviction that many places were "now in such an alarming situation that no man's life or property is safe." Perhaps Sydney now felt himself to be entirely at the mercy of circumstances. The ministry's ongoing inability to find a destination to which large numbers of transports could reliably be sent meant that there was still no end in sight to a gaols crisis which now had a nation-wide scope. At the same time, the most ambitious preventative measure yet devised had been thwarted by the intransigence of the local officials whose job it must be to implement them. Sydney's letters perhaps signalled a decisive falling back on the deterrent option so far as the Home Department was concerned, a perspective which, in turn, may largely have been influenced by a sense of urgency which could more justly be applied to the metropolis than the provinces.

141 Radzinowicz, History, 1:239-59; and Beattie, Crime and the Courts, 585-6.

142 HO 13/3 pp.164, 167-8, 172-3, 176-7, 182 & 181 (quote at p.176); and Add MS 59354 ff.6-7 ("The crime of horsestealing is now so common, is carried on to so great an extent and in so regular a system by a great number of men, that it will not in general be looked upon as a slight offence").
London certainly was not unique in putting large numbers of offenders to death during the 1780s. In fact, as Douglas Hay has shown, the actual proportion of convicts executed on the circuits exceeded that of London until the early nineteenth century. But London remained far ahead of the provinces in terms of the absolute numbers executed. And, because the essence of capital punishment was the singular event of a public execution, it was surely the absolute numbers hanged at any one time that impressed contemporaries more than the remote (and still largely unconsidered) realm of statistical proportions over time. Thus it was also in the metropolis - where far greater numbers were put to death on individual occasions during the 1780s than anywhere else - that the first serious rents in the intellectual fabric of the capital system began to appear. Indeed, the self-evident limitations of it as an effective strategy may have helped to generate a need for the justifications of Paley and Madan, as much for defensive as for assertive purposes.

At any rate, by the mid-1780s there were signs that the determined application of capital justice in the metropolis was not having its intended effect. London officials may initially have been gratified by the sense of shock and horror which contemporary periodicals sometimes expressed at the sight of anywhere between ten and as many as twenty people hanged at once outside Newgate. However, it soon became apparent that this shock and horror could as easily signify resistance rather than submission to the public authority which

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143 D. Hay. "Capital Punishment in England, 1750-1832" (unpublished paper, 1986), 9-11; see also Table 4.2 below. Much of my thinking on the subject of the administration of capital punishment, reflected in this and the following two paragraphs, closely follows the arguments of this paper.

144 Beattie has determined that 64 people were executed in Surrey between 1783 and 1787, and another 79 in the ensuing fifteen years (Crime and the Courts, 532-3). The parallel figures for the metropolis were 348 and 314 (see Table 4.1 above). Douglas Hay has tabulated the figures for the Old Bailey and the Home, Oxford, Western and Norfolk Circuits ("Capital Punishment," 30-3 & 36-7).

the execution display was meant to re-affirm. By maximizing the numbers put to death at once, metropolitan officials did not necessarily reinforce the authority implicit in the execution ritual. Rather, by exceeding a kind of intellectual and sensory saturation level, they actually ran the risk of drawing that authority into question. By the late 1780s, it was impossible to say whether or not anything had been gained at all in terms of the impression communicated by execution. Even a spectator as sympathetic to the ends of capital punishment as James Boswell, who thought one initial Newgate execution "shocking" and who was "unnerved" by another, found by 1790 that the latest "did not shock." This danger of familiarity breeding contempt - or at least indifference - was specifically acknowledged by Home Secretary Sydney himself early in 1789 when, following the King's recovery from his first serious attack of porphyria, he strongly urged that fewer capital offenders be hanged than might otherwise have been in normal circumstances. After the 1780s, this issue seems to have lost its urgency, partly because the number of people sentenced to death in the metropolis was now declining sharply. This was accompanied by a substantial decline in the number of cases coming to trial at the Old Bailey.

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147 See the discussion of this incident below at pp.425-6.

148 This can be illustrated by a count of trials at the Old Bailey during each September sessions - the busiest of the year - between 1775 and 1799. The five year averages are as follows:

<table>
<thead>
<tr>
<th>Year Range</th>
<th>Average</th>
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<tbody>
<tr>
<td>1775-79</td>
<td>89.8</td>
</tr>
<tr>
<td>1780-84</td>
<td>122.2</td>
</tr>
<tr>
<td>1785-89</td>
<td>142.2</td>
</tr>
<tr>
<td>1790-94</td>
<td>100.8</td>
</tr>
<tr>
<td>1795-99</td>
<td>98.8</td>
</tr>
</tbody>
</table>

The figure for 1790-94 is understated because, for the years 1790 and 1791, the publisher of the Old Bailey Sessions Paper was forbidden to publish accounts of trials ending in acquittal; see S.Devereaux, "The Fall of the Sessions Paper: Criminal Trial and the Popular Press in Late Eighteenth-Century London," Criminal Justice History 16 (1995; forthcoming).
However the most important factor in the decline in the number of metropolitan executions (as Table 4.1 strongly suggests) must surely have been the long-awaited resumption of transportation in 1787. After this year, the numbers fell to their lowest levels since the 1760s. For metropolitan officials, determined on a policy of maximum severity and adamantly opposed to the hulks, any reservations about the effectiveness of capital punishment would only have reiterated the need once more to achieve a regular and reliable system of transporting convicts. It was in the many vicissitudes involved in achieving this, and the questions of custodial responsibility which they raised, that the Home Department became more closely and explicitly involved with metropolitan officials than with those of the provinces.

We have already seen that the rebuilt Newgate was not a reformed Newgate, at least in so far as no attempt was made to implement a disciplinary regime for specifically penal purposes. Newgate remained what it had been throughout most of the eighteenth century: a prison devoted primarily to the incarceration, first, of debtors and, second, of convicted felons awaiting either trial or execution of sentence. It was the need to remove transports which most often brought the Home Department and the City into contact with one another over the issue of custodial practices. Sharing with metropolitan officials a conviction that the problem of crime was more urgent in the metropolis than anywhere else, and following a traditionally reactive rather than regulatory policy, the Home Department was faster both to perceive and respond to the needs of the metropolis.

Newgate convicts seem to have figured prominently in all four of the single shiploads of convicts for transportation which preceded the opening of Botany Bay in 1787 - one vessel
to Africa in 1783, two to America in 1783-4, and one to the Honduras in 1785.\(^{149}\) It is surely significant that the Treasury decision of December 1782, which first sanctioned the use of the hulks as temporary holding places until a ship could be commissioned for America, was prompted by the knowledge "that the Gaol of Newgate is crowded with Prisoners to a very inconvenient Degree" and sanctioned the removal thence of Newgate convicts only.\(^{150}\) Even so, these piecemeal expeditions were not sufficient to relieve Newgate of its increasing burden. Each passing year saw the number of prisoners rising to newly unprecedented levels: 500 in 1784; 680 in 1785; and about 750 by the end of 1788. More tellingly, nearly half of these prisoners were untransported convicts: 297 of 680 in November 1785 (more than 360 if we include respites, many of whose final sentences would ultimately have been transportation) and 350 of nearly 750 in October 1788.\(^{151}\) On several occasions between 1785 and 1789, the City urgently requested that the Home Secretary remove untransported convicts before either the health of the prisoners in general or the

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\(^{149}\) Approximately 26 of the convicts on the vessel for Africa were from the circuits, although the vessel ultimately carried 40, some or all of whom were from Newgate; see SP 44/95 pp.411, 413-5, 418 & 431-2; HO 13/1 p.2; HO 36/4 p.151; and W.L.C.L. Shelburne Papers 164 (Treasury minute of 29 Jan 1783). Of the first vessel to America, we can be sure only that it took on 56 convicts from the hulks. But the Treasury Minute implies that many (or most) of these would have been Newgate convicts. The vessel ultimately carried 70, and at least some of the supplementary 14 appear to have come directly from Newgate (Oldham, Britain's Convicts to the Colonies, 84-5). The second vessel to America carried 185 convicts, of whom 105 were from Newgate (and more, if we assume that the 50 transferred from the Censor hulk included many others; see HO 36/4 pp.48-9). Of the Honduras vessel, we know only that it carried 29 convicts (HO 42/9 f.565). For accounts of these four voyages, see the secondary references cited above at n79. Other convicts arrived in Africa via pardons on condition of military service, but the number of such pardons granted in peace-time slowed to a trickle at best.

\(^{150}\) W.L.C.L., Shelburne Papers 163 (Treasury minute of 28 Dec 1782); copy at Add MS 42775 ff.178-9. See also HO 35/4 (G.Rose to E.Nepean, 3 Jan 1783).

\(^{151}\) GM 54 (1784): 225; HO 36/6 pp.162-4; HO 42/12 ff.155-6; HO 47/7 (Ashhurst, J. to Sydney?, 20 Dec 1788); and HO 48/1A (R.P.Arden to Sydney?, 29 Nov 1785). Transports clogged the administration of criminal justice in a manner out of proportion to their actual numbers. Although they constituted half of Newgate's population at any one time, they made up only one-quarter of the annual number of prisoners who passed through in 1786 and 1787; see A.Babington, The English Bastille: A History of Newgate Gaol and Prison Conditions in Britain, 1188-1902 (1971), 137.
security in which they were held was compromised. Nor does the large-scale removal of transports to the hulks, beginning in 1783, appear to have substantially reduced the immediate burden on Newgate. By that same year, the Old Bailey sessions had become so long that legislation was passed (25 Geo. III, c. 18) to end the traditional requirement that the sessions must end when proceedings began at King's Bench.

These difficulties did not simply reflect the accidents of structural limitations. During the 1780s at least, metropolitan officials preferred the transportation option more often than their provincial counterparts did, and the Home Department simply followed their lead and responded to their needs. London's convicts constituted at least one-third of the annual number of convicts actually dispatched from England and Wales in the four decades between 1785 and 1823 (London's population at this time was just over 10% of the national total). This is surely indicative of that desire, expressed in the City's 1786 petition to the King, "for providing a speedy and due execution of the law, both as to capital punishment and transportation, without which all other regulations must prove nugatory and abortive, and [crime] must daily and rapidly increase."

This preference of metropolitan officials for the most overtly severe modes of

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153 The annual figures for 1784-89 were 200, 100, 175, 308, 190 and 421 respectively (HO 13/2-7; and HO 42/5 f.200). HO 13 does not record transfers before 1784, but one of Campbell's returns indicates that he had received 72 convicts from Newgate on 4 October 1783 alone - more than half of all he had received since August of that year (T 1/594 ff.342-4).


155 GM 56 (1786): 264.
punishment can also been seen in their attitude towards both prison and police reforms. On these matters, we can detect some divergences between City officials on the one hand and those of Middlesex on the other. Nevertheless a broad commonality of purpose seems to have continued between the two.

Prison reform proceeded more sluggishly in London than would be expected if we accepted the broad assumption that the crisis in transportation was the fundamental impulse. Newgate’s capacity to hold prisoners for purposive imprisonment remained extremely limited and, in 1786, one contemporary lamented the failure of "the opulent City" to rebuild and organize its prisons along Howardian lines. But neither City nor Middlesex officials substantially extended their capacity to imprison serious capital offenders until the 1790s - that is, until after the crisis of the 1780s was past. City prisoners actually sentenced to imprisonment were generally transferred to one of two compters but, although these institutions had been falling into decrepitude for many years and were condemned by the City surveyor in 1783, City officials were in no great hurry to rebuild them. Nor were the new structures, when they were finally rebuilt by 1787 and 1791, large enough (at a combined capacity of 150) that the City could have been intending to implement imprisonment on the same sort of scale that Beattie has determined that Surrey officials had from the 1780s on. By contrast, the new Middlesex House of Correction, opened at Cold Bath Fields in 1794, was an explicit effort to implement Howardian principles of incarceration for that county’s convicted offenders. However, with space for only 384 inmates, its capacity to hold

156 Dornford, Nine letters to the Lord Mayor and Aldermen of the City of London on the state of the prisons and prisoners within their jurisdiction [1786], 32.

large numbers of Old Bailey convicts for any length of time must also have been relatively limited. Nevertheless, there was a marked increase in the extent to which sentences of imprisonment were handed down at the Old Bailey after 1790 (see Table 4.2). The belated completion of the new prisons, coupled with a decline at last in the number of cases at

TABLE 4.2
Sentencing Patterns: The Metropolis vs Surrey, 1783-1802

<table>
<thead>
<tr>
<th></th>
<th>Death</th>
<th>Transportation</th>
<th>Imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>London &amp; Middlesex (Old Bailey)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1785-89</td>
<td>18.5%</td>
<td>50.1%</td>
<td>13.3%</td>
</tr>
<tr>
<td>1790-94</td>
<td>15.9%</td>
<td>43.9%</td>
<td>28.3%</td>
</tr>
<tr>
<td><strong>Surrey (Assizes)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1783-87</td>
<td>43.6%</td>
<td>17.4%</td>
<td>31.9%</td>
</tr>
<tr>
<td>1788-1802</td>
<td>38.0%</td>
<td>27.8%</td>
<td>29.0%</td>
</tr>
</tbody>
</table>


the Old Bailey, probably explains the rough convergence after 1790 between metropolitan sentences to imprisonment and those of the Surrey assizes.

This did not mean, however, that metropolitan officials ceased to view transportation as any less inherently desirable a punishment. The opinions and activity of William Mainwaring, chairman of the Middlesex bench and MP for the county, are suggestive in this

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159 The figures derived from Beattie do not include sentences for non-capital offenses against property, but I suspect that these would not substantially alter the proportions.

160 The pressure may further have been lessened by the outbreak of war in February 1793, which once more made possible the pardon of some offenders on condition of enlistment; see HO 13/9 p.513; HO 13/10 pp.184 & 205-6; HO 42/35 ff.351-2; and HO 47/19 (Recorder to Portland, 8 & 23 April, & 5 & 8 Aug 1795).
regard. As one of the prime movers in the construction of Cold Bath Fields, one might have expected Mainwaring to have been a champion of the imprisonment option. In fact, along with those City Alderman who also sat in parliament, he had spoken loudly for the need to resume transportation when reservations were being expressed about the African destination. More strikingly, in 1791, when parliamentary advocates of reformed prisons sought more completely to discredit transportation as a punishment per se, Mainwaring was invariably in favour of its maintenance in the most serious cases. He defended the system which had been established in practice and by legislation in 1784. For although the Middlesex magistrates were building a House of Correction in which the reform of offenders would be sought, they believed that the achievement of that reformation was critically dependent on keeping out those irredeemable convicts for whom, short of death, transportation was the only possibility. And Mainwaring was adamant that "The sentence of transportation never was pronounced where the least prospect of reformation remained."

Thus, whereas the most active prison-reformers of the provinces tended to perceive a complementary role between transportation and reformative imprisonment - one in which the role of the former was inherently conceived of as being subordinate to and supportive of the latter (see Part IV) - Mainwaring and the Middlesex bench continued to view the two as being hermetically sealed from one another. This difference is also apparent in Table 4.2. Provincial officials viewed transportation as an adjunct of imprisonment in a sentencing system that was still heavily characterized by capital punishment. Those of the metropolis

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161 GM 56 (1786): 168; and Parliamentary Debates 1784-92, 7:366. That same year, Mainwaring and his fellow county MP shepherded the facilitating legislation for the new House of Correction through the Commons (26 Geo.III, c.55; and see J.H.C. 41 [1786]: 296, 765-6, 798, 806, 866 & 879-80).

viewed it primarily as an adjunct of capital punishment, the only credibly severe alternative to what was already, for them, an overburdened capital code. Between 1795 and 1801, transports awaiting execution of sentence still constituted half of all non-debtors confined in Newgate.\textsuperscript{163} By the early nineteenth century, the failure of the City to reform the internal regimen of its gaols - particularly Newgate - had made the latter a synonym for all which gaol reformers abhorred.\textsuperscript{164}

The preference for severe punishments as a means of reducing crime also helps to account for the hostility of metropolitan officials to the Metropolitan Police bill of 1785. We have already seen that this measure was the culmination of a policing strategy which the Home Department had sought to implement since 1782. By the time the bill was placed before parliament in June 1785, it seems further to have been animated by a perception amongst ministers that the new execution ritual outside Newgate was not succeeding in deterring criminals. In introducing it, the Solicitor General "drew the attention of the House to the crowds that every two or three months fell sacrifice to the justice of their country, with whose weight, as he said, the gallows groaned: and yet the example was found ineffectual, for the evil was increasing." Indeed, he went on, "extreme severity, instead of operating as a prevention to crimes, rather tended to inflame and promote them, by adding desperation to villany."\textsuperscript{165} This perspective received support from \textit{The London Magazine}, whose issue of the month before endorsed the government's now more decidedly preventive emphasis:

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\textsuperscript{163}\textit{C.L.R.O.}, Misc MS 235.5. The figures vary between 39% and 64%, with most falling in the 50% range. Again, if respites of undesignated sentence are included, the figures might actually have been larger.


\textsuperscript{165}\textit{Parliamentary History} 25 (1785-86): 888-9.
The frequency of executions, unexampled in the annals of other countries, and the number of persons who are executed, show that our laws are calculated solely to punish, and not to prevent the commission of crimes. In other countries there are fewer executions, because a well regulated police does not afford the evil-minded an opportunity of violating the laws.

The pickpockets that worked the execution crowd indicated the failure of Newgate executions to achieve their intended effect. The reaction of the Middlesex bench to the bill and the strategies it embodied is unclear. Mainwaring seems to have confined his comments in the Commons to personal reservations, first, about the bill's having been introduced so late in the session and, in the second instance, before he and his fellow JPs could determine their reaction to it. He was certainly perceived as an unambiguous opponent by the bill's drafter, John Reeves.

Whatever the views the Middlesex bench had of the bill, the City, as we have already seen, objected strenuously to its provisions. But in emphasizing the City's concern for the invasion of its privileges, historians have missed another important reason that City officials deemed that invasion to be unnecessary. City authorities objected to the Metropolitan Police bill, not only out of purely parochial considerations for their authority, but out of their persistent conviction that hanging and transporting convicts were the best means of preventing crime. This was made clear by the Lord Mayor in a letter written to the Home Secretary after the bill's withdrawal, in which the former asserted that the ongoing crisis of

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166LM N.S. 4 (1785): 386. See also the concurrent observation of The Gentleman's Magazine that "It would be happy for this country, were we as ready to adopt good regulations from abroad, as bad fashions" (GM 55 (1785): 319). For another perspective, see the naval commander who suggested that all those executed be publicly dissected, a practice whose systematic enforcement was confined to murderers, and which was known to arouse widespread horror (HO 42/6 ff.335-6; see also Linebaugh, "Tyburn Riot," 79-88 & 102-16).

167Parliamentary History 25 (1785-86): 901 & 905; and Parliamentary Debates 1784-92, 3:511. It is amusing to note that another MP who objected to the bill's introduction so late in the session was William Eden, whose own legislative activity of the late 1770s had so deliberately relied on just this tactic; see Parliamentary History 25 (1785-86): 894-5; and above, Chapter 3, part I passim.

168PRO 30/8/170 ff.245-6.
crime in the metropolis was better explained by the government's continuing failure to re-
implement transportation. He attributed "the Number of Thieves in this Town, and those of
the worst sort" primarily to the ten-year hiatus in transportation and to the continued use of
the hulks, from which "a Torrent of those wretches, more harden'd than ever, is constantly
pouring in upon the public and [which] obviously accounts for the present alarming
increase." 169 Similar arguments had been made against the bill in the Commons by
Alderman Townsend, who "complained of the want of a place to transport felon[s] to" and
"stated in strong terms the necessity of clearing the gaols by putting the sentence of the law
into execution." 170 In the minds of City officials, levels of serious crime in the metropolis
could not be reduced until the government once again regularized the transportation of
serious offenders.

All of these developments perhaps confirmed the belief of many provincial officials
that the central government was often intolerably partial to the needs of metropolitan
officials. They too laboured under the problem of unprecedentedly crowded gaols. At once
deeply concerned for fiscal economy in government, but also reluctant to shoulder the
massive costs of rebuilding their own gaols on the scale which increased levels of
incarceration demanded, local officials also desired a greater responsiveness from the centre.
The MP Peniston Powney must have spoken for many others in 1784 when he lamented
(with pardonable exaggeration)

[that] in London ten thousand pounds was granted, as often as it was wanted, for
building and repairing gaols and houses of correction, without the [City]'s having the

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169 HO 42/7 f.256r.

170 Parliamentary History 25 (1785-86): 902-8 & 908-9; quotes at 902 & 903. Townsend also complained of
the delays in reporting the cases of capital convicts which further promoted overcrowding in Newgate (see
pp.388-392 & 395-8 below). John Reeves rightly implied that this stemmed at least as much from the Recorder's
own slowness as from anything for which government could be blamed (HO 42/7 f.258r).
trouble of asking for it. But the case was not the same with him and other county members.\textsuperscript{171}

Had he been aware of it, Powney might also have drawn attention to the fact that the capital was the only jurisdiction for which government paid the costs of transferring convicts under sentence of transportation to the hulks and to transport vessels.\textsuperscript{172} The systems of punishment which local authorities sought either to maintain or to establish, and the means by which they set about making the central government responsive to these aims, are the subjects of the next and final part of this chapter.

IV. The Crisis of the 1780s (3): The Provinces

It is only a minor exaggeration to characterize the metropolis as the engine of enhanced government activity in the disposition of convicts after 1782. Nor is this entirely surprising given that London was home to ministers and MPs for as much as two-thirds of the year. Even so the extent to which, in absolute numerical terms, London dominated the system of hulks and transportation was astonishing. We have already seen that, down to 1824 at least, London’s convicts regularly constituted about a third of all convicts who were actually transported to New South Wales. The capital’s transports dominated even more decisively in the early 1780s. Of 137 convicts taken on board the \textit{Censor} at Woolwich between August and October 1783, 72 came from Newgate. Similarly, 200 of 328 between August 1784 and February 1785 were from Newgate.\textsuperscript{173} When the \textit{Fortunée} was

\textsuperscript{171}Parliamentary Debates 1784-92, 3:214.

\textsuperscript{172}HO 36/4 p.307; and HO 36/5 pp.47, 87, 92, 191, 197, 246, 276 & 303.

\textsuperscript{173}T 1/594 ff.342-4; and HO 42/6 ff.445-8 (derived from comparison with removal orders recorded in HO 13/2). In December 1784 the gaols at Hull and Oxford were denied relief because the prisons “in and near this Metropolis” remained crowded (HO 13/2 pp.319-20; and HO 43/1 p.351). At this point, the only other hulk was the one at Plymouth which, during the same time period, had taken on only 11 convicts other than those escapees from the \textit{Mercury} for whose detention it had originally been commissioned (HO 13/2 pp.169 & 200).
established at Portsmouth in December 1785, the "first object" government had in mind for it was the immediate removal of 200 more convicts from Newgate. Even in October 1788, when the seven hulks were at full capacity, 750 transports remained in Newgate.174

As I have already suggested, this vast number of convicts for transportation appears to have stemmed, not only from the immensity of London's population, but also from a penal order and mentality that was markedly different from that in other parts of the country. Many commentators continued to believe that the problem of crime in the metropolis was and remained not just quantitatively but qualitatively different. Provincial authorities might implement reformative prison regimes (as some were doing at this time), but many senior authorities at the centre were convinced that London offenders were less susceptible to ameliorative attention. In 1785 the Solicitor General suggested that a young Welsh burglar might safely be pardoned because he was "18 which, at a great distance from the capital, is seldom an age of confirmed depravity ...."175

From the outset however the quantitative problems of the metropolis took precedence over any such qualitative rationales. In mid-1782 the government had it on good authority that the provinces would not pose as large or immediate a problem in terms of convicts for transportation as did London. Judge Francis Buller informed Shelburne that all the transports of the circuits were to be taken on as soldiers in the African corps, a measure "that would be the means of getting rid of the present difficulty" and which would allow "more time to consider of the Plan of transporting to Africa in large Numbers."

174 HO 13/3 pp.258-9 & 265; and HO 36/6 pp.162-4.

175 HO 47/2 (Solicitor General to Sydney, 23 Aug 1785).

176 W.L.C.L., Shelburne Papers 152/40.
death by which to dispose of serious offenders.\textsuperscript{177}

A year later however, with the resumption of transportation "in large numbers" not yet in sight, Buller's view of the scale of the problem in the provinces was rapidly being overtaken by events. In December 1782 the first extension of the hulks was sanctioned in response to the problems of Newgate. But it was finally carried into execution eight months later in response to "the crowded state of the Gaols in the [several] Counties as well as in London ...."\textsuperscript{178} Shortly after, Buller's colleague Baron Hotham warned the Home Secretary that dangerous crowding in gaols was becoming a norm throughout the nation:

Unless something be done, ... we must prepare for very fatal effects from the Gaol Distemper, I am afraid, all over the Kingdom.

... It is not for me to presume to suggest an Expedient in this very [illegible] Situation; but nothing can be so acceptable to the Whole Kingdom, as that Something should be done; and nothing can be worse than to leave the Gaols in the state they now are.\textsuperscript{179}

The number of transportable convicts in any one town or county gaol was often small, but their cumulative number was imposing, and the problem had clearly to be addressed. The crisis of the nation's gaols during the 1780s generated an interaction between centre and periphery that was unprecedented in both volume and regularity. The purpose of this final section is to describe, first, how the problem of provincial transports was perceived both at the centre and in the provinces and, secondly, those factors that enhanced the former's responsiveness to the latter.\textsuperscript{180}

\textsuperscript{177}See the references above at n114.

\textsuperscript{178}HO 13/1 pp.233-4 (see also pp.316-7).

\textsuperscript{179}HO 47/1 (Hotham, J. to Sydney?, 9 Feb 1784).

\textsuperscript{180}I hope at some later time to examine in detail the character and nuances of this interaction. Did government relieve local gaols of their transports according to any identifiable criteria, such as the scale of the individual gaol's problem or its geographical proximity to the metropolis? To what extent was relief contingent on the character and influence of the person - judges, local magnates, MPs - writing the appeal? Appeals for
The reconstruction of local gaols, begun in the late 1760s, accelerated during the 1780s. Between 1782 and 1800 thirteen Acts were passed facilitating the rebuilding of ten county gaols, and attempts to pass legislation for Kent, Warwick and Southampton had failed.\textsuperscript{181} Since the County Gaols Act of 1784 had been intended to remove some of the legal impediments to such reconstruction, ten probably represents only the smallest number of actual reconstructions, and there is evidence that other county gaols were being rebuilt at the same time.\textsuperscript{182}

Many new Houses of Correction were also built, a phenomenon which particularly suggests the expanded use of reformative incarceration. In 1779 Blackstone had anticipated that Houses of Correction would have to be employed for such purposes until such time as the penitentiary regime might gain favour. The new bridewell at Wymondham in Norfolk, erected under the supervision of a local magistrate named Sir Thomas Beevor, seems to have excited particular interest and approval. Judge William Ashhurst commended it to the Home Secretary's attention as a credible alternative to transportation in a particular case, deeming it


\textsuperscript{182}Working from the Victoria County History volumes, Richard Condon counted a total of eighteen county gaols (of a possible total of forty for England and Wales) rebuilt between 1782 and 1800 ("Reform of English Prisons," 105-17).
better regulated than any [House of Correction] in the Kingdom; by sending the
Prisoner there, it will not be passing the offence over without punishment, and at the
same time it will tend to promote the Habits of Industry and to produce Reformation
in the party ....

Wymondham’s internal regulations were published in *The Annual Register* and John Howard
himself approved of it. 183 Indeed, some thought the new solitary regime to be too effective.
In 1793 the future Home Secretary Thomas Pelham was deeply impressed by its effects as
applied in the new House of Correction at Lewes, Sussex: "[The effect] of solitary
confinement was very apparent tho’ the prisoners have been there only a few weeks; and I
am convinced that it should not be too rigidly enforced ...." 184

However, many local officials made no efforts to rebuild or otherwise to reform their
county gaols. John Howard had deemed the failure to separate felons in the county gaol of
Cumberland "inexcusable" given its vast number of rooms, and a visitor of 1800 still thought
it to be "a disgrace .... The Felons are all crowded together & the whole prison is so ruinous
and weak as to require a constant guard of soldiers." The earnest request in 1787 that the
county gaol of Nottingham be relieved in order that the transports "may not teach their
practices to those who are in confinement for their first offences ..." suggests a lack of
separation which, in turn, implies that this gaol too continued unreformed. 185

One also suspects that many of the new gaols were not meant to facilitate any new
penal regime, but only to house an increased number of convicts in greater health and
security. Certainly this is often the only explicit purpose that can be derived from the

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183 HO 47/6 no. 8 (Ashhurst, J. to Sydney?, 7 Feb 1787). See also AR 28 (1786), 87-93; GM 56 (1786): 484;

184 Add MS 33629 p.38.

& 428-9; *A Lancashire Gentleman: The Letters and Journals of Richard Hodgkinson*, 1763-1847, eds. F.&
K. Wood (Stroud, 1992), 121; and HO 42/12 f.234.
legislative record. Many local officials must have shared the sentiments of John Swinton, an Edinburgh magistrate who opposed the erection of a bridgetwell, partly on the grounds that he thought the principles of the regime inherently dubious and partly on the grounds that "The expence is boundless and must be constantly encreasing....

Unless therefore or rather until the expence of some places in England, where I understand trials are making, shall justify the measure, I should be sorry to see our respectable community ... hazard their reputation for prudence and discretion by rashly engaging in a scheme so problematical and so expensive.\textsuperscript{186}

At any rate, as we have already seen, the circumstances surrounding the passage of the County Gaols and Houses of Correction Acts of 1784 strongly imply a belief on the part of government (and of many MPs) that the desire to deploy incarceration on a wide scale was not yet sufficiently advanced throughout the realm that it was politically feasible to make such penal regimes mandatory for the nation at large.

Thus the first substantial moves toward implementing disciplinary reformation regimes along the lines of the Penitentiary Act came, not from the centre, but the periphery.\textsuperscript{187} The most celebrated efforts to do so were those of the Gloucester magistracy under the leadership of George O. Paul. The magistrates had already embarked on a major plan to rebuild their county gaol when, soon after being appointed to the county bench in 1783, Paul convinced them to adopt a far more ambitious scheme. In addition to rebuilding the county gaol along Howardian lines, four new Houses of Correction would be built throughout the county and part of the new gaol itself would be designated a "Penitentiary House," embracing most of the scheme outlined in the 1779 Act. Long before the new buildings were completed, the

\textsuperscript{186}N.L.S., MS 354A ff.99-101 (emphasis in original).

efforts of the Gloucester magistrates had become established in the public mind as the epitome of enlightened penal practice. As early as 1785 a critic of metropolitan policing practices invoked "the Gloucestershire regulations" as a model to be emulated.

Plans to institute large-scale reformative regimes were soon taken up in Lancashire and Oxfordshire under the respective guidance of Thomas Bayley and Christopher Willoughby. Bayley was a keen advocate of the ultimate replacement of transportation by imprisonment, a hope that had animated the framers of the Penitentiary Act of 1779 and to which he often alluded in his correspondence with the Home Department, as also the hope that government would again assume the lead in this movement. If such universalist ambitions were ever entertained by Willoughby and the Oxfordshire bench, they certainly were never explicitly stated by them. By contrast with the comprehensiveness of the Gloucester model and of Bayley’s views, Willoughby’s less rigorous implementation of penal labour seems to have been an almost genteel venture (some convicts were employed in the restoration of an Oxford college). Willoughby’s efforts had been brought to the particular attention of the King and earned him a baronetcy in 1794, a year after he assured the Home Department that "the employment of Prisoners by hard labour has in every respect answered the sanguine wishes of the Magistrates and ... Many Prisoners have been restored to Society

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189HO 42/6 ff.147-8.

190HO 42/4 ff.44-5; HO 42/6 ff.1-4 & 39-40; Add MS 38446 f.186; and HO 42/15 ff.336-7. For Bayley’s work, see M.DeLacy, Prison Reform in Lancashire, 1700-1850: A Study in Local Administration (Stanford, CA, 1986), 70-98 passim.
who have conducted themselves in such a manner as to get an honest livelihood." By the early 1790s the Dorsetshire magistrates were making similar changes under the encouragement of William Morton Pitt.

The widely accepted proposition that this extended use of imprisonment was a direct consequence of the difficulties encountered in re-establishing transportation has recently been questioned. Most tellingly, Margaret DeLacy has pointed out that the rapid growth in committals to Lancashire prisons largely involved offenders who were not under sentence of transportation. This assertion is confirmed in the two instances that I have been able to find in which other local officials provided the Home Department with complete listings of the prisoners under various sentences in their prisons. More than anything else, the "gaols crisis" of the late eighteenth century reflected whatever broad societal changes underpinned an enhanced willingness to prosecute offenders and to put new prison buildings to use. But we should not altogether dispense with the original proposition. Thomas Bayley himself told a 1785 parliamentary committee that the magistrates of Lancashire had been obliged to impose sentences of imprisonment on many lesser offenders who once would have been sentenced to transportation for seven years. This serves to remind us that transportation to America had embraced a wide range, not only of felony charges, but also petty offenders. The collapse of transportation therefore served at least to exaggerate the pace of a movement

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\textsuperscript{192} Later Corr. George III, no.637; and HO 42/18 ff.130-2.

\textsuperscript{193} DeLacy, \textit{Prison Reform in Lancashire}, ch.2. In 1784 convicted transports constituted only 15 of 104 prisoners in the Portsmouth Gaol, and 5 of 47 in the county gaol of Dorsetshire (HO 42/4 f.235; and HO 42/5 f.384).
towards the wider use of imprisonment that had been under-way since the 1760s at least.  

In those places where local officials were willing to bear the expense, the government in fact encouraged the use of imprisonment for less serious offenders. Paul himself spelled out one of the practical appeals that these developments would have had for the government: "It must be presumed that the very extensive & expensive Design ... will (when completed) relieve his Majesty's Ministers from our Share of the Inconvenience arising from the Increase of Crimes & the Decrease of the Means of punishing Criminals; ..."  

Pardons on condition of imprisonment at hard labour under the regimes established by the magistrates of Oxford and Dorset frequently appear in the Home Department’s Criminal Entry books after 1789. In 1795 the Duke of Portland praised the efforts of Thomas Bayley and the Lancashire bench:  

I am fully sensible of the important Advantages which arise to the County of Lancaster from the excellent Regulations under which the penitentiary House is conducted, a benefit which is in so great a degree to be attributed to the Care and Attention bestowed upon it by you, and the other Gentlemen in the Commission of the Peace.  

The Home Department seems also to have encouraged the adoption of such regimes in places where (so far as can be determined from the Home Office Papers) they had not been so determinedly taken up. In considering the request for removal of transports from the county

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195 HO 42/9 ff.163-4.

196 See for instance the individual pardons of 1789-96 listed at HO 13/7 pp.30-1, 352-3 & 466; HO 13/8 pp.91-2, 111-2, 163-4, 337, 459-60, 474-5 & 523; HO 13/9 pp.248-9 & 252-3; HO 13/10 p.389; and HO 13/11 pp.167-8. The Oxford pardons arose under a special arrangement between government and the Oxford Quarter Sessions (HO 42/33 ff.278-9; and HO 49/1 p.265).

197 HO 65/1 p.35 (see also HO 13/7 p.435). For similar praise of Willoughby’s efforts in Oxfordshire, see HO 13/7 p.343; and HO 13/10 p.78.
gaol of Staffordshire in 1793, it agreed that "Many of the convicts seem to be hardened offenders and fit objects only for transportation." All those transports whom the county wished to be rid of would be removed but, the Home Department added, "Others, who have been less in habits of vice, you may possibly wish to keep in Gaol to try the effect of the discipline of the penitentiary scheme." 198

Yet even in such pioneering counties as Gloucestershire, Lancashire, Oxfordshire and Dorsetshire, there still could be no question of doing away with transportation altogether. Although they did not employ it on the same scale as their metropolitan counterparts, many provincial authorities nevertheless saw transportation as continuing to play a vital role in their changing scheme of penal practices. In London the transportation of convicts was carried out on a massive scale largely because it was no longer feasible to execute convicts in sufficiently large numbers fully to realize that policy of severity and deterrence that metropolitan officials thought best served their needs. By contrast, the absolute number of capital convicts executed in many of the provinces remained quite high and the proportion of executions even more impressively so. But the proportion of sentences to transportation was markedly lower (see Table 4.2).

Whereas metropolitan convicts were often transported in lieu of execution, many provincial convicts may have been transported in lieu of imprisonment. Letters from magistrates in the pioneering counties all indicate that transportation was often viewed most importantly in terms of its capacity to reinforce the internal regime of the new prisons. In the first instance the new disciplines of separation and solitary confinement would be jeopardized

198 HO 13/9 pp.314-5.
if the gaol was still crowded with convicts under sentence of transportation. More subtly and powerfully, it was believed that both the opportune presentation of pardons to well-behaved transports and the timely removal of others would encourage the potentially reformable to redouble their efforts at moral regeneration. The most detailed statement of this sense of the co-dependence of transportation and imprisonment, and of centre and localities in making it work, was made by Sir George Paul to the Earl Spencer in 1806:

In the case of transports for term of years, we keep them in the Penitentiary House for a trial of their disposition. If they give us reason to think there are probable hopes of real reformation, we teach them a trade, and keep them two or three years according to circumstances. I then usually certify to the Secretary of State that we believe them reformed, and that they are deserving objects of His Majesty’s Mercy. In such cases, we shall hope for recommendation that pardons may be granted.

Those whose sentence is from Life or reprieve from a sentence of death, we seldom or never undertake; and we desire therefore that their removal may be as speedy and, indeed (for the sake of effect), as sudden as possible. We also beg to be allowed to remove such as misbehave in Prison and who we find would not only not be reformed themselves, but would probably prevent the reformation of others.

Similar ideas had been expressed in letters from Oxfordshire and Dorsetshire. And as early as 1789 the Lancashire bench had devised a three-fold system of classification amongst the transports in their county gaol for the Home Department’s instruction: those whom they deemed to be beyond redemption; those who conducted themselves well; and those whose behaviour was exemplary.

The basic ideological necessity of transportation to the authority of criminal justice therefore remained unchanged throughout the nation at large. For this reason alone, sooner

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199 HO 42/18 f.66; and HO 42/20 f.160.

200 Althorp PP G259 (G.O. Paul to Spencer, 31 Aug 1806; emphases in original). See also HO 42/11 ff.71-2 & 288-9; and Add MS 33107 ff.476-7. A more detailed account of this practice appears in Devereaux, "In Place of Death" (forthcoming).

or later, government would probably have felt compelled to intervene so as to help local gaols remove their transports. But it is also possible to identify a number of reinforcing elements that were unique to the rapidly changing late-eighteenth-century social and cultural context.

One of these was the perceived increase in the mobility of the nation's populace given the vast upsurge in mobility that was implied by the increased volume and speed of road traffic after 1750 and perhaps especially after 1780.²⁰² Virtually every official who wrote to the Home Department requesting relief of their gaol cited a potential incapacity to hold such numbers securely. The occurrence of at least five gaol-breaks in the latter half of 1784 alone must have leant credence to such a belief.²⁰³ There are also indications that the actual removal of convicts from provincial gaols to the hulks sometimes aroused anxiety on the part of statesmen. In October 1783 officials in Exeter were asked to ensure that their "convicts may not be passed thro' London in their way to the hulks" on the Thames. Four years later the Home Department requested that officials of Lancashire and Chester remove their convicts to Plymouth by sea rather than land. In November 1789 Scrope Bernard recommended the establishing of "hulks at Newcastle, Hull or some one of the northern parts, as in bringing convicts from that part of the kingdom to Portsmouth or Plymouth, the expence, trouble and risks must be very great, unless they could all rendezvous at some port

²⁰² See above, pp.29-31.

²⁰³ See the newspaper reports collected in 1784, 158, 170, 197-8, 310-1 & 291-3. Although I am not in a position to prove this, I find the universality of protests about the insecurity of gaols a little suspicious. Was every gaol that so protested really in such imminent danger? Or did local officials discover that this was a reliable means of provoking the government to action?
and be brought in one ship by sea."\textsuperscript{204}

Notions of increased mobility presumably underpinned the appeals of local officials to the Home Department for the relief of their gaol on the grounds of the building's physical insecurity. The cost of coach travel renders incredible the idea that escaped convicts might actually be travelling as far as might be feared. Nevertheless, a report in \textit{The Times} of December 1786 about the impending departure of the First Fleet strongly suggests the existence of just such an anxiety:

Private letters from Portsmouth describe that town and neighbourhood to be infested with numerous groups of thieves and robbers, that scarce a night passes, in which some persons are not robbed, or some houses broken open. The villains are supposed to have belonged formerly to the hulks at Woolwich, and to have come down to see their former friends and companions.\textsuperscript{205}

On a smaller scale, but one nonetheless alarming to them, the magistrates of Flintshire in northern Wales implored government to relieve their gaol of four transports whom they believed to be "part of a Gang of twelve or more, who about three months ago came from the neighbourhood of Manchester and Liverpool ...."\textsuperscript{206} Thus, to the extent that enhanced mobility had profoundly impressed itself on the minds of statesmen at the nation's centre, the serious offenders of the provinces had become a problem - not only for neighbouring counties and beyond, but for the nation at large - in a way that they had never seemed to be before 1775 when, by and large, the transportation of such offenders had proceeded unproblematically.

\textsuperscript{204}HO 13/1 pp.250-1; HO 13/6 p.33; and Bucks R.O., D/SB/OE 1/18. In the latter event, considerations of cost to government seem to have prevailed against so elaborate an extension of the hulks establishment. Perhaps it was expected that such costs as security in the removal of convicts to the hulks would entail ought properly to be borne by the local officials whom the service existed to benefit; see below, pp.320-1.


\textsuperscript{206}HO 42/14 f.118.
Almost as bad would have been the possibility that some local officials might simply take matters into their own hands and ship their convicts away on their own initiative. This is unlikely to have been a serious option except for those who, in the first place, were either in or near to port towns and, in the second, had a small enough number of convicts that their dumping in some American colony was unlikely to attract attention. In April 1785 the magistrates of Poole transported five convicts to Newfoundland, a venture that - bizarrely enough - may actually have been sanctioned by the Home Department. Only two months earlier one of the MPs for neighbouring Devon had threatened that, if the government did not soon relieve the gaol of Plymouth, "We must take redress elsewhere." As we will see in the following chapter, the ham-handed attempts of Irish officials to do this on a much larger scale proved to be a reinforcing factor in the decision of the government to develop a large-scale convict colony in New South Wales.

A rapidly-growing periodical press, distributed with ever-greater speed and efficiency throughout the country, further complicated matters for the government. The reduced capacity of ministers to control the flow of information to provincial officials brought a powerful new pressure to bear within the traditionally more-distant relationship between centre and periphery. In February 1785 the county gaoler of Lancaster, "Seeing in the Public Modern Memorial U. MSS. Diary of Benjamin Lester (entries for 25 & 28 April 1785). The entry for April 25th records the reception of "an Express from M' Napene [ie. Nepean?] to M' Cartwright that he could not set of the Convicts till Monday Wednesday Evening." My thanks to Jerry Bannister for providing me with this source.

208HO 42/6 f.62. Since Bastard immediately added that he "was also to inform" Sydney that he would make motions on the matter in the House of Commons "either today or tomorrow" (for which see pp.302-3 below), his subsequent activity in parliament was presumably not the "redress" of which he spoke.

209See below, pp.316-9.

Papers that the Hon'ble House of Commons had ordered a list of the criminals confined on board the Hulks in the River Thames," immediately took "the liberty to transmit to [a county MP] the number of Criminals now in the Gaol ...." The MP of course immediately passed this request to the Home Department.\textsuperscript{211} Other examples might be cited of local officials learning through the popular press that the gaols of other counties were being favoured with government's relief and demanding the same attentions in their turn.\textsuperscript{212} At the very least then, the rise of a more widely and effectively distributed periodical press enhanced the speed with which the periphery could make its claims on the attentions of the centre.

For all these changing contexts however, the character of the process by which government relieved local gaols of transports remained fundamentally reactive. The occasional surveys of "convicts under sentence of transportation who are confined in the different Gaols in this Kingdom" anticipated the statistical instruments of an active supervisory authority at the centre. But these surveys invariably followed discrete decisions to organize fleets or individual vessels for the transportation of convicts to New South Wales. The first was sent to the Clerks of Assize of the various circuits in January 1785 when government anticipated resuming large-scale transportation to a west African site.\textsuperscript{213} A second was issued the following December, this time to the High Sheriffs of the individual counties, while the determination of the final site was being awaited and preparations under-

\textsuperscript{211}\textit{HO 42/6 f.68}. For the MP, Thomas Stanley, see \textit{Commons 1754-90, 3:472-3}; and \textit{Commons 1790-1820, 5:254-6}. Higgin also noted that the paper had contained "a list of those under sentence in the Gaols of London and Middlesex," a factor which implies local awareness and resentment of the greater care in these matters shown by government to the metropolis than to any other part of the nation. For Higgin's activity in Lancashire, see DeLacy, \textit{Prison Reform in Lancashire}, chs.4-5 passim.

\textsuperscript{212}\textit{HO 42/10 f.391; HO 42/11 ff.244-5; and HO 42/15 f.417}.

\textsuperscript{213}\textit{HO 13/2 p.328} (what appears to be the resultant list is at \textit{HO 42/6 f.443}). A similar order was sent to the keeper of the Dunkirk hulk in Plymouth, but not to Campbell on the Thames - presumably because the government expected soon to do away with the former altogether (see \textit{HO 13/2 p.342}; and above at p.226).
way for what would become the First Fleet. Similar exercises, requesting slightly more detailed information, were carried out in 1789 prior to the formation of the Second and Third Fleets. Thereafter the practice altogether ceased except in order to ascertain the numbers of female transports (who could not be removed from provincial gaols until actually transported).

The basic information required by these circulars - Names, Offenses, Where and When Tried, by which Judge, and Sentence - could conceivably have been used by the Home Department to determine which local offenders would actually be transported. However the larger pattern of gaol relief took the form of temporary removals to the hulks, over which the government did not seek to exercise any greater control than merely to specify the numbers to be removed at any one time. There is evidence that government sometimes sanctioned choices as to which convicts already aboard the hulks were actually transported to New South Wales. As we have seen, the Duke of Richmond retained many hulks' inmates for the purposes of labouring on his fortifications projects. But the actual decisions appear to have been made on the spot, presumably by the hulks contractors in consultation with the Ordnance, rather than in London. It was not until 1806 that the Home Department began

214SP 44/414 p.222 (a copy of that sent to the High Sheriff of Warwickshire is at Add MS 41254 f.22). For the proposed African site and the ensuing difficulties over it, see below Chapter 5, part II(1).

215SP 44/415 (Sydney to the Sheriffs, 27 Feb 1789). A follow-up was issued seven months later after the delay in organizing the Second Fleet (see HO 13/7 pp.246-7; and see below, pp.319-20). A separate follow-up was sent regarding female transports, all of whom remained in local gaols (HO 13/7 p.283). For the Third Fleet, see SP 44/415 (Grenville to the Sheriffs of the counties of England & Wales, 22 March 1791; & S.Bernard to same, 23 Nov 1791; HO 42/19 f.49 appears to be an undated draft of the former).


217The quarterly hulks returns received in the Home Department specified only Name, When & Where Convicted, Sentence, and Behaviour - and so could not form the basis of any reasonably informed decision as to disposition other than in the long-term. As to transports still held in local gaols, the government's request to
regularly and systematically to collect information on provincial offenders that was sufficiently detailed that it might actually form the basis of rulings from the centre as to their final disposition. To the extent that local officials were primarily concerned that their worst offenders short of death should at least be removed from their gaols and communities, the larger part of the initiative in determining which offenders were punished by transportation was still largely in their hands during the 1780s and 1790s.

Nor is there any evidence that the information collected in this manner was used for any long-term purposes of policy formulation. For the time being, any ambition to exert a more active direction over the physical disposition of serious criminal offenders throughout the nation remained in the future. Nevertheless the gathering of information on convicts throughout the nation - a practice that might ultimately make such regulatory ambitions feasible - was already being deployed, albeit in order to uphold a traditional mode of administrative practice. In this area, as in others, the methods of a more active central governance were being tentatively and irregularly deployed in treating the ills of a state that, for most administrative practices, government continued to view as fundamentally decentralized.

V. Conclusion

If the behaviour of ministers during the 1780s appears to lack what we might think of as either humanity or leadership in penal reform, it does not follow that such behaviour was

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218 See below, Chapter 6, parts III-IV passim.

219 For similar instances of information collection in the service of an established administrative order, see the discussion of the administration of pardon below, Chapter 6.
incoherent and unconsidered. Intensive fiscal concerns precluded the construction by government of a vastly expensive penitentiary scheme. But, for a time at least, ministers sought to compensate for this abandonment with a sensible preventive alternative. Nor indeed was a strong lead in prison reform politically advisable in a state structure in which local officials varied widely, not simply in their commitment to realizing, but indeed in their fundamental sympathy with such reforms. A ministry that obliged rather than encouraged local officials to adopt administrative standards - standards which would impose considerable expense on local ratepayers - ultimately ran the very serious risk of alienating that support without which no ministry could long survive.

By the early 1790s the immediate problem of convict numbers was largely fading, but the arrangements put in place to meet it continued in place. In fact transportation and the hulks became the subject of renewed controversy. The emergence within parliament of intense and persistent opposition to the government’s penal arrangements prompted the latter to revive the policing strategies that it had abandoned a few years before. The tension between ministry and parliament forms the wider context in which both this debate, as well as the prior decisions about transportation that fundamentally informed it, must be placed if the development of policing and penal measures during the 1780s and 1790s is more fully to be understood.
CHAPTER 5
MINISTERS AND PARLIAMENT: THE DEBATE OVER PENAL POLICY, 1785-1801

Historians of changing penal practices during the late eighteenth and early nineteenth centuries have often written as though government and parliament were a single entity. On the other hand, whenever they have observed that actions by parliament altered a course of action set upon by government, they have not pursued the implications of parliamentary opposition to government policy. This chapter seeks to provide an account of penal policy in the latter decades of the eighteenth century. Change was a product, not only of Home Department initiatives or of the interaction between Treasury and Home Department, but also of the frequent tension between government and the legislative body that had to sanction any substantial measures. In short, this chapter seeks at once both to illuminate and to problematize the narrative of penal policy-making and reform through a concentration on the intermittently - but often intensely - combative relationship between ministers and parliament.1

We begin with a consideration of William Pitt’s overall influence in affairs which, although not to be underestimated, is nonetheless easily overstated when it takes the guise of that "mastery" over the House of Commons that is often attributed to him. Parliament’s derailment of his government’s plans to make Africa the established destination for convicts under sentence of transportation reveal the limits of that mastery on a particularly important occasion. The consequences of this, largely unforeseen on both sides, are pursued through a discussion of subsequent developments in the administration of criminal justice under the

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1The most substantial attention to parliamentary opposition to penal policy during the late eighteenth century is to be found in an early study, E.O’Brien, The Foundation of Australia (1786-1800): A Study in English Criminal Practice and Penal Colonization in the Eighteenth Century (2nd ed., Sydney, 1950), 119-23 & ch.8. However it proceeds from a relatively unconscious "Whig" perspective of penal reform, and is of a more narrative than analytical character.
Home Secretaryships of Pitt's closest colleagues, William Grenville and Henry Dundas. By contrast, Pitt's final Home Secretary, the Duke of Portland, took some surprising initiatives - initiatives that had important implications for the closely circumscribed governmental role in the administration of criminal justice favoured by Pitt. Finally, we consider the revival of intensive parliamentary opposition to the government's penal policy during the early 1790s. The government attempted to contain that opposition, first, by a renewal of the preventive policing strategy of the mid-1780s and, second and perhaps more surprisingly, by the decision to sanction Jeremy Bentham's Panopticon prison project.

Parliamentary criticism derived in part from humanitarian concerns about penal practices. An equally powerful strand was that same concern for considerations of economy that we saw at work in the previous chapter. Some MPs objected to the practice of transportation as a whole, preferring some variation on the hard labour option proposed during the late 1770s. Others objected to the distant and wholly undeveloped New South Wales as the destination of transports. And most people, in government and parliament alike, objected to the hulks which, although conceived by ministers as a purely temporary measure after 1782, tended to be regarded by their most vocal critics as a penal measure in themselves.

Interestingly, although the most active critics of government policy were often Whigs, this was not always the case. The leading proponents of the particularly controversial Gaols Regulation bills of 1790 and 1791 were Whigs such as Sir Charles Bunbury, Sir Gilbert Elliot, and Thomas Powys, but other active supporters included such committed Pittites as
Edward Phelips, Matthew Montagu, Henry Hobart and Sir Joseph Jekyll. Thus, by comparison with the debate over capital punishment during the early nineteenth century, criticism of government penal policy by no means fell on one side of the division between government and opposition. That this was so must have made Pitt feel all the more strongly his government’s potential vulnerability in these matters.

I. The Governing Temperament of William Pitt the Younger

It is impossible to understand the course of the central government’s penal policy between 1785 and 1801 without reference to the personality of William Pitt and to the circumstances under which he maintained his position and authority. The means by which he did this amongst his ministerial colleagues has already been discussed at length. Our principal concern in this chapter is with how Pitt sought to maintain his authority within parliament at large. Most of his biographers see an erstwhile (but not precipitous) fiscal and parliamentary reformer of the 1780s who gave way to a reluctant but determined warrior against French tyranny during the following decade. At the same time, the fiscal skill that Pitt demonstrated during the 1780s presaged the political supremacy that came with the routing of the Whigs in the Regency Crisis of 1788-9, Whig fragmentation after 1792, and

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4See above, Chapter 2, part II(3).

5G. Tomline, Memoirs of the Life of the Right Honourable William Pitt (4th ed, 3 vols, 1822); Earl Stanhope, Life of the Right Honourable William Pitt (New York, 1970; rep. of 1867 ed.); J.H. Rose, William Pitt and National Revival (1911); and Rose, William Pitt and the Great War (1911). Tomline made it no further than the outbreak of war in 1793, "a marked epoch in Mr. Pitt’s administration" (Memoirs of Pitt, 3:527), and concluded with a twenty-five-page encomium on Pitt’s domestic administration. John Ehrman characterizes the years between 1789 and 1797 as “The Reluctant Transition” (J. Ehrman, Pitt the Younger [1969-96], vol.2).
finally the withdrawal from parliament of the Foxite rump after 1797. A general impression has therefore arisen of Pitt's having enjoyed a long-term placidity similar to that which is often attributed to the eras of Walpole, the Pelhams and Lord North - punctuated perhaps by a few early setbacks that, in retrospect, may be read as the youthful statesmen learning his craft. However the undoubted novelty of a stable ministry after the crises of 1782-4 was hardly the same thing as the unlimited "influence over the legislative body" that one contemporary attributed to it.6 Things were far more difficult and complicated for Pitt than that.

The decimation of the opposition in the election of 1784 put an end to any grouping that might seriously expect to supplant Pitt's government.7 However this proved not to be the same thing as the elimination altogether of effective opposition on individual issues. Indeed the sheer number of ministerial defeats on major policy issues between 1784 and 1786 - the Westminster scrutiny, parliamentary reform, the choice of a destination for convicts sentenced to transportation, metropolitan policing, Irish trade regulation, various tax proposals, and naval fortifications - has no parallel amongst the other long-term ministries of the eighteenth century. The defeat on the last of these in February 1786 prompted William Eden to remark that Pitt faced "a very loose Parliament, and that Government has not a decisive hold of it upon any material question."8 So long as Pitt enjoyed the sole support of the King, and parliament could offer no alternative to him, his position as first minister was

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safe. But in a parliament which still possessed a large body of independent gentlemen, this was not necessarily a guarantee of an easy time of things.\(^9\)

Pitt's personal domination over his ministers was well understood among many local officials who sought the relief of their gaols. So too, however, was the extent to which the authority of parliament might be enlisted when government seemed insufficiently responsive. Thus John Rolle, MP for Devon, often took his county's concerns for the relief of its gaol directly to Pitt rather than the Home Department. But John Pollexfen Bastard, Rolle's fellow county MP and usually a supporter of Pitt's government, did not hesitate to criticize government activity regarding transportation after the Home Department proved too slow in responding to his concerns about prisoners in the gaol at Plymouth.\(^10\) Bastard's involvement in this latter issue indicates our principal concern in this chapter - the extent to which the government that Pitt dominated was obliged, in the face of activity in parliament, either to modify or altogether to abandon its intentions with respect to criminal justice administration.

Pitt's hold over both his colleagues and the Commons was largely a function of personality, so it is a source of no small frustration that a full understanding of that personality is largely beyond our abilities. That it will remain so is ensured both by the relative paucity of Pitt's own correspondence and the posthumous destruction of most personal communications from him by his closest friends.\(^11\) The son of one first minister and the nephew of another, Pitt was never allowed to entertain any doubts that his heritage destined him for the same office. Chatham took care to have his son educated at home, in


\(^11\)So intractable is this problem that's Pitt's most dedicated and detailed biographer largely sidesteps the issue altogether by conflating the man with his governmental labours (Ehrman, *Younger Pitt*, 1:xii).
splendid isolation from the men who would grow up to be his followers, opponents and
deifiers, and imbibing at least the idealism (if not the substance) of the Great Commoner’s
reputation for public spiritedness. Like many successful political leaders, Pitt combined a
deep-set sense of duty with a tremendous will to power. But the peculiarities of his
upbringing also ensured that, unlike most leaders, in him that mentality would assume a
solitary caste. Throughout his political career, Pitt preferred verbiage and postures to overt
partisan organization. What in others might seem at best temporizing and evasive, and at
worst hypocritical and manipulative could, in the intellectualizing forge of his perceptions,
seem almost a principle. It was a mark of how persuasive Pitt must have been that both
Henry Dundas, who might have expected greater deference to his age, experience and
influence, and Henry Addington, who might have expected more loyalty and support after
inheriting an almost impossible task of governance, destroyed any correspondence that might
lead us to think the less of him.

Pitt had made ostentatious displays of his blend of public spiritedness and his will to
power even before his twenty-third birthday. Having overreached himself by attempting to
enter parliament for Cambridge in the election of 1781, he did so in the interest of James
Lowther, but only after renouncing any willingness to support that interest on other than
principled grounds. At the same time, he refused minor office under both the North and
Rockingham administrations. He seems to have been seriously considered for the prestigious
new Home Secretaryship under Shelburne, and received the Chancellorship of the Exchequer
and a seat in cabinet. If nothing else, such ambition and self-confidence must have confirmed
George III in his belief that he had found the man who would ultimately be willing to brazen
it out in a Commons in which the main support would be the King himself.\textsuperscript{12}

Yet Pitt's public-minded inclinations were also genuine enough. By the time of the crisis over Fox's East India bill, he had already been associated with one measure of parliamentary reform and had personally sponsored a second.\textsuperscript{13} He was disturbed enough about the means by which the King intended to bring him to power that he avoided any direct role in concocting the strategy of overthrow.\textsuperscript{14} An uncomfortable sense of how little the events of December 1783 accorded with his usual stance may further have determined him in his attempts to carry a reform bill, this time from a position of authority. It must have been a bitter blow to Pitt that neither his King nor, in the event, the Commons wanted this third and much-attenuated reform measure.\textsuperscript{15} After its failure, there was little more to be seen of the high-minded reformer.\textsuperscript{16} Pitt's will to power now clearly achieved that primacy over his public spiritedness which, perhaps, it had always enjoyed.

At any rate, the minister we see after 1785 was mainly a survivor rather than an innovator. To the extent that he was faced with problems of administration and governance that were of a scale that Walpole, Pelham and North never had to face, Pitt might be said to

\textsuperscript{12}Commons 1754-90, 3:299-300; Ehrman, Younger Pitt, 1:24-6, 79-81, 83, 102-4, 112-15 & 127-42; Cannon, Fox-North Coalition, 65-7 & chs.9-10; and Reilly, Pitt the Younger, 1759-1806 (1978), 56-7, 66, 77-8 & ch.9.


\textsuperscript{14}Cannon, Fox-North Coalition, 128-32.

\textsuperscript{15}Christie, Wilkes, Wyvill and Reform, 204-19; Ehrman, Younger Pitt, 1:223-8; Cannon, Parliamentary Reform, 91-7; and Reilly, Pitt the Younger, 130-1.

\textsuperscript{16}This falling away after 1785 has been detected even in those measures of fiscal reform with which Pitt is so closely associated; see J.R.Breihan, "William Pitt and the Commission on Fees, 1785-1801," Historical Journal 27 (1984): 59-81 (esp.76-81); and P.Harling, The Wanag of 'Old Corruption': The Politics of Economical Reform in Britain, 1779-1846 (Oxford, 1996), 58-63.
have led the first ministry that was in some sense "modern." But after 1785, his primary ends and means do not seem to have been so different from those of his forebears. His principal goal was to stay in office; his principal strategy in so doing was the careful management of national finances. On matters that threatened inordinately to lengthen the domestic administrative reach of government, he managed rather than led. And if management required the abandonment of an unduly expensive measure, or of one that either was or might become alarming to a parliament still dominated by frugal backbenchers, so be it.

This was a strategy that had first been employed during his Chancellorship under Shelburne, when the Penitentiary scheme was abandoned in favour of a preventive policing strategy for London which (in its original conception) was to be carried on by local officials at local expense. For lack of close oversight by the Home Secretary and prior consultation with Pitt, this structurally limited plan had ballooned three years later into the more encompassing, ambitious - and expensive - Metropolitan Police bill. The decisive role of Pitt in its rejection was only too painfully apparent to the bill’s framer, John Reeves:

"[G]reat part of this storm has collected thro’ the coldness of the Treasury. - Lord B[eauchamp] mentioned it in his Speech, that Mr Pitt, I hope, will feel nettled at this remark of Lord B’s, and give that tone to the business, which he is so well able to give to any measure - That seems the only thing wanting. ... [I]f this Plan is lost, it is lost for want of the common exertions of government in the House of Commons."17

At this time Pitt was the only member of his ministry with a seat in the Commons. And he "professed himself not to be perfectly master of the subject, and therefore incapable of forming a competent judgment" on it. It is unclear whether we should take this to mean that

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17HO 42/7 ff.257-9. Reeves made his last plea for the bill to Pitt, and the only letter that I have found relating to its possible re-introduction the following year makes clear the Treasury’s rejection of it on the grounds of cost; see PRO 30/8/170 ff.245-6; and Brotherton Collection (Leeds U.), Sydney/Townshend Papers K9.
he was merely being disingenuous in order to mask yet another major political
miscalculation, or that he had not yet achieved that domination of his cabinet and its
measures that would soon come to characterize his ministry. The latter is quite possible
with regard to criminal justice measures. Pitt had taken no self-evidently active role in the
passage of the Transportation Act of 1784, despite the fact that its author specifically
suggested he lead in order "that it may come into the House with more Authority and prevent
the great Interference by some Gentlemen who may spoil the Bill by amendments."19

By July 1785 however, only a month after the withdrawal of the Metropolitan Police
bill, Sydney had lost any illusions he might still have had as to the First Lord's determinative
role in defending or advancing any substantial extension of government activity in criminal
justice matters. In requesting that the Treasury sanction a third vessel for the hulks
establishment on the Thames, Sydney noted that "[t]hese terms ... were communicated
privately to Mr Pitt and his acquiescence was obtained previous to the agreement."20 There
could be no more room for misunderstanding between the Home Secretary and the minister
as to who ultimately controlled policy. Nor was Pitt's influence over criminal justice
administration confined solely to issues which intruded on national finance. In February 1789
he informed Sydney that a cabinet meeting - one that Sydney seems not even to have
attended - had determined that only the smallest possible number of capital convicts in
London awaiting final sentence should be put to death.21

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18Parliamentary History 25 (1785-6): 907. See also Ehrman, Younger Pitt, 2:123-5, who adds that "this was
not the only sign of miscalculation in a rather disappointing year" (2:125).


20HO 36/4 p.311.

21See below, p.383.
Pitt may well have felt a particular interest in maintaining the good will of the City of London. The City's substantial role in national financial arrangements made good relations between it and the government indispensable. Its opposition to Fox's East India bill had been a particularly reassuring, perhaps even influential force in the crisis of 1783-4, and Pitt remained on close terms with many City officials for most of the rest of his life and career. Their clear preference, expressed in 1785, for a criminal justice system which stressed severe punishments over policing measures must therefore have been no light consideration with him. The renewed pressure which such a policy, in turn, brought to bear on the search for a new destination for convicts sentenced to transportation forms our first topic for substantial consideration.

II. Transportation: From Africa to Botany Bay

... I really cannot form any judgment when the evil will be at an end for, from the mistaken humanity of some and the affected tenderness of others, every plan which the King's Servants have proposed for transporting the convicts out of the Kingdom has met with such opposition that it has been almost impossible to carry any of them into execution.23

- Lord Sydney, 6 November 1785

(1) Parliament's Mandate, 1779-1785

Parliament's imposition of the choice of Botany Bay, or at least of some choice other than the government's proposed African site for the transportation of convicts, is seldom counted as one of Pitt's failures of the mid-1780s. Yet this was a defeat which had great implications for both government finance and imperial history. Parliamentarians intervened in the government's choice of destination because they maintained a wider conception of the

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22Ehrman, Younger Pitt, 1:140-1, 149 & 603n1; and Cannon, Fox-North Coalition, 118-9, 135 & 185.

23HO 13/3 p.239.
needs that had to be addressed by that choice. Both shared a concern that the new transportation venture be as economical as possible, but parliament intervened when it seemed that government's selected destination both neglected a proper balance of penal considerations and threatened important trade concerns. The ironic outcome was that, by indirectly obliging government to take on the last-ditch option of New South Wales, parliament ended up with a far more costly set of penal arrangements than it had ever sought or anticipated. This would leave the door open for continued debate about the relative merits of transportation, the hulks and the penitentiary after 1790.

We should remember the traditional advantages of transportation as a penal practice. First, it provided a middle ground. Many offenders whose crimes and character were not thought to justify their being executed were nevertheless thought to be beyond such help as England's slowing expanding reformative prison regimes might offer. But to place them on board the hulks, where they would be indiscriminately mixed with all classes of offenders, might eliminate all hope of their ultimate reformation. The solution was to transport them to a place where conditions were sufficiently arduous that their characters might ultimately be redeemed. Transportation also possessed the self-evident attraction of removing dangerous offenders from society. As the Bow Street magistrate Sampson Wright bluntly observed in 1782, "the Public will be happy to get rid of them at any rate."24

In the second place, an ideal location would also satisfy economic imperatives. The advanced social and economic development of the American colonies had created a market for labour that could absorb large numbers of indentured offenders. No other British colony had reached so advanced a state by the 1780s, and this raised the likelihood that government

24HO 42/1 f.98.
would have to contribute in much larger measure to the upkeep of England's exported convicts. The extreme option would have been a remote and economically unpromising location where the convicts would have to be guarded by a permanent garrison - a place like Botany Bay. A better location would provide the happiest compromise between this and the American ideal.

By 1779 it seemed to have been agreed by both ministers and parliamentarians that an African site would fulfil these requirements. This possibility was considered by a Commons Committee of that year which had found the hulks wanting from the perspective of both penal severity and potential reform. The government subsequently transported several convicts to various forts on the African coast, initially through individual pardons on conditions of military service, but also forty others under formal sentence of transportation in a voyage of 1782. Shelburne's correspondence at this time with Judge Francis Buller strongly suggests that the government also regarded Africa as the best alternative to America for the full-scale resumption of transportation. Buller emphasized that "Transportation has been so long out of use that it will be extremely difficult, if not quite impracticable, for the Justices of the Peace to revive it without the Assistance of Government," but he was also convinced that "once revived, ... it may be continued with as little Expence to the Public as Transportation to America was formerly." Buller was in contact with "several Gentlemen respecting the Practicability of sending Convicts to Africa," including hulks contractor

25 J.H.C. 37 (1778-80): 306-14 (esp. 311-3). See also pp.172-3 above.

26 The intermittent character of the practice before the voyage of 1782 was confirmed in a letter from the Under Secretary in the Southern Department, who advised one applicant "that opportunities of sending Convicts to Africa [are] offering but seldom ..." (SP 37/15 ff.302-3). See also W.Oldham, Britain's Convicts to the Colonies, ed. W.H.Oldham (Sydney, 1990), ch.4.

Duncan Campbell, all of whom were "satisfied that the Plan is feasible ..." Campbell and his colleague William Huxford proposed an island off the coast of Sierra Leone.  

The fiscal concerns of the moment, clearly stated in Buller's letters to Shelburne, clear up the mystery that might otherwise surround George Moore's two subsequent, small-scale voyages to the Americas. These might seem not only desperate and foolhardy, but also distractions from the main purpose, until we remember the importance of perceived economic advantage as a factor in the government's calculations. The American demand for indentured servitude had remained strong up until the outbreak of the Revolutionary War, and the expectation that it might resume after the war's end would have been of a piece with larger hopes and expectations that the pre-war pattern of trade relations between the old country and the new might soon be resumed.  

The observation of the Commons Committee of 1779 - "That it is not in the Power of the executive Government at present to dispose of convicted Felons in North America" - clearly implied that the latter remained the favoured site, to be departed from only if necessity continued to dictate. And in fact Moore succeeded in selling off most of those convicts whom he brought to Baltimore on his first

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28W.L.C.L., Shelburne Papers 152/40 & 41. Huxford may soon after have lost credibility, if not all favour, by suggesting an alternative plan of turning over all male convicts to the Dey of Algiers (W.L.C.L., Shelburne Papers 152/44). The disgust which this proposal aroused, presumably in Shelburne himself, is recorded by a later cataloguer of his papers: What an abominable proposal! - and from an Englishman too! - This Man must be no less ignorant than unfeeling - ignorant in not knowing that the Sentence of the Law is Banishment, not Slavery - unfeeling, in every Sense of the Word, but, more especially, in supposing every Culprit to be of the same Class (Add MS 24134 f.70; emphases in original).


30J.H.C. 37 (1778-80): 314 (first emphasis added).
voyage in 1783-4, so it is not surprising that both he and the government were willing to try again the following year. By this time however it was becoming apparent that the Americans might actually have principled objections to the reception of convicts that would override the attraction of cheap labour.31

By late 1784 then it was clear that the preferred option of the former American colonies was permanently lost. It had also emerged that the next best options, the islands of the West Indies and the Honduras, were also unwilling to accept convicts.32 At the same time the scale of the convict crisis, most pressing in London but now also cumulatively alarming in the nation as a whole, was only too apparent. After a last ditch effort to determine if any of the Portuguese settlements in Africa might receive convicts, the government negotiated a contract for the removal of about twenty convicts to its fortress at Cape Coast Castle.33 By early 1785 however it had become clear that the establishing a permanent site for the large-scale reception of transports could no longer be avoided. The government settled on plans, first proposed as early as 1779, to turn an island in the River

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31This must always have seemed a strong possibility, given not only past experience with the colonies but also that, on his first voyage, Moore apparently claimed to be bound for Nova Scotia - his alternate destination if the convicts were turned away at Baltimore (Corr. George III. nos. 4413 & 4419-20; A.R.Ekirch, Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775 [Oxford, 1987], 134-9; and K.Morgan, "English and American Attitudes Towards Convict Transportation, 1718-1775." History 72 [1987]: 427-9). In the event, an American resident in London immediately sent word of the voyage (and the deception) to American peace negotiators in Paris (John Jay: The Winning of the Peace: Unpublished Papers, 1780-1784, ed. R.B.Morris [New York, 1980], 572-3). For Moore's voyages, see A.R.Ekirch, "Great Britain's Secret Convict Trade to America, 1783-1784," American Historical Review 89 (1984): 1285-91; and Oldham, Britain's Convicts to the Colonies, ch.5.

32Moore's second voyage had ended in the Honduras. The acceptance of the convicts there had only been with such hostility that a third voyage, directly there in late 1785, carried only twenty-nine convicts. Moore was turned away and resorted to distributing the convicts along the Mosquito Coast. See HO 42/9 ff.564-6; Martin, "Foundation of Botany Bay," 50-1; M.Gillen, "The Botany Bay Decision, 1786: Convicts, Not Empire." English Historical Review 97 (1982): 747-8; and Oldham, Britain's Convicts to the Colonies, 88-94.

33HO 13/2 p.320; HO 36/4 pp.238-9 & 259-60; HO 42/5 f.323; HO 42/6 ff.30, 70 & 172; and HO 43/1 pp.353-4 & 355.
Gambia into a permanent site for the reception of British convicts. By February 1785 circumstances were deemed to be so pressing that a second contract was sanctioned for the transportation of 150 convicts to that place. After an appeal from the Recorder of London, this was almost immediately raised to 200.

It was at this point that parliament intervened in a manner that proved to have far larger consequences than were anticipated by either parliament or government. The creation in March 1784 of a Commons Committee "to enquire what Proceedings had been had in the Execution of" the Penitentiary Act of 1779 - moved by Sir Charles Bunbury and Sir Gilbert Elliot, two of the Penitentiary commissioners - perhaps indicated objection to the principle of transportation in general. But parliament had been dissolved only two days after the Committee reported, and both Bunbury and Elliot lost their seats in the ensuing election. The absence of Bunbury from the Commons seems to have left those MPs who preferred detailed hard-labour regimes to transportation without active leadership almost until his return in 1790.

By contrast the members of Pitt's first parliament seem to have accepted the ongoing role of transportation in English penal arrangements. Faced with the alarming prospect of rapidly-filling English gaols, and the problem of variation in penal emphases from one place

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34SP 37/13 ff.9-12. Roberts had subsequently been interviewed at length by the Commons Committee of that year; see J.H.C. 37 (1778-80): 311-2. Another witness before that committee, Robert Stubbs, reiterated the idea of using an island in the Gambia in April 1783 (HO 42/2 ff.186-7).

35HO 35/1 (Sydney to Treasury Lords, 9 Feb 1785[draft]); HO 35/6 (G.Rose to E.Nepean, 28 March 1785); and HO 36/4 pp.233-4. In fact all seventy-six of the convicts whose transportation to Africa was actually approved by the Privy Council in 1785 came from the metropolis - yet another indication of the continuing force exerted on government by the capital's requirements (PC 2/130 pp.75-80 & 219-21).

36J.H.C. 39 (1782-84): 844, 982-3 & 1040-6; and Commons 1754-90, 2:140 & 396. Sir Phillip Jennings Clarke also co-sponsored the Committee resolution, but his activity regarding the Penitentiary is obscure. Elliot returned to the House in 1786 but, with Bunbury and Wilberforce, seems only to have exerted pressure for the Penitentiary directly on Pitt via private communication rather than from the floor of the Commons (see above, pp.195-6.
to another. they concentrated their attention on the question of how it was to be accomplished.\textsuperscript{37} It is surely no coincidence that Sydney's request for permission to transport 150 convicts to Lemaïne was issued only six days after the Commons passed a resolution demanding to know what steps had yet been taken by government in pursuit of the powers vested in it by the Transportation Act of 1784.\textsuperscript{38} This resolution was accompanied by two others requesting returns of prisoners on board the hulks and of those under sentence of imprisonment. That the geographic scope of the returns called for in these resolutions was confined to London and the Home Counties suggests that many MPs must have shared the ministers' sense of which region of the nation had most urgently to be dealt with.\textsuperscript{39}

The call for these returns marked the onset of intensive concern amongst MPs regarding government's plans for renewing transportation. The two leading figures in this scrutiny appear to have been Viscount Beauchamp and Edmund Burke, both prominent members of the recently depleted Whig opposition.\textsuperscript{40} Their opposition to the government's choice of Lemaïne as the site to which convicts should be transported provided yet another occasion on which Pitt was (in his own words at the time) "taken unawares ...." This was to happen again only two months later with the Metropolitan Police bill. The subsequent overturning of government's plans to transport convicts to Lemaïne proved to be one in a series of defeats endured by an austere and independent leader who had not yet become acclimatized to the combative arena through which his measures might have to be passed.

Pitt's performance on transportation was evasive and unimpressive. Beauchamp and

\textsuperscript{37}See above, Chapter 4, part II.

\textsuperscript{38}\textit{J.H.C.} 40 (1784-85): 479 (3 Feb 1785); and HO 35/1 (Sydney to Treasury Lords, 9 Feb 1785, draft).


\textsuperscript{40}For Beauchamp, see \textit{Commons 1754-90}, 3:424; and \textit{Commons 1790-1820}, 5:124-5.
Burke refused to make a definitive motion until the returns that the Commons had requested from government a month earlier were produced. Pitt tried to bluster past this by asserting that "other business of importance was waiting to be brought on" and arguing that "no gentleman should be suffered to waste the time of the House with a long speech, when there was no motion before them ...." A month earlier he had effectively lied when asked directly whether government had already entered into contracts for transporting convicts to Lemaine. (It had not - but such contracts had been authorized, which was very nearly the same thing.) But Pitt soon retreated, producing the called-for returns the following day and thereby opening the path to the Commons committee, under Beauchamp's chairmanship, that would definitively frustrate government's plans for Lemaine.41

The Beauchamp Committee held hearings between late April and late May 1785, producing an interim report on 9 June and a final one on 28 July.42 Its investigations raised two broad objections to the scheme of transporting convicts to Lemaine, one of which tended to give way to the other in terms of relative emphasis during the course of the Committee's hearings.

The Committee first affirmed what appears to have been Burke and Beauchamp's principal concern in moving its formation: that transportation to Lemaine would be a sentence of death by other means. Burke could not reconcile it with justice, that persons whom the rigour of the law had spared from death, should, after a mock display of mercy, be sent to a country where they

41Parliamentary Debates 1784-92, 2:219, 306-7 & 310-1; and J.H.C. 40 (1784-85): 838. In fact Pitt must have known only too well what the nature of Beauchamp's motion would be. His government had for some time been aware of potential humanitarian objections to the African site (see below pp.298-9), and an unsigned and undated letter to his Home Secretary advised that "Ld Beauchamp intended to have objected in the H of C to the sending Convicts out of the King's Dominions, but was absent when the Bill [ie. Transportation Act of 1784] came on ...." (HO 42/6 f.442).

42J.H.C. 40 (1784-85): 954-60 & 1161-4. The rough minutes of the hearings are preserved at HO 7/1.
could not live, and where the manner of their death might be singularly horrid; so that the apparent mercy of transporting those wretched people to Africa, might with justice be called cruelty; the merciful gallows of England would rid them of their lives in far less dreadful manner than the climate or savages of Africa would take them.43

He also refused to be put off by Pitt's pleas of pressing business in the Commons, observing "that whenever the attention of the House was called to a subject that was so deeply interesting to its humanity, the matter was artfully contrived to be got rid of, by its being stated, that there was other business to come on." Predictably, an immediate voice of opposition to the motion was that of London Alderman and MP Nathaniel Newnham, who reiterated the inadequacies of the hulks, the consequent danger of crime posed to Londoners, and the typical metropolitan conviction that such offenders "were much better removed to the utmost distance, where there would be least chance of their returning." Nevertheless Beauchamp's motion for a Committee to investigate what progress had been made in carrying the Transportation Act into execution passed a week later and its hearings were under-way soon after.44

The first hearings and report concentrated on the substance of the convict crisis within England, reviewed government's frustrated attempts to renew transportation to America, and explored the probable dangers posed by both the climate and the anticipated native hostility.45 The preeminent concern for London and conviction as to the unique scale of its difficulties was reiterated in so far as only the Recorder of London, the Keeper of Newgate, 

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43Parliamentary History 25 (1785-86): 431. Compare the text given in Parliamentary Debates 1784-92, 2:308, in which the emphases are slightly different. See also Parliamentary Debates 1784-92, 2:217-9; and GM 55 (1785): 448, which give varied accounts of the debates of 16 March 1785.


45The printed report alters the order in which it received the testimony of individuals in order to achieve this effect: compare J.H.C. 40 (1784-85): 954-60 and HO 7/1 ff.1-63.
and Thomas Bayley of Lancashire were invited to give testimony as to the condition of convicts in England. Evan Nepean recounted George Moore's voyages and made several disingenuous claims (if not outright lies): that Moore's second voyage had never been authorized by government; and that Lemaine was only "under the Contemplation of Government, and preferred to every other Plan [which was true], though not finally resolved on [which was not]. But the bulk of the Committee's effort was focused on determining the conditions of the proposed site on the Gambia, and all the testimony that it procured confirmed the general conviction that no convict sent there would survive for long.

There is some evidence that Pitt and his government had been only too aware that transportation to an island on the Gambia might be a de facto death sentence. In 1784 the man whom government had hired to investigate Lemaine's suitability as a site for the reception of convicts expressed his willingness to do so, but warned that he had very great doubts of [the convicts'] being able to procure a subsistence in that Country after the Provisions proposed to be delivered to them by Government are expended; The wretched State they would in that Case be reduced to, I am very certain would much hurt the humanity of Lord Sydney, and it is to be apprehended would excite great complaints amongst the dissatisfied people here ....

He believed however that a more regularly supplied and supervised settlement might succeed.

More damning is a draft letter from Sydney to the Mayor of Plymouth in December 1784, promising the latter that his gaol would be relieved once the Dunkirk hulk was emptied by the removal of its convicts to Africa. Sydney noted that there were "obstacles [to this plan] that may hereafter appear," and requested that the Mayor regard his letter "as a private one,

46 Of London's transports, the Keeper of Newgate observed that no "Gaol ever can reform them" nor could any prison regime "that I know of," adding that "A great many have been Executed from my Prison for such Offences" as they had been convicted of (HO 7/1 f.63).


for it would be likely to create trouble were the intentions of Government known with respect to the destination of the Convicts.\textsuperscript{49} If Pitt and his government did not actually expect to be sending transports to their death, they were only too well aware that many people would certainly see it that way.

That said, simple humanitarianism was far from all that figured in the Beauchamp Committee's decision to reject Lemaíne. The second emphasis of the Committee, which came to the forefront in its final report, was largely economic. The Committee was concerned about the extent to which a convict colony on the Gambia might disrupt trade by arousing hostility amongst the native population on whom its success depended. "In my Opinion," said Edward Thompson, a naval Commodore who had been on the African coast the previous year, "people of the best Character instead of the worst should be sent ... Personal Character is of particular Importance to the African Trade." It is probably no coincidence that Thompson's evidence was the last to appear in the printed account of testimony before the Committee, although five other witnesses had followed him during the actual hearings.\textsuperscript{50}

A desire not to antagonize powerful trading interests was probably an important consideration for Pitt, whose only recently-established hold on power had received a major boost from the favour of the City of London. And its appeal for MPs at large may not have been merely crass self-interest. Few of them are likely to have had immediate concerns in the Gambian trade, but many may have been concerned for the larger principle of maintaining and extending national trade as a means of underpinning the post-war economic recovery. (Pitt himself may not have been indifferent to such a consideration.) But whatever the

\textsuperscript{49}HO 42/4 f.79; and HO 42/5 ff.386-7.

\textsuperscript{50}J. H. C. 40 (1784-85): 957 & 959-60; and HO 7/1 f.43 (which is more forcefully stated than its printed equivalent).
reasons. Pitt found himself faced with an opposition to Lemaïne that could not be ignored and to which he soon submitted.

The Committee ended with a detailed statement of the penal and economic matters to be taken account of in determining any new site for transports. It first asserted the indispensable need for transportation, in so far as "the extraordinary Fullness of the Gaols makes a Separation of Offenders impracticable, and that by constant Intercourse they corrupt and confirm each other in every Practice of Villainy" - an opinion that was quite probably based largely on immediate knowledge of Newgate alone. Like metropolitan officials, they believed that the hulks "as a temporary Expedient" had

singularly contributed to these mischievous Effects. ... [T]hey form distinct societies for the more complete Instruction of all new Comers; who, after the Expiration of their Sentences, return into the Mass of the Community, not reformed in their Principles, but confirmed in every vicious Habit.

Another dramatic, perhaps unselfconscious response to the immediate London context was to recognize the further pressure for transportation generated by the self-evident failure of "the late Increase in the Number of public Executions" to have any "other Effect than the Removal of the Offenders in Question; ... Crimes still multiply, in Defiance of the severest Exertions of Justice."\textsuperscript{51}

However, a larger concern for the nation's economic recovery informed the Committee's insistence that any site that might be chosen should hold out the promise of being economically productive. Not surprisingly Burke, long a champion of 'economical reform,' had alluded to this concern in his remarks to the House before the Committee was struck:

Besides these considerations, some regard should, in these times of difficulty and

\textsuperscript{51}\textit{J.H. C.} 40 (1784-85): 1161.
distress, be paid to frugality and oeconomy. The business of transporting convicts, among other inconveniences, was attended with very considerable expence. Instances of profuse expenditure were sometimes justifiable, when they had humanity and clemency for their object; but could never derive any sanction from cruelty and inhumanity.

That he subordinated economical considerations to a humanitarian impulse did not substantially reduce the importance of the former. The Committee noted that, since the scale on which transportation had to be revived must inevitably be large,

the Expence must be great, though perhaps less in its Consequences than the Establishment of the Hulks, which ... are, in all Respects, a dead Charge to the Public, except for the small Return made by the Work at Woolwich Warren; and the Committee hope it will not be impossible to fix on such Spots for the Transportation of Criminals as may, by the Commercial and Political Advantages to be derived from them, indemnify the Public for their original Charge.

Indeed the Committee's concluding remarks captured their sense of the priorities to be balanced. Since no site would

answer the Purpose of annual Transportation, unless it becomes a numerous and flourishing Colony, which will require for many Years the fostering Hand of the Mother Country, the Committee recommend the Adoption of it, so far only as the Commercial and Political Benefits of a Settlement ... may be deemed of sufficient Consequence to warrant the Expence inseparable from any such Undertaking, at the same Time that it restores Energy to the Execution of the Law, and contributes to the interior Police of this Kingdom.

In short, parliament insisted on the best possible compromise between the dictates of humane conscience and severe "Public Justice" on the one hand, and the imperatives of African trade and national finance on the other.

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52 *Parliamentary Debates* 1784-90, 2:218. See also Beauchamp's remarks during the debate on the Metropolitan Police bill three months later: "If the convicts had been sent [to Africa], the consequence would have been, they would be all dead in a very few weeks after they were landed; or they would turn pirates, and it would be impossible for any commerce to be carried on near that place" (*Parliamentary History* 25 [1785-86]: 906).

(2) The Botany Bay Decision, 1785-1789

The government's unenviable task was to fulfil this complicated mandate. Botany Bay, first suggested to parliament in 1779 by Joseph Banks, was also considered by the Beauchamp Committee, but only in testimony secured after its first report to parliament and which, unlike the first set of hearings, was never subsequently presented to it in printed form. This testimony had made clear the extraordinary expense that the far-distant and uncolonized Botany Bay would entail. Duncan Campbell testified that convicts could not be sent there at a cost of less than £30 each, more than twice the contracted cost of Africa. A merchant named James Matra subsequently testified that trade opportunities in the region meant that it could be done for less, but the Committee seems to have thought his speculations dubious enough that it did not bother to include them in its final report, which proposed only an alternative African site, Das Voltas on the south-west coast. A vessel was dispatched to investigate its suitability.

In the meantime, appeals for the relief of local gaols continued to come into the Home Department, and the hulks establishment had to be extended to Portsmouth to meet the need. In February 1786 MPs for Devon, inevitably joined by those for the metropolis, brought their impatience for the removal of their transports to the floor of the Commons. Pitt, still awaiting word of the Das Voltas expedition, could only reply that the matter ... had long been, and was at that time, under the consideration of Government; that a great variety of proposals had been presented to them upon the subject, and that every reason existed for believing that when they had been able maturely to weigh the tendency of each, and to compare their practicability, propriety, and policy, the result would be an application to Parliament, accompanied

54HO 7/1 ff.65-86 (9-25 May 1785). This section commences with an interview with James Matra in which he is indicated as appearing for a second time. As there is no record of any previous appearance by him, it may be that some of the minutes have been lost.

55HO 7/1 ff.65-70 (Matra), 78v-82 (Campbell) & 83-5 (Matra); and J.H.C. 40 (1784-85): 1162-4.
by a description of the least unexceptionable plan, which would of course be submitted to the investigation and final decision of the House.

The phrase "least unexceptionable plan" suggests that Pitt’s government was already facing up to the probability that no destination combining the penal and economic advantages desired by parliament was likely to be found. Pitt prepared the ground for this distasteful alternative by pointing out that "every [new mode of disposing of the convicts] was attended with such difficulty and expence, that Government was not a little embarrassed what method to take consistently with the public safety." So pressing was the need to resume transportation by this time however, that one MP simply stated "that it was better to bear the expence than submit to the danger." And in late July 1786 word at last came back that parliament’s choice of destination, Das Voltas, was a barren, sandy waste.

The government’s final choice of Botany Bay in August 1786 therefore stemmed from a combination of bad luck, mounting pressure of circumstances, and exhausted options. From the fiscal point of view, both its distance and the total absence of prior European settlement also made it the worst possible one. But those who seek to assert that this is one of the best arguments for the decision to settle Botany Bay having been an imperial venture do not take sufficient account of the circumstances, considerations and interactions that led to its choice. I have no wish to add to an already vast and combative literature on "the Founding of Australia," but two points seem to have been decisive and are also of

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58 Martin, "Foundation of Botany Bay." reviews all possible candidates and the objections to them.

59 Representative pieces in the debate may be found in G. Martin, ed., *The Founding of Australia: The Argument about Australia’s Origins* (Sydney, 1978). The most recent full-length statement of the imperial perspective is A. Frost, *Convicts and Empire: A Naval Question, 1776-1811* (Melbourne, 1980). An important
immediate relevance to the present work.

In the first instance, the question of cost might appear to have a compelling logic. Why would a fiscally conservative government and legislature prescribe to themselves the most costly possible destination for transports? Would not the cheapest possible destination conform to the same pattern of thinking that prompted the government to abandon the Penitentiary project in favour of preventive police strategies? Part of the answer to this apparent dilemma has already been provided. Pitt's government was in fact all too ready to send large numbers of transports to a possible death on Lemaîne in order to resolve its administrative difficulties at the lowest cost. It was parliament itself, the body that Pitt was being so careful not to offend, that stepped in to assert the preeminent values of penal coherence and trade interests.

There is a point of historical explication to be clarified here. Many actions of ministers and MPs were clearly motivated by a desire to minimize costs. In and of itself however, this is no guarantee that such a desire may not have been altered or even altogether overridden by conflicting aims or priorities, much less that the minimal financial burden would indeed obtain in the final project. The policing strategy of 1782 began as a cheaper alternative to an institutional project, grew in prospective expense, and seems finally to have

been rejected on these latter grounds. So the interplay of individual and institutional actors, as well as shifting circumstances, might cloud or even sever the connection between motive and outcome. Parliament condemned the hulks as "a dead Charge to the Public" in May 1785. But the immediate result of their having delayed transportation to Africa was the need to extend the hulks establishment to Portsmouth, a move which more than doubled its overall cost. So the desire for the cheapest possible destination for transports cannot be taken as prima facie evidence that an expensive destination is solely - or even primarily - indicative of an alternative objective, specifically defined and coherently pursued.

In fact most contemporary assertions about the respective costs of alternative strategies were highly speculative at best. No contemporary ever seems to have produced an actual cost-comparison of the policing or penitentiary alternatives during the early 1780s. A similar debate between equally unspecific optimism and pessimism informed the debates over the relative fiscal advantages of transportation and penitentiaries after 1790. One suspects that a contemporary onlooker, knowing all too well the distance between a projected institutional practice and its final realization, might easily have doubted the accuracy of one projection or the other. In the final analysis conviction was at least as important a motive as calculation - probably more so.

Such ambiguities were peculiarly relevant given how little was known of Botany Bay in 1785-6. Many of the commercial adventurers who bombarded government with optimistic

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60 Between 1779 and 1785 the average annual cost of the hulks was £14,000; between 1786 and 1791 it was £39,450 (figures derived from Supply votes in J.H.C. 37-46 [1778-91]).

projections of South Seas trade and visions of a great naval manufactory were undoubtedly sincere in their beliefs, but there is no compelling evidence that their beliefs became the government's policy. As Mollie Gillen has noted, there is a reason why, of the fifteen items given in the "Heads of a Plan" which announced to the Treasury Lords the choice of Botany Bay, the new colony's anticipated productivity appear as items thirteen, fourteen and fifteen, while convict transportation dominates both the preamble and the accompanying letter.\textsuperscript{62} The "Heads" clearly reveals that the government was all too uncomfortably aware of parliament's injunction that its chosen site must "be deemed of sufficient Consequence to warrant the Expence inseparable from any such Undertaking ...."\textsuperscript{63} Thus it was careful to anticipate, not only the "effectually disposing of convicts," but also the "rendering their transportation reciprocally beneficial both to themselves and the State ...." But with seven hulks filled with convicts and continued pressure from local gaols, there was an immediate and indispensable need at least to clear the former, as the opening paragraph of the letter accompanying the "Heads" indicated:

The several gaols and places for the confinement of felons in this kingdom being in so crowded a state that the greatest danger is to be apprehended, not only from their escape, but from infectious distempers, which may hourly be expected to break out amongst them, his Majesty ... has been pleased to signify to me his royal commands that measures should immediately be pursued for sending out of this kingdom such of the convicts as are under sentence or order of transportation.

That the desperation of the present situation in England must overrule any consideration of expense was stated explicitly in the twelfth head:

Upon the whole, it may be observed with great force and truth that the difference of expence ... that this mode of disposing of them and that of the usual

\textsuperscript{62}Gillen, "Botany Bay Decision," 755-6 & 758-9. The full text of the letter to the Treasury and the "Heads of a Plan" is reprinted in Founding of Australia, 22-9 (the ensuing quotes are at 26, 22 & 28).

\textsuperscript{63}J.H.C. 40 (1784-85): 1164.
ineffectual one [ie. America] is too trivial to be a consideration with Government, at least in comparison with the great object to be obtained by it, especially now the evil is increased to such an alarming degree, from the inadequacy of all other expedients that have hitherto been tried or suggested.

This declaration immediately preceded the hopeful assertions that the new colony might prove to be a useful source of flax, "tropical products" (whatever those might be) and timber.

New South Wales was at last chosen as the destination for the First Fleet because no other place yet considered met the mixed conditions dictated by parliament: of severity and the potential for reform on the one hand, and of economy and prospective trade potential on the other. Moreover, no other place was likely to be able to receive convicts in the numbers - hundreds rather than dozens - that, by mid-1786, had immediately to be dispatched. It was the last of all places that had been both considered by parliament and pressed on the ministry by mercantile visionaries. But the evidence strongly implies that neither the legislature nor the executive regarded the proposals of the latter as either practical or desirable so long as an African alternative still seemed to exist. Government only paid as much attention to mercantile ideas about flax and timber as it may have felt was necessary to pacify concerns MPs might have about the expense of the venture. New South Wales was the only possible location still thought to possess even the potential, however remote, of proving to be economical in the long run.⁶⁴ The irony, of course, is that this more expensive option had essentially been forced on government in the first place by a parliament which it had to sought to avoid alienating on exactly these grounds.

So far as economic expectations were concerned, little was known of New South

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⁶⁴Mackay, A Place of Exile, ch.3; and Martin, "Founding of New South Wales," 37-46.
Wales with any degree of confidence, much less certainty. As a consequence - and this is the second and perhaps more telling objection to the imperial argument - government refrained from making any permanent commitment to Botany Bay until it had received word of the success or failure of the new settlement. In October 1786 the Home Department had informed officials in Ireland, who were anxious to find a reliable location to which to transport one hundred convicts of their own, that they could not yet expect to send them to Botany Bay because "until some Accounts are received from thence, no other emigrations are intended to be permitted." Two years later, when the need was urgently being felt to clear the English gaols of female transports (for whom removal to the hulks was not an option) Sydney expressed the same reluctance to the Treasury:

Not having received any accounts of Governor Phillips arrival in New South Wales, I am unwilling to recommend the sending any more convicts thither immediately, but if the advices which I imagine I shall shortly receive from him answer my expectations, I shall certainly propose that the female convicts in question should be sent to the same place.

"If, however, it should so happen that the plan should not, upon the receipt of those advices, be found an eligible one," Sydney continued, "it is most likely that some part of North America will be fixed upon for their destination." Five weeks after this, in December 1788, Sydney indicated to the Recorder of London (London again!) that the ministry was considering Quebec or Nova Scotia as possible alternatives should Botany Bay fail. Before

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65Hence the efflorescence of publications about it soon after the first word was received in 1789. Major periodicals devoted much space to "Intelligence of Botany Bay" during the 1790s; see AR 31 (1789): 55-9 & (Chron 1789): 256-8; AR 33 (Chron 1791): 89-102; AR 40 (Chron 1798): 458-68; GM 59 (1789): 273-4; and GM 61 (1791): 79-80 & 270-4. For a list of 41 publications between 1789 and 1800, see J.H. Thomas, "Portsmouth and the First Fleet, 1786-1787," Portsmouth Papers no.50 (1987): 29-33. J. Alexander, Bibliography of Australia (Sydney, 1941-69), I:3-122, lists over 300 titles published between 1786 and 1800, although many are only tangentially related. See also V.Crittendon, A Bibliography of the First Fleet (Canberra, 1982).

66HO 36/6 pp.162-4; HO 100/18 ff.369-72 & 417-8; AR 30 (Chron 1788): 223; and GM 58 (1788): 1116, which added that "The project of sending them to Botany Bay does not seem to have answered the expectations
the return of word from the infant settlement in March 1789 then, ministers did not entertain
a confident expectation of it even surviving, much less of its becoming a thriving imperial
outpost. 67

The definitive commitment to Botany Bay came in the years following 1789, by which
time the need to transport convicts had expanded well beyond the levels that had been
anticipated in the mid-1780s. The news of success - or at least not disaster - in March 1789
must have come as a relief, for it had soon become apparent that the First Fleet had not fully
relieved the nation's gaols, and the hulks establishment had been extended from five vessels
to seven. 68 Moreover, the numbers required to be transported from Irish gaols had now to
be added to those of Great Britain. The definitive commitment to New South Wales came
only in the early 1790s, and (as we will see) its symptoms are far more clearly to be read
from changes in the administration of convict transportation than in any explicit imperial
designs or activity.

The full costs of both transportation to the far end of the earth and of a concomitant
hulks establishment became a lasting concern for both ministers and MPs. In June 1789 the
long-delayed preparations were under-way to dispatch a ship full of female transports to New
South Wales, the first convict vessel to leave Britain since the First Fleet two years before.

67 In opposition to this might be cited Pitt's assurance to Wilberforce that, despite what the latter may have
been reading in the papers, "the scheme of Botany Bay ... is approaching fast to its execution" (The
Correspondence of William Wilberforce, eds. R.I. & S.Wilberforce [1840], 1:65 [8 Dec 1788]). This is the
same day as the reports in periodicals noted above. But the issue at hand was a curacy at the settlement that
Wilberforce was anxious to secure for a client of his, and I think it more likely that Pitt might tell an evasive
"white lie" to his friend, concerning a matter of patronage, than that Sydney would tell a very serious
administrative one to the Recorder of London. Letters exist that indicate that, even in late February 1789,
government still had not determined the final destination for the female convict ship (HO 36/6 pp.198-9; and
HO 42/14 ff.132-3).

68 See above, pp.225-30.
Government now found itself, against its will, deeply enmeshed in a nation-wide set of penal arrangements entailing the removal of convicts from local gaols to transport vessels and hulks, as well as their ultimate transportation. There had been several reasons why it found itself at this pass: an ongoing sense of obligation and self-interest in responding to the criminal justice needs of the metropolis; an uncomfortable and growing realization that a failure to do the same with provincial convicts might have serious implications for authorities at the centre as well as those at the periphery; and the administrative consequences of parliamentary interference in the government’s attempts to find the most expedient solutions.

It was at this point that Lord Sydney, for some time now a spent force both politically and administratively, resigned from the office that he had held for just over six of its first seven years. His retirement brought to the Home Secretaryship a succession of two major political figures. Their engagement with the issues of the Home Department and their sensitivity to the priorities of Pitt’s Treasury contributed to significant changes in the manner in which government approached the administrative burdens that it had so unwillingly and haphazardly acquired after 1782.

III. Treasury and Home Department

As early as May 1788, Pitt had wanted to secure the Home Secretaryship for his cousin William Grenville, being restrained only by the need to find Lord Sydney a sufficiently comfortable sinecure on which to retire. After the removal of Lord Chancellor Thurlow in June 1792, most government decision-making was in the hands either of Pitt or of a triumvirate composed of himself, Grenville and Henry Dundas, who succeeded the latter as Home Secretary in June 1791.

The amenability of Grenville and especially of Dundas to Pitt’s authority generally
placed them in, if anything, a weaker position than the more independent Sydney had been to press for significant changes in the character of the Home Department's administration of criminal justice. The combined five years which they served as Home Secretary were marked by some significant developments on this front but, with the exception of the Middlesex Justices Act of 1792, these advances concerned matters that were either confined to the internal conduct of Departmental business or that reflected a close interaction between Treasury and Home Department. They did not require legislative sanction and therefore Pitt's activity in the Commons. And even the Middlesex Justices Act, as we will see, probably reflected the Treasury's long-established sense of which strategies were best.

(1) The Home Department under Grenville, 1789-1792

The priorities of Pitt's Treasury were explicit in the actions taken regarding transportation and the hulks during Grenville's Home Secretaryship. Grenville inherited from Sydney an embarrassingly expensive set of arrangements regarding the disposition of convicts for transportation, consisting of an unexpectedly large number of hulks on which to confine them temporarily, and an ultimate destination of great distance and cost. His private papers contain a collection of estimates as to the expense of both transportation to New South Wales and the hulks at home, suggesting that these were recurrent concerns throughout his three years at the Home Department.

Most objectionable of all, on the grounds of both principle and cost, were the hulks. As early as 1782 government had intended to do away with them altogether. By 1789 however, through a combination of necessity and bad luck, the establishment had swelled

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69See below, pp.398-403.

70Add MS 59247 ff.108-25.
from two to seven - three on the Thames and four at Portsmouth. When Henry Bradley, the
supervisor of the Dunkirk at Portsmouth, died in that year, the Treasury indicated its desire
to discharge the vessel once its inmates were embarked on the Second Fleet. Grenville
replied that "the several gaols in the Country are in so crowded a state" that the services of
the Dunkirk would again be necessary once it had been emptied, but he optimistically
suggested that another large-scale removal to New South Wales the following spring might
make its discharge possible.71 After the Third Fleet set sail in March 1791, the Treasury
immediately made good on Grenville's suggestion. It also announced its intention to
discharge two of Duncan Campbell's hulks, the Justitia on the Thames and the Ceres at
Portsmouth, and of placing Campbell's two remaining vessels at Portsmouth under the
direction of James Bradley (who had inherited his deceased brother's contract for the
Dunkirk). These new arrangements were in place by June 1791.72

Certain important themes are illustrated in these changes. When asked by the
Treasury for his opinion as to whether or not the entire hulks regime should be placed under
a different contractor and scheme of management, Grenville stated that he had no reason to
think that either Campbell or Bradley had been
deficient in that attention to the convicts that is indispensable in a trust of this nature,
but [also added] that he [was] entirely unable to decide how far the terms now offered

71 HO 13/7 pp.356-8; HO 35/10 (T.Steele to E.Nepean, 27 Oct 1789); and HO 36/6 p.313. If obliged to
retain the Dunkirk, the Treasury wanted to grant the contract to the same man with whom transportation was
being contracted. William Richards, Jr. Richards had been pestering Pitt for more than a year beforehand with
his proposals to take over the entire hulks establishment (to a total of 2,000 inmates) at a more economical rate.
He continued to do so, to no noticeable effect, as late as 1798 (PRO 30/8/171 ff.30, 26-9, 20, 22-3, 24 & 40-1;
and PRO 30/8/311 ff.60-9 & 133-8). The proposal seems first to have been put to the Home Department in
1788, although I have found no record of its response at that time (HO 35/9 [Steele to Nepean, 27 Oct 1788]).
The contract for the Dunkirk passed to Bradley's brother James and, after again raising the possibility of
Richards taking over the hulks as a whole in 1791 (see below, n72), the Treasury seems to have dropped the
matter.

72 HO 13/8 pp.185, 193-4, 197, 247, 264-7 & 268; HO 35/11 (T.Steele to E.Nepean, 1 & 4 Jan 1791; &
C.Long to same, 6 June 1791); HO 36/7 pp.110-1; and HO 42/19 ff.229, 232-3, 281 & 359.
by them are reasonable and proper to be adopted in point of expence, of which he conceives their Lordships to be the properest judges.

This not only displayed an inherent deference to the Treasury’s fiscal priorities, but also implied a relative unconcern on the part of the Home Secretary for the character of the regime prevailing on board the hulks. Indeed Grenville’s decision does not seem to have been informed by any close consideration of the latter at all. Moreover the disinterest of the Home Department in a centrally directed hulks establishment, which had been apparent from the outset in the 1780s, was now reconfirmed by placing the two remaining hulks at each location under the supervision of different contractors, those on the Thames continuing under Duncan Campbell and those at Portsmouth being now solely under James Bradley. This relative unconcern about the conduct of the hulks establishment may have stemmed, less from any lack of compassion on Grenville’s part (although there is some evidence of this in another context), than from his express belief that it might soon be wholly eliminated.73

Grenville shared the Treasury’s desire to be rid of the hulks, but not simply on the grounds of their cost. He also did so from a conviction that imprisonment on board them served no good purpose. He made this clear in an intriguing exchange with Dundas not long after becoming Home Secretary. Grenville did not doubt that there were certain classes of offenses in which

the most advantageous mode [of punishment] that can be resorted to, as well for themselves as for the Country, is that of transporting them either to Botany Bay, or to some other remote place from whence it is not likely that they will return. But there are many smaller offenses for which there is now no other punishment than the Hulks, and which it would seem too severe to punish by a sentence of banishment in fact for life.

73HO 36/7 pp. 110-1. Grenville went on to observe, however, that William Richards’s proposal to move the entire establishment to Milford Haven might entail more expense than a change of contractor was worth. The Treasury appears to have agreed with him; it never raised the issue again (see n71 above).
Grenville's proposed solution for this lesser class of offenders was to set them to work on a massive canal project in the Highlands, a measure "which unites a work of great public benefit, with a measure of advantage to our police" and which would "at the same time ... produce if possible a saving to the public upon the present expence." Dundas was unenthusiastic, citing both strategic difficulties and the probable unwillingness of Scottish landholders "to have great numbers of convicts quartered in their neighbourhood." But Dundas sympathized with Grenville's sense of the inadequacies of the hulks - "a very mischievous institution, [which] produces many more crimes than itpunishes" - and suggested they be replaced by the extensive use of pardon on condition of military service abroad for smaller offenses committed by potentially reformable characters. "Death, transportation, and Bridewell are, in my judgment, the only variety of punishment that the manners of our country will admit of."75

The departure of the Third Fleet in March 1791 raised the prospect of reducing Britain's convict problem to a sufficiently small scale that this exact set of arrangements might be possible. In February 1791 Grenville advised the Treasury that further contracts for hulks should be made only on a short-term basis, "as it most likely will happen that some other plan will ultimately be substituted which will make the employment of any hulks unnecessary."76 Two weeks later, he elaborated on what he had in mind when he held an audience with City of London officials, who now desired a system whereby Newgate might

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74W.L.C.L., Melville Papers [3] (W.W.Grenville to H.Dundas, 11 Dec 1789). Many aspects of the hulks remain unclear. This letter, and some others, suggest that they were viewed as a penal regime in their own right. Certainly critics of them during the 1790s often viewed them as such. But the larger burden of evidence suggests that they were used as clearing houses for convicts under sentence of transportation in local gaols. I hope to explore changes in the character of the hulks regime in later work.

75H.M.C., Dropmore Papers, 1:555-6.

76HO 36/7 pp.110-1.
be relieved of its transports immediately after each session. Grenville expressed to them the "perfect conviction" of both himself and of "those with whom he had the honour to act" as to the "inutility" of the hulks. He then announced that

that it was in the contemplation of the executive Government to make an Alteration in the mode of executing the Law respecting Transportation by empowering the Justices of Oyer and Terminer and Gaol Delivery to commit such Offenders whose cases furnished a reasonable hope to expect a Reformation to Penitentiary Houses which he expected would be soon erected in every City and County in England or that they would provide proper places for the reception of that Class of Offenders.

It was at exactly this time, first, that government was resisting a broad-based proposal to impose Penitentiary Act standards of incarceration on all the nation’s gaols and, second, that Jeremy Bentham made his first approach to Pitt’s government about his proposed Panopticon mode of imprisonment.77

Whatever intentions Grenville may have had in these last few months of his Home Secretaryship however, it is doubtful that Pitt’s government intended to offer an active lead in the construction of a nation-wide network of penitentiaries, much less on the model of Bentham’s Panopticon. As we saw in the previous chapter, although government fully acknowledged a role for reformative imprisonment in the punishment of lesser classes of offenders, its strategy for achieving this was to encourage local authorities to implement such regimes at their own expense. I have found no evidence to suggest that Grenville’s remarks of 1791 were ever confirmed by any stated intention of government to give legislative force to such a plan. Rather I suspect that they reflected, first, the extent to which belief in reformative incarceration was gaining ground in many parts of the country. Second and more

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urgently, they reflected a growing sense amongst Pitt and his ministers of the need to take some sort of action in the face of persistent and often successful agitation in parliament at this time for nation-wide standards of imprisonment. The nature of government’s action on this issue forms the subject of the next part of this chapter. In the event, Bentham’s Panopticon was never built and the hulks establishment never eliminated.

The need to maintain transportation for certain serious classes of offenders, however, was never in doubt. After the departure of the Third Fleet in the spring of 1791, Grenville expressed an expectation that Britain’s transportation needs might soon be met by a single vessel to be dispatched after each assizes, a goal that seems actually to have been achieved between 1794 and 1798. If government did not think it possible to eliminate transportation to New South Wales altogether, it had at least reached a point at which the numbers necessary to be sent from Britain were manageable.

By this time, however, the numerical pressure to maintain a destination for transports had been reinforced from an unexpected direction. While preparations were under-way for the First Fleet in late 1786, Irish officials had written to the Home Department requesting that their convicts be included in the venture as well. They were put off on the grounds that it was by no means certain that Botany Bay would be a permanent destination. As the Lord Lieutenant had reported only one hundred convicts requiring transportation, the Home Department can perhaps be forgiven for having thought the needs of the Irish to be far less pressing than Britain’s.

Unfortunately lesser Irish officials had already taken matters into their own hands.

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Without informing their English rulers, they sanctioned no less than nine convict voyages to the Americas between November 1784 and November 1789. The last three of these ended with dozens of Irish convicts being abandoned on Cape Breton in 1788, Newfoundland in 1789, and Anguilla and Barbuda in 1790. The Newfoundland incident became a particular problem because, mindful of the British government's prohibition against formal settlement on that island and confronted with an enraged mercantile elite, the governor brought these convicts to England, where their disposition became the subject of protracted legal wrangling between British and Irish officials during the fall and winter of 1789-90.\(^{80}\) The Irish convicts set ashore on Cape Breton had originally been intended for Quebec, and it is likely that these scandals definitively ended any hopes that may still have been held out for Nova Scotia or Quebec as a destination for transports.

At the very least, if further outrages were to be avoided in the Americas, it was clear that Britain would have to provide a destination for Irish convicts as well. After several pleas from the Irish Chief Secretary during 1790, Grenville at last wrote to inform him that space would be made for two hundred Irish convicts in the Third Fleet.\(^{81}\) Thereafter the transportation of Irish convicts to New South Wales was provided for - at cost - by Britain.

"We have not any Means of employing our Convicts at Home so as to expect a Reformation in their Conduct," the Irish Chief Secretary wrote in 1792:

> To turn them loose upon Society would be the most objectionable of all Measures: they cannot now be sent to any of the British Colonies, we must therefore depend on the Assistance of Great Britain in transporting them to New South Wales.\(^{82}\)

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\(^{81}\) HO 100/29 ff.5-6 & 202-4; HO 100/30 ff.128-9, 151-2, 159-60, 180-1 & 184-5; and HO 122/2 ff.81-2.

\(^{82}\) HO 100/37 ff.281-2.
As Table 5.1 indicates, once the massive relief projects of the first three fleets had been performed, Irish convicts constituted an impressive proportion - no less than 56% - of all convicts transported to New South Wales between 1792 and 1800. As with the British provinces during the 1780s, the government must have been impressed with a conviction that the need of Irish officials to transport serious offenders could all too easily become a problem for them - and certainly if any more outraged colonies were to send transports to Britain as Newfoundland had done.83 The need for a permanent, large-scale destination for transported offenders was therefore reinforced from a direction which, technically at least,

**TABLE 5.1**

**Numbers of Convicts Transported to New South Wales from Britain and Ireland, 1787-1800**

<table>
<thead>
<tr>
<th>Year</th>
<th>Britain</th>
<th>Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td>1787</td>
<td>778</td>
<td>-</td>
</tr>
<tr>
<td>1789</td>
<td>1268</td>
<td>-</td>
</tr>
<tr>
<td>1791</td>
<td>1303</td>
<td>155</td>
</tr>
<tr>
<td>1792</td>
<td>391</td>
<td>14</td>
</tr>
<tr>
<td>1793</td>
<td>1</td>
<td>305</td>
</tr>
<tr>
<td>1794</td>
<td>83</td>
<td>-</td>
</tr>
<tr>
<td>1795</td>
<td>134</td>
<td>233</td>
</tr>
<tr>
<td>1796</td>
<td>203</td>
<td>188</td>
</tr>
<tr>
<td>1797</td>
<td>364</td>
<td>-</td>
</tr>
<tr>
<td>1798</td>
<td>396</td>
<td>-</td>
</tr>
<tr>
<td>1799</td>
<td>53</td>
<td>490</td>
</tr>
<tr>
<td>1800</td>
<td>588</td>
<td>-</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>5568</strong></td>
<td><strong>1385</strong></td>
</tr>
</tbody>
</table>

**SOURCE:** O'Brien, *Foundation of Australia*, 286.

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83 As with their own provinces, concerns for the extent to which improved transport and mobility made Irish convicts a problem for British officials must have played a role. The Criminal Entry Books indicate a sharp rise in the number of cases of Irish criminals being found at large within Britain during the 1780s and after (see HO 13). See also the discussion below at pp.464-5. I hope to explore the peculiar effects of the Irish convict system on state consciousness amongst the British in later work.
was external to the British nation itself. This was the periphery impressing its needs upon the centre with a vengeance.

If transportation to an expensive destination could no longer be avoided, its execution might at least be rendered more economical. The contractor for the First Fleet, William Richards, Jr, had recommended to Pitt that vessels could recoup some of the costs of the voyage by carrying tea from China for the East India Company on their return trip, and three ships had subsequently done so.\(^4\) After the expense of the First Fleet, Sydney had suggested that a naval lieutenant should go with the *Lady Juliana* in 1789 and be employed "in watching over the proceedings of the Contractor and his agents, and that from the dispatch his presence would occasion, a saving would arise ...."\(^5\) More substantial measures were proposed thereafter by the Treasury and by Grenville. With New South Wales still required as a destination, the China trade - a measure that in 1787-8 seems to have been viewed simply as an opportune convenience in a potentially one-off venture - now took on a force of necessity. Grenville recommended to the Treasury a similar arrangement regarding the tea trade in preparing the Second Fleet. His express desire that preparations for the Third Fleet should be made "in such a manner as may be likely to be attended with the least expense" may have emboldened the Treasury to request, successfully, that the departure of the Third Fleet be delayed for six months in order to ensure that the vessels should have the best opportunity of performing their China trade service. Since this had the effect of increasing the projected number of transports from one to two thousand, its ultimate

\(^{4}\)PRO 30/8/171 ff.32-3, 18-9 & 34-5; and Bateson, *The Convict Ships*, 118.

\(^{5}\)HO 36/6 pp.253-6.
effectiveness of a measure of economy may be doubted.\textsuperscript{86}

A more effective economizing measure was the decision to make the provinces pay the costs of their own transports. Only two weeks after coming to office, and before arrangements were begun for the Second Fleet, Grenville informed local officials that government intended to bring transportation as close as possible to its pre-war mode of proceeding:

It has been usual for Government to defray the expenses attending transportation of the Convicts upon the Home Circuit only. The other counties must therefore be subjected to the charges which their convicts may occasion and, after the embarkation shall have taken place, they will be called upon to reimburse the Government their proportion of the expense according to the number of convicts they have to transport.

The Attorney General was consulted and, of course, Ireland was required to pay for its convicts as well.\textsuperscript{87} I have not yet been able to investigate the financial arrangements which ensued and which presumably must have fallen under the Treasury's purview. However, as I have discovered no objections to Grenville's proposal amongst local officials, I presume that it must have been acceptable to them.\textsuperscript{88} The individual costs to regions outside London and the Home Circuit, most of which did not individually transport large numbers of offenders after any one assizes, were probably not insupportable.\textsuperscript{89} If this practice did indeed prevail,

\textsuperscript{86}HO 35/10 (T.Steele to E.Nepean, 16 March 1790; & G.Rose to Nepean, 21 Oct 1790); HO 36/6 pp.285-6 & 343-4 (source of quote); and HO 36/7 pp.8-9 & 43-6.

\textsuperscript{87}HO 13/7 pp.78-260 passim; HO 36/7 pp.43-6; HO 42/15 ff.182-3; and HO 49/1 pp.319-20. Sydney had broached this likelihood with a local official earlier in the year (HO 13/6 p.360). It was also to have been the operating principle in transportation to Africa in 1785 (HO 42/5 ff.386-7).

\textsuperscript{88}A letter written while the female convict ship \textit{Indispensible} was being organized in 1795 indicates that the counties were expected to provide the requisite clothing for the female convicts embarked (HO 43/7 pp.202-5). For such orders to the counties to the end of 1805, see HO 13/11 pp.110-1; HO 13/13 pp.11-4 & 422; HO 13/14 pp.458-9; HO 13/16 p.444; and HO 13/17 p.117. As early as 1783, the Mayor of Bristol had anticipated such a policy (Add MS 61870 ff.70-1).

\textsuperscript{89}It need hardly be added that the metropolis continued to dominate figures for transportation. Its convicts composed approximately 43\% of those of the First Fleet, 66\% of the women of the \textit{Lady Juliana}, 38\% of the Second Fleet, and 34\% of the Third. Counts based on J.Cobley, \textit{The Crimes of the First Fleet Convicts}
it constitutes yet another qualification of any argument that New South Wales need
necessarily have been an exorbitantly expensive venture for government.

(2) The Home Department under Henry Dundas, 1792-1794

Similar attention was shown to economy during Henry Dundas's Home Secretaryship. In March 1792 he accepted the Treasury's proposal to turn over the transportation of offenders to ships of the East India Company on the grounds that it would be "more advantageous for Government, and more beneficial for the settlement" to do so. That the saving costs to government was his principal concern is suggested by the fact that letters to Irish officials stressed only that factor. However the system was only applied to one vessel before the East India Company declined the service and the private contractor system was resumed.

Dundas also pursued humanitarian considerations. Only two weeks after becoming Home Secretary, he recommended that the Treasury implement a system whereby contractors should be paid on the basis of the number of convicts they delivered safely to New South Wales rather than the number they took on board. He had been actuated by an anonymous letter warning him that a convict ship presently preparing to sail was overcrowded and that disease was likely to break out during the voyage. (Inspection of the Pitt disclosed that small pox had already broken out amongst some of the convicts, who were immediately removed to


90HO 35/12 (C. Long to S. Bernard, 28 March 1792): and HO 36/7 pp.272-3 (source of quote).

91HO 100/38 ff.28-9, 34-5 & 51-2. In the second of these letters Nepean estimated that "the Savings may be about one fourth of the gross Charge."

92Oldham, Britain's Convicts to the Colonies, 154-6.
a hospital ship at Portsmouth.\(^93\) The Treasury felt that it was unlikely to find any contractors willing to act under such terms, but compromised by allowing a reward of £5 for each convict landed alive on top of a flat fee per head for the voyage.\(^94\) Such attention to the health of convicts was minimal, but it at least formed a sharp contrast with Dundas's predecessor. When informed of the "exceedingly bad" accommodations on board one of the ships of the Second Fleet prior to its departure, Grenville had merely replied that "There never was an embarkation in which the transportees did not complain of the transports - there is no time for remedying any defects."\(^95\)

Dundas's innately humane impulse regarding the convicts on board the \textit{Pitt} received a compelling spur when, only a week after he had first made this suggestion to the Treasury, word reached him of the appalling mortality that had taken place on board the very ships that Grenville had despatched with such cavalier disregard a year and a half earlier.\(^96\)

Investigations ensued in the spring of 1792 and the incident became a subject of agitation in parliament in February 1792.\(^97\) Coming in the midst of recurrent parliamentary criticism of its transportation arrangements, the mortality in the Second Fleet was a sharp blow to the Pitt government. On at least two subsequent occasions, Dundas sought to ensure that paid medical attendance was provided for convicts on the voyage to New South Wales. In the

\(^93\)HO 13/8 p.280; HO 35/11 (G. Rose to E. Nepean, 25 & 27 June, & 3 July 1791); and HO 36/7 pp.164-6.

\(^94\)Oldham, \textit{Britain's Convicts to the Colonies}, 156-7.

\(^95\)Bucks R.O., D/SB/OE 1/18 & 6/33 (emphasis in original).

\(^96\)HO 36/7 p.171.

\(^97\)\textit{J.H.C.} 47 (1792): 386, 406, 470-71 & 498-9; \textit{Parliamentary Register} 1780-96, 31:191-4; HO 35/11 (C. Long to E. Nepean, 28 July & 26 Oct 1791); HO 35/12 (Long to S. Bernard, 8 & 16 Feb, & 23 April 1792); HO 36/7 pp.260-1, 263, 285 & 288-9; HO 43/3 p.349; and HO 49/1 (Dundas to Attorney general, 20 Feb 1792). See also the copies of documents in Pitt's papers, PRO 30/8/246 ff.53-6, 131-41, 144-5 & 148-55; Bateson, \textit{Convict Ships}, 127-31; and Oldham, \textit{Britain's Convicts to the Colonies}, 162-6.
second instance, his recommendations led to the adoption of a system whereby ship's surgeons received a reward of one guinea for each convict landed in New South Wales. Basic standards of care for transports had become an issue of concern for government. This may have reflected, not only concern for parliamentary scepticism about transportation as a practice, but also a growing sense of investment in New South Wales as an important colonial concern. A healthier colony might become a more productive and economical one.

(3) The Home Department under Portland, 1794-1801

The Duke of Portland was an outsider taken into a coalition; he was not and probably could never have been as close a colleague of Pitt as Grenville and Dundas. However, so long as he took no measures that involved substantial new expense, such a position may also have afforded him a larger degree of freedom in the management of the criminal business than had been enjoyed by either of his predecessors. Moreover, unlike another outsider who had held the office, Lord Sydney, Portland's genuine interest in making improvements in this area seems to have grown rather than diminished.

In 1797-8 parliament made a sweeping attempt to review virtually the whole range of government activity and expenditure. Presented in June 1798, the 28th of the thirty-six Reports of the House of Commons Select Committee on Finance reviewed and condemned prevailing government practice with respect to "Police and Convicts." Drafted by two Cornish MPs, Charles Abbot and Reginald Pole Carew, in close consultation with Patrick Colquhoun and Jeremy Bentham, the Report essentially followed lines laid down in the early

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98 HO 35/14 (G. Rose to King, 22 Jan 1794); HO 36/7 pp.289-90; and HO 36/8 p.171 & 181-2.

1790s by Bunbury and other parliamentary critics of transportation and the hulks.\textsuperscript{100} It condemned both the cost and the moral effect of New South Wales as a destination for transports, suggesting that these objections could only be overcome when the settlement had reached a sufficient degree of development that removal to it could no longer be thought to be a form of punishment (pp.29-30). Worse still were the hulks, which the Report deemed to be of no remedial value whatsoever. Indeed, by failing to provide for the separation of one class of offenders from another, the Report melodramatically anticipated their imminent rampage (pp.19-20 & 22-3). Of the eleven recommendations made in the Report, ten concerned policing activities. The eleventh was "That no Time should be lost" in implementing Bentham’s proposed penitentiary (pp.20-2 & 32).

Abbot subsequently warned Bentham that Pitt’s hold over Westminster was such that little could be expected to come of any project that he did not wholeheartedly endorse. Indeed, the Speaker of the House had indicated to Abbot from the outset that the whole scheme of the Select Committee itself would not have got off the ground without Pitt’s concurrence in the first instance. As to the 28th Report specifically, Abbot quickly swerved from optimism to pessimism. A month after it had been submitted to parliament he told Pole Carew that "more practical good may be derived from this part of our labours than from any other subject on which we have Reported ….." The following day however, he deemed the drudgery of the Finance Committee work to be a "greater servitude" than any transported convict had ever been set to, and one "which we are now striving to get rid of one month more after every body else has got rid of it and forgotten it." Pitt’s government ignored most

\textsuperscript{100}"Twenty-Eighth Report from the Select Committee on Finance, &c.: Police, including Convict Establishments" (26 June 1798), in Commons Papers, 112:3-216 (the ensuing page references are to this source). The correspondence amongst Abbot, Pole Carew, Bentham and Colquhoun can be followed in Bentham Correspondence, 6:32-108 passim.
of the recommendations contained in the thirty-six Reports. Abbot himself had no further influence over penal policy other than to oversee the renewal of the Transportation and Penitentiary Acts the following year.

However, the 28th Report was indicative of continuing concerns in parliament as to both the costs and benefits of the government's penal order. Moreover it appears to have had some impact on Portland's conduct of the Home Department. Certainly Portland paid the same sort of attention to considerations of economy in transportation that Grenville and Dundas had. In November 1797 he instructed the Treasury to take up the Britannia, "a South Sea Whaler," out of a conviction that this "will be a more economical mode of performing this service than by taking up a vessel for the purpose, as the settlement is in the way of the trade of the Britannia." The contractor, Samuel Enderby, had previously approached the government with such a proposal, and would did so again. However this seems to have been the only occasion on which his services were accepted, so clearly Portland made no long term contribution to the economizing of transportation in this respect. Perhaps his principal contribution to reducing the cost of transportation was that, between 1796 and 1798, he at last succeeded in getting Irish officials to pay the costs of those Irish convicts that had been transported by Britain beginning in 1791.

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101 The Diary and Correspondence of Charles Abbot, Lord Colchester, Speaker of the House of Commons, 1802-1817, ed. Colchester (1861), 1:68-9; Antony House Muniments (c/o Cornwall R.O.), CC/K/29; and Harling, Waning of 'Old Corruption,' 78-80.


103 HO 36/10 pp.329-30; and Bateson, Convict Ships, 147 & 157. See also PRO 30/8/133 ff.33-8, 44-5, 39-40 & 41-3; and Add MS 38234 ff.124-5.

104 HO 35/16 ("Number of convicts that have been sent from Ireland to New South Wales," [16 March 1796]); HO 35/17 (Commissioners of Victualling to J.King, 25 Aug 1796); HO 35/19 (C.Long to King, 25 Jan 1798); HO 36/9 pp.358-9; HO 36/10 pp.318, 332-3, 345 & 396-7; HO 43/7 pp.527-8; HO 43/10 pp.357 &
Portland also took steps to ensure the health of the convicts being embarked for transportation. These actions probably reflected, not only a humanitarian impulse toward individual convicts, but also a larger sense of the needs of a still struggling settlement that was often subjected to hostile scrutiny by MPs. In the first instance, Portland occasionally took steps to ensure that a qualified surgeon was on board a convict vessel. However he seldom did so without also ensuring that it could be done at the lowest possible cost to government. Thus, as the Ganges was being readied in August 1796, Portland first requested that a surgeon be provided "upon as economical scale as the nature of the service will admit ...." When he subsequently learned that one of the Assistant Surgeons for the settlement was to sail in the same vessel, Portland sent an amended request that this surgeon in particular should have the care of the convicts during the voyage for a flat payment of £50.\textsuperscript{105} In short Portland's attention appears to have been haphazard at best. Basic humanitarian considerations played a role, but not yet to the extent that a systematic expense should be taken on by government. And I have found only one instance of Portland asking the Treasury to give a ship's surgeon the one Guinea reward proposed by Dundas for each convict "safely landed" at New South Wales.\textsuperscript{106}

Portland's principal measure on behalf of the convicts's health was more immediately preventive. Such an approach was advocated in July 1794 by the Assistant Surgeon at New South Wales who, in reporting no fatalities aboard the Surprize, attributed previous disasters to

\textsuperscript{105}HO 13/10 p.519; and HO 36/9 pp.471-2. See also the request that the ship's surgeon of the Lady Shore perform the same duty and receive "such a reasonable allowance as will be proper compensation for the same" (HO 13/11 p.125).

\textsuperscript{106}HO 36/10 pp.285-7.
the diseased state the convicts were sent on board in: and I can attribute our singular
good fortune to nothing so much as sailing without any person on the sick list - It will
therefore be evident to your honours of what important consequence sending these
unfortunate people in a healthy state is - ...107

Portland took this advice to heart. Under circumstances that remain obscure, he required Sir
Jeremiah Fitzpatrick, the Inspector General of Irish Prisons and Madhouses during the 1780s
and Inspector of Health for the British army from 1793, to inspect every vessel and every
convict put on board it before departure.108 From the mid-1780s, letters issued from the
Home Department to local gaolers had specified that, before convicts were either removed
from local gaols to the hulks or directly on board vessels for transportation, they were
required to be "examined by an experienced Surgeon" and that they should "appear to be free
from any putrid or infectious distemper...." Evidence of exactly how this requirement was
actually enforced is hard to find. Presumably the final judgment was left largely to the
individual hulks or transportation contractors, and whatever medical expertise (if any) they
brought to bear on the matter.

Fitzpatrick seems to have been allowed full power of making judgments against the
transportation of individual convicts whom he thought unfit for the voyage.109 But his pleas
for an established convict inspectorship seem to have fallen on deaf ears, even though there
could be no sensible alternative if government wanted to overcome the problems of self-
interest posed either by local authorities desiring to be rid of their convicts, or by contractors
eager for the rewards of taking them on:

107HO 35/15 (J.Thomson to Navy Board, 26 July 1794; enclosed in C.Long to J.King, 16 Feb 1795).

Fitzpatrick and the Politics of Social Reform 1783-1802 (1981), 267-79; and MacDonagh, "Humanity,
Economy, Policy: On Common Sense and Expertise in the Life of Sir Jeremiah Fitzpatrick," in Government and

109HO 13/11 pp.412 & 413; HO 13/13 p.113; and HO 43/8 pp.13-4.
... Government's not having created such an Officer,... by no means speaks its wisdom, or does it prove that the Office is not necessary: for to receive reports from the interested as to permit them to furnish articles whether of accomodation, diet, medicine, cloathing, &c &c without proper inspection is next akin to the expectation of receiving true and punctual payments of revenue or duties from those who should actually pay them, without the interference of inspecting or collecting Officers & outlines of duty for the Officer alluded to, viz: To Report the state of health of the convicts after conviction.¹¹⁰

Like his fellow ministers, Portland presumably had no interest in extending the range of government activity and obligation beyond the minimum level required. Indeed, the task was surely given specifically to Fitzpatrick because he was already employed by government for the health of the forces, thereby obviating any need for the sort of permanent, extensively empowered appointee that he himself thought necessary.

Portland made far more significant progress with respect to both the hulks. In fact, he became the first Home Secretary to regard the hulks more in the light of a lasting concern rather than a temporary expedient. He certainly displayed a more energetic interest in conditions on board them than had any of his predecessors. The Home Office Papers for his Secretaryship indicate that Portland ordered investigations of conditions on board the hulks on several occasions, usually after attempted escapes or uprisings. These efforts culminated in an extensive investigation of the persistently troublesome Portsmouth establishment in 1800-1 and a sweeping condemnation, not of the individual contractor involved, but rather of the system in general.¹¹¹ "I have every reason to believe," concluded Portland's investigator, that "the Contractor is an honourable Man, but were he an Angel it would not be in his power to prevent those iniquitous practices which I have the strongest proof must

¹¹⁰Add MS 33105 ff.260-1 (emphases in original). See also Add MS 33105 ff.242-3; and MacDonagh, Inspector General, 270-1.

¹¹¹HO 13/13 pp.206, 206, 232, 268-9 & 279; and HO 43/12 p.407.
have existed for several Years past."\(^{112}\)

This might simply be taken to confirm the distaste for the establishment that was shared by government and parliament alike. But what is more striking in retrospect are the indications of its growing regularity and implicit permanence. Beginning in 1799, the annual accounts that the Home Secretary was required to submit to the Treasury began to include deductions against the contractor for failures to keep convicts secure, as well as the costs of recapturing them.\(^{113}\) And in 1800 Portland not only reconfirmed the £100 salary paid to the ailing chaplain for the Thames hulks, but also secured a further £50 to pay for an assistant to him.\(^{114}\) These actions suggest a fundamentally different outlook on the hulks to that anticipation of imminent dissolution which characterized both Treasury and Home Department between 1782 and 1794.

The most striking indication of a long-term, institutional conception for the hulks was Portland's expansion in 1800 of the scale of convict labour commitments at both Woolwich and Portsmouth on works for the Ordnance and Admiralty Boards.\(^{115}\) In 1801 Portland even sanctioned the removal of convicts from local gaols to the hulks solely to meet the needs of these new projects.\(^{116}\) Concern for productive labour by hulks convicts had been displayed before, but had largely been the initiative of the Duke of Richmond while Master General of the Ordnance. Moreover Richmond's concerns had been indulged at a time when the full removal of all hulks convicts, however much desired, was still a relatively remote

\(^{112}\)HO 42/61 ff.137-8.

\(^{113}\)HO 36/11 pp.51-2, 211-2 & 408-9.

\(^{114}\)HO 35/21 (C.Long to J.King, 14 March & 9 April 1800); and HO 36/11 pp.220-1 & 232-3.

\(^{115}\)HO 13/12 pp.472 & 473; and HO 43/12 pp.301 & 303-4.

prospect. A conspicuous silence had settled over the matter following the establishment of regularized transportation by the early 1790s. Conceived in the midst of an already long war, the new proposals had no such implicitly limited time-frame.

This was remarkable for a government that had once been committed to the complete elimination of the hulks. Portland’s activity and proposals with respect to the hulks also flew in the face of parliament’s condemnations of the early 1790s (a detailed discussion of which is given in the next section) and of the 28th Report of the Select Committee on Finance in 1798. They implied a determination to turn an initially expedient arrangement into a workable and useful institution. Sensitivity to parliamentary criticism in 1798 may have been reinforced by a significant change in the practice by which government secured funding for the hulks establishment. Whereas the yearly expenditure had previously been secured by post facto grants from the Committee of Supply, by 1800 parliament was moving toward a more controlling pattern of requiring estimates of the coming year’s costs in advance, a practice that would be established by the end of 1802.117 Portland’s activity may also have been a specific response to the attempts of Bentham and his sympathizers to discredit the hulks in favour of the Panopticon. Portland had once been reckoned sympathetic to Bentham’s scheme, but may have had a change of heart after Bentham’s display to him of a now much-dilapidated model in January 1797.118 The detailed statement of Bentham’s project that appeared in The Annual Register for 1800 suggests that the debate between the two measures had become public knowledge, a factor which may have prompted Portland to redouble his


118 Bentham Correspondence, 5:352-3, 354 & 355; & 6:463-4. For a detailed discussion of the government and the Panopticon project, see below, part III(3).
efforts with regard to the hulks.119

Portland's Home Secretaryship therefore marked the end of the first era of the hulks. By September 1797 the aging Duncan Campbell had entered into joint partnership with his son John in the management of the two hulks on the Thames, and James Bradley had altogether turned over that of the two Portsmouth vessels to Andrew Hawes Bradley.120 On 1 May 1801 the Campbells turned over the management of their hulks to Stewart Erskine, thereby ending the last involvement of the contractor whose name had been virtually synonymous with the hulks during their first quarter century.121

Finally, shortly before Portland left office - three months after the rest of Pitt ministry - he sent the Treasury a proposal for fundamental alterations in both the management and character of the hulks establishment. Viewed in perspective, this document marks a significant moment in the history of English penal management. In the first instance, Portland recommended central oversight of the hulks system as a whole:

By the appointment of an Overseer having been left in the hands of the contractor, there is a total want of that check and control which are indispensably necessary to keep such an Establishment as this in order, and abuses have accordingly crept into the management of it which, as may well be supposed, the wisest regulations are unable to prevent or correct unless they are supported and enforced by the unremitting vigilance and attention of a superintending power.122

Thus Portland took up, for the hulks, that principle of central inspection that Fitzpatrick had


120Compare HO 36/10 p.239 with HO 13/11 p.296; and HO 13/11 p.8 with p.121. Andrew Hawes Bradley was initially addressed as Andrew Hawes "Dyne." I have discovered no record of him outside the Home Office Papers but, as he was consistently referred to as "Bradley" by 1801, I have preferred that form.

121HO 13/13 pp.338 & 403-5.

122HO 36/11 pp.430-4.
recommended in vain for transports.123

Portland's further proposal, that the hulks should constitute a more regimented system of punishment in and of themselves, was an equally dramatic departure from the government's past attitudes. Contemporary critics of the hulks had often assumed that certain classes of offenders (usually those sentenced to seven years transportation) were seldom transported, but rather served out their time on board the hulks. I am uncertain how far this may actually have been the case, but Portland's proposal of 1801 is the first official document I have found that explicitly contemplates the hulks establishment as a penal regime in its own right. "[T]he health of the convicts and every hope of amendment and reformation depend upon the introduction of new regulations and a new system of management in almost every part of the institution ...."124 Portland's notion that the hulks should be a vehicle for "amendment and reformation" moves us some distance away from the temporary holding measures of the 1780s and back toward the original 1776 conception of the hulks as quasi-penitentiary institutions. I have not yet been able to determine what the "well-calculated" regulations Portland recommended to the Treasury were. However, in extending the works carried on by hulks convicts at Portsmouth during the previous year, Portland had already instructed the Overseer that

it will be necessary that the more atrocious and hardened description of convicts, who afford little hopes of reformation, should be kept separate and apart from those who, being guilty of crimes of less enormity, and less practiced in vice and profligacy, appear to be capable of amendments. ... I must particularly require that ... all intercourse and communication between the two classes I have described may be

123See above, pp.326-8. Fitzpatrick had complained to the Home Department of conditions on board the Portsmouth hulks and argued "that matters ... have for some time past required your special interference ... in respect to the mode of conducting the business of the unfortunate, doomed victims ..." However he also admitted that he was not authorized "in any official sense to inform you of what occurs in respect to your convicts" (Add MS 33106 ff.162-3; see also ff.362-4).

124HO 36/11 pp.430-4.
restricted as much as possible, and that measures may be taken that they may regularly mess and sleep apart, either on board different vessels or in different quarters on the same vessel.\textsuperscript{125}

This requirement for a separation and classification of offenders, while admittedly primitive and minimal by comparison with the degree of categorization advocated by proponents of prison reform, nevertheless reinforces the proposition that Portland was seeking to convert the hulks into the best (or certainly least objectionable) substitute for the hard labour regimen that Bentham's prison was expected to provide. More generally, it laid the groundwork for the fundamental departures in outlook amongst statesmen at the centre that will be described in the last chapter of this thesis.

How could Portland have made such fundamental changes in an establishment that Pitt's government had always wished to see ended? Pitt may simply have had more pressing issues on his mind. By the late 1790s, he and his senior ministers had become absorbed in the prosecution of an unwinnable war. He may not have realized how far Portland's interests in penal projects extended. Moreover, in reducing the structural pressure on convict arrangements, the war had perhaps reduced the potential controversy that might attach to new proposals over how to dispose of hulks convicts. Perhaps too there was an urgent necessity for the military works they were to carry on, and Portland seized hold of the opportunity for systemic change thereby afforded. Finally, Portland probably had not made the full implications of his activity entirely apparent before Pitt left office in March 1801. His critical proposal regarding the hulks was not sent to the Treasury until June 1801 - three months after Pitt's resignation, even though Portland had received the results of the Portsmouth

\textsuperscript{125}HO 13/13 pp.31-4. A similar intention may have underscored Portland's later prohibition against "the mixing of the convicts belonging to the Hulks off Cumberland Fort with those of the [Weevil?]" (HO 13/13 p.273).
in February.\textsuperscript{126}

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For most of its seventeen years in power, the role of Pitt's government in the disposition of serious offenders was a reluctant one at best. The ideal arrangement was that which had prevailed before 1775, in which the provinces - and now Ireland as well - paid their own way and in which an active role on the part of government was required only for those convicts in the closest physical proximity to it.

Developments in the central oversight of criminal justice administration during the Secretaryships of Grenville and Dundas confirmed the ongoing discomfort of Pitt's government with the costs of the system of transportation and hulks that had emerged during the 1780s. By the early 1790s it had seemed that the former might be minimized and the latter altogether eliminated. Only two vessels would be required to remove all convicts under sentence of transportation each year, and local officials might soon develop sufficient resources of their own for those sentenced to imprisonment, thereby freeing government from any further role in the custody of convicts. By this time however, parliamentary pressure for nationally determined standards of imprisonment had re-emerged with new intensity. We must now consider how Pitt's government met this powerful challenge to its arrangements and priorities.

\textbf{IV. Parliament, Police and Panopticon}

In determining and supervising penal arrangements for the nation as a whole, Pitt's government always had a double-edged problem: first, how to balance the persistent demands

\textsuperscript{126}HO 36/11 pp.430-4. I cannot speak definitively on the matter but, in light of subsequent developments under the new ministry (see below, pp.447-9), Portland's industry during his four months under Addington - rather than Pitt - is suggestive.
for severity and deterrence with the growing sentiments, in some minds and places, for reformative carceral institutions; and second, how to do so in the manner least likely to impose objectionable costs on either government or on local authorities of varying commitment to imprisonment as a punishment for serious offenders.

By 1789 it seemed to have hit upon the right balance. It would provide transportation to local officials at cost and in the most economically efficient manner. At the same time, it encouraged the efforts of local authorities interested in developing reformative hard labour regimes for lesser offenders along the model of the Gloucester system. By no means however, was Pitt's government willing to impose any such regime on local officials who might simply be lukewarm about, much less those who might be actively opposed to them. Nor was it willing to take on the cost of the national penitentiary scheme proposed by Eden and Blackstone in 1779. Both proposals seemed liable to provoke trouble in a parliament dominated by inherently frugal backbenchers concerned to minimize the costs of both government and local administration alike. It was probably with this in mind that Pitt rejected a call for a sweeping, closely defined reform of the criminal law in April 1787:

[It would be extremely dangerous to take any step which might have the smallest tendency to discredit the present existing system, before proper data and principles should be established whereon to found another. Such principles ought to be again and again considered before they should be adopted, and ought to be fully weighed and settled by those learned and able men who filled the highest stations in the Law department.]

Determined to minimize its obligations to act for the nation as a whole in matters of domestic regulation, the Pitt government sought to assuage difficulties rather than to impose a uniform set of standards that might seem less relevant in one local context than another.

Not all parliamentarians viewed matters this way. Through a combination of

\[127\text{Parliamentary History 26 (1786-88): 1059.}\]
determination and skill, and invoking the same concerns for economy that animated the ministry, several MPs - Sir Charles Bunbury the most prominent and active amongst them - launched a sustained effort to impose nation-wide standards of imprisonment between 1789 and 1794.

(1) Renewed Parliamentary Activity on Prisons, 1789-1794

Few members of Pitt’s first parliament advocated the full replacement of transportation by imprisonment at hard labour. Most focused their questioning of the ministry’s penal policies on the ever-more pressing need to relieve the gaols of convicts under sentence of transportation. In March 1786 the two county MPs for Devon demanded to know what progress the ministry had made on this front. The Commons subsequently secured returns of all felony convictions in England and Wales during the previous years, as well as the costs to government of the hulks since their establishment in 1775. In 1787 Pitt presented the House with copies of the Orders in Council for the transportation of the First Fleet convicts. The Commons also demanded to see returns of all convicted offenders for the county of Middlesex for the last year and a half. Such activity was suggestive of a Commons keen to see the renewal of transportation, perhaps particularly with regard to that region of the country that was its home. The government’s 1788 renewal of the Transportation Act passed without incident and with more than a month to spare before the end of the session. The only sign of opposition was a long-standing distaste for both the principle and the cost of the hulks as an interim measure.

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The first sign of renewed interest in national standards of incarceration was the Gaols Act passed at the end of the 1789 session. This measure sought to extend the provisions of the County Gaols Act of 1784 to all other gaols in the counties. The duty of enforcing its essential requirements - the separation of felons and debtors, the abolition of spirits, annual cleansing, ventilation, clean cells, sickrooms, bathing facilities, salaried medical attendance, and the option of a clergyman - lay with the Quarter Sessions, who were to require an annual certificate from each gaoler within their jurisdiction and who could impose fines of up to £50 on negligent gaolers. Like the County Gaols Act, however, the legislation did not actually oblige the Quarter Sessions to enforce its provisions.\textsuperscript{131} No evidence exists of determined government opposition to the Gaols Act, and presumably it would not have passed if such opposition had existed. However, as it imposed no unavoidable burden on local officials, it probably seemed uncontroversial. Still it is striking that the measure originated with two Whig peers and that, in imitation of typical government practice, they presented the bill late in the session, presumably in order to ensure the minimum opposition.\textsuperscript{132}

A far more dramatic departure was the following session's "Bill to provide for the Custody and Employment of Offenders in certain Cases, and for the Regulation of the Places in which such Offenders may be confined."\textsuperscript{133} This bill invoked the original expectation of the Penitentiary Act of 1779 that, until the construction of the two penitentiaries, Houses of Correction should be used to implement imprisonment at hard labour. Such Houses of

\textsuperscript{131}29 Geo. III. c. 67. See \textit{Commons Papers}, 64:401-4 for the bill as presented to the Commons.

\textsuperscript{132}The bill was introduced by Earl Radnor and chaired at Committee stage by Lord Chedworth, both Foxites. Having introduced the bill on 28 May, they did not hold its second reading until a month later, when the session was nearing its close. It received the royal assent on the last day of the session. See \textit{J.H.L.} 38 (1787-90): 441, 476, 488, 489 & 524; \textit{D.N.B.}, 10:88-9; and \textit{Commons 1754-90}, 3:302-3.

\textsuperscript{133}\textit{Commons Papers}, 65:301-14.
Correction as were presently under construction in the counties were now to be designated "Penitentiary Houses" and to implement regimes that, at a minimum, followed the one outlined in the 1779 Act. Each was to be provided with a governor whose salary would be determined by the value of the convict labour and a gaoler with a salary of up to £50 per annum. Any fees and rates collected by the gaoler were to follow a fixed schedule. The county Quarter Sessions were to appoint three officials to inspect each Penitentiary House at least three times in each quarter (ie. once a month) and was obliged to remedy any departures from the prescribed regime.

Most controversially, the bill allowed the substitution of sentences to hard labour for transportation. Judges were to be empowered to alter sentences of transportation to imprisonment at hard labour in the Penitentiary Houses until such time as the sentence of transportation could be carried out, or even to substitute hard labour altogether for the same term as the original sentence of transportation. At any rate, transports might still be imprisoned in the Penitentiary Houses (without being set to labour) until their sentence was carried into execution. And they were not to have their sentence carried into effect if more than half the term of their original sentence had expired. Failing construction of such a Penitentiary House, every county was required at least to keep transports separately confined from all other prisoners.

The 1790 bill clearly sought to eliminate the hulks, something which was probably universally desired. But it must also have aroused intense controversy in so far as it implicitly sought to bring transportation and hard labour into a direct, exclusionary opposition to one another - an opposition that, however reluctantly, Eden and Blackstone themselves had backed away from in the 1779 Act. The ministry's attitude toward the bill is difficult to determine but, two days before parliament was dissolved, the Commons had
effectively thrown it out by ruling that amendments made to it in the Lords had turned it into a money bill and that the "new" bill must be reintroduced in the Commons.\(^{134}\)

Ministerial opposition was more explicit the following year. The bill’s leading proponent was now Sir Charles Bunbury, once more returned for Suffolk six years after having lost his seat in the 1784 election. Bunbury prefaced the bill’s reintroduction by an explicit attack on the nature and expense of New South Wales as a destination for convicts and by an assertion of the need for properly regimented prison regimes at home for offenders susceptible of reformation. Pitt maintained that transportation to New South Wales was not the fiscal, moral or physical disaster that Bunbury portrayed it to be (word had not yet reached England of the Second Fleet’s experience). However his opposition to Bunbury’s motion for accounts of the settlement, partly on the grounds that any such accounts would not reflect the extent to which government’s expenses were offset by East India trade, failed.\(^ {135}\)

Indeed attendance in the Commons that day was so low that a division failed to block the second reading of Bunbury’s new bill immediately thereafter.\(^ {136}\) The new bill carried the principles of its forbear even further, requiring that the regime outlined in the 1779 Act be applied to all county gaols and Houses of Correction, or at least to defined areas within them. At the very least all gaols must now embrace the basic classification scheme prescribed to County Gaols by the Act of 1784. Finally all prisoners, without regard to the sentence

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\(^{135}\) *J.H.C.* 46 (1790-91): 162, 206, 255, 334 & 394; *Commons Papers*, 83:241-58; *Parliamentary Register 1780-96*, 28:399-401; and *Senator*, 1:291-6 & 2:3-13. See also HO 35/11 (T.Steele to E.Nepean, 10 Feb 1791); and HO 42/18 ff.266-8 & 277.

under which they were imprisoned, were to be set to hard labour to help defray the costs of their incarceration.\textsuperscript{137} Thus, under the guise of minimizing costs to the counties, Bunbury and his allies sought to make the penal application of hard labour more extensive than ever. The 1791 bill was his nearest approach to a national application of the penitentiary regime since his failed bill of 1779.

This time, however, the opposition of both the county of Middlesex and the ministry prevailed. William Mainwaring attacked the bill - as he had the original Penitentiary Act itself - as a peculiarly costly imposition on his county, particularly as the construction of its own expensive new House of Correction at Cold Bath Fields was now well-advanced. This new institution was expected to house between three and four hundred convicts under sentence of imprisonment. But if judges were empowered to send the Middlesex transports housed in Newgate there as well, it would be overwhelmed and all hopes of the necessary separation and classification of offenders ruined. The Middlesex bench subsequently petitioned parliament against the bill on the grounds that their "County will be materially injured, and a new and heavy Expense brought on the said County, and the Police thereof greatly affected." Peniston Powney, MP for New Windsor, feared a similar result if the care of transports was imposed upon Berkshire's fourteen-room House of Correction.\textsuperscript{138}

Pitt also spoke for those who continued to believe that an irreducible distinction existed between an offender for whom transportation was the only option short of death and one whom a prison regime might redeem:

\textsuperscript{137}\textit{Commons Papers}, 89:1-18.

\textsuperscript{138}\textit{J.H.C.} 26 (1790-91): 194; \textit{Parliamentary Debates} 1784-92, 20:197; \textit{Parliamentary Register} 1780-96, 28:326-9; \textit{Senator}, 3:201; \textit{Commons} 1754-90, 3:319-20; and \textit{Commons} 1790-1820, 4:877-8. Their concerns about defeating the reformatory purposes of Houses of Correction were shared by William Wilberforce, who otherwise was an enthusiastic supporter of the penitentiary ideal (\textit{Senator}, 3:201).
That it was a necessary and essential point of police to send some of the most incorrigible criminals out of the kingdom, no man could entertain a doubt, since it must be universally admitted, that it was the worst policy of a State to keep offenders of that description at home to corrupt others and contaminate the less guilty, by communicating their own dangerous depravity. With regard to penitentiary houses, ... he hoped to see them become general, and that every county would adopt the plan, since a proper discrimination between such offenders, as from their abandoned and hardened profligacy ought to be made examples of, and such as afforded hopes of reformation was absolutely necessary.

However, he later went on to say,

he did not approve of a general receptacle for such offenders, being well convinced, that proper houses for that use in the different counties, would be much better adapted for the purpose, because they could be more easily looked after, and kept under better regulation, than it was possible for any general receptacle to be managed in.\textsuperscript{139}

The proposed bill would blur the crucial distinction between incorrigible offenders, who must be transported, and those susceptible of reform. It would defeat the purposes of such reformative prison regimes as already existed (and others hopefully still to be built) in the localities, and would also impose large expenses on many unwilling local officials. In some places - John Beattie has demonstrated that Surrey was one\textsuperscript{140} - the role of transportation in the array of penal practices was already vastly reduced from what it once had been. On the other hand, as we saw in the previous chapter, it continued to play a very large role in the metropolis given the practical impossibility of imposing the capital code on a wide-scale after the 1780s. Pitt was unwilling actually to impose a reduced use of transportation on any local authorities against their will, or even to risk appearing to be doing so. His ministry continued to view the role of government \textit{vis a vis} local officials as a co-operative rather than a directive one - much less a prescriptive one. It was in vain that the bill’s advocates argued

\textsuperscript{139}Senator, 1:294; and Parliamentary Register 1780-96, 28:350. In the same vein, William Mainwaring insisted that, in Middlesex, "The sentence of transportation never was pronounced where the least prospect of reformation remained" (Senator, 3:201).

\textsuperscript{140}Beattie, \textit{Crime and the Courts}, 560-5 & 601-10.
that the costs of the prisons might be recovered from the profit of the work carried on within them. For many local officials, such contentions probably seemed remote projections by comparison with a familiar and, at last, once more reliable set of arrangements for transportation.

Having failed to block the bill's second reading, the ministry subsequently managed to impose seven delays in its further consideration and finally defeated it on a division. A less objectionable version of the bill was subsequently passed into law within a month and received the royal assent on the last day of the session. The Gaols Regulation Act of 1791 required Quarter Sessions to appoint governors in all Houses of Correction (or penitentiary houses) for the county, but left it to their discretion as to whether or not that governor would be salaried (s.1). Moreover, although the regime described in the Penitentiary Act was to be applied in these penitentiary houses, that regime could subsequently be altered by the Justices of the Peace (s.2). All prisoners housed therein could be set to work (s.12). Transports awaiting execution of sentence in the county gaols might also be set to hard labour, and any time that they were confined under those terms would be counted against the term of their sentence (s.7). Transports were also to be housed separately from all other offenders in the gaols (s.10). But judges no longer had the power to remove transports to the Houses of Correction. Thus the Act met the objections of the original bill's opponents, while preserving some of its proponents' ambitions. It advanced the principles of hard labour on the model of the Penitentiary Act, but did not make them absolutely mandatory or interfere with the

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141 Sen. 3:202.

execution of sentences of transportation. ¹⁴³

(2) The Ministry's Response: (a) Police, 1789-1792

In the event, the Gaols Regulation Act of 1791 was the last substantial attempt to regulate conditions in the nation's gaols before Peel's Act of 1823. ¹⁴⁴ At the time, however, it was not clear that transportation was secure from attack. The Gaols Regulation bill of 1790, which had embodied a substantial attack on transportation, had passed both Houses and only been defeated on a technicality at the end of the session. Pitt faced a problem that might re-emerge at any time. The question was how to contain a movement that could have politically damaging consequences. Two strategies were adopted.

In the first instance, Pitt's government appears to have fallen back on the preventive strategy that had first been devised in 1782 as an alternative to the penitentiary scheme. This return was initiated in April 1790, when Grenville revived the Bow Street-based Foot Patrol on the major roads in and out of London that the Treasury had sought (apparently successfully) to eliminate in 1783-4. Knowing the earlier objections only too well, Grenville emphasized that the patrol would be in place only "until some other Plan shall be fixed upon for checking the depredations complained of, without subjecting Government to this Expense." ¹⁴⁵ Underpaid and undermanned from the outset, it seems to have enjoyed favour with Dundas who continued to press for its extension even after he had left the Home Department. In the event, and with the express approval of Pitt, Dundas and Grenville, a more extensive cavalry patrol was established in 1800, by which time seven years of war had


¹⁴⁵HO 43/3 pp.190-1. In 1797 it consisted of thirteen groups totalling 68 men (Radzinowicz, History, 3:135-37).
presumably muted traditional constitutional objections to the presence of uniformed men on the main roads. In 1805 it was partially replaced by a formal, large-scale Horse Patrol under civilian authority, the cost of which was minimized by the elimination of part of the Foot Patrol.\footnote{146}

The revival of the preventive strategy also explains the passage of the Middlesex Justices Act in 1792. This measure established seven police offices, six in Middlesex and one in Southwark. Each was staffed by three government-paid magistrates, to be available during fixed hours, and by six salaried constables. Save for the more explicitly hierarchical arrangements of the 1785 bill, including the placing the individual offices under the authority of a government-appointed commission and a detailed classification of the constables attached to each office, this was in essence the scheme that John Reeves believed could have been passed once the City of London was excluded from its purview.\footnote{147} The 1792 bill began as a private measure of Francis Burton, a supporter of the ministry with a penchant for issues of legal improvement.\footnote{148} Burton's sketchy proposal emerged from its first committee stage as a substantial imitation of the failed bill of 1785, and Home Secretary Dundas now became its most active proponent.\footnote{149}

\footnote{146}HO 30/2 ff.128-33, 384-5 & 386-7; HO 35/13 (J.Reeves to G.Rose, 2 Oct 1793; enclosed in C.Long to E.Nepean. 23 Oct 1793); HO 42/49 ff.259-62; and HO 42/80 ff.35-6 & 38. See also Radzinowicz, History, 2:192-3 & 425-7.


\footnote{148}J.H.C. 47 (1792): 562, 571, 737, 806-7 & 824; and Commons 1790-1820, 3:341-3.

\footnote{149}Compare the first and second versions at Commons Papers, 79:409-16 & 417-28. I am puzzled by the bill's having been proposed by Burton and subsequently taken up by government. Was the first initiative genuinely his (as the substantial transformation of his bill might suggest), or was Burton a stalking horse? It is interesting that Pitt seems largely to have distanced himself from the measure, leaving its advocacy and defence to Dundas and Burton. Perhaps Pitt's interest was exercised in some measure by his brother-in-law Edward James Eliot, one of the Lords of the Treasury and chair of the bill's first committee stage (J.H.C. 47 [1792]: 743 & 754; and Commons 1790-1820, 3:682).
The sudden revival of this measure may seem surprising, given that Pitt had rejected it on the grounds of its potential expense in 1786. It has often been assumed that the government’s principal aim was to have a force of paid magistrates for the purpose of detecting and prosecuting seditious and treasonous activity. Circumstantial evidence suggests such a concern. Both Grenville and Dundas had corresponded with Edmund Burke after the latter published his *Reflections on the Revolution in France* in 1790. It is suggestive that some of the first instructions from the Home Department to the new police offices enjoined the magistrates to be on the watch for seditious and treasonous behaviour. So was the appointment of John Reeves, leader of the nation’s pre-eminent loyalist association, as Receiver for the Police Offices.

But a definitive case continues to elude historians. Ruth Paley has demonstrated how ineffective any such activity on the part of the stipendiaries was, and how government failed to provide focused leadership in this respect. This matches a larger picture, drawn by Clive Emsley, of an ultimately cautious and inconsistent pursuit and prosecution of radicals by government during the 1790s. If anything, provincial magistrates - far from the metropolis and acting on the traditional, voluntary basis - were more aggressive in perceiving...
and pursuing "sedition" than were the new stipendiaries of Westminster.153

This does not mean that such intentions did not inform the passage of the Middlesex Justices Act in the spring of 1792. The latter stages of its passage corresponded with the Proclamation against seditious writings, triggered by the publication the second part of Thomas Paine's Rights of Man in February 1792. And Dundas's express satisfaction with the conduct of the "new magistrates" in September of that year may have been linked to "the proper steps" that had been taken regarding the sale of Paine's book.154

Nevertheless it is striking that the debates surrounding the Act's passage contain no mention either of such ambitions on the part of government or, perhaps more strikingly, of any explicit fear of them amongst the opposition. Objections were focused mainly on the possibility that government might use appointments to the stipendiaries as a means of extending executive influence - a long-established fear of eighteenth-century opposition - or on the threat to individual liberty posed by the expansive powers granted under Clause D.155 This clause allowed for the arrest and imprisonment in Houses of Correction for up to six months of reputed thieves, as well as those merely unable to give any good account of themselves. But this provision had also appeared in the 1785 bill, so - although it undeniably constituted a dramatic extension of the summary powers normally granted to magistrates - the potential application of it to the persecution of radicals need not have been the operative


154 H.M.C., Dropmore Papers, 2:308.

Moreover, in pressing for the Middlesex Justices Act, government emphasized the persistence of high crime levels in the metropolis. That the strategy of the Act was fundamentally that of the mid-1780s - the prevention of the most serious crimes by the determined prosecution and punishment of petty offenders - was seldom made explicit in the debates in the Commons. It was, however, made clear on one occasion by Dundas, who reminded the House that, rogues reached the gallows by degrees; that they started as pickpockets about 13 or 14; that they became emboldened by habit and practise; that when by picking pockets they were able to buy a horse, they commenced highwaymen; and by an accumulation of crimes, all highly injurious to the public, they arrived at the climax of their fate, and ended their career by the hands of the hangman. He appealed to the feelings of the House, whether it would not be practical humanity to rescue such wretches from their fate, and by an early prevention of their pursuits, check their evil courses, and afford them an opportunity of being restored to society. ... [H]e felt himself guilty of no breach of duty in wishing to prevent the commission of crimes ....

Such thinking was more apparent in the House of Lords. The former Home Secretary, Viscount Sydney, stated that "it was surely better to pass a law to prevent offenses, and clear the streets of the desperate footpads and pickpockets that infested them, than to apply a remedy to them after they were committed." Similarly Lord Chancellor Loughborough asserted what he claimed to be the universal view of the judges,

that every attempt to prevent crimes was so far preferable to punishing them after they were committed, that they ... were persuaded that it would produce the most beneficial consequences. ... The Clause [D] in fact, his Lordship said, he considered as calculated to produce a more powerful effect, as a preventative of crimes, than all the capital punishments that could be invented by human ingenuity.  

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158 Senator, 5:1044 & 1053.
Pitt himself contributed relatively little to the debates. Perhaps he wanted to avoid antagonizing MPs sympathetic to prison reform and who might suspect the strategy that was at work here. Perhaps he hoped that the ultimate success of the preventive strategy would quell enthusiasm for institutional measures. The 1785 bill had not been presented as an explicit substitute for the imprisonment either, although clearly that was one of its underlying motives. Given the extent to which, either by accident or design, the bill appeared to arise from several different quarters rather than directly from government, the calculations that informed government's involvement were - and remain - difficult to determine with precision.159

A concern for the prevention of serious criminality would have dovetailed neatly with a government interest in using paid magistrates to act against sedition. This can be illustrated by reference to two "Instructions" issued by one of the new stipendiaries, the famous police reform advocate Patrick Colquhoun, to his constables at the Worship Street Office. One of August 1792, directing their particular attention to the prosecution of morals offenses, vagrancy and so forth, clearly reflects the preventive strategy of the 1780s. But in December of the same year Colquhoun issued another instruction

for the purposes of giving additional energy to the executive power and to the Civil Magistrate in the present circumstances of Public Affairs. ... not only in keeping the peace: but in supporting and maintaining the constitution of this Country as by law established against every attempt to alter or subvert it as well as against all licentious attempts to create discontent, and to raise up clamour and distrust with regard to the present Government of the Country or for any other purpose tending to mischief and

159 For instance, the much-debated Clause D, as well as several other crucial elements from the 1785 bill, were only moved by William Mainwaring when the second version of the 1792 bill was nearly ready for presentation (Senfor, 5:758). But the scene between him and Dundas in the House may have been a stage-managed theatric. Both of them had been members of the bill’s original drafting committee, and so might easily have introduced such critical modifications at the outset (J.H.C. 47 [1792]: 562).
Sedition. 160

But the *prima facie* concern of the Act was the problem of crime.

This focus followed logically on the prevailing tension between government and parliament over the most effective means of addressing that problem. The year before, Middlesex in particular had been intensely opposed both to the costs that Bunbury's Gaols Regulation bill would impose on their county, as well as the extent to which it would have thwarted that set of penal arrangements which they thought best-suited to their county's needs. More recently, Bunbury had renewed his attack on the ministry's hulks and transportation arrangements. Only days before Burton first moved the police bill, the Commons had received the accounts that Bunbury had demanded of the disastrous voyage of the Second Fleet, and then further required an account of "the Quantity and computed value of the Work" done by the inmates of the hulks. Dundas made a confident show on the ministry's behalf but, in its simmering conflict with parliament over penal practices and priorities, the government was probably as close to serious embarrassment as it would be at any point before the sustained criminal law reform campaigns of the early nineteenth century. 161 It may not be surprising then that, in shifting back to the preventive policing strategy of the previous decade, Pitt's government should have chosen to act as indirectly as it seems to have done. At any rate, when government sought the renewal of the Middlesex Justices Act in 1796, it did so solely on the grounds that a substantial reduction in metropolitan crime had taken place since 1792 and that a greater reduction might yet be

160 Copies of these two "Instructions" to the constables of the Worship Street Office, dated August and 15 December 1792, are in W.L.C.L., Melville Papers [5].

expected.\textsuperscript{162}

However, the revival of a preventive policing strategy may not have seemed sufficient to quell opposition to the prevailing system of transportation and the hulks. Pitt and his ministers may have hoped that such tactics would so reduce crime levels that the demand for more direct intervention in the administration of the nation’s prisons would dissipate. But such success could only be realized in the long run.

(3) The Ministry’s Response: (b) Bentham and the Panopticon, 1791-1801

In the meantime, although Bunbury and his followers had secured some movement toward the central regulation of gaols by the end of 1791 session, they continued to be loud and active critics of the settlement at New South Wales and of the hulks regime. In May 1793 Bunbury again questioned the physical and moral salubrity of transportation to New South Wales. Principles of proportion suggested to him that only offenders sentenced to fourteen years and life should actually be subjected to so appalling a voyage and destination; seven-year offenders ought perhaps to be sent to British North America. In place of the hulks, universally acknowledged to be inadequate and undesirable, he recommended to government’s attention a dramatic new penitentiary design proposed by Jeremy Bentham.\textsuperscript{163}

The full details of the ensuing story - of the philosophy underlying Bentham’s penal scheme, of its realization through architecture, of his subsequent frustration in finding a site for the building, of his ultimate disappointment in 1801, and of his long and embittering

\textsuperscript{162}36 Geo.III, c.75: and Woodfall’s Debates, 1796(3): 117-25 & 1796(4): 206-7. See also W.L.C.L., Melville Papers [11] (N.Conant, “A Sketch of the General Effects of the late Police Establishments,” 25 Feb 1796). Even so, reservations about both executive influence and the powers of arrest remained strong enough that the ministry abandoned its intention to make the Act perpetual, settling simply for another five year "trial." In fact, given both the relative inattention of most stipendiaries to their duties and their limited resources, it is doubtful that their activity accounted for the apparent fall in crime. The renewal of war was probably the most influential factor; see Paley, “Middlesex Justices Act,” 252-61.

\textsuperscript{163}Parliamentary History 30 (1792-94): 956-61.
struggle thereafter for compensation - are now generally available to penal historians. Most recently, they have been comprehensively treated in the late Janet Semple's outstanding monograph. Yet none of these works have provided adequate answers to what are surely the central conundrums of this story: why did Pitt's government sanction the project in the first place? and why, having done so, did it all but completely ignore Bentham's efforts to realize it?

Bentham was essentially correct in believing that his dream had been thwarted by the overwhelming power of the executive, and perhaps particularly by Pitt's pre-eminence amongst his ministers. Bentham always reckoned Evan Nepean, the Under Secretary in the Home Department, to be the "gentlemen who, from the commencement of the business in 1792 ... was perfectly acquainted with every particular belonging to it." Dundas had viewed Bentham's "Panopticon model and machinery" at this time but, in Bentham's own words, merely "admired or pretended to admire" it. It was Nepean who informed Bentham that he had permission to proceed. Dundas had also been in the room, but did not speak directly to Bentham himself: "Mr Dundas ... was at your elbow," Bentham later wrote to Nepean, "hearing and, as it seemed to me, signifying concurrence, though as yet not otherwise than by looks." He understood only too well the significance of the fact that

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166 HO 35/23 (J. Bentham to G. Harrison, 2 Feb 1811; contained in Harrison to J. Beckett, 16 Feb 1811; a very different version of this letter appears in Bentham Correspondence, 8:98-107).

167 Bentham Correspondence, 4:395 & 5:22 (emphases in original).
no action had been taken by government until, after Bunbury broached the subject in parliament in 1793, Pitt himself came to view the model. Pitt’s ultimate control over the matter was reinforced in 1794, first by the departure of Nepean and Dundas from the Home Department and, second, by the necessity, under the terms of the enabling legislation passed that year, for government to purchase land for the project.168

Thereafter Bentham’s experience of Pitt’s government was one of rapidly escalating frustration and despair. In this he was often his own worst enemy. Even before the passage of the 1794 Act, he wrote an extraordinarily arrogant and high-handed letter to Dundas, claiming that government’s slow movement on the legislation indicated that it had already abandoned serious intent about it. Dundas, possibly the only minister in Pitt’s government who ever actually wrote to Bentham, sent his one and only letter not long after this. His only advice was a pointed insistence that, if Bentham’s appeals to government were to achieve their end, they "must be treated of and digested into practice by temper and dispositions very different from those which have too often guided your pen ...." Bentham clung to the hope that he might still reach Pitt through Dundas, but his final attempt through this channel - "a last gasp after a three year’s struggle" - was made in August 1796.169 In that year, when Bentham approached the Bishop of Rochester for land on which to build his penitentiary, the Bishop apparently had to write to Pitt twice before the latter even bothered to reply on the

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168 For the latter particularly, see Bentham Correspondence, 6:443-4.

169 Bentham Correspondence, 5:33-4, 77-8, 118-9 & 245; and Semple, Bentham’s Prison, 189-90. Bentham’s conviction that the Treasury was his main recourse (and enemy) was so complete that he seems to have made no serious effort to cultivate Dundas’s successor at the Home Department, the Duke of Portland, despite the apparent enthusiasm for the scheme of Portland’s criminal business factotum William Baldwin. But Bentham’s display of the Panopticon model to Portland and his entourage in January 1797 appears to have been a dismally mismanaged affair, and he later regarded Baldwin as covert enemy to the scheme (Bentham Correspondence, 5:340, 343, 352-3 & 355; & 6:463-4).
subject.\textsuperscript{170} In general Pitt's Treasury Secretaries, especially Charles Long, ran interference between the First Lord and his increasingly frantic and assertive supplicant. Bentham vividly recounted to his brother:

Finding the absolute impossibility of getting Long to stir a step - to take any notice of a letter or to give me any regular audience, - and he having in a sort of flying conversation partly with another man in the room, partly on the staircase told me I must give in a Memorial - without saying about what - and refusing my request of being permitted to concert it with him before it went ....\textsuperscript{171}

For almost all intents and purposes, government was a closed door to Bentham after 1794. He therefore pinned his remaining hopes on a show of force by the Commons. However the accession of the Portland Whigs to the ministry in 1794 marked the end of effective parliamentary opposition to Pitt's government. In 1798 the 28th Report of the Select Committee on Finance advocated pursuit of the Panopticon experiment. However one of its guiding lights, Bentham's step-brother Charles Abbot, warned him that the project could expect little practical benefit from this endorsement:

The measures proposed being such as the Execve Govt. is concerned to promote or prevent the adoption if they are proper - lies naturally with the Ministers. ... [Y]ou may depend upon it - that nothing in which Govt. is directly or indirectly concerned will be carried through Parliament without their 	extit{cordial} support.

Indeed, Abbot continued, one could go further to say that nothing could be passed which is not professedly under the 	extit{cordial} protection of the Treasury - either by its own choice - or (if you please) by adopting the recommendation of its Colleagues in Power.

... If it comes from any one but the Chancellor of the Exchequer - it will by one cross wind or another be stranded in some stage of its progress. ... And if he

\textsuperscript{170}PRO 30/8/146 ff.131-2 & 133-4. See also Bentham Correspondence, 5:289-93, 318 & 318-9; and Semple, Bentham's Prison, 197-200 & 212.

\textsuperscript{171}Bentham Correspondence, 6:292; and Semple, Bentham's Prison, 192-3, 211-2 & 220-34.
does not choose to adopt it, is it likely that he shod suffer it to be forced upon him?\footnote{Bentham Correspondence, 6:106-7 (emphases in original); text also in Hume, "Bentham's Panopticon," 2:53. Bentham had earlier remarked of the Committee, "Can there be any thing more perfectly in the power of Mr Pitt? - Can there be anything more perfectly out of the power of every body else?" (Bentham Correspondence, 6:15). For the 28th Report and some of its possible influences for change, see above pp.323-5.}

The contrast between Bentham's experience and the active support given the hulks contractors, by Home Department and Treasury alike, could scarcely be sharper. From 1794 at least, government clearly never intended to provide initiative and support for Bentham's Panopticon to the degree to which they did the hulks establishment that it was ostensibly to replace. Why then had government bothered to sanction the project in the first place?

Much of the confusion over this issue stems from the failure of previous historians to place Bentham's project in the context of developing penal arrangements. The Achilles heel of the Panopticon proved to be its narrow definition in the minds of the government that had commissioned it. A series of letters between the Treasury and the Home Department between 1799 and 1801 sealed its fate. The Home Secretary, the Duke of Portland, reiterated the view that "such Penitentiary Houses should be used principally for such transportable convicts as the several gaols of the counties cannot contain, from the time of their receiving sentence 'till an opportunity may offer for their being transported." By June 1800 Portland was now confident that conditions in New South Wales "will, in all probability, every year admit of increasing the number of convicts to be sent there in a very rapid proportion."\footnote{HO 36/11 pp.152 & 272 (copies at HO 42/48 ff.182-5).} Thus, in Portland's view, Bentham's prison was to exist primarily to serve the purposes presently fulfilled by the hulks, and those hulks in turn might soon be made redundant by the
increased capacity of New South Wales to receive transports.\footnote{This latter point was made more explicit in a subsequent letter, in which it was suggested that "at no very distant period, the colony will be in such a state of improvement as to be capable of receiving, in each year, the whole number of convicts which it may be necessary to send from the different gaols in the Kingdom ..." (HO 36/11 p.391; reprinted in \textit{Commons Papers}, 114:368-9).}

Given this circumstance, "as well as the various improvements which have taken place in the different gaols of this Kingdom," the Treasury desired Portland's opinion as to whether or not government should pursue Bentham's project - now expanded from an initial projected occupancy of 1,000 to one of 2,000 prisoners - "by way of an experiment, ... or whether under all the circumstances it may be most adviseable to relinquish the Plan altogether ...." Portland left the questions of abandoning the Panopticon and compensating Bentham to the Treasury, but suggested that, if they pursued it further, "a building large enough to contain 500 convicts will be sufficient." The announcement to Bentham of this large-scale reduction was one of the very last acts of Pitt's Treasury before he left office in March 1801.\footnote{HO 35/22 (C.Long to J.King, 25 Aug 1800); and HO 36/11 pp.390-2. These letters are reprinted in \textit{Commons Papers}, 114:367-9. Long remained as Junior Treasury Secretary a month beyond Pitt's resignation, despatching the notification to Bentham ten days later (\textit{Bentham Correspondence}, 6:382-3; \textit{Commons 1790-1820}, 4:449; and Ehrman, \textit{Younger Pitt}, 3:533).}

On the face of it, although undoubtedly a severe reduction in the size of the scheme, it seems strange that Bentham interpreted this as a definitive rejection of it. This became apparent in his three subsequent published attacks on government's penal arrangements, in which he asserted the superior virtues of the Panopticon, not merely to the hulks establishment, but also to transportation to New South Wales.\footnote{Hume, "Bentham's Panopticon," 2:39-40; R.V.Jackson, "Bentham's Penal Policy in Action: The Case Against New South Wales," \textit{Utilitas} 1 (1989): 226-41; Jackson, "Theory and Evidence: Bentham, Collins, and the New South Wales Penal Settlement," \textit{Australian Journal of Politics and History} 39 (1993): 318-29; and Semple, \textit{Bentham's Prison}, 234-6 & 239-53.} But government had never viewed the role of the Panopticon in so wide-ranging a fashion. As we have already seen, the
prior history of both ministerial penal policy and of parliamentary adjustments to it reveal a pattern of development in which transportation was expected to continue playing a major role. Dundas had been careful to reiterate this when he first informed the Commons of government's plan to commission Bentham’s Panopticon project in 1794:

He did not mean to say that no offenders should in future be transported to Botany Bay; on the contrary, there were many who ought to be transported there .... Botany Bay would, in his opinion, continue to be a very useful colony to this country, for the reception of many offenders.177

At the same time, both ministers and MPs expected imprisonment to be carried on at the local level in locally-administered institutions.

Nor was this perspective solely confined to the ministry, although Bentham later convinced himself that such must surely have been the case. In proposing Bentham’s scheme to the Commons in May 1793, Bunbury was critical of transportation to New South Wales, but not of transportation per se. It was specifically the hulks establishment that he hoped to see eliminated through the cheaper and more effective alternative of Bentham’s scheme. This was a reading that, perhaps only reluctantly, Bentham had endorsed at the time.178 This impression must later have been reinforced, first by Bentham’s offer to take over the hulks establishment ("the being the better enabled to put as Speedy a termination to it as possible"), and then by his using its anticipated acceptance as grounds on which to expand the capacity of the projected prison from one to two thousand.179 More and more enraptured with the

177Woodfall’s Debates, 1794(3): 468.

178Parliamentary History 30 (1792-94): 958-60; and Bentham Correspondence, 4:366-7. See also Bentham Correspondence, 7:71-3, in which Bentham later tried to convert Bunbury.

179Bentham Correspondence, 6:53, 188-9 & 279. In fact Bentham wanted the contract for the hulks as compensation for his "losses" thus far in pursuing the contract for the Panopticon, one of many indications of how deeply intertwined his reform enthusiasm was with his own commercial self-interest (see Semple, Bentham’s Prison, 202-3).
ingenuity and totality of his vision - not to mention the profits that he was convinced he
would make as its contractor - Bentham only belatedly began to realize how narrowly defined
his project had always been in the eyes of its commissioners, and therefore how dangerously
vulnerable it was to cancellation. At any rate, the absence from Bentham’s correspondence of
all the most vocal proponents of penal reform in the House of Commons during the early
1790s - Bunbury, Elliot, Jekyll, Powys, Phelps - after 1794 is striking. Nor can any
activity by them on the project’s behalf be detected thereafter. Perhaps they too, like
government, rapidly tired of Bentham’s increasingly exaggerated sense of his project’s
significance, as well as the increasingly high-handed tone with which he pressed it upon their
attention.

Why then did Pitt ever bother with it in the first place? I have found no sources that
enable me to answer this question with certainty but, given a proper sense of context, I think
that intelligent speculation is possible. It is seldom noted that, after Pitt and Dundas inspected
and approved Bentham’s model at a "Raree-show" held at the latter’s home in July 1793,
they requested him to have his building ready within six months. This suggests that the
initial approval of the Panopticon was based on a specific and pressing purpose. At about this
time, both government and the public at large were greatly concerned about reports of
unhealthy crowding in Newgate. Perhaps Pitt and Dundas had it in mind that the

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180 Bunbury corresponded with Bentham on at least three more occasions between 1794 and 1802, but never
with reference to any activity that he might take with respect to the Panopticon (Bentham Correspondence,
5:142, 143-4 & 198).

181 In 1796 Bentham cultivated another MP, Philip Metcalfe, but soon despaired of his inactivity in the House
(Bentham Correspondence, 5:74-6 & 335; and Commons 1790-1820, 4:580-1).

182 Bentham Correspondence, 4:432 & 448.

Panopticon might replace Newgate as a receptacle for the metropolis’s convicts under sentence of transportation. It should be remembered that, in the not too distant past, government had been compelled to expend very large sums of money on the upkeep and repair of Newgate. Bentham’s private contracting principle for the management of the Panopticon held out the promise of a prison that would cost government little or nothing, an attraction that Bentham had scrupulously emphasized at the outset, which his allies later pressed him to reiterate, and which Dundas had emphasized in presenting the enabling legislation to the Commons in 1794. Indeed Dundas and Pitt seem only to have taken the project up once they were convinced of the cheapness, simplicity and effectiveness of its proposed labour regime. Dundas subsequently enthused to the Commons that

the plan was not only practicable, but also very easy to be carried into effect, viz. by means of a machine, which enabled every man to be a manufacturer, without the assistance of any skill whatever: ... merely moving the machine answered all the purposes of completing the manufacture. ... [T]heir labour would be very useful to the Public; and ... with a very little expense, the produce of their labour would equal the charge of carrying on the work.  

Yet clearly there was no functional purpose for the Panopticon that remained sufficiently compelling to warrant further interest after mid-1794. This suggests that Pitt’s government must have been influenced by other considerations as well.

Many advocates of nation-wide prison reform were convinced it could only be achieved if London led by example. Given the capital’s attempts to maximize capital punishment during the 1780s and its heavy reliance on transportation as a secondary punishment, this was something that it was conspicuously failing to do. We have already

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18 Bentham Correspondence, 4:359-60; & 5:201-2; and Woodfall’s Debates, 1794(3): 469. The legislation (34 Geo.III, c.84) was necessitated by the change from government supervision, as outlined in the 1779 Act, to private contract in the management of the proposed penitentiary (Semple, Bentham’s Prison, ch.8). The Transportation Act of 1784, renewed in 1788, was again renewed during this session (34 Geo.III, c.60).

183Woodfall’s Debates, 1794(3): 468.
noted that Jonas Hanway and others had taken such a view of the Penitentiary Houses to be constructed under the 1779 Act. This was also the view of William Morton Pitt, one of Bentham's supporters and a champion of local prison reform in Dorsetshire, who believed that "all the pains taken by Magistrates in the Country are of little avail, whilst the London Prisons continue in their present state." For rather different reasons, Bentham asserted the indispensability of a metropolitan site given the capital's status as "the great seat of inspection ...." But there is no evidence that such a purely symbolic view of matters motivated Pitt's ministry, much less that the project would have been taken up solely on those grounds.

The most compelling explanation would seem to involve the desirability either of being rid of the hulks or the functional necessity of relieving Newgate, coupled with an even more compelling political motivation. Pitt and Dundas probably hoped that a long-term (and not especially burdensome) commitment on their part to a substantial experiment in penal discipline might decisively relieve the continuing pressure from parliamentary advocates of prison reform. Bunbury's continuing activity in the 1792 and 1793 sessions, the latter coming in the midst of profoundly embarrassing reports of the condition of prevailing transportation arrangements, suggested that opposition to New South Wales and pressure for government regulation of the nation's gaols might not vanish for the foreseeable future. In announcing the decision of the ministry to endorse Bentham's project, Dundas was careful to tread both sides of the path. He unequivocally asserted that transportation would always have a role to play in English penal arrangements: "But although he thought that some were not sent who ought to go, yet he thought that many were sent whose labours might be made better use of in this

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186PRO 30/8/167 ff.219-20; Bentham Correspondence, 5:60-1; and Semple, Bentham's Prison, 142-7 & 295.
country. Both those determined to uphold transportation and those who anticipated its ultimate supplanting by disciplinary prison regimes could derive comfort from this.

Moreover, as we have already seen, the Panopticon promised to pose little cost to government. The worst that could have happened was that government would have a prison that would pay for itself and which might even serve a useful functional purpose in the metropolis. In the event, the admission of the Portland Whigs to government in July 1794 - only four days after the enabling legislation was passed - probably nullified much of the political capital to be gained by the legislation. And it was not long after this that Pitt and Dundas began determinedly to distance themselves from Bentham and his project.

Presumably they hoped that the whole matter might simply fade away. Construction of the new prison could be expected to take some time. It might have been hoped that, before then, the preventive effect of policing measures would be apparent. At the same time, prison reform efforts in the provinces might further reduce the pressure on the system of transportation and the hulks. In the metropolis, immediate problems of incarceration may have been expected to be substantially lessened by the opening of the large new Middlesex House of Correction at Cold Bath Fields at the same time that the Penitentiary Act of 1794 was passed. And surely Pitt and Dundas had no idea just how persistent Bentham, as he became more and more convinced both of his project’s brilliance and profitability to himself, would prove to be. Would a less ego-maniacal person than Bentham ever have persisted in the face of such obstruction and inanition on the part of a ministry? That there is no parallel for it in all of eighteenth-century history probably says more about Bentham than it does

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188The Act received the royal assent on July 7th; the Portland Whigs joined the cabinet on July 11th (Ehrman, Younger Pitt, 2:413-4).
about Pitt and his government.

The government's sense of the Panopticon's purposes appears to have been narrow and self-interested. But this did not stem from a benighted indifference or even opposition to principles of reformation in penal practice. The Panopticon was finally rejected, on all but the most experimental level, for two reasons. The first was the apparent adequacy and widespread acceptance of New South Wales as a destination for transports. And the second was a concern that local prison reform should continue as far as it needed to in order to meet the needs of those local authorities who desired it. In retrospect, the general slow-down in prison rebuilding by 1800 suggests that this point may already have been reached.\(^{189}\) But in 1799 Portland raised an undesirable possibility with the Treasury:

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\ldots \text{I incline to think that it would be very inexpedient to remove [prisoners] from the county gaols, unless the crowded state of those gaols should render it absolutely necessary; for it would naturally tend, not only to check that spirit of improvement which now so universally prevails in the several counties in respect to their gaols, but would be the means of the gaols themselves being neglected, by which the greater part of the prisoners, who are now or may be hereafter confined in them, would necessarily be sent to the Panopticon, where the expences attending their custody must be borne by Government instead of being defrayed by the respective counties.}^{190}\]

By providing an alternative source of penal incarceration, the existence of a government-funded Panopticon might actually thwart the full-extension of the process of prison reform in the manner that government believed it ought properly to proceed. It would be one thing to fund a small-scale endeavour in the metropolis for whatever political capital might still be gained by the gesture. But this experiment might prove counter-productive in a larger sense if the institution that resulted became an excuse for local authorities to renounce all further

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\(^{190}\) HO 36/11 p. 153; text also in Bentham Correspondence, 6:261 n2.
responsibility in penal reform. Thus, however ingenious it may have been in the abstract, Bentham’s scheme of reformative incarceration ultimately seemed to be superfluous, and perhaps even dangerous, to the needs of the moment.

Moreover Bentham’s ambitions for the scheme were far greater than either the government or parliament’s ever were. Bentham wanted altogether to supplant transportation and the hulks. The government would gladly have been rid of the latter, but neither had the desire nor saw any means to dispose with the former. Bentham wanted to revolutionize penal practice. At best, government simply wanted a cost-effective prison. Bentham’s correspondence is full of self-admiration for his "total" scheme of punishment and reform, but there is no indication that he had ever seriously considered, in its context, the developing penal order that he was so confident it could supplant. Sustained by an over-inflated sense of his importance, not to mention of the wealth that he might achieve, and insensible of the cumulative weight behind the developing order of transportation and prison arrangements, Bentham continued to throw himself onto the barricades of ministerial indifference to less and less purpose.

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By 1801 then, and perhaps as early as 1794, the Pitt government had successfully contained a persistent movement in parliament to advance the central direction of penal administration beyond the bounds that the government thought desirable. It had done so through a combination of preventive and penal measures that probably owed at least as much to opportunism and reaction to immediate circumstances as it did to any consistently pursued legislative strategies. But this should not be taken to imply that the larger story of penal reform is therefore one of failure or limitation, rooted in the callous and benighted indifference of ministers. Viewed from the broader perspective, one can detect a coherent
and - so it must have seemed by the end of the eighteenth century - largely successful
government perspective on the institutional means by which penal reform should proceed.

V. Conclusion

In 1839 Lord Brougham observed of William Pitt that "his financial administration
being the main feature in his official history, all his other plans are allowed to have been
failures at the time ...."¹⁹¹ If we consider the development of penal arrangements for the
nation, Brougham's comment overstates the case in two ways. In the first instance it implies
a lack of coherent perspective outside the realm of overtly fiscal issues. In fact Pitt's
government constantly adhered to a broad line of thinking on the subject of penal
administration. It refused to intrude in local penal arrangements beyond the minimum extent
necessary. Most local officials were determined that transportation should continue to play a
role in the array of punishments. Imprisonment at hard labour was an increasingly attractive
alternative to many. However the extent to which this was so varied from one place to
another, and Pitt was unwilling to dictate precisely fixed scales of punishment and conditions
of imprisonment so long as this was self-evidently the case. Thus, in the minds of Pitt and
his ministers, criminal justice remained a fundamentally local concept in terms of both its
execution and its psychological impact. The progress of penal reform had therefore to be
allowed to follow the course dictated by its specific settings.

Nor, in the second instance, was the resultant penal order a failure. Although
superficially more successful than the attempts of Bunbury and his followers to assert the
preeminence of the hard labour principle, the early nineteenth-century attack on penal
arrangements tended to focus on the more largely symbolic issue of the place of capital

¹⁹¹Historical Sketches of Statesmen Who Flourished in the Time of George III (1839), 1:197.
punishment in the penal code. By comparison with many of the debates of the 1770s and early 1790s, the question of appropriate secondary punishments, including the nature of penitentiary discipline, seems to have been almost an ancillary concern.\textsuperscript{192} The principal aim of the agitation of Romilly and his followers was the reduction of the capital code; the increasing complexity and sophistication of secondary punishments was more its effect than its aim. But the basic character of those punishments, as well as the distribution between centre and periphery of the responsibility for carrying them out, was in place by 1801 and would endure throughout the first half of the nineteenth century.

That said, this set of arrangements was by no means a simple product of initiatives undertaken and coherently pursued by Pitt’s government. Rather it was the product of that government’s intermittent but intensive dialogue with parliamentarians. In so far as much of the impetus for change came from parliament rather than the ministry, Brougham’s comment is therefore accurate. Parliament’s concerns for economy constantly informed such measures as the Pitt government adopted, and the frequent (and often concomitant) pressure of MPs for the wider application of hard labour principles almost certainly generated far more legislation on that subject than would otherwise have been undertaken by a ministry that was essentially cautious and conservative with regard to nation-wide standards of penal care. During the crisis of the 1780s and early 1790s, the government remained determined to return to that set of largely self-supporting penal arrangements that had prevailed before 1775. By 1801 however the Home Secretary - though perhaps not the ministry at large - was contemplating a permanent custodial role for government subject to some measure of inspection and regulation.

The erosion of the traditional local-community vision of criminal justice in favour of a more nationally conceived one was also becoming apparent elsewhere. Sheer pressure of numbers after 1782 was the fundamental driving force behind all government involvement in criminal justice administration, whether it was the need to intervene directly in the restoration of transportation, or to establish the hulks as an interim measure. But even if Pitt’s government had succeeded in altogether removing itself from direct involvement in the institutional components of punishment, it would still have been subjected to the intensive pressures that came to bear upon the system of pardon after 1782. How government met this crisis of numbers, and how the measures it adopted gradually promoted a more determinedly centralized conception of the administration of criminal justice, are the subjects of the next chapter.
In this penultimate chapter, we return to a relationship which concerned us in the second, that between the King and his ministers. Our focus here is on a single element of the royal prerogative, but one which formed the core of the central government’s involvement in the administration of criminal justice. In 1770 pardon was the only element of criminal justice in which the central government was regularly involved. By the 1830s a whole array of penal functions had arisen around it: the collection of data on criminal offenders throughout Great Britain; the maintenance of prison-hulk establishments at Woolwich, Portsmouth and Bermuda; oversight of the transportation of the most serious non-capital offenders to the other side of the world; and oversight (however limited and ineffective) of most gaols and prisons in England and Wales. This vast and relatively rapid extension of the central government’s role in the administration of criminal justice was a direct consequence of increasing numbers of capitaly convicted offenders, combined with changing ideas about penal practice. By the early nineteenth century, Home Secretaries were impelled to sanction both new forms of information-gathering and new patterns of decision-making in order to withstand the numerical pressure coming to bear on what had once been - in theory if not in practice - an essentially personalized mode of determining sentence.

This chapter presents three themes that account for the transformations of these years. The first was the declining personal role of the monarch and the increasing role of the Home Secretary in determining pardon decisions. This was largely due to the sheer pressure of numbers. Indeed so great was this pressure that, in the second instance, a sub-bureaucracy was developed within the Home Department to oversee the gathering and arrangement of information to facilitate the Home Secretary’s decision-making role. Initially such material
was gathered only for the metropolis. By the early nineteenth century, when such efforts were being made for the rest of England and Wales, a third transformation was under-way at the centre. This was a change in outlook from a perspective in which pardon was viewed within a specific, local context to one in which it was seen within a larger, more nebulous conception of criminality that had common application throughout the nation. This outlook was implicit in the decision to begin collecting nation-wide statistics for felony committals beginning in 1805, and became increasingly apparent with a dramatic decline in pardon references to trial judges after 1813.

In his recent study of capital punishment during these years, Victor Gatrell gives pride of place to an "overloading" of the pardon system in accounting for what he sees as its "sudden" collapse during the 1820s. His conclusion is based on the straightforward observation that, by the 1830s, the proportion of pardons granted had risen to 95% of all capital convictions.¹ In fact closer examination of both the statistical pattern on the one hand and the increasingly diffused distribution of actual decision-making power on the other, suggests that the increasing case-load imposed on the pardon system may not have been so overwhelming that it can reasonably be said to have constituted the principal explanation for its breakdown. The picture of developing bureaucratic practice in the Home Department presented here suggests that the growing number of pardon cases can only be understood as a factor promoting change when it is considered in its changing ideological context: an increasingly general concern about a system in which certainty - both as to the standard of evidence on which individual offenders were convicted, and the proportion between their offence and its punishment - did not seem to be assured. The desire to meet such

expectations underpinned many of the developments described hereafter.

I. The Character and Function of the Royal Pardon to 1790

On May 3rd 1783 four days of criminal trials at the Old Bailey came to an end and eighteen people stood convicted of capital offenses. Their ordeal had only begun. They were confined to the condemned cells in Newgate prison where, on this occasion, they would have to wait almost two months before learning their final disposition. On June 27th the Recorder of London, the chief sentencing officer of the Old Bailey, was admitted into the royal Closet at St James's Palace so that the King, with the advice of his Council, might determine who amongst the sixteen men and two women languishing in Newgate were to die so that suitable examples might be made to deter others.²

The Recorder's Report before Council was the means by which was determined the punishment of all capital offenders convicted at the Old Bailey. It constituted one of only two occasions on which the Council - also known as the "Grand" or "Nominal" Cabinet - still met. By comparison with the "Inner" or "Efficient" Cabinet, which consisted of only the first minister and the most senior and influential ministers of state, and which often met under informal circumstances, the Council was a larger-scale and more formal affair. Besides the members of the Efficient Cabinet, it was also attended by the King himself, the senior ceremonial officers of both the cabinet and the royal household, the Archbishop of Canterbury, and usually both the Lord Chancellor and the Lord Chief Justice of King's

²HO 42/2 ff.278-81 & 306-8. Most contemporaries used the phrases "the Recorder’s Report" and "the Report" to specify the meeting of Council at which the Report was given. For the sake of clarity, I refer to the meeting as "the Council" and reserve the term "Report" for the actual material presented to it by the Recorder - very little of which has survived before 1816.
This arrangement was peculiar to the metropolis. It appears to have dated from early in the reign of William and Mary, probably stemming from the King’s prolonged absences on the continent and the Queen’s disinclination or inability to oversee detailed government business during his absence. More puzzling is the persistence of this mode of managing pardon in London so long after the circumstances which had first given rise to it had subsided. John Beattie has suggested that it may initially have been sustained by the accession of another female monarch and subsequently of a German prince who lacked familiarity with English law. By 1760 the government may have felt a vested interest in maintaining a direct hand in the disposition of felons as a means of exerting some measure of social discipline in the urban jurisdiction which was its home. This interest was probably reinforced by the value which the City of London came to place upon the procedure as a symbol of the Corporation’s unique status in the nation.

Although a recent consideration of the Council meetings of the 1820s dismisses them with confident vitriol, we in fact know very little about the structure and character of their proceedings. No minutes were preserved, and the only records we have of the Reports between 1760 and the abolition of the procedure in 1837 are the lists of those convicts whose cases were considered, tabulating their "Names," "Crimes," the "Substance of the[ir]
Petitions" (if any had been made) and "By whom [they had been] recommended." And of these lists, only four have survived before their systematic preservation from 1816 - one from 1780 and three from 1783.7 A letter of 1774 informs us that this list was placed in the care of one of the Secretaries of State, whose task it was during the Council meeting to mark down either "respited" or "law to take its course" alongside each convict's name.8 After the functional division of the Secretariat in 1782, the expectation was that the Home Secretary must attend.9 The surviving lists suggest that, by comparison with the procedure which prevailed earlier in the century, the King seems to have been required only to decide whether or not the convict's life was to be spared.10 The determination of the specific condition of pardon appears to have been left for the Secretary of State's later consultation with the Recorder, a fact which probably goes some way toward explaining the long lists of respites occasionally sent by the former to the latter during the 1780s.11

Of the sixteen men and two women whose cases were heard by the Council on 27 June 1783, it was decided that eight of the men should be hanged. Four of these - three burglars and a footpad - were specifically exempted from pardon by the Home Secretary's resolution of 1782 (a fifth such offender included in this Report had escaped custody by the time the Council met). Three others had committed forgery or coining offenses; a fourth man

7SP 37/21 ff.146-7; and HO 42/2 ff.96-7, 230-31 & 306-8. They are preserved complete from 1816 until the abolition of the Report before Council in 1837 (HO 6/1-22).

8H.M.C. Dartmouth MSS, 1:366.

9In the midst of one of his bouts with chronic illness, Nepean informed Bernard that Grenville - who was still relatively new to his office - should do so "as it will be proper that he should attend the King upon the occasion" (Bucks R.O., D/SB/OE 7/6). The scheduling of and issuing the summonses for the Recorder's Report appears to have been one of the Home Secretary's peculiar tasks, reflecting his symbolically unique access to the royal person; see above, Chapter 2, part II(1).


11See the discussion below, pp.395-8.
convicted of a similar offense escaped execution by raising doubts in the judges' minds as to the applicability of the statute under which he had been convicted. The eighth man left to die had been convicted of disfiguring a person. The two women, convicted of offenses to which women were thought to be particularly prone (stealing in a shop and stealing in a dwelling house\(^{12}\)), had no petitions made on their behalf, but were nonetheless spared on the recommendation of the trial jury - a factor which had not served in the case of one of the male burglars. However three of the seven men who were spared had also been convicted of stealing in a dwelling house, so it is by no means clear that mercy for this offense was closely related to gender. One man who had forged a bill of exchange and another who had stolen some bank notes were apparently spared on the basis of strong petitions on their behalf. The remaining two, a horse-thief and an impersonator of a seaman, were pardoned without having had any petitions presented on their behalf.\(^{13}\)

Historians of English criminal justice have expended much time and energy in attempting to determine the manner in which the King's prerogative power of pardon was exercised. Were decisions made according to clear, widely understood and relatively class-neutral criteria? Or were they made in an arbitrary fashion whose principal purpose was to reinforce those bonds of deference and patriarchy which were a defining dynamic of eighteenth-century English society?\(^{14}\)


\(^{13}\)HO 42/2 ff.306-8.

This issue is briefly discussed in the conclusion to this chapter. Our major concern here is not with the wider social implications which pardon undoubtedly had in many individual instances, but rather with the more straightforwardly technical issue of who actually made the decisions as to whether or not a particular convict should receive one.

The practice of royal pardon had much to recommend it, both practically and ideologically. The most famous jurist of the late eighteenth century, William Blackstone, recognized the practical necessity for pardon in a criminal justice system in which all serious offenses were punishable by death. Indeed he succeeded in reversing the logic of Beccaria’s argument that punishments ought to be less severe but more certain. Blackstone preferred a capitaly-based, deterrent criminal law to a fixed scale of punishments because he was convinced that "there cannot be any regular or determinate method of rating the quantity of punishments for crimes, by any one uniform rule ...." Any such system must inevitably fail because it would necessarily introduce a very dangerous power in the judge or jury, that of construing the criminal law by the spirit instead of the letter; or else it must be holden, what no man will seriously avow, that the situation and circumstances of the offender ... ought to make no distinction in the punishment.\(^\text{15}\)

Punishments fixed according to an abstract definition of a crime's seriousness - one which took no cognizance of the individual offender's character or the circumstances of his or her

offence - were liable either to be too lenient or too harsh. In Blackstone’s view, the
discretion provided by pardon was the better means of achieving a more precise fit between
the offender’s crime and its punishment.

It also made acceptable a capital code which, if enforced according to its letter, would
arouse intense distaste. This latter view was emphasized by Edmund Burke, who believed
that mercy ought to "have the fullest Scope wherever there has been the slightest motive to
it." This was not tender-heartedness but simple common sense. "[N]ot only motives of
Compassion make it often advisable; But … the State of our Criminal Law renders a frequent
Recourse to that Corrective of absolute necessity." The letter of the criminal law was too
bloody for anyone to tolerate it for long were it not mitigated in actual practice. "[W]hen the
Law is so very vicious - The Mitigating Power of the Crown cannot be so well employed as
in preventing its having its worst effects."17

The mitigating function of pardon therefore served both practical and ideological
purposes. In the latter instance, it also gave an immediate and personal face to the otherwise
remote operations of sovereign authority. Pardon, Blackstone observed,

is that act of [the king’s] government, which is the most personal and entirely his
own. The king himself condemns no man; that rugged task he leaves to his courts of
justice: the great operation of his sceptre is mercy. … [The king] regulates the whole
government as the first mover, yet he does not appear in any of the disagreeable or
invidious parts of it. Whenever the nation see him personally engaged, it is only in
works of legislation, magnificence, or compassion. To him therefore the people look
up as the fountain of nothing but bounty and grace; and these repeated acts of
goodness, coming immediately from his own hand, endear the sovereign to his
subjects, and contribute more than any thing to root in their hearts that filial affection,

16 Similarly Edmund Burke once observed that "that rigorous Justice, which considers nothing but the Crime,
and totally forgets all persons and Circumstances, is perhaps too nearly allied to cruelty:" see The

17 Burke Correspondence, 3:212 & 8:330.
and personal loyalty, which are the sure establishment of a prince.\textsuperscript{18}

This is why Secretaries of State were so concerned to ensure that they each had an equal and balanced access to the sanctioning of the pardon prerogative.\textsuperscript{19} The highly formalized language of petitions reiterated, again and again, the personal engagement between monarch and subject which pardon symbolized.\textsuperscript{20} The legitimating function this served was so important that, technically, it superseded the trial judge's determination as to the most appropriate punishment in particular cases. In 1804 the Home Secretary reiterated this superior aspect of "that prerogative of the Crown, which of all others is the most consoling to His Majesty and the dearest to his People ... the prerogative of showing Mercy." The opinions of judges and magistrates were given "uniform attention" but those opinions, when they were sought, were "required for the Royal information and not for its Direction and Control."\textsuperscript{21}

The traditional understanding of George III and his character as a monarch might lead one to assume that he took a large personal role in the exercise of his prerogative power of pardon. The legend of George III's zeal in exercising his prerogative powers was first promulgated amongst his contemporaries. Henry Brougham thought him to be a king "impressed with a lofty feeling of his prerogative, and a firm determination to maintain, perhaps extend it. ... For the greater affairs of state it is well known how substantially he


\textsuperscript{19}See above, Chapter 2, part I(2).

\textsuperscript{20}The most provocative discussion of the significance of pardon in this respect is Douglas Hay, "Property, Authority and the Criminal Law," in \textit{Albion's Fatal Tree}, 44-9.

\textsuperscript{21}HO 43/14 pp.400-1 (emphasis in original). In practice however this seldom obtained. In a written note to his Principal just three years earlier, the Under Secretary noted of one case that "The pardon to Thos. [B]erry, on the recommendation of such a Magistrate as Mr [Shelby], is a matter of course & will be done forthwith" (Add MS 33107 ff.121-2).
insisted upon being the King *de facto* as well as *de jure.*" For many years this view seemed the best explanation for the disastrous war with the American colonies. But another contemporary believed that the King's love of prerogative power was not confined solely to the highest aspects of rule. In looking over volumes of *The Annual Register* between 1766 and 1809, one reader concluded that George III must be directly responsible for the appalling numbers of convicts who were executed .... [N]o Sovereign was more jealous of his Kingly prerogative than George the Third ... yet, in the exercise of his best prerogative of mercy, the appalling numbers who were executed, as well in the country as in London, manifest too much indifference to human life.

George III was a butcher, not only of his erstwhile American subjects, but also of those at home. But to what extent *did* he personally exercise the power of pardon?

The procedures by which pardon decisions were made had been in place for at least half a century before George III succeeded to the throne in 1760. We have already noted his personal involvement in decisions on the capital convicts of the metropolis. Convicted felons throughout the rest of England and Wales, however, could by no means be assured of receiving the direct attention of their King. Those convicted capitally were sentenced to death at the end of the assizes (as were those at the Old Bailey), but the presiding circuit judge immediately reprieved those whom he deemed to be deserving of mercy. Most of those capital convicts who ultimately received pardon did so in the form of a "general" or "circuit" pardon, submitted by the presiding judge to the Secretary of State. By 1728 it had become established practice that the judges' determinations as to circuit pardons went unquestioned by the government. The King, Justice Park observed to James Boswell in 1788, was "the Fountain of Mercy," but it was "his judges, to whom he delegates that prerogative when

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upon their circuits."

Only a second and numerically much smaller class of assizes cases stood any chance of receiving the King's personal attention. Capital convicts who had not been included in the circuit pardon might submit individual petitions to the Secretary of State for the King's consideration, a procedure which was justified on the grounds that it gave capital convicts on the circuit "the same chance as those of the capital," all of whose cases without exception were included in the Recorder's Report to Council. But this was a formal assurance only. A memorandum of 1751 deemed "the Extension of His Majesty's Mercy in the Pardon of Criminals" to be one of the "Offices of His Majesty's Principal Secretary of State," invoking an assertion of 1662 that the King's "Memory is not to be imagined charged with all [the] Particularities" which petitions (and not just on criminal matters) might involve. James Rivers, Under Secretary of State between 1754 and 1765, observed that the Secretary of State "used to judge for Himself whether, from the Circumstances of the Cases, or from the Persons recommending them, they were of sufficient Weight to be attended to ...." And the extant correspondence of both the King and the Secretariat contains little evidence to support the view that George III intervened personally in such cases to any great degree. I have found only seventeen instances before 1788 of the King's opinion explicitly being either sought or given. In most of these, his intervention seems to have been warranted by highly

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25Cal. HO Papers, 2:188. Shelburne derived this view from a letter on pardon procedure he had solicited from a former Under Secretary of State (W.L.C.L., Shelburne Papers 168 ff.146-7).

26Eg MS 3440 ff.5-12. I am unable to identify the author of the 1662 original.

27W.L.C.L., Shelburne Papers 168 ff.132-3. The Earl of Suffolk once expressed his reluctance to refer a case to the King: "The evidence of the Trial appears so strong against the Convict and it is so wrong a thing in general to attend to evidence and affidavits after the Trial, that I cannot at once, without enquiry, apply to the King" (Add MS 34412 f.301).
particular circumstances: the extraordinary nature of the offense or the punishment; the social
prominence of the petitioner's supporters; an immediately pressing need for a respite; or the
simple error of a particular Secretary. Only three cannot be accounted for in these
ways.

Moreover the King's intervention often served simply to confirm the recommendation
already given by the judge before whom the convict had been tried, and whose opinion
usually determined their fate. Shelburne asserted this rule in 1767 during his first service
as a Secretary of State. "[I]t has been His Majesty's invariable rule," he informed a
petitioner on a convict's behalf, "to pay the greatest regard to the opinion of the Judges, not
having, to [my] knowledge, differed in any one case from it." Nor is it surprising that the
judge's opinion should have been thought so crucial, for the trial judge was in the best
position to estimate a punishment's potential impression on the community in which it had
occurred. Ministers sometimes displayed an explicit sensitivity to the relevance of the
individual community context of crime and punishment. In 1765 the Secretary of State

\[\text{\textsuperscript{28}}\] For special cases as to offender or punishment, see Corr. George III, nos.448, 1644, 1647, 4291, 4292 &
4463; Later Corr. George III, no.189; and HO 47/2 (George III to Sydney, 28 March 1785). For the invocation
of socially prominent petitioners, see "George III and the Southern Department: Some Unpublished Royal
4300-1; W.L.C.L., Sydney Papers 12 (Sydney to E.Nepean?, 12 June 1785); and HO 47/2 (George III to
Sydney?, 1 Aug 1785). For the need for an immediate respite, see Corr. George III, no.4163. For the error,
see above p.37.

\[\text{\textsuperscript{29}}\] Eg MS 982 ff.1-2; "George III and the Southern Department," 434; and Corr. George III, no.4505. I have
not counted the occasional instances in which the Secretary of State assured the petitioner that the king had
considered their case and could not be induced to extend his mercy to the petitioner (for instance, see HO 13/4
pp.19-20).

\[\text{\textsuperscript{30}}\] In fact a case could be reviewed fast enough that the convict's name could be included on the circuit
pardon; for one instance, see HO 47/4 (Ashhurst, J. to Sydney?, 31 March 1786).

\[\text{\textsuperscript{31}}\] Cal. HO Papers, 2:188. It was characteristic of Shelburne's thoroughness and attention to administrative
practice that he seems to have established this procedural point through separate inquiries of two former, long-
serving Under Secretaries of State, James Rivers (1754-65) and Edmund Weston (1742-63); see W.L.C.L.,
Shelburne Papers 168 ff.132-3 & 146-7.
promised to seek every means by which some gaol-breakers "can legally be executed with that expedition so much desired by the County of Kent." Two years later another Secretary stated that it was policy to follow the opinion of the trial judge, noting that "after trial, sentence, and reconsideration by the Judge, it is highly expedient that justice should take place. for the good of the community ...."

This is not to say that no conception existed at all of a single standard of criminal justice of national relevance. Edmund Burke invoked just such a self-consciously distinct standard in appealing for a pardon on a convict's behalf:

... the reputation of National Justice is concerned in this business, and ... His Majesty's Government will not be strengthened or honoured by the example. I neither know this unhappy man, his family, his connections, or any friend that he has in the world: ... I use this liberty with your Lordship upon a public principle, from my very great regard to the administration of Justice and mercy in this Kingdom.  

Nevertheless ministers were aware, although a standard was one thing, the specific circumstances of individual cases in which it was to be applied were often quite another. When one judge failed to assign a specific condition of punishment to a recommendation in 1781, the Secretary of State refused either to decide the matter for himself or to leave it to the King: "His Majesty, upon your recommendation, is perfectly disposed to shew Mercy to the woman," Viscount Stormont told Justice Maysey. "I am therefore to desire you will acquaint me for His Majesty's information the kind of punishment you think most fitting ...." Many reports of the 1760s do not make the punishment explicit but it seems safe to say that, in the case of offenses serious enough that the judge had not recommended pardon in the first instance, the condition of mitigation was probably self-evident. This might not

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33 Burke Correspondence, 2:324-5.

34 SP 44/96 p.133.
have been the case by 1781, when the lack of a fixed destination for convicts sentenced to transportation complicated matters.

Clearly then there was no systematic intervention on the part of a King determined to uphold his prerogative authority of pardon. In fact, the other twenty cases on which he seems to have commented or given instructions before 1788 involved those that had already been heard at the Council - that is to say, those which were already understood to be within his peculiar purview, but for which new evidence had subsequently emerged prior to execution of sentence. Moreover, in one of these cases, the tone of the King's reply suggests that, far from flattering his sense of personal grandeur, Secretarial scrupulousness on these matters could exasperate him. "There is no manner of utility," he complained in June 1782, "in having the Recorder make the full Report of the Convicts at the end of each Old Bailey Session, and the Law Lords attend for their opinion if subsequent applications are, without some new matter, attended to ...." Indeed, scarcely two years earlier, George III had been only too willing to set aside the burden of personal involvement in deciding the cases of those Gordon Rioters who had been tried at a special sessions for Surrey. The practice of the Recorder's Report gave the King no option but to hear the Gordon Riot cases tried at the Old Bailey. In determining the cases of the Surrey offenders, however, he felt that, provided the Lord Chancellor and Lord President of Council were

satisfied with those [cases] recommended by the Judges for Mercy and that the others ought to be executed[,] no Cabinet need be held for that purpose ... but Orders given

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35 Corr. George III, nos.42, 155, 1107-8, 1114, 1116, 1302, 1659, 3185, 3799-800, 3993, 4353-4, 4406, 4498-500, 4533-4 & 4537; Add MS 34412 f.260; Add MS 45519 ff.47-8; SP 44/92 p.506; J.H.Jesse, Memoirs of King George the Third: His Life and Reign (Boston, 1902), 3:234; and Later Corr. George III, nos.157, 159, 276, 287 & 466. We might also take note of the King's being consulted with respect to a handful of capital convicts at the Old Bailey rejecting pardon on condition of transportation (see below at pp.425-6).

36 Corr. George III, no.3800. It is worth noting that Shelburne had already consulted the Recorder about these cases so "that his opinion might be submitted to Your Majesty along with the Petitions" (no.3799).
for the Law taking its course and the Respites agreeable to the Report ....

In the event, the King was denied this particular relief by the Lord Chancellor. But in general, unless there are a great many letters missing from the extant royal correspondence - something which seems unlikely - thirty-seven interventions in twenty-eight years for all of England and Wales does not suggest a regular and extensive royal concern for personally exercising the prerogative power of pardon.

Indeed, even in the capital cases of the metropolis heard at the Council, it seems likely that effective decision-making was in the hands of judges rather than the King. Anecdotal accounts of Councils after 1800 imply a collegial decision-making practice, in which each member of council expressed an opinion and the deciding voice was the King’s. Lord Chancellor Eldon, who prided himself on his detailed attention to individual cases, recalled defending his desire to spare one convict, who had committed a robbery in Bedford Square, against the unanimous intention of the Council to hang him. ‘‘Well, well,’ said the King, ‘since the learned judge who lives in Bedford Square, does not think there is any great harm in robberies there, the poor fellow shall not be hanged.’’ It is unclear whether or not a collegial practice obtained before this time. Perhaps it became more fixedly the case

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37SP 37/21 ff.263 & 268-9. Thurlow thought it highly improper that the judges had respited all of the convicts and merely suggested their disposition without providing any detailed consideration of their cases. Such expedience seemed especially dubious given the particular importance of exemplary punishments on this occasion. To forego procedural proprieties merely “to avoid the manifest inconvenience of Delay,” Thurlow seemed to imply, might bring the exercise of the pardon prerogative into disrepute.

38We must be guarded on this point given the paucity of the royal correspondence during the first seven years of George III’s reign. But on the whole, the authority of Shelburne and the Under Secretaries in 1767 must speak louder than any correspondence which may or may not ever have existed.

after the King's illness of 1788-9.\textsuperscript{40} A more formally structured expectation of large-scale attendance, consistent with collegial decision-making, may have underlined the removal of the meetings from the Closet to the Great Council Chamber in 1793.\textsuperscript{41}

But whether or not the King actually heard each Council member's opinion, the special care which was taken to ensure the Lord Chancellor's attendance implies that his voice was critical in the King's determinations. George III's complaint to his Home Secretary in June 1782 specifically notes the required presence of the Law Lords, presumably the Lord Chancellor and Lord Chief Justice, "for their opinion." The limited evidence that can be found to indicate the nature of proceedings at the Recorder's Report strongly suggests that their views, and particularly that of the Lord Chancellor, were usually decisive. Lord Eldon, who was Lord Chancellor almost continuously from 1801 to 1827, claimed to have had the decisive voice in determining the fates of Old Bailey convicts. He remarked on several occasions about the extent of his preparations prior to each Report, and later deemed it "a comfort to reflect that I did do so, and that in consequence I saved the lives of several individuals."\textsuperscript{42}

The number of occasions on which the scheduling of the Recorder's Report was either determined or adjusted in order to ensure the attendance of the Lord Chancellor - at least thirty between 1782 and 1828 - seems to support the view that his role in the decision-

\textsuperscript{40}It is certainly difficult to believe that the surprising practice, noted in 1786, of "the King standing all the time of the Report" would have been continued after this time; see HO 47/5 (Recorder to E.Nepean?, 26 Dec 1786).

\textsuperscript{41}HO 43/4 p.185.

\textsuperscript{42}Twiss, Life of Eldon, 1:398-9; and Hansard, 2nd ser., 10 (1824): 417; & 3rd ser., 13 (1832): 987.
making process was critical. Arthur Aspinall attributes primary significance to the role of
the Lord Chief Justice, but I have found only three occasions on which the timing of the
Report was adjusted to ensure his presence and two of them date from the period of the Fox-
North Coalition, when the Chancellorship was in commission and Lord Chief Justice
Mansfield the senior law lord for the time being. The attendance of both law lords was
probably desired, and perhaps particularly during the 1820s when Eldon began to feel the
pressure of Chancery business and the leadership of the House of Lords more and more
heavily. Certainly Lord Chief Justice Ellenborough seems to have been as conscientious of
his role in the Report as was Eldon. But when the Recorder’s Report was finally abolished
in 1837, it was the Lord Chancellor who was asked to determine "the proper punishment of
each" outstanding convict, so it seems likely that his had always been the most important

43 W.L.C.L., Sydney Papers 10 (George III to T. Townshend, 17 Nov 1782); HO 13/4 p.108; HO 47/5
(Recorder to E. Nepean, 31 Aug 1786); Later Corr. George III, nos.19, 444, 508, 530, 1103, 1564, 2643,
2671, 2748 & 3782; Jesse, Memoirs of George III, 5:94-5; Add MS 38564 f.72; Corr. Prince Regent, no.2882;
Devon R.O., 152M/C1817/OZ (B. Bloomfield to Sidmouth, 30 Nov 1817), 152M/C1818/OZ (Sidmouth to
Bloomfield, 23 May 1818), 152M/C1819/OZ (Eldon to Sidmouth, 5 Jan 1819), & 152M/C1821/OZ
(H. Hobhouse to Sidmouth, 2 Sept 1821); Add MS 40299 ff.63-4, 122-3 & 313-4; Add MS 40300 ff.89-90; Add
MS 40315 ff.68-9, 70, 87 & 237-8; Add MS 40316 ff.23-4; and Add MS 40352 f.120.

44 Corr. George III, nos.4325, 4429-30, 4435-6, 4445-6 & 4451-2. On a third, much later occasion the Lord
Chancellor reminded the Home Secretary to be sure that the Lord Chief Justice could "disentangle himself from
his sittings" for the day of the Report; see Devon R.O., 152M/C1819/OZ (Eldon to Sidmouth, 5 Jan 1819). See
Aspinall, "Grand Cabinet," 335.

45 The Chancellor’s attendance seems to have been viewed as a necessity, but there were occasional concerns
to ensure the Lord Chief Justice’s attendance, particularly in the event that the Lord Chancellor could not attend
or had to leave early (Add MS 40315 ff.276-7 & 302-2; Add MS 40351 ff.236-7; and Add MS 40367 ff.194-5). For
the growing pressure of Chancery business during the 1820s, see Twiss, Life of Eldon, chs.46-50 passim;
and John, Lord Campbell, Lives of the Lord Chancellors and Keepers of the Great Seal of England (New York,

46 Ellenborough once requested a copy of the Recorder’s Report on a particular case before the council met
(HO 13/22 p.364). On another occasion he promised the Home Secretary that he would "certainly endeavour to
be with you" at the upcoming Report, although the phrasing of this promise implies that it would have
proceeded without him; see Devon R.O., 152M/C1818/OZ (Ellenborough to Sidmouth, 28 March 1818).
voice. Nor would this be surprising in an official who was often described as the keeper of "the royal conscience."

George III's personal role in pardon decisions further declined after his first attack of porphyria in the winter of 1788-89. During this time, four sessions at the Old Bailey had gone unreported, with the result that very many people were in danger of being executed. After the King's recovery, Lord Sydney advised him that, considering "the number of them, and the interruption which such a spectacle gives to the general joy and happiness of the present time," lenity was the preferred policy. This advice originated, not with Sydney, but rather with William Pitt, presiding over a meeting of cabinet which the Home Secretary does not seem even to have attended. Pitt was certainly concerned about "the Public Impression" which execution on a massive scale would have, but he also noted subsequently that "Harassing the King with the detail" of the pardon conditions would be "better avoided."

This measure of genuine concern for the royal well-being only thinly masks the likelihood that Pitt and his cabinet now believed the King's judgement in these matters to be too unreliable to be left to his discretion in any significant degree. A year later, William Grenville expressed private concerns about "overfatiguing the King" with a lengthy Recorder's Report. The King was subsequently consulted on only a very few cases, and

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47 HO 13/72 p.55; and HO 6/22 (Cottenham to Russell, 16 Sept 1827), from which the quote is derived.

48 Later Corr. George III, no.495; and HO 47/9 (Recorder to E.Nepean?, n.d.[c.March 1789]).

49 W.L.C.L., Pitt Papers 2 (W.Pitt to Sydney, 10 & 16 March 1789). The possibility that the King’s illness had suspended the operation of mercy had been raised - but not pursued - two months earlier in the House of Lords (Parliamentary History 27 [1788-89]: 1064-7).

50 Bucks R.O., D/SB/OE 6/9. Lord Glenbervie tells a blackly amusing story about the King’s behaviour after a Recorder’s Report held later in his reign. The list of the condemned was left with the King for a time, during which he had apparently added to it the names of his doctors, "two rascals who deserve hanging more than all the others" (The Diaries of Sylvester Douglas [Lord Glenbervie], ed. F.Bickley (1928), 1:384).
the disappearance altogether of such matters from the royal correspondence after 1791 suggests a rapid and complete transition from a system in which the King’s opinion might on occasion be sought to one in which he was not consulted at all. A draft reply to a solicitation for pardon written in September 1789 suggests as much. The assurance that the response would be favourable and that "a proper instrument will accordingly be prepared to be sent to His Majesty for that purpose" was crossed out and replaced with the less revealing statement that "The matter will accordingly be submitted to the King as soon as possible ...." The King’s regular involvement in pardon ceased altogether after 1791, and it was shortly after this time that the Criminal Branch was being formed within the Home Department to oversee the functioning of the pardon system. There is no evidence of any resistance to these developments by George III himself. He may even have anticipated them as a part of his intention, expressed immediately after his recovery in February 1789, "for the rest of my life [to] expect others to fulfil the duties of their employments, and only keep that superintending eye which can be effected without labour or fatigue."  

31 I have found only four more instances of references to the King concerning metropolitan convicts (Later Corr. George III, nos. 532, 564, 612, 655 & 657, one of which emanated not from Grenville but from the Foreign Secretary). There are also six instances of references from the circuits, all stemming (apparently) from either the social prominence of the petitioner or a special circumstance (Later Corr. George III, nos. 545, 549, 584, 618, 660, & 699 & 708). The case referred by the Duke of Gordon (no. 545) was initially rejected by Grenville, and seems only been brought to the King’s attention after Pitt intervened; see HO 47/8 (W.W.Grenville to Gordon, 26 July 1789; & W.Pitt to W.W.Grenville, n.d.). The King declined mercy in a case recommended by his heir apparent (no. 618), observing that "had as unfavourable a case been pressed on Mr Grenville through any other channel, he would have declined laying it before me." All but the last of these date from Grenville’s Secretariaship, and the congruence between the Windsor archives and Grenville’s extensively preserved correspondence leads me to suspect that this is all that there ever was.

32 HO 42/15 f.184. Of another case, considered only a week later, Grenville observed "I think no reference necessary ..., being clearly of the opinion that the King ought not (even if he can do it) to recall his Pardon" (Bucks R.O., D/SB/OE 6/2; emphasis in original).

33 Quoted in Life of the Right Honourable William Pitt, ed. Stanhope (New York, 1970; rep. of 1867 ed.), 2(Appendix): vii. As John Brooke notes, the King remained as attentive as ever to the flow of government business (King George III [1972], 344). But his participation in its detail surely declined. Two months after his recovery, the King referred to an upcoming Recorder’s Report as "that unpleasant business," an indication perhaps that he was not unwilling to abandon direct participation in pardon decisions where that was possible.
Much has been made of George IV's intermittent desires, several decades later, to pardon convicts against the advice of his Home Secretaries, which sympathetic biographers have read as evidence of his kindly and humane nature. But however annoying his interventions in individual cases may have been at that time, it is easy to make too much of them. For one thing, there are only fifteen known instances of them in his twenty years as Prince Regent and King, a third of which date from 1811 alone. Moreover his attempts to re-assert his personal role in the pardon prerogative were invariably half-hearted at best. His ministers largely attributed them to the undue influence of royal friends and hangers-on, a factor which seemed particularly apparent in the dying King's last and most troubling intervention, involving not an English case but rather an Irish arsonist. "It is very difficult to discover exactly in what manner any transaction occurs at Windsor," Wellington observed to Peel, noting that the King's desire "to exercise ... his Majesty's highest prerogative of mercy" was actually written by the Master of the Royal Household, Frederick Watson. The King's only personal contribution to the relevant correspondence was a submissive desire "that the Law should take its course ... by the Execution of the Capital Sentence." During

\(\text{(Later Corr. George III, no.508). Two later letters, from 1794 and 1797, suggest that the Home Secretary could both schedule the Report and anticipate its outcomes with confidence (Later Corr. George III, nos.1103 & 1564).}\\)

\(\text{54F.Bresler, Reprieve: A Study of a System (1965), 42-3; C.H.Rolph, The Queen's Pardon (1978), 26-8; and Gatrell, Hanging Tree, 550-4.}\\)

\(\text{55Corr. Prince Regent, nos.2918, 2933, 2939-40, 2944, 3005, 3008, 3154 & 3421; The Diary of Henry Hobhouse (1820-1827), ed. A.Aspinall (1947), 17, 87 & 104; Sir Robert Peel from His Private Papers, ed. C.S.Parker (1891-9), 1:315-7; Add MS 40299 ff.241-3, 298-9, 315-6 & 354-5; Add MS 40300 ff.255-6 & 282-3; Letters George IV, no.1550; and Greville Memoirs, 1:304-5.}\\)

\(\text{56Peel from His Papers, 2:146-51; Despatches, Correspondence, and Memoranda of Field Marshal Arthur Duke of Wellington, K.C., 1819-1832, ed. Wellington (1867-80), 6: 553-77; Add MS 40327 ff.121-6 & 132-9 & 159-60; and Add MS 40338 ff.123-4, 127-8, 131, 133-4 & 151-2. See also Hobhouse Diary, 104.}\\)

\(\text{57Wellington Despatches, 6:554 & 570; and Add MS 40300 ff.358-9.}\\)
the Recorder’s Report before Council, he sometimes abandoned all effort and left the matter to a majority vote of the Council - which is presumably to say that the wishes of the Lord Chancellor and the Home Secretary prevailed.58

All of this substantially qualifies any notion of a King eager to exercise personally his power of pardon, even during the first two decades of his reign, when George III regularly exercised his prerogative power of choosing ministers. This pattern of behaviour must later have been reinforced by the sheer pressure of numbers which came to bear on the pardon system beginning in the early 1780s. Nowhere was this pressure more sharply felt than in London, which became the site of the first substantial efforts on the part of officials, both within and without the Home Department, to devise procedures for coping with an administrative burden which increasingly outstripped the ostensibly personal character of pardon.

II. Structural Pressures and Written Records: 
The Problem of the Metropolis, 1782-1800

The unprecedented rise in the number of capital convictions after the end of the Revolutionary War severely strained a pardon system which could not function quickly and effectively under such circumstances. The number of capital convictions rose throughout England after 1781, but its growth was nowhere more pressing and alarming than in the metropolis. The extraordinary swelling in the number of convicted offenders at the Old Bailey, coupled with the obligation that every capital case be heard before the Council, pushed the workings of pardon in London to its functional limits. It was therefore in the

58Hobhouse Diary, 17; and Greville Memoirs, 1:304-5. Early biographers of George IV portrayed his contributions to Recorder’s Reports as a long-lasting, detailed and principled search for any reason to grant mercy. See H.E.Lloyd, George IV: Memoirs of His Life and Reign (1830), 465-7; and P.Fitzgerald, The Life of George the Fourth, Including His Letters and Opinions, With a View of the Men, Manners, and Politics of His Reign (New York, 1881), 913.
capital that the first procedures were developed to lubricate the system through the use of information resources which could be used either as supplements or even outright alternatives to judicial references. These resources were developed under the auspices of the government of the City of London, to whom the Recorder - the chief sentencing officer at the Old Bailey - was answerable. By the 1790s, they were also being used by the Home Department and its newly formed Criminal Branch.

The first such resource was the Old Bailey Sessions Paper, a printed account of criminal trial at the Old Bailey that was derived from the notes of a City-appointed shorthand writer and produced for popular consumption.59 From the mid-1770s forward, City officials regularly intervened in the Paper's publishing arrangements in order to ensure that it provided a more accurate and extensive account of the trials. Because this intervention coincided with an expansion in the number of daily newspapers in London - which could produce trial accounts fast enough to beat the Session Paper to a popular audience - the Paper's publisher soon became wholly dependent on the City's financial support for continued publication.60 In turn, the City was willing to sponsor this increasingly substantial account of trials at the Old Bailey because of its growing use in relieving the mounting administrative pressures on the metropolitan system of pardon.61

The Recorder of London seems to have used the Sessions Paper as an aid in preparing

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59The full title of the Sessions Paper was The Whole Proceedings on the King's Commission of the Peace, Oyer and Terminator, and Gaol-Delivery for the City of London; and also the Gaol-Delivery for the County of Middlesex; Held at Justice-Hall in the Old Bailey. ... In subsequent notes I will use the conventional abbreviation, OBSP. In the main text, I use the phrase most often employed by contemporaries, "the Sessions Paper."


his written Reports on capital convicts for the Council. Authorities in both the City and the central government were concerned that the Council be held as soon as possible after the conclusion of each session. This anxiety stemmed less from any concern for the state of mind of the capital convict, who might be agonizing over his or her final disposition, than from administrative and ideological imperatives. In the first instance, increased numbers of capital convicts awaiting final sentence might contribute to more crowded and potentially dangerous conditions in Newgate. Secondly, the determination - especially after September 1782 - that metropolitan justice should be carried out swiftly and with maximum severity required that the elapsed time between trial, sentence and execution should be as short as possible if capital punishment were to have its intended public effect. Both of these considerations were even more severely compromised when, as happened at least twice during the 1780s, delays in holding the Council lasted so long that another session occurred in the meantime, requiring that two or more Reports be made at the same time. Such a delay early in 1787 prompted the Home Secretary to complain to City officials, immediately after one of their frequent petitions for the relief of Newgate, of "the irregular and dilatory manner" in which the Recorder had lately been making his reports, both before the Council and (in non-capital cases) by letter. The City Aldermen struck a committee to investigate this matter, and its

62 In November 1783, for instance, the Recorder requested that a special report be made to the King of the case of

John Huster [who] has this moment been convicted before me of a foot pad robbery attended with such circumstances of cruelty and aggravation, as appear to me to bring him clearly within that description of atrocious Offenders whom his Majesty was, sometime since, pleased to declare his intention of bringing to speedy and exemplary punishment, for the sake of public example, and the personal safety of his subjects (HO 42/3 f.223).

63 HO 47/5 (Recorder to E. Nepean?, 26 Dec 1786); HO 47/9 (same to same?, n.d.[c.March 1789]); and GM 59 (1789): 271.

64 HO 43/2 pp.202-3. Sydney had good reason to fear that delayed Councils might jeopardize the credibility of the criminal law. The long delay of one in the late summer of 1782 was noted by several non-official observers (W.L.C.L., Shelburne Papers 152/46; Add MS 35619 f.309; and Add MS 35620 f.6).
records confirm the central role which they expected the Sessions Paper to play in expediting pardon in the metropolis. Delays in making reports may have stemmed, in part, from the fact that the Recorder during the 1780s, James Adair, was also a prominent Whig lawyer and politician, whose activities frequently required him to be absent from the capital.

Most importantly, the Recorder was expected to report all capital cases from the Old Bailey, whether or not he had actually presided over (or even attended) their trial. The testimony of the Aldermanic committee of 1787 suggests that the City subsidized the Sessions Paper in the expectation that the Recorder would use the shorthand writer’s notes to acquire sufficient familiarity with the facts of cases over which he did not preside in order to be able to Report them to the Council. In fact, it is unclear to what extent the Recorder ever made regular use of the publisher’s notes in preparing his Reports for the Council during the 1780s

65C.L.R.O., Rep 191 p.152; and Small MSS Box 4, no.47/398. Six years earlier, the Aldermen themselves had resolved that the Recorder should “take such Steps as may be necessary ... that the Report of the Condemned Prisoners may be made to His Majesty as soon as conveniently may be after each Sessions” (Rep 184 p.307).

66On at least two occasions. Adair asked that Reports be scheduled around his obligations to be in the country, see HO 47/5 (Recorder to E.Nepean, 31 Aug 1786); and HO 47/6 (Recorder to Nepean, 15 Aug 1787). Adair resigned the Recordershould in June 1789, noting “the laborious attendance necessary in the Office ... and the increase of my own professional engagements ...” (C.L.R.O., Historical Papers vol.2, no.71). Some correspondence in the Home Office papers suggests that he may have been seeking to evade an impending criminal charge for official misconduct; see HO 13/7 pp.123-4, 329-35 & 335-6; and HO 47/9 (J.Adair to W.W.Grenville?, 21 July 1789; & Nepean to Attorney & Solicitor General, 27 July 1789). See also Biographical Dictionary of Modern British Radicals, eds. J.O.Baylen and N.J.Gossman (Hassocks & Atlantic Highlands, NJ. 1979-88), 1:13-6.

67There are allusions to this difficulty in HO 47/4 (Perryn, J. to Sydney?, 14 April 1786); and HO 47/5 (Recorder to E.Nepean?, 26 Dec 1786), the latter of which also notes “the necessity of relieving the Cells of Newgate as expeditiously as possible.”

68C.L.R.O., Small MSS Box 4, no.47/398. The report indicates that this practice had begun in January 1786, but that it was still only irregular. Judge Perryn once offered to forward his notes of an Old Bailey trial he had presided at that same year "tho' fear the short Hand Writer shod omit to take notice" of some particularly important facts on the case; see HO 47/4 (Perryn, J. to Sydney?, 14 April 1786). The use of the Sessions Paper in this connection was sufficiently well-known to be commented on by a contemporary pamphleteer; see J.Dornford, Nine letters to the Lord Mayor and Aldermen of the City of London, on the state of the prisons and prisoners within their jurisdiction (11786)), 38-9n.
(although, by the 1820s, they were apparently indispensable). Only four lists of convicts whose cases were heard before the Council before 1816 survive, but they all have page references to the relevant accounts in the Sessions Paper written in beneath their names. This may mean that the Sessions Paper was actually used during the Council itself, where it must have proved particularly useful in helping to decide cases in which no petition had been submitted on a convict's behalf. However, although the Lord Chancellor had been receiving a free copy of each issue as early as 1778, the City did not grant the Home Secretary the same privilege until 1821. So it is not clear that the page numbers indicate use of the Sessions Paper by any member of the Council other than the Lord Chancellor, who probably had the main voice in decision-making.

However, there is evidence to suggest that the Home Department used the Sessions Paper for purposes of quick reference when considering cases of pardon from non-capital sentences during the 1780s. Judges to whom cases were referred sometimes invoked its account of a particular convict's trial in place of extensive discussions of the evidence on

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69 The publisher of the Sessions Paper once complained that Adair had been purchasing transcripts of Old Bailey trials from Gurney, the former publisher of the Sessions Paper, in preference to his own - despite the fact that his payment from the City was partly predicated on his supplying these transcripts (C.L.R.O., City Lands Minute Book 15 [2 May 1787]; and City Lands 84 ff.194-95). That Adair was doing this seems to be confirmed by a passage in his expense accounts book, which records a payment "to M' Gurney the shorthand writer ... for his transcript of the Trials of the Capital Convicts of June Sessions 1789 ..." (Add MS 53815 f.60v). It also seems to be confirmed by the fact that City authorities, in a cost-cutting measure, suspended the shorthand writer's obligation to provide his notes to the Recorder in 1794 (C.L.R.O., City Lands 85 f.317). But Adair may have been an exception. The City again took up the cost of these notes in 1805 (C.L.R.O., City Lands 97 f.70). So vital to the Report did these notes become that, in 1829, the Recorder had to delay a Report because he did not yet have them in hand; see HO 6/14 (Recorder to R.Peel, 15 Dec 1829); and Add MS 40316 f.61.

70 SP 37/21 ff.146-7; and HO 42/2 ff.96-7, 230-1 & 306-8.

71 This is explicit in two of the three extant lists from 1783, in which the Sessions Paper was invoked to confirm that the jury or prosecutor had recommended to mercy a convict on whose behalf no petition had been submitted (HO 42/2 ff.96-7 & 306-8).

72 C.L.R.O., City Lands 70 ff.141-2; and City Lands 112 ff.228-9.
their cases, which would seem to indicate a presumption that the Home Department had access to copies. Also, although the Home Secretary did not yet receive a copy of the Sessions Paper as a matter of course, Sydney had requested in 1786 that the City supply one "from time to time" for the purposes of avoiding references to judges which would have been unnecessary "had the circumstances of the Trial been known." Three years later he anticipated that one upcoming Report would not require much time because the cases did not appear by the Sessions paper to be of the most atrocious kinds." And in 1789, when eight Old Bailey convicts attempted to refuse pardons on condition of transportation, Nepean supplied Grenville with copies of the Sessions Papers that contained accounts of the relevant convicts' trials.

So there is much indirect evidence that the Home Department was at least using the Sessions Paper on an intermittent and discrete basis to facilitate a heavily burdened metropolitan pardon system. It is unclear whether or not it was using the Sessions Paper regularly and systematically: no copies of it have survived among the Home Office papers. The only run of the Sessions Paper which is preserved in the Public Record Office begins only in 1801 and appears to be a second-hand copy, presumably obtained at some later date. On the other hand, the absence of the Sessions Paper from the extant Home Office papers does not prove that it was not used. We noted in Chapter 2 that there are also

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73HO 42/1 f.289v; HO 47/6 (Ashhurst, J. to E.Nepean?, 11 March 1787); HO 47/9 (Recorder? to Sydney, 21 Aug 1789); and HO 47/15 (Phillips, J. to H.Dundas?, 19 Jan 1792). In referring one case to the Recorder, the Under Secretary noted that the case in question "does not appear on that part of the Sessions Paper which has yet been printed," which suggests that the Home Department may in fact have been receiving it regularly; see HO 47/13 (S.Bernard? to Recorder, 24 May 1791).

74HO 13/4 p.163-4; Later Corr, George III, no.508; and Add MS 59356 ff.61-2 & 63-4. For this incident and its significance, see below pp.425-6.

75PCOM 1/1-156.
virtually no extant letters from gaol keepers after 1792, although the entry-books suggest that there must still have been many coming in. So it is possible that the copies of the Sessions Papers which were used in the Home Department have vanished along with the vast bulk of the in-letters relating to criminal matters which would have been the preserve of the Criminal Branch.

At any rate, there can be no question of the Sessions Paper’s centrality to capital pardon procedure in London after 1821, when the Home Secretary first began to receive copies regularly from the City. The dramatic rise in capital convictions which followed 1781

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SOURCES: PP(HC): 1819.xvii.295-9; 1826-7.xix.199-200; 1830-1.xii.508-9; 1842.xxxii.545; and HO 6/4.

had eased off by the 1790s, a development which presumably returned the administration of
pardon in the metropolis to a more manageable state of affairs. But after the end of the
Napoleonic Wars, capital offenders were again being convicted at the Old Bailey in greater
numbers than ever. At this time, the Recorder, the Lord Chancellor and the Home Secretary
resorted to the Sessions Paper in making the Recorder's Report to Council more manageable.
In the first instance, it appears to have been used to anticipate the length of time which
consideration of each case might require. (Sydney had mentioned it in this connection as
early as 1789.) In 1819 Lord Chancellor Eldon remarked that he had "cast [his] eye over the
printed Old Bailey Paper[s] that are to be considered at the next Report" and that a date
could now be set for it. 76 Second and integral to the question of scheduling Council
meetings, the Sessions Paper became a common text that the Recorder, Lord Chancellor and
Home Secretary could use to decide which cases obviously warranted pardon, identifying
only the more complex or otherwise potentially difficult ones for the Council's close
attention. In 1823 the Recorder told Peel that he had "delayed giving Notice of my Report
two days, not being able to refer Yourself and the Lord Chancellor to the Pages in the
Sessions Paper which is not yet printed." 77 Other letters amongst these three officials make
clear their efforts to identify the most taxing cases in advance, three of which clearly state or
imply the role of the Sessions Paper in helping to make these decisions. 78

Most accounts of cases given in the Sessions Paper seem terrifyingly short when we

76 Devon R.O., 152M/C1819/OZ (Eldon to Sidmouth, 5 Jan 1819).

77 HO 6/8 (Recorder to R.Pee1, 31 May 1823).

78 Add MS 40352 ff.96-7; Add MS 40380 f.294; HO 6/14 (Recorder to R.Peel, 5 July 1829); and HO 6/17
(Recorder to Melbourne, 11 Oct 1832). For other attempts to identify particularly complicated cases, see HO
47/50 (Eldon to R.Ryder?, 18 Feb 1811); Add MS 40367 f.184; HO 6/10 (Recorder to Peel, 2 Feb 1825); Add
MS 40315 ff. 237-8 & 276-7. An exchange in 1822 between Peel and Eldon is particularly interesting, in so far
as it makes clear that the actual order of the cases distributed over two sessions was altered so "that the Cases,
which are not doubtful, may be disposed of in the first Report, tho they belong to the second" (Add MS 40315
ff.68-9). Such anticipations are found in virtually every notification of readiness from the Recorder from 1832
consider that lives were in the balance, so there is certainly room to doubt how far it made a positive contribution to the quality of decision-making in the Council. It seems clear that the Sessions Paper was not the principal source of evidence used by the Council in its final, life-and-death deliberations. The Recorder still prepared extensive written Reports; Lord Chancellor Eldon claimed that he spent many hours making precise notes in order to determine who should live and who die for the sake of example; and petitions from the convicts themselves flowed into the Home Office. All of these documents had also to be considered at the Council.\textsuperscript{79} Indeed no members of the Council other the Lord Chancellor, Chief Justice and Home Secretary even appear to have received copies of the Sessions Paper before January 1829, when Lord Ellenborough and several others expressed "a wish to have printed copies of the evidence of the trial of the person[s] whose cases were to be decided ... sent to them some days before[hand]." This wish was complied with on at least this one occasion: Ellenborough recalled subsequently reading them on his way to Windsor for a Report.\textsuperscript{80}

The principal advantage provided by the Sessions Paper was that it formed a common factual resource amongst the three officials who had to decide when the Council would be held and which cases would actually be heard in detail. This would appear to be the obvious rationale for the practice, begun in 1821 - the same year that the City first supplied the Home Secretary with free copies - of listing the page numbers of each case on the list of capital convicts which the Recorder sent to the Home Secretary in requesting that a date be

\textsuperscript{79}A delay of a few days was expected in one Report because Eldon "of course will wish for a day or two days perhaps to consider the Recorder's minutes ..." (Add MS 40352 f.120).

\textsuperscript{80}Ellenborough Diary, 1:294-5.
set for his Report. In so far as it seems to have been used to identify the most serious, life-or-death cases - that is, those which warranted the closest consideration - the Home Department’s use of the Sessions Paper may have had some positive impact on the quality of decision-making.

But to explain the urgency which was attached to the Sessions Paper during the 1780s, we must direct our attention away from the cases of capital convicts and toward appeals from non-capital sentences. I have already described the problem of chronic overcrowding in Newgate prison during the 1780s, which stemmed partly from the sheer number of offenders being convicted in the metropolis and partly from the preference of metropolitan authorities for principles of maximum severity in penal practices. Yearly removals to the hulks of approximately one hundred convicts under sentence of transportation were insufficient to relieve Newgate of its full burden of untransported convicts, to say nothing of capital respites awaiting the Report in Council. The removal of many of these convicts ultimately depended on conditional pardons (imprisonment, military service, or self-transportation) or remission of sentence, something which could not be achieved until a reference had been made and a written report received from the Recorder. This secondary class of pardon references assumed an unusually large significance in the metropolitan system of pardon during the 1780s.

After the mid-1770s, the burden of deciding such cases seems to have fallen upon the Recorder alone. Just how large a burden this must have been is suggested by Table 6.2, which indicates the proportion of all references to judges which these non-capital references made up between 1786 and 1795. Given the pressures of preparing the Reports of the capital

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81: The first instance of this was the list of convicts convicted at the September session; see HO 6/6 (Recorder to Sidmoutch, 12 Nov 1821).
cases, not to mention his own extra-official activities, the Recorder of the 1780s soon fell badly behind in reporting this less serious but no less pressing class of cases. As early as July 1783, he could only promise to provide the individual reports in such cases "by 3 or 4 at the time" given the "extreme hurry of business ...." In June 1788 he had as yet failed to provide responses in thirty-seven cases, many of which had been referred to him more than a year beforehand. The following year he again had thirty-three cases outstanding, many of them referred as much as a year before. These delays must have struck the Home Secretary as being the more annoying, not simply because of the "pernicious consequences which must result from this extraordinary delay," but also because the expected substance of

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<td>9</td>
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**SOURCE:** HO 13/4-10.82
the Recorder's reports in such instances was usually quite minimal by comparison with that expected of circuit judges. On some occasions, to expedite the transportation of offenders, the Home Department referred lists of convicts to the Recorder with the simple request that he return the list after "affixing the punishment which, in [your] opinion, each of them ought to suffer, that conditional pardons may be prepared accordingly." Many of the "reports" of such cases which were returned by the Recorder consisted of little more than lists of names identifying the date of trial, nature of the offence and recommended condition of pardon.

The Home Department might well have been content with a similarly minimal level of detail in the report of individual cases, and it is in this respect that the potential usefulness of the Sessions Paper becomes apparent. In 1786 the Home Secretary requested that the City of London "hasten as much as possible the printing of the Sessions Paper," and that copies should be sent to him "from time to time" because "applications are frequently sent to him in favour of convicts immediately after their trial, and references often made to the Judge upon cases with which he would not be troubled had the circumstances of the Trial been known ...." Since the Home Department continued to refer secondary cases in the metropolis to the Recorder and to no other judge, it is possible that this letter was largely meant to suggest to City authorities an obviously expedient means by which conditional pardons could be determined for secondary cases, particularly those which had been tried a long time ago and

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84 HO 13/7 p.71. Other examples, phrased differently but implying a similar procedure, include HO 13/3 pp.236-7; HO 13/4 p.336; HO 13/6 pp.410-1; HO 13/8 pp.396 & 454-5 (the latter of which instructed the Recorder to assign conditions "without giving any detailed account of their cases in the present moment...."); HO 13/9 p.513; and HO 13/10 pp.184 & 205-6.

85 HO 42/35 ff.351-2; HO 47/3 (Recorder to E.Nepean?, n.d. [c.March 1785]; Recorder to Sydney?, n.d.[R.3 March 1785]; & Recorder to Sydney?, 28 Dec 1785); HO 47/5 (Recorder to Sydney?, 26 & 31 Dec 1786, & n.d.); HO 47/9 (Recorder to W.W.Grenville?, 24 June 1789); HO 47/15 ( Recorder to H.Dundas?, 15 Feb 1792); and HO 47/19 (Recorder to Portland, 8 & 23 April, & 5 & 8 Aug 1795).
for which the judge’s notes might be more difficult to retrieve. Adair’s accounts indicate that he was receiving the Sessions Paper as early as 1784, although he did not acquire a complete set until 1790. As with capital cases, the use of the Sessions Paper as a resource in deciding secondary pardons was explicit by the 1820s, although the number of references to the Recorder had dwindled by then (see Table 6.3 below). In the larger scheme of things, the Home Department’s letter of 1786 may have signalled the beginning of its ambitions to eliminate secondary references to the Recorder altogether - a possibility to which I will return shortly.

The Sessions Paper was not the only written record which could be used in helping to decide non-capital pardons in the metropolis. As early as 1773 the famous Middlesex magistrate Sir John Fielding had emphasized the necessity of keeping some record of each convicted offender’s character and of the evidence produced at their trial. Fielding was particularly concerned about the administration of pardon with respect to non-capital convicts because he feared that many of them were actually serious offenders who had simply been lucky at trial or in the Council, and who might now renew their depredations on society:

[T]he impositions which affect the fountain of Royal mercy most frequently and most fatally are those which procure free pardons for offenders under sentence of transportation; for it often happens that many notorious criminals, after having escaped justice, though often tried for the highest offence, are at last convicted for petty thefts, either owing to the leniency of the prosecutors or the nature of the case. Here the offence appearing trivial and strong application (deceitfully obtained) for mercy seldom fail of success. And under these circumstances, to [my] certain knowledge, some very daring robbers have been let loose to the terror of society.

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86 HO 13/4 pp.163-4; and Add MS 53815 ff.57, 58 & 61.

87 HO 6/17 (Recorder to H.Hobhouse, 19 & 22 Aug 1822); HO 47/64 (Recorder to R.Peel, 20 Dec 1823); PC 1/71 (Recorder to H.Hobhouse, n.d.[c.June 1824]); and HO 47/65 (Recorder to R.Peel, 10 July 1824). As in the capital cases, the Recorder was also careful to use his own notes of the trial wherever possible. I suspect that the most expeditious use of the Sessions Paper was made during the 1780s, when the pressure of numbers was at its greatest.
Fielding believed that such cases of ill-considered mercy could be minimized or even altogether eliminated by regular reference to a "register of offenders" like that which he had kept in his Bow Street office for several years. The Earl of Suffolk may have shown some interest in Fielding's proposal, although there is no evidence that either he or William Eden ever acted upon it. On the other hand, City of London records indicate occasional payments "for making Lists of Prisoners tried at the Old Bailey," lists which perhaps were made with this idea in mind and whose first appearance coincide with the first alarming increase in the number of metropolitan prosecutions after 1767. In September 1791 the Sheriffs of London began to keep an annually updated register of "the Several Persons Confined in ... Newgate for felonies and Misdemeanours" but, only two years later, the City ordered it discontinued as a cost-cutting measure.

At this point the Home Department took over the keeping of the Register, which was to be up-dated by means of weekly returns to be submitted by the Sheriffs of London and Middlesex. That the Home Secretary, Henry Dundas, had in mind an idea very much like Fielding's is indicated by the particular instruction to the Sheriffs that they should specify "against each Name ... whether such person hath before been in custody and on what occasion, and any other information which may lead to a knowledge of the general character of the offender which may have come to your knowledge." The Register was meant to

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88 Cal. HO Papers, 4:11. Fielding's concern may particularly have been aroused by the unusually large number of free pardons being granted to non-capital convicts in London between 1771 and 1775, probably as a consequence of the rebuilding of Newgate during those years (see above, pp.139-40).


90 C.L.R.O.: Rep 197 p.107; Rep 198 pp.61 & 193-4; and Jor 73 f.359.

91 HO 13/9 p.400 (repeated at HO 43/4 pp.451-2). In 1797 the Chief Clerk of the Home Department described the purposes of the Register as being

To note each Commitment and Conviction, for the Purpose of distinguishing between old and new
ensure that serious offenders should not derive any undue benefit from the pardon system. It seems to have been particularly intended to complement the evidence, supplied by the Sessions Paper, as to the offender's guilt or innocence on the particular offense, with evidence as to their general character which may or may not have been produced at trial. Both sorts of evidence were vital in determining appropriate pardon decisions - although in what relative proportions is difficult to determine. And it is striking that the metropolitan registers were more detailed than their regional counterparts, which the Home Department began to keep in 1805.

The Home Department's general concern to secure evidentiary resources was an innovative response to the great problem which the number of convicts posed to the traditional system of pardon in the metropolis after 1781. It made it at least possible not to have to refer non-capital cases to the Recorder at all, but rather to confine informed decision-making on them to the Department itself. The decline in the number and proportion of such references during the 1790s - despite the complaint of the Department's Chief Clerk in 1797 that the number of pardon solicitations had "of late Years been very considerably increased, by the increased and increasing Practice of soliciting Mercy in the Cases of Criminals".

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92I suspect that continued references to the Recorder stemmed in large measure from the need of the Home Secretary to find character information to complement the Sessions Paper's account of the basic evidence of the individual offence.

93King, "Decision-Makers and Decision-Making," 42-51; and Beattie, Crime and the Courts, 432-49.

94The two registers kept by the City from 1791-3 are now at HO 26/1 & 56; the registers which follow on them begin at HO 26/2. As indicated below, the purpose underlying the regional registers (HO 27) was somewhat different.

95"16th Report of Committee on Finance:" in Commons Papers, 109:137.
suggests that such decision-making may have been increasingly conducted within the Home Department alone. This possibility is perhaps reinforced by the failure of secondary references in the metropolis to increase in tandem with the immense upsurge in the number of capital convicts after 1815 (see Table 6.1 above). Indeed by the latter period, as Table 6.3 indicates, the percentages seem less significant than the remarkably small absolute numbers of references - a strong indication that less and less of the actual decision-making in pardon cases was in the hands of trial judges by this time.

**TABLE 6.3**

Pardon References to Judges: The Metropolis vs the Nation, 1786-1825

<table>
<thead>
<tr>
<th>Years</th>
<th>Old Bailey (non-capital)</th>
<th>National (capital &amp; non-capital)</th>
<th>Percentage Old Bailey</th>
</tr>
</thead>
<tbody>
<tr>
<td>1786-90</td>
<td>145</td>
<td>180 min.</td>
<td>80.6 max.</td>
</tr>
<tr>
<td>1791-95</td>
<td>98</td>
<td>218</td>
<td>50.0</td>
</tr>
<tr>
<td>1796-1800</td>
<td>26</td>
<td>129</td>
<td>20.2</td>
</tr>
<tr>
<td>1801-05</td>
<td>41 min.</td>
<td>187</td>
<td>21.9 min.</td>
</tr>
<tr>
<td>1806-10</td>
<td>26</td>
<td>106</td>
<td>24.5</td>
</tr>
<tr>
<td>1811-15</td>
<td>41</td>
<td>233</td>
<td>17.6</td>
</tr>
<tr>
<td>1816-20</td>
<td>7</td>
<td>60</td>
<td>11.7</td>
</tr>
<tr>
<td>1821-24</td>
<td>10</td>
<td>122</td>
<td>8.2</td>
</tr>
</tbody>
</table>

**SOURCE:** HO 13/4-43.96

That said, the gathering of information about metropolitan convicts does not seem to have proceeded with the regularity and attention to detail that its advocates had intended. During the 1790s, the magistrate and police-reform advocate Patrick Colquhoun echoed Fielding's complaint of twenty years earlier about the "want of a more correct and regular System, for the purpose of obtaining the fullest and most authentic information, to avoid

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96See the reservations above at n82.
deceptions in the obtaining of pardons." Like Fielding, Colquhoun believed that large numbers of irredeemable convicts "after a temporary confinement, would return upon the Public, with little prospect of being better disposed to be useful to Society, than before." His belief that this was so may not have stemmed as much from direct knowledge of the Department's actual resources as from an extremely hostile exchange between himself and Edward Raven, the Keeper of the Register, in 1799. Colquhoun had requested that Raven provide him with a precis of "Trials, Acquittals and Punishments, discharges, pardons &c." Raven refused, partly because of the pressure of departmental work, and partly because he deemed such information to be fit only "for the private Information of [the Home Secretary]" - but perhaps primarily because he hoped to publish that information for his own profit. In the face of Raven's intransigence, Colquhoun may simply have concluded that the information did not exist.

Colquhoun may have been correct. As early as 1795, Raven had complained privately to the former Home Secretary of the "witchcraft" by which both the new Police Offices and the Keeper of Newgate were "denying the information necessary for the Secretary of State in the exposition of notorious characters ...." As a result, Raven continued, echoing Fielding, pardons increase while the applicants smile at the concealment of their characters and thus is His Majesty and the Secretaries of State deceived. The art of writing a pardon is the business of a school boy, but to distinguish ... fit objects is the result of information and inquiry attended with labour and expence. .... I most earnestly intreat that ... this Book may be continued with some degree of force or authority that I may

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98HO 42/48 ff.58-61. The Home Secretary, Portland, thought both men to be presumptuous in the extreme concerning, respectively, their monopoly over and rights of access to departmental records: "Raven had no business to say more to Colquhoun than that he could not consider himself at liberty to comply with his request without orders from me to that purpose; & C[olquhoun] had still less reason to fly into such a passion" (HO 42/48 f.61v [endorsement]).
no longer be the subject of ridicule.\textsuperscript{99}

So Raven's later bluster in dealing with Colquhoun may have been intended in part to mask his own inability to secure the information as required. His ultimate dismissal from the Home Department in 1800 raises the possibility that he may have been either inadequately informed about matters or even out-rightly negligent in the exercise of his duties.\textsuperscript{100}

In general then, it is difficult to be certain as to the regularity and effectiveness with which the Home Department was collecting and employing its new textual resources - the Sessions Paper and the Registers - before the early nineteenth century. Nevertheless, the fact that the Home Department seems to have taken them seriously as a potential basis for determining pardon decisions in the metropolis is remarkable enough in itself. In the first place, it suggests a major shift away from a system of pardon which was personal and immediate: personal, in so far as the decision usually rested with the judge who had presided over the case at trial; and immediate, in so far as most appeals and decisions followed fairly closely on the original conviction. In metropolitan London, the desire of officials to ensure that the maximum number of serious offenders was punished with the maximum severity, coupled with a vast increase in the number of such offenders, produced a situation in which both of these aspects of the traditional pardon system were breaking down. Convicts might

\textsuperscript{99}S.R.O., GD51 1/258 (emphases in original). Later that same year, Raven opposed a general reference in which the Recorder of London was asked to assign terms of military service to a group of convicts in Newgate, arguing that many such pardons would be "impositions ... on the King's Humanity," and stating that he had turned down bribes from some people to let similar cases go through (HO 42/35 ff.235-6). But in fact, the Recorder's replies to the Home Secretary's requests in these matters show as much sensitivity to distinctions of punishment as was possible given the limited range of penal options available to capital respite and transports in the metropolis (HO 47/19 [Recorder to Portland, 8 & 23 April, & 5 & 8 Aug 1795]; and HO 42/35 ff.351-2). None of the convicts in question eluded punishment altogether and Raven never bothered to say just how exactly he expected them to be punished otherwise. At any rate, in the midst of a major war, military service must have seemed a severe enough punishment to those receiving it. By raising a problem without also suggesting a solution to it, Raven must have greatly antagonized his superiors.

languish either in Newgate or on board the hulks for so long that pardon decisions in their cases might have to be made several years after their trial. By this time, both the trial judge and his notes of the case might be unavailable. This, coupled with the large number of such cases to be considered, would have made resort to written records not only the obvious but possibly the only strategy for ensuring that some measure of justice was done.

Second and more strikingly, the Department's concern for securing reliable texts suggests, not only that attention to individual cases which we might associate with discretionary justice, but also a concern for ensuring that all convicted offenders were in some degree punished - something which later critics of the discretionary system accused it of fundamentally neglecting, and which has traditionally been characterized as a component only of England's "reformed" criminal justice system. This bears out John Beattie's broad contention that changing punishments during the eighteenth century are at least as well understood as reflecting a determination to ensure that more offenders were punished more severely than ever before - to bring, in his words, "the greatest unhappiness to the greatest number of convicts" - as of intentions to humanize penal practices. It also reinforces Randall McGowen's contention that the debate over the reform of the criminal law is better understood as a transition from one "image" of criminal justice to another than from one set of practices to another.101

This is not to suggest that the discretionary system of the early nineteenth-century was above reproach. Evidence for the use of written records by the Home Department is only extensive with respect to the metropolis; most cases on the circuits continued to be

101Beattie, Crime and the Courts, 450-618 (quote at 617); and R.McGowen, "The Image of Justice and Reform of the Criminal Law in Early Nineteenth-Century England," Buffalo Law Review 32 (1983): 89-117. But see also Beattie's caution against overemphasizing the ambition amongst contemporaries "that the crime and the criminal were to fit the punishment" (Crime and the Courts, 439). I agree, although I think that this ambition may have been widening in scope for the metropolis by 1800.
determined by the trial judges until long after 1800. Nor was it necessarily the case that the use of such materials in the metropolis particularly enhanced the quality of decision-making by any self-evidently humanitarian standard - or, indeed, any standard at all other than the need for some measure of expediency and efficiency where large numbers were concerned. We are studying a system in transition, and more apparently so with respect to the metropolis than any other part of England.

Nevertheless, Home Secretaries were alive to the issues and difficulties involved in administering a pardon system that had to make good on the expectation of punishment for the guilty and mercy for those who deserved it. They sought to facilitate large-scale decision-making by creating a bureaucracy which would collect and order the rapidly accumulating records so that the Home Secretary could be enabled to decide the merits of each case for himself. It is to this bureaucracy, and the changing practices over which it presided, that we now turn our attention.

III. The Criminal Branch and Pardon, 1790-1840

One of the most striking aspects of both Sidmouth and Peel as Home Secretaries is the extent to which they appear to have been personally engaged in making decisions in pardon cases. The achievement of such a degree of engagement was not simply a function of moral scruple. It also reflected the development of a sub-department within the Home Secretary’s office that was meant to enable the Home Secretary to keep pace with the steadily increasing number of criminal cases and issues to be considered. The task of the Criminal Branch was to review and organize the correspondence relating to convicts, be it pardon letters or letters relating to the gaols and the hulks, in such a fashion as to facilitate the Secretary’s personal decision-making on each question.
A number of things provided the impetus behind the development (we can hardly say "creation") of the Criminal Branch. It may, in some nebulous sense, have reflected the withdrawal of the King from active participation in the pardon process after 1789. A more concrete impulse would have been the chronic illness of Evan Nepean, the Home Department's first permanent Under Secretary, coupled with the large and rapid expansion of the Home Department's domestic concerns after 1792. By this year, the responsibility for organizing the criminal correspondence seems to have fallen on the Chief Clerk, William Pollock - so much so that many letters were addressed directly to him rather than the Secretary of State.102

The outbreak of war between Britain and France on 1 February 1793 was probably a further impulse behind the creation of a sub-bureaucracy to organize criminal matters. We have seen that the Home Secretary of the time, Henry Dundas, became deeply involved in the effort to prosecute the war. In this context, it is striking that Edward Raven, who was already employed by the City of London in conducting the Register of metropolitan convicts, was appointed a Supplementary Clerk only two days after France declared war on Britain. His formal appointment as Keeper of the Register eight months later marks the first point at which an explicitly designated functionary was appointed for the purpose of managing an aspect of the Department's criminal business.103

The second such appointment, that of the attorney and MP William Baldwin as Counsel for Criminal Business in January 1796, served a more obviously determinative

102 HO 42/21 ff.488 & 501; and HO 42/22 f.11. Pollock's involvement in criminal matters is apparent as early as 1788; see also HO 47/7 (J.Shaw to Sydney, 25 June 1788); HO 42/22 f.231; HO 42/23 ff.278-9; and HO 42/24 f.132.

103 J.C.Sainty, Home Office Officials, 1782-1870 (1975), 23 & 25-26. Raven's appointment in the Home Department preceded by three months the City's cancellation of his salary, so the decision on their part did not necessarily reflect a disregard for the problem of convict administration.
function than Raven's. There is evidence of Baldwin's activity in an advisory capacity almost a year and a half beforehand, when his patron and political leader the Duke of Portland first assumed the Home Secretaryship.\textsuperscript{104} Orders for Baldwin's payment indicate that he was expected to advise on "all questions relating to the Criminal Business ...."\textsuperscript{105} His most obvious tasks were to read and organize the petitions and reports flowing into the office, and to advise the Secretary of State on their disposition - "to give his opinion when a case is sent with the usual compliment (the fee) marked on the back of it," as one sceptical MP described it.\textsuperscript{106} Some sense of Baldwin's potential influence is suggested by his detailed recommendation in the case of William Lay, a convict in Maidstone Gaol about 1803:

> Not being apprized of the Circumstances of this Case nor having any opportunity of looking into the Evidence which was given upon y' Tryal I can only recommend it to Lord Pelham to refer the Case to y' Judge who tried y' Convict upon whose report Lord P. will most probably be enabled to form a Judgment whether y' Pet[ition] & recom[endatio]n ought or ought not to be complied with. WB

And Pelham's annotation beneath it is suggestive of Baldwin's influence: "Let it be referred & a letter [sent to the petitioner] to that effect."\textsuperscript{107} Indeed on several occasions Baldwin annotated Newgate petitions in a manner which implied, not only that the Home Department

\textsuperscript{104}Hallward Library (Nottingham U.), PwF 243; and Commons 1790-1820, 3:123-5.

\textsuperscript{105}Departmental orders to pay Baldwin his salary between 1799 and 1813 are recorded at HO 36/11 pp.225-6, 360-1, 451 & 516-7; HO 36/12 pp.66, 186 & 297; HO 36/14 pp.61, 193 & 357; HO 36/15 pp.114, 224, 330 & 467; and HO 36/17 pp.108 & 268.

\textsuperscript{106}Parliamentary History 33 (1797-98): 968.

\textsuperscript{107}HO 47/33 (petition of W. Lay, c.1803-4). Baldwin (and also, after 1800, Capper's) organizational and advisory function is apparent in many other annotations on cases: "M' Baldwin or M' Capper to report on this case. ... P[elham]" (HO 47/33 [J.Richardson to Pelham, 26 April (1803)]); "... deliv'd to Mr Capper (for Mr Baldwin) to be referred to the recorder of Portsmouth" (Althorp PP, G246 [petition re Belton Lockyer, 12 March 1806]); "This case has been referred & the Report is very unfavorable - Lord Spenc[er] deciding ag[ains]t relief - W. Baldwin" (Althorp PP, G264 [G.Smart to Spencer, 21 July 1806]); and "M' Capper, If this Man's Character has been enquired into on board the Hulk - and is satisfactory - M' Graham to be informed that the Pardon is acceded to - the Judges Report in his Case being a favourable one. [J.Beckett]" (HO 47/42 [petition instruction, c.Aug 1809]). It was also apparent to those writing on behalf of convicts. "M' Baldwin or M' Capper is the Gentlemen to apply to at the Secretary of State's Office ..." (HO 47/42 [T.Humhage to M.Nigh. 19 July 1809]; and see HO 47/44 [H.Gardner to B.P.Capper, 8 Aug 1810]).
did indeed decide some secondary metropolitan cases without reference to the Recorder, but also that Baldwin’s advice could be particularly authoritative in such instances. In 1810 Baldwin commented extensively on the petition of Mary Murphy, a convict in Newgate:

I have read [in the Sessions Paper?] the Tryal of Mary Murphy. It appears to be a slight Case. The Pet' very young. Perhaps ye Pet' would give security for her good Behav' & take care to provide a proper [position] for her - M' Ryder [the Home Secretary] will perhaps think it right that some Answer sho' be sent to the RH the Duke of Kent [the petitioner on her behalf]. WB

Baldwin and Raven also appear to have exercised a supervisory function over the separately contracted hulk establishments at Woolwich and Portsmouth, as well as the removal of convicts from hulks and gaols for transportation. Yet for all his activity, Baldwin’s position was by no means a permanent one. He seems nearly to have lost it when Earl Spencer became Home Secretary in 1806. And on his death in 1813 it was allowed to lapse, partly as a sop to a economy-minded parliament constantly on the look-out for

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108 HO 42/109 f.123v. Another case, that of John Biles, which clearly had been referred to the Recorder, has attached to it a note reading "Let him be pardoned agreeable to the Report. WB" (HO 47/21 [Recorder to Portland, 19 April 1797]). Five years later, Lord Pelham endorsed Baldwin’s detailed explanation of the case of Robert Stuart, convicted of uttering in May 1801 (HO 47/31 [20 Nov 1802]).

109 Add MS 33106 ff.138-8 & 162-3, the latter of which observes "that matters ... have for some time past required your special interference at Langston Harbour &c in respect to the mode of conducting the business of the unfortunate, doomed victims ...."

110 Earl Fitzwilliam felt obliged to put in a good word for "my old friend Mr Baldwin" who "has no official appointment, but is professionally employed" in the Home Department. Spencer, who ultimately kept Baldwin on, was initially noncommittal because "I am as yet so very new in my Office ... that I must beg leave to defer saying anything positive on the subject of Mr Baldwin’s situation in it for the present;" see Althorp PP, G252 (Wentworth Fitzwilliam to Spencer, 7 Feb [1806]; & Spencer to Wentworth Fitzwilliam, 8 Feb 1806). Baldwin’s request for a personal interview with the First Lord two months later raises the possibility that Spencer may have been inclined to dismiss him (Add MS 59381 ff.102-3). Baldwin had also been given the position of Counsel for Colonial Business, which he continued to hold in the War Department after 1801 and until his death (Sainty, Home Office Officials, 39-40); this may indicate that Portland’s considerations in appointing his friend may not have been driven purely by concerns for administrative efficiency with respect to pardon.
bureaucratic trimming.  

Although he was clearly Baldwin’s subordinate, Raven occasionally complained that the whole of the Criminal Business fell to him.  

This seems doubtful but, after his dismissal in 1800, Raven’s position was replaced by two separately designated officials: William Day, who continued as Keeper of the Criminal Register until 1841 (and who was not officially provided with an assistant until 1828); and John Henry Capper, who was appointed to the new position of Clerk for Criminal Business, a position which he held until 1847 (again, officially unassisted until approximately 1822). In fact Capper, his later assistant, as well as Day’s later assistant - like Raven before them - had all been appointed as Supplementary Clerks several years before they received officially designated appointments, probably in an effort to evade parliamentary scrutiny of new, established expenses. So it is possible that the number of functionaries devoted to the administration of the Criminal Business was larger than the simple number of official designations implies.

The initial development of the Criminal Branch proceeded in a relatively ad hoc fashion, with only a minimum number of new positions being created or defined. When an Inspector of Hulks was first appointed in 1806, signalling the commencement of a self-consciously permanent role for the Home Department in national convict administration, the position was filled by Aaron Graham who, as a Middlesex magistrate, had no official

\[111\] So too was the position of Law Clerk in 1818, having been held by only two people since its revival in 1791 (see above, p.107). Sidmouth was quick to point out these cost-cutting measures on his part when he was asked to make further reductions after 1817 (HO 36/18 pp.353-4; and HO 36/19 pp.81-2 & 393).

\[112\] HO 42/51 f.431; and HO 42/48 f.60v, which cites “Mr Baldwin’s indisposition” as the cause.

\[113\] Sainty, Home Office Officials, 3 & 23-8. Day was also inspector of the Horse Patrol; see Althorp PP, G247 (W. Day to Spencer, 5 May 1806).

\[114\] See below, pp.447-9. Graham’s service in this position actually began three years earlier than it’s official acknowledgment.
FIGURE 6.1
The Development of the Criminal Branch, 1790-1840

1790  Under Secretary (continuing supervision)

c.1792  William Pollock (Chief Clerk)

1793  E.Raven (Keeper of the Register)

1796  W.Baldwin
      (Counsel for Criminal Business)

1800  W.Day  J.H.Capper
      (Register)   (Clerk for C.B.)

1806  [Abolished]

1813  [Abolished]

1818  [Retired]

1827  G.Everest

1828  S.Redgrave
      (Asst.)

      (Register) (Asst.) (Clerk for C.B.) (Asst.)
      & Inspector of Hulks
standing within the Home Department’s internal bureaucracy. But, between Baldwin’s death in 1813 and Graham’s retirement in 1818, the Criminal Branch seems to have crystallized as both a permanent and an internal sub-bureaucracy under the direction of Capper, who united his mechanical tasks as Clerk for the Criminal Business with both Baldwin’s evaluative function in pardon cases and Graham’s former position as Inspector of the Hulks. His crucial organizational role in supplying the information by which the Home Secretary could make considered decisions on pardon cases is particularly apparent after 1818; Robert Peel, who was even more scrupulous about such matters than Sidmouth, relied heavily on Capper in this respect. Officially however, the Criminal Branch continued to lead a kind of shadowy semi-existence long into the nineteenth century. Its clerks were not placed on the Home Office’s establishment until the 1840s, and prison supervision, as it emerged during the 1830s, was conducted by an external establishment of inspectors who were not directly bound by the Home Office’s authority. This pattern of institutional development perhaps reflected an unhappy union between, on the one hand, the obsession with fiscal restraint which dominated political life during these decades and, on the other, the fundamental distaste with which, amongst all the obligations of government, convict administration was viewed.

Despite the somewhat haphazard pattern of its development, the Criminal Branch seems to have served its purposes adequately enough. Home Secretaries tinkered with and added to the internal structure of their Department in order to ensure that their capacity to

115 HO 47/61 passim (1821); Add MS 40351 ff.103-4, 137-8 & 187-9; Add MS 40355 f.337; Add MS 40357 ff.323-5; Add MS 40358 ff.147-50; and Add MS 40367 f.266.

decide all important matters - in this instance, pardon - was maintained, with as much detail (and occasionally innovation) either as they desired or as scrutiny by a perennially cost-conscious parliament permitted. This latter problem became a particular source of frustration to Sidmouth in the years following the Napoleonic Wars, when a parliamentary committee concluded that the need for fiscal retrenchment after two decades of war dictated that the three Secretarial establishments should be returned to their 1797 levels. Sidmouth strongly objected, pointing out that "the general correspondence carried on between the Office and almost all descriptions of persons in every quarter of the British Islands" had greatly increased during the intervening years. He particularly emphasized "the business arising out of convictions, particularly for capital and transportable offenses, which in 1797 was very inconsiderable compared to the present time."

Although the desire to maintain the central role of the Home Secretary in determining pardon decisions was the principal purpose in the development of the Criminal Branch, it did not always seem to achieve that end - particularly in the eyes of some critics of the discretionary system. One such line of criticism proceeded from the conviction that, not only was the King himself no longer making the determinations that were justified in his name, neither indeed was his Secretary of State. "A man needs not multocular powers to penetrate far enough into this sanctum sanctorum," one critic observed in 1832, "to see that the principal secretary knows nothing at all of nine hundred and ninety-nine cases out of a thousand of the petitions presented, or of the decisions connected with them." Only "a few solitary cases possessing features of extraordinary Interest" presented to "Mr. Capper's Office" would make it past the Under Secretary, whose "peculiar duty" it was "to read the

\[\text{\textsuperscript{117}}\text{HO 36/19 p.391. For the fiscal-political climate of the time, see P. Harling, The Waning of 'Old Corruption': The Politics of Economical Reform in Britain, 1779-1846 (Oxford, 1996), 163-82.}\]
petitions, and report to the principal secretary thereon." The creation of the Criminal Branch to supervise and organize the flow of information regarding pardons begs the question of how far it may have been the case that the Under Secretary - or even Capper - may in fact have been the actual decision-makers in individual cases.

The limited extent to which pardon correspondence and records of consultation on it have been preserved makes it difficult to generalize on this question with complete confidence. The Under Secretary was usually the first person who read an incoming petition or who greeted those petitioning in person to the office. After the establishment of the Criminal Branch, personal addresses were sometimes made to its officers. However the surviving evidence suggests that the final decision always belonged to the Home Secretary, as the pyramidal flow of information within the Home Department (in general) and the Criminal Branch (in particular) intended it to be. In troubling the King with pardon business Lord North sometimes invoked Nepean's assiduity, but this is as likely to have reflected North's anxiety to assuage an old master who now held him in contempt as it is any undue influence on Nepean's part.

118[T. Wontner.] Old Bailey Experience: Criminal Jurisprudence and the Actual Working of Our Penal Code of Laws (1832), 117-8; see also 120-1 & 139-43. A former Keeper of Newgate, Wontner based his comments on his experience of metropolitan pardons. His account of the Home Department is largely impressionistic, and he seems to have been wholly unaware of the Home Department's regular use of the Sessions Paper to overcome the informational limitations of which he often complains.

119Evan Nepean was often the first person whom visitors to the Home Department during the 1780s encountered or addressed; see The Letters of Richard Brinsley Sheridan, ed. C. Price (Oxford, 1966), 1:160-1; GM 56 (1786): 1139; Add MS 38570 ff.50-51; and HO 44/41 ff.26-7. The allure of young women may have been intended to lend extra impetus to a personal approach. On the back of the last, Nepean wrote "Keep this as a Relict of One of the prettiest Women I ever beheld" (f.27v). Edmund Burke once had one of his pardon solicitations delivered by "a Young Woman" (HO 43/3 p.239).

120See the references above at n.102.

121Corr. George III, nos.4498-500. For another occasion on which North invoked "the great precaution of Mr. Nepean" as his excuse for troubling the King (no.4479).
That said Nepean, whose term as Under Secretary predated the Criminal Branch, does seem to have commented extensively on at least one case for his Principal's benefit. And it is not hard to believe that he may have exercised some degree of influence in these matters with a Home Secretary as minimally engaged with the business of his office as Sydney appears to have been after 1784.122 Portland, too, may have been inclined to leave the criminal business largely in the hands of underlings, as might be expected given that Baldwin's office was his creation. There was at least one instance in which the decision to issue respites in a case appears, from the text of the letter, to have been at the Under Secretary's discretion.123 In contrast, Grenville ensured his personal responsibility for all the decisions of his office by having the Under Secretary dispatch all departmental correspondence to him whenever he left town. "I return the Report on the case of Hands," he wrote Scrope Bernard in one instance

I have determined not to comply with this recommendation for mercy, & have entered my opinion at the foot of the Report in order that it may remain in the office, & that there may not appear to have been any neglect on the subject.124

This letter illustrates what appears to have been a general rule: although Home Secretaries valued the advice, experience and expertise of judges, Under Secretaries and the Criminal Branch, the final decisions remained unquestionably their own. The conclusion of John Beckett's detailed advice to the Earl Spencer in a rape case of 1806, wherein circumstances

122HO 47/7 (draft note re case of William Bales in Nepean's hand, n.d.[c.June 1788?]).

123"There does not appear to Mr King ... to be sufficient grounds for sending respites for the convicts, but if Mr. Wilberforce, from his interview with Mr. Justice Heath, shall have reason to suppose that the Judge's Report may be favourable, and will signify the same to Mr King, respites will be immediately forwarded ..." (HO 13/10 pp.215-6).

124Bucks R.O., D/SB/OE 6/1 (emphasis in original); see also 6/2. Hands was an Old Bailey convict, so it is likely that the Recorder's report on the case consisted of little more than a statement of which punishment he thought appropriate. Perhaps detailed, reasoned reports carried more weight than this with the Home Secretary.
made consulting the judge prior to execution impossible, reflects the balance between information, advice and deference this must have entailed:

It is needless ... for me to observe to Your Lordship that the respite must be granted by you if at all, on your own authority, and without any communication with the Judge - and that probably the respite, if granted, will be considered tantamount to a mitigation of sentence.

I ought at the same time to state to Your Lordship that in the opinion of the Bar Mr Justice Roche [the presiding judge] is apt to be rather severe.\textsuperscript{125}

The Home Department and its Criminal Branch existed, not to remove the responsibility for pardon decisions from the Home Secretary, but to ensure its continuance despite the pressure of numbers.

The expanded scale of this problem after 1815 makes it the more striking that there is far more evidence for the primary decision-making role of the Home Secretary to be found under Sidmouth, and especially Peel. In fact Sidmouth appears to have initiated a new era of Home Secretary activism regarding pardon after 1813. The extensive notes and instructions which both Sidmouth and Peel made - often on the outer wrappings of cases - not only reflected their personal role in deciding such cases, but also their often detailed engagement with the evidentiary issues involved. In writing to him when he was absent from London, Peel’s Under Secretaries often anticipated the specific disposition of cases on the basis of past experience and practice, but they certainly never presumed that anyone but he had the final word. Indeed they often dispatched blank respites for his signature should he desire to act in the matter.\textsuperscript{126} Nor did this activity on the part of Under Secretaries stem only from

\textsuperscript{125} Althorp PP, G241 (J. Beckett to Spencer, 25 Aug 1806). On another occasion, Beckett advised Spencer that "You will decide I take it for granted to let the Law take its Course ...." see Althorp PP, G66 (13 March 1807).

\textsuperscript{126} Many such letters were sent to Peel when he accompanied the King on his tour of Scotland in the fall of 1822 (Add MSS 40350–3 passim). See also Add MS 40360 ff.72-3; Add MS 40368 f.122; and Add MS 40380 ff.293 & 300-1, in which Peel supplied blank signatures for Hobhouse’s use in a particular case.
deference to the authority of their superior. "The case of the two unfortunate men who were hanged at Cork in consequence of the reprieve arriving too late," Hobhouse once observed to Peel, "is too fresh in my mind, to allow one hour to elapse if any thing mitigating should arrive at this Office." If there was any chance that the Home Secretary might not be able to consider an appeal before an execution took place, the Under Secretary issued one himself in order to cover all possibilities. Under Secretaries must have viewed it as a relief that the ultimate responsibility for life-or-death decisions rested with their superior, and did their best to ensure that no action on their part ever compromised that responsibility. The case of Peel and his Under Secretaries seems particularly a propos, as it would have formed the immediate backdrop to whatever experience our critic of 1832 would have had.

Yet critics who asserted that the power of pardon was not entirely in the Home Secretary’s hands were, in a larger sense, correct - though not precisely in the way which they believed. By the second decade of the early nineteenth century, much of the effective power of pardon had become diffused. This diffusion was not within the Home Department itself, but amongst the whole panoply of authorities with which the Department was obliged to deal as a consequence of the growing complexity of the English penal order. Although the Home Secretary exercised oversight and retained the final say, many other officials were effectively making decisions as to the disposition of convicted offenders. Victor Gatrell has argued that the "overloading" of the pardon process provides the fundamental explanation for the "sudden" collapse of the capital system during the 1820s. Yet this contention is not directly borne out when we consider the number of references actually being made to judges

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127 Add MS 40351 f.201.
128 Add MS 40381 ff.40-1 & 42.
129 Gatrell, Hanging Tree, 18-21 & 616-7.
(Table 6.4), which in fact was notably declining. We are faced with an apparent paradox.

England's criminal code was still overwhelmingly capital during these years and the number of convicted capital offenders grew rapidly after 1815. How could it be that the number of cases referred to judges actually declined during this period? The straightforward answer is that pardon decisions were being made by people other than the trial judges alone.

To begin with, the decline must partly have been accounted for by practices which nevertheless involved work on the part of the judges. There is evidence that some pardons originated, not in references to the judges, but rather in reports which judges sent in to the Home Department on their own initiative - reports which the Home Secretary might or might not have combined the two Welsh Circuits (including Chester).

**TABLE 6.4**

Pardon References to Judges: Old Bailey and Circuits, 1811-1824

<table>
<thead>
<tr>
<th>O.B.</th>
<th>Home</th>
<th>Norfolk</th>
<th>Oxford</th>
<th>West</th>
<th>Midland</th>
<th>North</th>
<th>Wales</th>
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<tbody>
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<td>14</td>
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<td>7</td>
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<tr>
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<td>6</td>
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<td>9</td>
<td>12</td>
<td>5</td>
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<td>1813</td>
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<td>9</td>
<td>2</td>
<td>5</td>
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<tr>
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<td>1815</td>
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<td>1817</td>
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<td>1822</td>
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<tr>
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<td>4</td>
<td>9</td>
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<tr>
<td>1824</td>
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<td>9</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>7</td>
</tr>
</tbody>
</table>

**Note:** I have combined the two Welsh Circuits (including Chester).

**SOURCE:** HO 13/21-43.
not choose to endorse.\textsuperscript{130} I do not know of any examples of this practice during the late eighteenth century or earlier. There were also, of course, the circuit pardons. Although I have not yet been able to compare these numerically over time, it is possible that they grew, not only in absolute terms, but also in terms of the proportion of capital offenders for which they accounted during the early nineteenth century. If such an increase did occur, the critical question becomes whether or not the judges themselves found this obligation so burdensome that the system was becoming unworkable. In fact, there is no evidence amongst the Home Office papers that the judges themselves found this task - which after all, required no written justification - unduly onerous. Nor indeed does Gatrell's own vituperative account of the judges and of the pleasure which they took in exercising their authority sit very well with a system which was "overloading" in any straightforward sense.\textsuperscript{131} Finally, in the case of the Recorder of London certainly, it is possible that the judge could be consulted on cases without necessarily resorting to any written exchanges at all.\textsuperscript{132}

The increasingly regularized use of imprisonment as a punishment probably further reduced the need to refer cases to trial judges. References to the Inspector of the Hulks are common during the first decade of the nineteenth century, but seem to have disappeared altogether by the second. This disappearance probably reflected the routinization of the Hulks Establishment: either in so far as transportation to New South Wales became sufficiently

\textsuperscript{130}See for instance, HO 13/26 p.126; HO 13/28 pp.488-9; HO 13/31 p.1; HO 13/32 pp.301-2 & 354; HO 13/33 pp.24-5, 207 & 211; and HO 13/36 pp.115-6. In the latter case, involving three men convicted of an aggravated robbery and under sentence of transportation, Sidmouth did not feel any pardons to be in order, but nevertheless promised to keep the men on board the hulks for six months while the judge sought to make a case for their innocence (which Sidmouth deemed to be the only reasonable ground for pardon).

\textsuperscript{131}Gatrell, Hanging Tree, ch.18.

\textsuperscript{132}I have found two instances of allusions to consultations with the Recorder which did not involve written references of the case (HO 13/29 pp.137-8; and HO 13/41 pp.254-55). The Recorder during Peel's Home Secretaryship, Newman Knowlys, lived next door to Lord Chancellor Eldon on Bedford Square.
regular that pardons from the hulks were no longer a functional necessity; or perhaps that
terms of confinement on board the hulks, from which no pardon was appropriate, were
already acquiring a *de facto* reality as an established mode of punishment. It is equally
possible that the ease of personal contact between the Hulks Inspector and the Criminal
Branch after 1806 meant that remission from hulks’ sentences could be managed in a fashion
that left little or no paper trail. The need to refer pardons for incarcerated convicts to trial
judges was further obviated by the increasing development of local gaols and prisons as
substantive penal options. Self-activated recommendations from Visiting Magistrates became
common items in the Criminal Branch’s correspondence, although - as in the case of self-
activated judicial references - the Home Secretary did not feel himself to be obliged to take
the Magistrates’ advice in every case and, indeed, might even seek a judge’s opinion.133

The fundamental explanation for the falling off in judicial references is that more of
these decisions were simply being made by the Home Secretary himself in consultation with
the Criminal Branch. The pattern of decline in Table 6.4 suggests that Sidmouth self-
consciously initiated a more explicitly centralized pattern of decision-making in non-capital
cases. The decline in references begins almost immediately after the death of William
Baldwin in October 1813, whose evaluation of cases appears to have been of such value to
the Department. One form which this centralization took was purely negative: simply not to
refer cases at all without compelling reason. In 1818 it was explained to one judge that
Sidmouth

always gives the Judges Credit for having exercised a sound Discretion as to the
Degree of Punishment and he therefore never troubles them for their Reports unless a

133For instance, HO 13/25 pp.217-8, in which all five recommendations for remission were accepted; and
HO 13/26 p.108, in which one of three was rejected "upon full consideration of a Report which I have received
from Mr Justice Dampier."
Petition alleges some Matter of which a Judgment cannot be formed without an Authoritative Statement of what passed at the Trial.\textsuperscript{134}

Peel may have been even more scrupulous than Sidmouth about asserting his overall authority in decision-making. During the first two months of his Secretaryship, Peel issued detailed justifications for rejecting judicial recommendations no less than six times.\textsuperscript{135} Again, it should be emphasized that such refusals to review the decisions of trial judges did not necessarily indicate an enhanced cruelty. They may simply have reflected the extent to which a wide range of established secondary penal options - transportation, the hulks, and locally reformed prisons - reduced the felt need to review non-capital cases. This innovation at the centre probably accounts for the simultaneous appearance of self-activating judges - judges who may sometimes have felt a tension between their legal obligations as they understood them, and the degree of severity which individual cases seemed to warrant. An Act of 1823, which removed the obligation of circuit judges to pronounce sentence of death on those capital convicts whom they intended to include in their circuit pardons, must primarily have been intended to set them more at ease with their enhanced - since potentially more final - discretion.\textsuperscript{136} It certainly had no impact whatsoever on the volume of those judges' work, and was surely indicative of the extent to which secondary punishments were now taken for granted, no matter the letter of the law.

\textsuperscript{134}HO 13/32 pp.261-2.


\textsuperscript{136} Geo. IV. c.48. The bill had been introduced by Peel's Parliamentary Under Secretary, George Dawson (J.H.C. 78 [1823]: 347). The purely formalistic nature of this measure was confirmed during the debates surrounding a failed attempt in 1832 to extend it to the metropolis; see Hansard, 3rd ser., 11 (1832): 1274-5; & 13 (1832): 543-4. Murder continued to be an exception under the provisions of the 1752 Murder Act (25 Geo. II. c.37), which required that sentence of death immediately be pronounced and the convict executed within three days thereafter.
The Home Department’s taking upon itself the power to decide cases independent of judicial references was a remarkable development, and perhaps the more so for its ideological significance than its practical effects. As we have already seen, although eighteenth-century Secretaries of State were by no means obliged to refer all petitions to the trial judge, and often chose not to do so in particular cases, the judge’s peculiar capacity to gauge the relevant local circumstances nevertheless made his view of the case particularly desirable. An adherence to this practice must surely have underlain the difficulties of administering pardon in the metropolis during the 1780s, when the Home Department continued to insist that the Recorder himself determine the punishment in all cases referred to him. Grenville’s letter of 1789, cited above, implies that rejections even of the Recorder’s non-capital reports were understood to be exceptional.

By the second decade of the nineteenth century, the Home Secretary was setting his own evaluation of the seriousness of individual offenders and offenses committed in a particular community above the more immediate sense of them which a trial judge presumably possessed. By what means did nineteenth-century Home Secretaries do this? One was the use of reliable written texts which could be consulted in tandem with - and perhaps in place of - a judicial reference. I have already described at length how the use of the Old Bailey Sessions Paper and the creation of the Criminal Register seem to have been intended to serve exactly this purpose for the metropolis after the crisis of the 1780s. It is possible that, in the early nineteenth century, newspapers acquired a similar relevance in considering provincial cases. They were at least occasionally submitted along with other documents regarding the evidence in such appeals, although few explicit instances of this survive
amongst the Home Office papers for our period. A parliamentary committee of 1904 was told that "the governors of prisons have instructions to keep the best newspaper reports of all important trials and forward them to the Home Office with the first petition from the prisoner." There is no indication of when exactly this became standard procedure, but Peel’s anxiety about the accuracy of local newspaper accounts of the notorious Thurtell-Hunt murder case of 1824 - in which he was obliged to defend a controversial extension of pardon to one of the killers - must partly have reflected this sort of concern.

So the pardon system did not "suddenly" collapse under the weight of an ever-increasing case-load. Although the discretionary system remained in place, it is not at all certain that the pressure of numbers made it unmanageably top-heavy. Home Secretaries contrived a system whereby they retained final responsibility for all pardon decisions. The resulting system was intended to ensure, not so much direct decision-making by the Home Secretary in every case, but rather his overall supervision of and responsibility for a decision-making structure that was being made increasingly complex and diffuse by the growing extent and sophistication of England’s penal regime. A pardon system which had once been justified on the grounds that it afforded a symbolic personal contact between the monarch and his subjects had given way to one in which decisions were made by the

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137 For two examples, see Add MS 40351 ff.201-4; and Add MS 40367 ff.210-2. The newspapers themselves have not been preserved; their inclusion is only alluded to in the letters. It is possible that many others were silently included in other letters, and have now been lost.


139 Add MS 40359-60 passim; and Add MS 40368 passim. It must also have reflected growing anxieties about the role of popular periodicals in distorting the public’s perception of how criminal justice was administered; see A. Borowitz, The Thurtell-Hunt Murder Case: Dark Mirror to Regency England (Baton Rouge, LA, 1987), ch.7.

140 A major weakness of Gatrell’s emphasis on "overloading" is his insistence on regarding England’s penal order as being "capital" in some unproblematic sense. In functional practice, it was far more sophisticated than that by end of the second decade of the nineteenth century.
Home Secretary in the monarch's name. Despite the immense pressure of numbers, first in the 1780s and then again after 1815, the personal attention involved in pardon had been preserved, partly by the development of informational structures to support the Home Secretary in fulfilling this role, and partly by the emergence of established modes of secondary punishment which reduced the need to review non-capital cases.

This is not to say that the pardon system did not come to seem "overloaded" in some meaningful sense, but rather that the definition of that overloading involved qualitative considerations which critically informed the quantitative one. There would have been no reason why the dozens of pardon decisions required after each sessions at the Old Bailey or each assizes could not have been made expeditiously, had not profound questions arisen about the character of the decision-making process itself. Contemporary critics of the discretionary system, whose arguments ultimately prevailed, usually viewed this issue in its most dramatic but numerically declining form: that of capitaly condemned convicts.

IV. Competing Images of "Public Justice," 1800-1830

Another increasingly significant development in the administration of pardon during the early nineteenth century was a tendency to view standards of punishment in a wider, more abstract and uniform context rather than within the specific community contexts in which they arose. Home Secretaries did not cease to endorse the basic tenets of a criminal code aimed primarily at selecting examples for purposes of general deterrence. But certain structural developments - a growing reliance on more extensive written and printed records, as well as a growing interest in the application of criminal statistics - promoted a tendency to see the context of that deterrent example in more abstract terms rather than the specifically localized ones that had underscored the practice of judicial references in pardon cases.
This second theme forms an inextricable strand in the emergence of an intellectually coherent, sustained and ultimately successful critique of the discretionary system during the early nineteenth century. Blackstone, it will be recalled, defended the discretionary system on both ideological and functional grounds: first, because it reiterated the symbolic tie between subject and monarch; and second, because it provided a necessary means of mitigating a capital code which could not effectively achieve its purposes if enforced according to its strict letter. Less than a century later Henry Brougham would directly respond to both of these assertions:

It is said that the power of pardoning gives a character of mercy to the sovereign or the government, which tends to strengthen their authority; and it is also said that the provisions of the law are sometimes too harsh, and therefore they should be relaxed. But just in so far as the prerogative of mercy interferes with the due administration of justice, it is an impure and illicit source from which to draw favour towards the Government. That favour will arise from the legitimate use of power, and this is sufficient. Next, if the law is too severe, it ought to be amended, and its amendment is only delayed by this bad substitute of particular action for a general rule.\(^{141}\)

In fact the narrower ideological function does not seem to have formed a particularly compelling strand in the debate on the discretionary system during the early nineteenth century. This was presumably a function of the extent to which, after 1790 and certainly by 1810, it was self-evident that "the King's government" was his in name only. Critics such as Thomas Wontner and Edward Gibbon Wakefield understood that the effective power of pardon ostensibly resided in the Home Secretary and not the monarch, and this fundamentally altered the abstract moral equation to which Blackstone had alluded in defending the discretionary system. Ministers, who had long been understood to deal with the more prosaic realities of governance, were never free from suspicion of partiality in the way that the

monarch could be. Critics of discretion were therefore that much more likely to view pardons as a means of influence peddling rather than as a symbolic reiteration of the ties between sovereign and subject.

However, the debate over discretionary justice was organized primarily around how to interpret its functional purposes rather than its ideological ones. Critics focused primarily on two issues: certainty and proportion of punishment. Punishment only served its deterrent purpose if criminals truly believed that they were certain to be punished for their deeds. But such certainty was not to be had in a penal code which ostensibly punished every serious crime by death. Instead victims would be deterred from prosecuting an offence for fear that the full, disproportionately severe letter of the law might be enforced. And criminals, knowing both the reluctance of prosecutors to run the risk of condemning them to death, as well as the "lottery" which critics believed the system of pardon decision-making to be, were only too willing to take their chances. These reservations were expressed in the late eighteenth century by commentators such as William Paley and Patrick Colquhoun (both sympathetic to the preservation of the capital code in many instances), were taken up by Romilly and others in the early nineteenth-century campaign against the capital code, and finally enshrined as conventional wisdom in the 1836 Criminal Law Commission which immediately preceded the Whigs' reduction of the capital code to only eight offenses the following year.142

In fact Home Secretaries had long been concerned about certainty and proportion

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within the context of the discretionary system. Such concerns clearly underscored Grenville's response to one of the most dramatic events at the outset of transportation to New South Wales: the refusal of several Old Bailey convicts to accept it as a condition of pardon. One person had done this in 1787 and two others on separate occasions in 1791, but all of them were fairly easily cowed into submission by the judge. In September 1789 however no less than eight did so, of whom three men remained obstinate long enough to provoke a minor crisis. The presiding judge felt that, as the King's intention of showing mercy had already been made explicit, the threat of immediate execution favoured by the Home Secretary as a mode of persuasion was legally invalid. But the acknowledged ability of a convict to refuse a specific condition of pardon fundamentally jeopardized the claim that discretion might serve to ensure certainty and proportion in punishment. Worse still, if convicts could do so without the King being able to retract his stated intention to pardon them, they might thereby unilaterally "exempt themselves from all punishment." As it happened, the three convicts in question submitted after four days, and it was not until 1797 that the Law Officers explicitly determined that acceptance of a pardon condition on the part of the convicts was not necessary to its being enforced.

A mutually understood concern for proportion similarly also seems to have underlined Peel's assurance to one trial judge in 1824, after the latter had apparently sentenced two convicts to transportation when they ought to have been imprisoned, that

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143 OBSP (Jan & Feb 1787): 328-9 & 462-3; AR 33 (Chron 1791): 23 & 40; and GM 51 (1791): 484.

144 H.M.C., Dropmore MSS, 1:516-24 (quote at 517). The Lord Chancellor believed that the pardons were not valid until physically in the prisoners' possession, and that it therefore remained to the court to exert its authority to carry out the original sentence if they remained obstinate (pp.522-3). See also Add MS 59356 ff.59-60, 61-2, 63-4 & 65-6; HO 13/7 pp.237-9; and OBSP (Sept 1789): 888-92.

145 HO 13/11 pp.204-5 & 225. The statutory authority invoked was the Transportation Act of 1784 (see above, pp.231-2).
I will take care that they are not removed from the Gaol of the County until the Judges can have considered the legal effect of the sentence passed upon them by Your Lordship - and at any rate they will not be placed in a worse situation than if a Sentence in precise conformity with the Law had been passed.\textsuperscript{146}

Yet it must be conceded that proportion was liable to be a crude achievement at best when, in the first instance, judges and Home Secretaries recognized only a very limited range of sentence-lengths and types of punishment and, secondly, alterations on the grounds of individual circumstances were not a matter of systemic review, but rather had to be initiated by the convict or someone else on their behalf. On the other hand, it can also be fairly pointed out that a penal code of complete certainty and proportion remained an unattainable ideal even after the end of the capital system and, indeed, that discretion has remained essential to the operation of modern-day criminal codes.\textsuperscript{147}

Textual resources were a crucial means by which the aims, not only of functional expedience, but also of achieving certainty and proportion, were intended to be met. We have already noted the use of the Sessions Paper and Criminal Register in attempts to ensure the punishment of all convicted offenders in the case of metropolitan pardons. In the short run, resort to such materials shored up a pardon system which was increasingly burdened by the pressure of numbers. But in the longer run, to the extent that most such records could be and were read by the larger public, they must also have eroded confidence in discretionary justice precisely by suggesting the extent to which the achievement of certain and proportionate punishment in individual cases might be a contingent rather than an assured outcome. I hope to make this latter possibility the subject of future research. For the present, \textsuperscript{146}Add MS 40363 ff.71-2.

\textsuperscript{147}Radzinowicz, History, 5:723-40; and C.Emsley, Crime and Society in England, 1750-1900 (2nd ed., 1996), 269-70. "That an absolute certainty of punishment is, however, quite unobtainable, is clear," conceded Romilly as early as 1785; see Observations Upon Thoughts on Executive Justice (1785), reprinted in The Opinions of Different Authors Upon the Punishment of Death, ed. B.Montagu (1809-13), 1:146.
my concern is to demonstrate how the Home Department’s use of texts constituted, not only a response to concerns for certainty and proportion, but also how it simultaneously generated a more abstracted and centralized conception of criminal justice administration.

The use of texts such as the Sessions Paper and provincial newspapers reflected - and surely also reinforced - a growing attention to evidentiary concerns. Recent studies of the criminal trial during the late-eighteenth century have identified a growing concern about standards of evidence as a major dynamic in the development of the modern criminal trial. This development was particularly noticeable with respect to medical issues, one writer of 1809 noting that "the value of applying to medical gentlemen, to aid the judge and the jury in their opinion and verdict, in criminal cases, is already felt ... at the Old Bailey ...." It was probably driven, in part, by the increasing presence and activity of lawyers in trial, especially when employed by the defence. John Beattie has suggested that the admission of defence counsel in criminal trials, which was not sanctioned by law until 1836, was tolerated and perhaps even encouraged by judges who were concerned that many defendants were too ignorant of legal matters and too dazed by their circumstances to mount fair defences for themselves. One judge at an Old Bailey trial even went so far as to recommend that the Home Secretary should consult the convict’s counsel, the notoriously aggressive advocate William Garrow, and went to some trouble to consult Garrow himself

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148 J. Carr, Caledonian Sketches; or, A Tour Through Scotland in 1807 (1809), 101. For the increasing sophistication of insanity evidence in Old Bailey trials during this period, see J. P. Eigen, Witnessing Insanity: Madness and Mad-Doctors in the English Court (New Haven, CT, 1995).


before submitting his final opinion on the case.\textsuperscript{151}

These matters are important because pardon procedure was often understood as a judicial proceeding in itself, and not necessarily an easily influenced afterthought to trial. One Under Secretary of the 1760s characterized the Recorder's Report as "a kind of double [ie.second] Chance," suggesting that its uniqueness was the reason that individual cases not included in the circuit reports were considered at all.\textsuperscript{152} If pardon was viewed as a secondary trial procedure, then it is not surprising that judges and Home Secretaries seem to have felt themselves obliged to ensure some adequate degree of attention to issues of evidence. By the second decade of the nineteenth century, there are a number of instances where they were clearly giving this sort of attention to individual cases. Home Secretaries often requested that judges send not only a report of the case but also their own notes of the trial.\textsuperscript{153} Indeed several judges' reports from the early nineteenth century are virtually trial transcripts, suggesting an ever more encompassing attention to detail.\textsuperscript{154} The sort of attention which Peel sometimes paid to the individual details of some cases is particularly striking. In one Scottish case he asked Hobhouse whether or not it was "possible to recognize a body eight weeks after death from any appearance of the skin?" He contemplated a reference to the Law Officers for consideration of this issue, and had Hobhouse submit a


\textsuperscript{153} HO 13/21 p.258; HO 13/29 p.101; HO 13/45 p.129; and Add MS 40381 ff.118-9.

\textsuperscript{154} Gatrell also notices the increasing volume of case reports during the early nineteenth century, and attributes it to the fact that "the Home Office was reacting more conscientiously or cautiously too" (\textit{Hanging Tree}, 206-7).
detailed forensic inquiry on the matter to a medical expert.\textsuperscript{155} There are also a few case reports in which judges provided maps of the area in order to establish the practical possibility of the events having transpired as asserted.\textsuperscript{156} Such examples indicate a much closer attention to details of evidence than is to be found in the late eighteenth-century case reports.

They certainly imply a greater degree of such attention on the part of decision-makers than either the reformers’ account of pardon-procedure or that of its earlier historians have suggested. Lord Melbourne, Home Secretary in the Grey ministry, claimed that "he used to go through the cases when there was no doubt about the propriety of the sentence being executed" and "recollected … having been four or five hours with Chief Justice Lord Tenterden examining precedents" in one instance.\textsuperscript{157} We cannot of course be certain that all cases received such attention from either judges or the Home Secretary - and this uncertainty was a major plank in the reformers’ case. By the same token, it seems likely that, then as now, most cases did not self-evidently warrant as close a scrutiny as others.

Although I have not yet determined how the surviving sources might enable me to answer the question more definitively, my overwhelming impression is that - certainly in those case where a convict faced execution (and these were the cases which critics of the discretionary system emphasized) - serious attention was paid by both judges and Home Secretary to ensuring that all evidence had been considered. But no matter the extent to which this was

\textsuperscript{155}Add MS 40357 ff.307-8; and HO 13/41 pp.86-8. See also Add MS 40358 ff.3-4 & 9; and Add MS 40373 ff.253-8.

\textsuperscript{156}See for instance, HO 47/56 (J.Rawlinson to J.Fleming, 5 April 1817). For other such cases between then and 1830, see HO 47/59, 63, 67 & 72 passim.

\textsuperscript{157}Recollections of a Long Life, by Lord Broughton (John Cam Hobhouse) with Additional Extracts from His Private Diaries, ed. Dorchester (1910-11), 6:106.
the case. It seems certain that the growing weight of expectation that was coming to bear in these matters was so great that critics of the discretionary system - many of whom were clearly unaware of the Home Department's use of textual resources - simply did not find it credible that it was being met.

The desire of Home Secretaries to receive the maximum amount of information on a case also reiterates the extent to which, as appears to have been the case after 1813, they were increasingly determined to decide the merits of individual cases for themselves. This draws our attention to a second aspect of a more extensive reliance on texts: the extent to which such a practice promoted a growing centralism in the approach of Home Secretaries to decision-making in pardon. I have already noted the sometimes explicit attention which Secretaries of State paid to the community context of a convict's case in the 1760s. The unique capacity of the circuit judges to gauge the local context of each case underscored the practice of requesting a report from them, so much so that Viscount Stormont once refused to assign a condition of pardon that had not been determined by the trial judge. A similar attentiveness to the knowledge of officials on the spot was displayed by Sydney during the 1780s.

This contrasts sharply with the apparent decline in the practice of referring cases to the circuit judges after 1813. This refusal did not stem solely from any straightforward conviction that textual resources were an adequate source of the local information necessary for the Home Secretary to make a determination on the case. It also stemmed from a growing conviction that one crime was very much like another and ought therefore to be

158 Wakefield, *Punishment of Death*, 235-47 (esp.236); and [Wontner,] *Old Bailey Experience*, 136 & 140.

159 HO 13/4 pp.211-3; and HO 13/5 pp.351-2. For Stormont in 1781, see above at p.378.
punished the same way. Sidmouth enunciated this principle in 1820 when seeking to override the King’s impulse toward mercy during a Recorder’s Report:

He ... stated that several convicts had been executed during the present Assizes, to whom upon the principle of an act of grace mercy should be extended, and that the accident of a crime being committed in one County or another ought not to make any difference in apportioning the punishment.

Similarly Peel once showed mercy in the case of two convicted burglars in Scotland because "had the case been tried at the Old Bailey and reported to the King, the Council would not I am sure have left the Men for execution."^160

Perhaps the most compelling indication of a growing belief in penal uniformity at the centre was an ambition to use statistics about the incidence of crime in order to apportion pardons more carefully and precisely. The Home Department first attempted to secure returns of criminal committals to all county gaols from the sheriffs in 1789 and again two years later, although the intention underlying this seems to have been limited simply to expediting the removal of transports to the hulks.^161 It was only with Lord Pelham’s request for that information in 1802 that an underlying intention was first expressed "of ascertaining at all times the general state of the Country with respect to the number and nature of offenses committed, and with respect to their increase or diminution."^162 Pelham appears to have been responding to the ideas and activity of Sir Jeremiah Fitzpatrick, who had urged on both Dundas and Portland the desirability of compiling a "Criminal Chart" of the nation which could then be used to determine which measures would most effectively

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^160 Hobhouse Diary, 17; and Add MS 40360 f.69v.


^162 SP 44/416 (Pelham to Visiting Magistrates of County Gaols in England & Wales, 25 Jan 1802); and HO 43/12 pp.253-4.
address the problem of crime in its various aspects.\textsuperscript{163}

The regular collection of nation-wide committals data was the achievement of Lord Hawkesbury (subsequently the second Earl of Liverpool) during his two terms in the Home Department during the first decade of the nineteenth century. Hawkesbury seems to have had a particular flair and inclination for administrative improvement and centralization, one which he may have inherited from his father’s long experience as a government functionary.\textsuperscript{164} In a letter to the King, Hawkesbury stated that the explicit purpose behind collecting information on criminal committals was the considerable advantage [which] may arise in the administration of justice from your Majesty’s Judges being regularly informed of the state of crimes throughout the country in each year, and of such as may be either increasing or decreasing.\textsuperscript{165} It is interesting to note that Hawkesbury sought to collect this data for Scotland and Ireland as well - a striking indication of a growing perception of crime as a problem of truly national rather than specifically local dimensions.\textsuperscript{166}

There were some hindrances at the outset. There was an initial confusion amongst the county sheriffs about the extent of the data required, many of them not realizing that

\textsuperscript{163}N.L.S., MS 1041 ff.22-3; and Add MS 33105 ff.325-6.

\textsuperscript{164}N.Gash. \textit{Lord Liverpool: The Life and Political Career of Robert Banks Jenkinson, Second Earl of Liverpool, 1770-1828} (1984), 8-9. In December 1792 the elder Hawkesbury requested that Nepean provide him with “a short Abstract of the most material facts which have come to the Knowledge of Government” of the various “Riots and Insurrections” in the country at that time - a clear indication of the administrative temperament that his son was to display at the Home Department (HO 42/23 f.277).

\textsuperscript{165}Later Corr. George III, no.3018. The King professed himself “highly pleased” with this effort to improve “the Sources of intelligence on the State of the Police of the overgrown Metropolis as well as of the rest of the Kingdom ….” (MS Loan 72/1 f.135). On later occasions Hawkesbury submitted to him the tabulated figures for 1805 and 1808 (Later Corr. George III, nos.3178 & 3849).

\textsuperscript{166}SP 44/416 (Hawkesbury to Sheriffs of England & Wales, & Chairmen of Quarter Sessions, 17 July 1804); HO 103/4 pp.63-5; and HO 122/7 ff.123-4. In this connection it is interesting to note that the first attempt in 1814 to pass the legislation which made routine the collection of the data was considered in tandem with legislation “for the more easy apprehending and trying of Offenders escaping from one Part of the United Kingdom to the other” (54 Geo.III, c.186). See below at n171.
committals data were required for Quarter Sessions as well as Assizes.\textsuperscript{167} When the sheriffs subsequently failed to provide the information in 1805, Hawkesbury then sought to procure it from the county Clerks of the Peace and the chief magistrates "of places having a distinct jurisdiction for the trial of crimes."\textsuperscript{168} However, unlike the sheriffs, these officials had no formal responsibility to central authorities, and many of them were unwilling to perform the task without compensation for the expense which it entailed.\textsuperscript{169} But Hawkesbury - as well as Spencer, on whom he impressed "very particularly" the importance of this subject - persisted, and further refined the nature of the data collected during his final months in the Home Department in 1809.\textsuperscript{170} The collection of the national committals figures was finally made routine and paid for by legislation passed in 1815.\textsuperscript{171}

\textsuperscript{167}See the various individual and circular letters of September 1804 (HO 43/15 pp.34, 36, 39, 40, 44, 52 & 54). Quarter Sessions committals were requested from the Middlesex magistrates by a letter of 30 November 1804 (HO 13/16 p.273).

\textsuperscript{168}HO 42/99 ff.207v-208v; SP 44/416 (J.King to Clerks of the Peace for England & Wales, 16 March 1805; & Hawkesbury to Mayors & Chief Magistrates of England & Wales, November 1805).

\textsuperscript{169}SP 44/416 (Beckett to various Clerks of Counties & Circuits, 13 March & 16 July [2 letters], 1810 & 25 May 1811); and HO 43/18 pp.75 & 100-1. The request of the Lancashire Clerk for more than the set 5 guinea fee in consideration of "the great extent of the County and the number of Criminals exceeding that of most other Counties" was rejected (HO 43/18 p.262). From 1812 the Treasury supplied William Day with £150 per annum to be disbursed amongst the local officials who compiled the data for the national registers (HO 36/15 pp.383-5; HO 36/17 pp.49-50, 239, 340-1 & 478; HO 36/18 pp.115, 307 & 488; HO 36/19 pp.83, 238, 339-40 & 461; and HO 36/21 pp.11-2, 91, 176-7, 260, 364 & 456).

\textsuperscript{170}Later Corr. George III, no.3178. It became standard practice to request the data in an annual letter from one of the Under Secretaries issued every December; see SP 44/416 (10 Dec 1806; 10 Dec 1807; 1 Dec 1808; 12 Dec 1810; 14 Dec 1811; & 12 Dec 1814, the last such letter). For the refinement of the data in 1809, the nature of which I am as yet unable to determine, see SP 44/416 (Liverpool to Senior Judges on Circuits, 3 July; C.C.C. Jenkinson to Chief Justices of Welsh Circuits, s.d.; & Jenkinson to Clerks of England & Wales, s.d. & September).

\textsuperscript{171}The passage of this Act (55 Geo.III, c.49) in tandem with three others - to ensure the role of clergymen in gaols (55 Geo.III, c.48), to abolish fees in gaols (55 Geo.III, c.50), and "for the more easy apprehending and trying of Offenders escaping from one Part of the United Kingdom to the other" (54 Geo.III, c.186) - may be indicative of a substantial effort on the part of the Home Department to centralize key aspects of convict custody in 1814-15. All four measures had been attempted in 1814, but three had to await the next session before passing. It is interesting to note that, as in Hawkesbury's original conception, the first draft of the Act to Procure Returns of Committals was meant to cover all of Great Britain and not just England and Wales (J.H.C. 69 [1813-14]: 517). The correspondence of this effort with Baldwin's death in late 1813 and the new practice in
In fact Hawkesbury intended that the data collected should be used by the judges to render more precise those impressions of local levels of criminality which partially informed their decisions as to how many offenders should be hanged or otherwise punished for a particular offense at a given time.\(^1\) But I have been unable to discover a single judge’s report in which statistical data were invoked, so it is likely that the judges continued to base their decisions on their general impressions of crime levels, as well as on other local information and pressures.\(^2\) I suspect however that Home Secretaries made extensive use of these data in their own decisions, particularly after 1813 when they ceased to refer cases to judges as routinely as they once had.

It is difficult to say whether Home Secretaries evaluated individual cases in their county context or a larger national one. If the former, then the practice of collecting data may have tended to reinforce the community-based orientation of pardon decision-making. But in the surviving tabulations of committal figures amongst the Home Office papers, figures for executions - the most serious and most strongly contested component of the criminal law - were invariably expressed in national terms rather than county-by-county.\(^3\)

\(^1\)The desire to collect the data has traditionally been ascribed to the parliamentary debate over capital punishment; see Radzinowicz, *History*, 1:395 n51; and V.A.C. Gatrell & T.B. Hadden, "Criminal Statistics and Their Interpretation," in Nineteenth-century Society: Essays in the Use of Quantitative Methods for the Study of Social Data, ed. E.A. Wrigley (Cambridge, 1972), 341. But letters explicitly requesting similar data for parliamentary purposes are clearly differentiated in the Circulars Entry Book (SP 44/416 passim). At any rate the data were being collected from 1805 - three years before sustained parliamentary debate over capital punishment was initiated by Romilly. And Capper confirmed that the question "was first taken up by Lord Hawkesbury" in his testimony before the Select Committee on Criminal Laws in 1819 (PP[HC] 1819.viii.20).

\(^2\)Based on a survey of the Judges’ Reports, 1784-1830 (HO 47/1-75). There may be some reports in the petition archive which I have not yet surveyed (HO 17).

\(^3\)The earliest surviving computations can be found at HO 42/91 f.723 (1807 crimes and sentences by county, with national totals for executions); HO 42/99 f.366 (1805-8 committals by county, with crimes, sentences and punishments expressed as national figures); and HO 42/109 ff.18 & 20 (1810 crimes, sentences and punishments given as national totals only). The only returns preserved amongst Liverpool’s own papers are for death sentences, executions and transportation sentences in 1805 and 1806 (Add MS 38339 ff.163-4). The
Indeed it is likely that such figures had to be expressed in national terms in order to be large enough to acquire statistical significance. This, coupled with Sidmouth's injunction to the King in the 1820 Recorder's Report cited above, leads me to suspect that Home Secretaries were increasingly animated by an abstract national rather than a specifically local orientation in considering their pardon decisions. Criminality was therefore amongst the earliest subjects of that process of statistical collection and manipulation through which, as Mary Poovey has argued, a new "social body" came to be articulated during the nineteenth century.

Further research on this issue is necessary, but the use of statistical data as an aid in determining pardons formed a clear step in the long-term process by which the determination of individual cases was extracted from the ostensibly unique local context of each one, and situated in a more uniform conception of "crime" that was now believed to have nation-wide relevance and application.

Between 1770 and 1830 then, the geographically specific concept of "community" was being supplanted in the minds of statesmen by a more nebulous conception of "the public." A particularly striking manifestation of this change was the growing practice among Home Secretaries, when rejecting applications for pardon, of invoking their "public duty" or consistency with a standard of "public justice." The earliest use by ministers of this language in mitigating punishment dates from Grenville's assumption of the Home Department in June 1789. They are a common feature of rejections by the end of the 1790s. This was a

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176 Grenville invoked "the Ends of Public Justice" in recommending to judges that they show mercy in two cases, the first (the day after he accepted the Seals) a hanging and the second a whipping (HO 13/7 pp.64 & 77). However Sydney had once rejected a pardon plea on the grounds that the respite had "been obtained by misrepresentation in order to elude Public Justice" (HO 13/3 p.45).
decade during which anxiety about events in France and the potential for disorder and rebellion at home led many members of the political and cultural elites to pay particular attention to the cultivation of patriotism and of loyalty to the established order of things, a process in which the burgeoning popular press played an integral role. The emergence and development of a nation-wide conception of crime and criminal justice, similarly promoted by the expanding press, may have been an integral strand in these developments.

By the early nineteenth-century, the invocation of "public duty" and "public justice" - an implicit acknowledgment of some uniform standard against which the perceived legitimacy of a decision ought to be measured - was a regular justification in declining pardons. Its nationally uniform character in the Home Secretary's mind was implied in 1824 when Peel had to decide whether or not a pardon would be appropriate for one of the principals in the notorious Thurtell-Hunt murder case. Although he had already determined that "the general feeling" in the area where the murder had taken place "was that no dependence could hereafter be placed on the faith of public authorities concerned . . . if Hunt should be executed," Peel nevertheless asked his Under Secretary to sound out "The prevailing feeling in London among those whose opinion is worth having" before making his final decision. By no means were purely local considerations necessarily to decide the matter.

I must emphasize, first, the tentativeness of this broad argument (I hope to pursue it

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178 Add MS 40360 ff. 70v-71. See the other references to this case above at n139.
at greater length in future work), and also the limits on reading it too literally. The "community" implied by a county-wide structure of assizes makes scarcely more sense than any larger community of "England" (or "Great Britain"). The physical extent of discrete communities, on which any public punishment could be expected to have a direct effect, would have been very small indeed. And the execution or transportation of prisoners after assizes, often far from the scenes of their crimes and the people amongst whom they had lived, must have had an impact on their communities that was far less potent and direct than the language of the concept implies. We are talking about a mental transformation rather than a literal, phenomenal one - albeit a mental transformation which must have derived strength and credence from the growing ease of transport and communication within Britain during these decades, as well as the culturally homogenizing influence of a widening popular press.179

The increasing self-confidence of Home Secretaries in making decisions without reference to trial judges was one symptom of that habit of viewing "criminal justice" in a nationally uniform fashion which has subsequently become so persistent a feature of historical writing on the subject. The potency of these related developments is clear in a story related by the poet George Crabbe in January 1828. Crabbe and a friend had been appalled by the flippancy with which local magistrates had determined the punishment of a serving girl who had stolen some cups and saucers valued at 4s. 6d. from her master. On hearing the plea which Crabbe's friend made on her behalf, the magistrates changed the girl's sentence from six months' imprisonment and an impossibly large fine of £40 to one in

179This reiterates Benedict Anderson's argument that all communities are better understood as culturally "imagined" rather than physically literal phenomena; see Imagined Communities: Reflections on the Origin and Spread of Nationalism (rev.ed., 1991).
which the fine was commuted "for six other Months of solitary Confinement." Crabbe’s friend successfully appealed to the Home Department for commutation of the sentence, whereupon the magistrates took the two of them to task for the accuracy and temper of the observations which they had made in their petition on the magistrates’ conduct. Crabbe’s confident expectation of vindication is revealing:

... I think the [magistrates] will not be indiscreet enough to publish in the papers what they formed into Resolutions [against us], but let the matter die, if not & appeal be made to the public, they will in my Opinion loose much more than they are aware of. The sentence was severe & so the public will judge.180

Crabbe’s story and its underlying assumptions encapsulate all of the developments noted here: the emergent willingness of the Home Department not simply to confirm the local content of judicial determinations, but also to override them in the interests of imposing a punishment more proportionate to the offense, and the basis of that sense of proportion in a more abstract notion of "public justice" which the press played a central role in both questioning and re-affirming.

V. Conclusion

In describing the ways in which the Home Department sought to ensure the certain and proportionate punishment of convicted offenders, I am aware of running the risk of painting too optimistic a picture of a process to which no one would ever want to be subjected. No doubt critics such as Victor Gatrell are right when they assert that many people died on the gallows for what must have seemed, sometimes even by the standards of their own day, inadequate or unjust reasons. But Gatrell both exaggerates the numerical persistence of capital punishment - far more people were hanged during the 1780s than the

1820s - and oversimplifies the mind-set of those who had to determine what punishment ultimately befell each convicted offender. Admittedly some decisions during the late eighteenth century could seem appallingly unjust by modern standards. Consider the Recorder of London's account of how the case of the notorious thief Patrick Madan was decided in 1782:

His Majesty said, 'Mr. Recorder, is not that an old acquaintance of yours?' 'Yes, Sir,' said the Recorder, 'older than is to his credit.' Said Lord Thurlow: 'Mr. Recorder, don't you think the evidence on which he is convicted very slight, to say no worse?' 'I do,' said Adair. 'What, Mr. Recorder,' said the King, 'do you think it not sufficient?' 'I do, Sir,' said Adair, 'and there is not another of Your Majesty's subjects who would have been convicted upon it.' 'Well,' said the King, 'we do not sit here to try people's characters. He must not suffer. But what shall we do? He is a very bad man. We must not turn him loose upon the community.' Said the Recorder: 'Sir, since a jury has put him in Your Majesty's power, you do him no injustice when you save his life, though you send him to the coast of Africa'; and so was decreed.¹⁸¹

Madan was undoubtedly not the only known recidivist whose case was not decided solely according to his guilt or innocence of the offence at hand. But the paucity of surviving source material makes it impossible to quantify this issue in a manner which might assuage the concerns of historians wanting to argue for either the regularity of the arbitrariness of the discretionary system.

For similar reasons, I have not attempted to engage the recurrent debate over whether pardon decisions were determined on the merits of individual cases or on the social standing of those who petitioned on behalf of individual offenders.¹⁸² To begin with, it should be pointed out that the process by which most offenders received pardon - by inclusion in a circuit pardon - is largely hidden from view. It seems reasonable to believe that their cases


¹⁸² See the references at n14 above.
were discussed by judges and local officials during the course of the assizes and that local social dynamics were often an important determinant, but we have very little direct evidence of these matters. As to those individual cases for which we do have some documentation, even if we could find instances where a socially prominent petitioner's case was decided favourably on the explicit basis of evidentiary matters alone, one might still plausibly (if unprovably) insist that social considerations were an implicit factor in their final disposition. \(^{183}\)

At any rate, there need be no contradiction between an assertion that the administration of pardon met some reasonable evidentiary standard and that, at the same time, it might satisfy the desire of a petitioner to affirm their status in the eyes of individual convicts, of the local community, and of themselves. When a young servant named Mary Hall was convicted of infanticide at the Winchester assizes in 1772, she was fortunate enough to have her case petitioned by no less a figure than the Duchess of Northumberland. Notwithstanding the status of the petitioner however, Secretarial correspondence on the case reveals a scrupulous focus on the issue of establishing Hall's guilt or innocence before making any decision in her case. Such attention to the evidence of the case, however, by no means precluded the satisfaction which the Duchess took in Hall's ultimate pardon on condition of seven years transportation:

My Joy upon this Occasion is not to be described, both as I look'd upon her Case to be desperate, and that it should please God to make such a Weak Being as myself the Instrument of saving the Life of this poor Creature. \(^{184}\)

Late eighteenth-century observers were constantly of two minds as to the question of social

\(^{183}\)Gatrell, Hanging Tree, 613-4.

\(^{184}\)Add MS 34460 f.500; Cal. HO Papers, 3:576; and The Diaries of a Duchess: Extracts from the Diaries of the First Duchess of Northumberland (1716-1776), ed. J.Greig (1926), 194.
influence versus evidence of individual guilt as factors in determining pardon. A virtual intermingling of such considerations was revealed by Edmund Burke in 1789 when petitioning on behalf of an Irishman convicted of stealing and sentenced to seven years transportation:

The man has an exceedingly good character, and several persons of the first rank in Ireland interest themselves in his preservation. It is not easy to presume innocence after a conviction upon a Trial where there has been no suggestion of hardship: But the thing is possible enough; and the Gentleman, from whom I have received the Petition, and who is no light person, really thinks him innocent: But if it be lookd upon only as a Case in which there are Circumstances of Doubt, or alleviation, when you consider how much the Punishment of Transportation is aggravated beyond what formerly it has been, you will I dare say think with me that there may be a ground for pardon with or without conditions as you may think reasonable, and that you will be pleased to comply with the wishes of so many respectable people as seem concerned for this poor man on whose Life and industry a large family depends.

The tension between considerations of evidence and of social status was also apparent in Burke’s observation to the original petitioner, the Earl of Charlemont:

I have written to Mr Grenville, and had the answer I expected, that he would refer it to the Judge who tried the Cause. Surely some of those who have Interest with the Ministers were more properly applied to.

It is somewhat more difficult to say how and to what extent this changed over time.

My own impression from a reading of pardon documents over a long period of time is that, although a petitioner’s standing might certainly impel a Home Secretary to do everything possible to view the case favourably, it was unlikely to be the decisive factor where the offence was serious and an example of some sort necessary. When directly confronted with this question in 1825, Peel was adamant that in no single instance has Mercy been extended to a Criminal as the consequence of mere solicitation, however indefatigable. ... I never decide upon the Application in favour of any Convict upon any other consideration than those of the Merits of the

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185 Burke Correspondence, 6:8-9 & 12.
Finally those who would assert the relevance of social standing in reducing a sentence from death to transportation for life, or from transportation to a long stay on a prison hulk, might consider how far such "mercy" can be said to reflect a powerful extension of a petitioner's social influence. When Wellington asked Peel to spare a convicted burglar in 1824, Peel insisted "however that he must be sent out of the Country." Since the judge had not pronounced death on the convict in the first place, the condition of Peel's "mercy" cannot have been very much better than that which the convict could already have expected.187

Evidence of guilt and of character, the latter undoubtedly including questions of social status, remained the crucial considerations in deploying the power of pardon to determine punishment. These were the matters on which the Home Department had to find means of securing reliable information in the face, not only of mounting numbers of cases, but also of rising evidentiary standards in regard to the issue of guilt. Given the growing distaste for even the possibility of execution for most offenses, and certainly for those involving property, this was a standard whose actual achievement must always have remained debatable, even to those few observers who were aware that the Home Department actively sought accurate information on which to make such judgments.

Few such reservations existed within the Department itself before 1830. The bureaucratic support and informational resources that had been developed, coupled with the increasingly well-established character of such secondary punishments as transportation, the hulks and imprisonment, emboldened Home Secretaries to take more and more of the final

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186 Add MS 40382 ff.251-2.
187 Add MS 40306 ff.47 & 48.
responsibility for the disposition of English convicts into their own hands. This is the only way in which to explain the dramatic and permanent drop in the number of references to trial judges following Baldwin’s death in 1813. Such inclinations and confidence both reinforced and, in turn, were reinforced by an increasingly abstract, uniform and centralist perspective on the administration of criminal justice.

This actively centralist perspective was particularly characteristic of those Home Secretaries who came to the office after 1801. William Pitt, by his domination of both the Commons and of most other aspects of government business, always maintained effective limits on the extent to which any of his Home Secretaries might develop a truly centralized administration of criminal justice in England. Such initiatives as were acted on were confined to the metropolis. Those aimed at a genuinely centralized administration of criminal justice in Great Britain - one more generally supported by parliament, Treasury, and Home Department alike - only began to appear under the Addington ministry and its successors. It to this development that we turn in our concluding chapter.
APPENDIX 6.1

Pardon Procedure in the 1780s

Initiative (1)

Petition

Under Secretary

Home Secretary

Initiative (2)

Respite

Reference & Report

Decision:
King or Home Secretary
APPENDIX 6.2

Pardon Procedure in the 1820s

Initiative (1)

A) Petition → B) Judge → C) Visiting Magistrates

Initiative (2)

Criminal Branch

Under Secretary

Home Secretary → Respite → Reference & Report → Decision: Home Secretary
CHAPTER 7

CONCLUSION: CONTINUITY AND CHANGE

Between 1801 and 1805 six more Local Acts were passed authorizing the reconstruction of gaols in Kent, Winchester, Aberdeenshire, Lincolnshire, Portsmouth and Carmarthenshire. During these years there also emerged a new figure to take up the cause of prison inspection and publicity whose first champion, John Howard, had died of typhus after visiting a prison in Russia in 1790. From 1804 to 1810 almost every issue of The Gentleman's Magazine contained one of James Neild's reports of his visits to prisons throughout the country. They indicated that there was still much room for improvement in the separation, classification and healthy maintenance of the nation's prisoners. However the major impetus behind the reform of prisons continued to be those local authorities who were responsible for their upkeep.

In the midst of this conventional pattern of development, however, two government measures stand out. In March 1802 the Addington ministry provided the necessary renewal of the Transportation Act. While the bill was before the Commons, the government added to it a clause establishing an Inspector for the hulks. The clause was presented by Addington himself, who added that none other than the King, "having been informed of the Subject

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141 Geo.III (P&L), c.132; 42 Geo.III (P&L), c.47; 42 Geo.III (P&L), c.96; 43 Geo.III (P&L), c.58; 45 Geo.III (P&L), c.44; and 45 Geo.III (P&L), c.103.

Matter of this Motion, recommends it to the Consideration of the House. The new Hulks Inspector was Aaron Graham, the magistrate whom, three years earlier, Portland had assigned the task of reviewing the hulks establishment at Portsmouth. From 1802 forward, the Commons and the Lords received annual reports from the Inspector as to the anticipated cost of the hulks establishment. The appointment of a paid Inspector for the hulks marks the first acknowledgment of a permanent, self-consciously custodial role for the central government in the disposition of the nation’s criminal offenders.

Further acknowledgment of such an active and permanent role came with the renewal of this Transportation Act only six months later (four-and-a-half years ahead of schedule). This new measure sanctioned the transportation of convicts to New South Wales in naval vessels as well as by private contractors. Transportation continued to proceed mostly by the latter mode, but this Act signified government’s readiness, not simply to remove convicts regularly, but also to take what measures might be necessary to do so in a timely fashion. It was also meant to ensure the regular relief of the hulks and - in the same way that Paul and

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342 Geo.III, c.28, s.2. See also J.H.C. 57 (1801-2): 223; and Parliamentary Register 1796-1802, 17:170-1. In fact the King was far less enthusiastic than that, lamenting the expense of transporting convicts and of keeping them on board the hulks alike. He wished that his government would devise "such a regular plan of sending the convicts to New [South] Wales as may prevent their being detained here in the hulks; as to the reforming the morals of those who have deserved that punishment, the King from now long experience is not sanguine in expectations on that head" (Add MS 33115 ff.56-7).


543 Geo.III, c.15. See also Woodfall’s Debates, 1802-3(1): 264; Parliamentary Register 1802-3, 1:435-6; and Bentham Correspondence, 7:160-1 & 163-4.

6 This desire seems to be confirmed by a Home Department memorandum of 1801 which anticipated an annual need to transport 500 men and 100 women from Britain (plus 100 men and 20 women from Ireland) to New South Wales (HO 42/62 ff.647-8; copy at Add MS 33122 ff.77-8).
other local magistrates conceived of the relationship between transportation and their penitentiary regimes - to ensure the success of the new regime instituted on board them. 7

During the ensuing decades, the hulks establishment became more extensive and its structure and ambitions more complex. With the collapse of the capital code in the 1820s, the scale of transportation to New South Wales would be vastly expanded. And government would begin to impose minimum standards of care and penal regimen in local prisons with the Gaols Act of 1823. 8 However the basic categories of punishment and the division of responsibility for their execution that was established by the end of 1802 would remain substantially unchanged until the end of transportation to New South Wales and the assumption by the Home Office of the overall supervision of prisons in 1877. It is only a minor exaggeration to say that subsequent developments involved, not so much departures from, as the working out of ideas and elaborations upon institutions and arrangements that had emerged between 1775 and 1802. 9

The developments of the first decade of the nineteenth century reflected changing

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7 For this see HO 42/62 ff.601-5 (esp. f.602; copies at HO 42/62 ff.595-600 & Add MS 33122 ff.180-1 & 71-6). See also HO 13/14 p.105; and HO 42/62 ff.619-20. For transportation and the new gaol regimes, see above Chapter 4, part IV.

8 I hope to treat these issues at length in future work. For some preliminary views on the interaction between the capital code and transportation during these years, see S.Devereaux, "In Place of Death: Transportation, penal Practices, and the English State, 1770-1830," in Qualities of Mercy: Justice, Punishment and Discretion, ed. CStrange (Vancouver, BC, 1996; forthcoming).

patterns, first, in the structures of state authority that have been our principal concern in this thesis and, secondly, in those larger social and cultural developments that informed them.

I. The Structure of the State

A new vision of the nature of relations between centre and periphery was clearly implicit in the Addington ministry’s transportation legislation. And the near-total withdrawal of the King from ministerial activity after 1790 meant that relations between him and his ministers had little impact on those matters with which we are concerned. After 1801 however, important changes took place in the relationships between ministers and parliament on the one hand and in those amongst ministers on the other.

(1) Ministers and Parliament

After the resignation of Pitt in March 1801 the political world reverted to that pattern of factions, royal servants, and independent members that had characterized politics before 1784. The inability of one group to maintain a hold on power without forming alliances with others widened the possibilities for certain issues to have an impact that might have been denied them had they been raised during a more firmly entrenched ministry. This new flexibility may have contributed to that grip over English political life that the issue of the criminal law had after Romilly first raised it in 1808.

More particularly, the events of 1801 brought the followers of Henry Addington to the centre of the political stage. Even in the mid-1790s, some these men had displayed a sympathy with that belief in an enhanced central role in penal arrangements that informed the

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arguments made by men such as Sir Charles Bunbury. Speaker of the House from June 1789, Addington’s loyalty to Pitt was rooted in their shared childhood. The son of Chatham’s personal physician, Addington was Pitt’s closest friend next to Dundas. Like Dundas, he was temperamentally unlike the First Minister. Addington possessed a constancy in his attention to the details of administration that, for all his brilliance in debate, Pitt essentially lacked. He also had a personal self-possession that led him to worry about his friend’s increasingly frequent alcoholic excesses. Addington’s loyalty, both personal and political, was unswerving, but it did not preclude the development of his own personal following in the House. Coupled with a growing degree of political impartiality in the Speakership, this probably enhanced his credibility as the King’s ultimate choice to succeed Pitt in 1801.

Addington hailed from Devon, and his followers were largely based in the West Country. They included his younger brother John Hiley Addington, who was to serve both as Treasury Secretary in his ministry and, later, as his Under Secretary in the Home Department from 1812 to 1818. Reginald Pole Carew, MP for Cornwall, would serve Addington’s ministry as Under Secretary in the Home Department under Charles Philip Yorke. The younger half-brother of the third Earl Hardwicke, Yorke was Addington’s second Home Secretary following the unhappy tenure of Thomas, Lord Pelham. He was closely connected to the Addington family, although his primary political loyalties always


remained with Pitt.\textsuperscript{13} All of these men belonged to that growing number of MPs whose immediate background - if not necessarily their overt social and political character - was in the professions rather than the landed elite, and whose outlook contributed to a growing professionalization in the conduct of parliament and administration after 1780.\textsuperscript{14}

The figure of most lasting import and influence was Charles Abbot, another Cornish MP and the step-brother of Jeremy Bentham.\textsuperscript{15} Abbot had a proclivity for the reform of parliamentary procedure and an astonishing energy in carrying it into effect once it was sanctioned. Many of the procedural reforms over which he presided during the late 1790s seem so basic and indispensable that it is remarkable to think how novel many of them were at the time. His principal concern was the state of British legislation. Less than a year after entering parliament, Abbot secured the first of what became annual committees to identify Expanding Laws. This was a subject of no small import. In 1794 it had been discovered that several Scotsmen convicted of sedition and sent to New South Wales had, in fact, been transported without legislative sanction, the Act allowing the transportation of Scottish felons not having been renewed when required. This did not simply pose a general embarrassment to legislative processes; it also provided several more occasions for parliamentary critics of

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\textsuperscript{13}Commons 1754-90, 2:12-3 & 3:305-6; and Commons 1790-1820, 3:41 & 47-50, 4:845-7, & 5:665-74. In searching for a new Chief Secretary for Ireland, the Lord Lieutenant wrote his brother that "P. Carew I should like exceedingly, and he would also be a particularly good one for many essential points: revenue, police, and indeed almost all subjects that occur" (Add MS 45033 f.135).


\textsuperscript{15}Commons 1790-1820, 3:1-8. In 1809 Abbot declined Perceval's offer of the Home Secretaryship; see The Diary and Correspondence of Charles Abbot, Lord Colchester, Speaker of the House of Commons 1802-1817, ed. Colchester (1861), 2:204-5.
transportation to make their views known. Abbot next turned his attention to efforts to secure the wider promulgation (distribution) of the statutes. It was also thanks to Abbot's efforts that the modern tripartite division of legislation into "Public General," "Public & Local," and "Local & Personal Acts" was initiated in 1797. In 1800 he also secured legislation for the first national census.

Abbot was also the principal force behind the thirty-six Reports of the Select Committee on Finance 1797-8, a sweeping attempt by parliament to review virtually the whole range of government activity and expenditure. The 28th of these Reports, presented to the House in June 1798, reviewed and condemned government practice with respect to "Police and Convicts." Drafted by Pole Carew and Abbot, in close consultation with Patrick Colquhoun and Jeremy Bentham, the Report followed many of the lines laid down in the early 1790s by Bunbury and other parliamentary critics of transportation and the hulks. In particular, it recommended the abolition of the latter and the immediate construction of Bentham's Panopticon.

In February 1802 Abbot was appointed Speaker of the House of Commons. It therefore comes as little surprise that a government led by Addington - much of whose senior bureaucracy was staffed by his personal followers and whose parliament was presided over

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19 "Twenty-Eighth Report from the Select Committee on Finance, &c.: Police, including Convict Establishments" (26 June 1798), in Commons Papers, 112:3-216. The correspondence amongst Abbot, Pole Carew, Bentham and Colquhoun can be followed in Bentham Correspondence, 6:32-108 passim.
by one of them - should pass legislation in 1802 which acknowledged a self-consciously permanent role for the government in the disposition of convicts. Later, as Viscount Sidmouth, Addington would serve as Home Secretary when the national penitentiary was finally realized with the construction of Millbank in 1812-6, of whose "importance and necessity" he was "convinc'd" and for the success of which he was "most anxious ...." Two years before Abbot's retirement as Speaker in 1817, Sidmouth appointed him to Millbank's first Supervising Committee.20

(2) First Lord and Secretary of State

The fragmentation of the political world after 1801, with the concomitant need to form alliances to control the Commons, once more limited the degree of control that a First Lord might exert over his fellow ministers in the conduct of their departments. These limitations were perhaps somewhat offset by a growth in the structured supervision of departmental finance by the Treasury that was, in turn, promoted by the Common's overall scrutiny of government finance.21 From March 1802 the Treasury required annual estimates from the Home Department of the anticipated cost during the coming year "attending the confining, maintaining, and employing the Convicts at Home" - a further indication that the permanence of that arrangement was now acknowledged.22 Yet it is also possible that such structural boundaries were imposed in lieu of that more immediate and personal - and

20PRO 30/9/16 pt.2 (same to same, 5 & 28 Aug 1815); and PRO 30/9/12/7 (Sidmouth to C. Abbot, 21 April 1816). Abbot's son left a notation to the effect that "It was under the duties of this Commission that [Abbot's] health first gave way" (PRO 30/9/16 pt.2 [wrapper]). It is amusing to note that Addington's first extant letter, written to his father at the age of thirteen, describes a visit to the assizes (Devon R.O., 152M/C1771/F1).

21See the references above at p.10 n26.

22HO 36/12 p.38. By 1804 it was established practice for the annual estimate for convicts to be submitted in one letter with those for "the Supervision of Aliens," "the Public Office in Bow Street," and "the Probable Amount of the Contingencies and Extra Charges for Messengers in [the Home Secretary's] Office" (HO 42/77 f.110; and HO 36/14 pp.29-30). In turn, the provision of estimates regarding the convicts to the Home Department was the task of the newly appointed Inspector of the Hulks (see for instance, HO 42/77 f.118).
perhaps more effectively confining - oversight that had been characteristic of Pitt. Fixed budgets may have set an effective upper limit on departmental activity, but they were not necessarily a bar to innovation in departmental practices and procedures. Whatever its impact, the more structured budgeting of convict measures certainly reflected Addington’s skill and attention regarding fiscal matters, whatever his limits as a politician.23

Until the development after 1832 of more firmly structured political parties, no First Lord enjoyed that degree of personal ascendancy that Pitt had managed to achieve during his great ministry.24 Home Secretaries displayed more initiative and activity after 1801 than they had before, much of it leading to significant changes in the administration of criminal justice by the central government. The First Lords of this period seem to have allowed the separate departments of government a freer hand in the formulation and advancement of policy than Pitt had done during his great ministry.25

Governmental styles during the late eighteenth and early nineteenth centuries are often characterized as either departmental or prime ministerial. Neither of these captures the operative reality of any particular ministry. On the one hand, although Pitt’s governmental style set limits on the initiatives of his ministers, it did not altogether preclude them. At the same time, Boyd Hilton has qualified the traditional view of departmental governance as being necessarily indicative of a weak First Lord. Liverpool’s ministry is often taken to be the quintessential example of such weakness, but Hilton has demonstrated that Liverpool was much more skilful in exercising an effective direction over his colleagues than is generally


24Spencer Perceval invoked Pitt’s example; see above at pp.81-2. Perhaps the last First Minister with a credible claim to that status was Robert Peel; see Harling, Waning of 'Old Corruption,' 233-4.

recognized. By the same token, Hilton also notes that Sidmouth generally enjoyed a free hand at the Home Office. At any rate, it is better to think of departmental and prime ministerial governance as analytical poles rather than as literal, watertight alternatives to one another.

Whatever the operative balance between ministers may have been, Home Secretaries between 1801 and 1830 displayed far more independent initiative than their predecessors. Addington’s first Home Secretary seems conscientiously to have carried forward the work on the hulks proposed and initiated by the Duke of Portland. However the Home Office papers for his Secretaryship suggest that Portland’s appointee, Aaron Graham, was the most active force in these developments from the administrative side. From the legislative perspective, the main burden of shepherding the two Transportation Acts through the Commons was borne by Henry Alexander. Alexander was a close ally of Pelham’s, but he also continued to act prominently on government’s behalf in legal measures long after Pelham’s resignation in August 1803. His activity may as easily have been a function of his position as Chairman of the Commons’ Ways and Means Committee - at a time of enhanced parliamentary scrutiny over expense - as of his personal connection with Pelham. And the Addingtonians were parliamentarians par excellence. Moreover two key memoranda of 1801, setting out an


27 The creation of Graham’s Inspectorship was under consideration as early as August 1801 (Add MS 33107 ff. 341-6), and clearly stemmed from Portland’s proposals (see above, pp. 331-3).

anticipated need to transport convicts in larger numbers, probably reflected a concern for the social dislocation that peace with France was expected to bring. The alleviation of this problem has been identified by the ministry's historian as one of its main concerns from the outset. So again, Pelham may simply have been following someone else's lead.

The preeminent influence of Addington and his followers is further suggested by the reluctance with which Pelham had accepted the Home Department in the first place. The removal of colonial affairs to the War Secretaryship had greatly reduced the office's attractions, and Pelham had already been made to wait several months for Portland's departure. The situation appears to have left Pelham feeling disgruntled and may have enhanced his sense of being an outsider in a frail ministry which needed as many friends as it could get. On the whole, although Pelham acted conscientiously regarding the new developments in convict administration under the Addington ministry, it is unlikely that he was a principal force behind them.

The contributions of subsequent Home Secretaries were more definitively their own. Hawkesbury's orders to collect data relating to criminal committals from 1805 was a substantial contribution to that uniform, nation-wide vision that Home Secretaries brought to bear on the administration of criminal justice in the following decades. Even more surprising was the activity of Viscount Sidmouth, whose name has become a synonym for conservatism at its worst. As Prime Minister, Sidmouth played an important role in the reforms carried out by Pelham. In 1813 he initiated the pattern of Home Secretaries taking more and more of the authority for pardon upon themselves. The deliberateness of this move is suggested by the

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29HO 42/62 ff.601-5 (copy at ff.595-600) & 647-8; copies of both at Add MS 33122 ff.180-1 & 71-6, & 77-8; and Fedorak, "Addington Ministry," 8-12, 16-29 & 146-57.

30See above, pp.90-2.
absence of any large numerical pressure upon the discretionary system at the time.\textsuperscript{31} More strikingly perhaps, Sidmouth was also the original proponent of the Gaols Act of 1823, a measure which is more often associated with his successor Robert Peel and which was the first substantive step towards the establishment of mandatory, nation-wide standards of care for prisoners.\textsuperscript{32}

By contrast, although he has the reputation of being the great reforming Home Secretary, Peel's measures of the 1820s were less a function of his taking a lead in policy formulation than of his either following an opinion that was becoming increasingly difficult to resist and of intercepting it before more extensive concessions could be demanded. Peel was explicit about this with his Under Secretary in December 1826:

\begin{quote}
I thought it might be very desirable that I should give a distinct notice before the Recess of the Bills which I mean to bring forward after it. This notice will prevent Trespassers - and judging from the daily motions made by Wheble, Harvey and others for Papers connected with the administration of the Law, there is an abundant disposition on the part of new members to become legislators.

\ldots

I should then preoccupy the Ground.\textsuperscript{33}
\end{quote}

Four years earlier he had professed indifference to the Gaols bill that he had inherited from Sidmouth, and did not pass it until he was satisfied that measures had been taken to render

\begin{itemize}
\item \textsuperscript{31}See above, Chapter 6, part III; and Table 7.1 below.
\item \textsuperscript{32}4 Geo.IV, c.64. Sidmouth had attempted to pass the bill twice. In the first instance, it only reached first reading (\textit{J.H.C.} 75 [1819-20]: 482). In the second, its committee report was delayed beyond the prorogation of parliament (\textit{J.H.C.} 76 [1821]: 477). Peel's own measure only passed on the second attempt, the first failing to pass the Lords before parliament was prorogued (\textit{J.H.C.} 77 [1822]: 407-8). Sidmouth, who was on the final bill's committee, thought Peel's version inferior: "We shall make poor work of it after all" (Devon R.O., 152M/C1823/OZ [Sidmouth to C.Bathurst, 19 May 1823]).
\item \textsuperscript{33}Add MS 40390 ff.131-4 (emphasis in original). Compare Norman Gash, who sees every decision of Peel as being rooted in a constant and studied didacticism; see \textit{Mr. Secretary Peel: The Life of Sir Robert Peel to 1830} (1961), chs.9 & 14 (esp. p.312: "Peel was never noticeably influenced by popular prejudices. His instinct, as always, was to ascertain the facts and draw the right conclusions").
\end{itemize}
imprisonment a more suitably harsh punishment. It was to some extent a measure of the achievements of Peel's predecessors in office that, in retrospect, the substance of his concessions seems more symbolic than real.

(3) Central and Local Governments

The Transportation Acts of 1802 signalled the central government's acknowledgment that it was now permanently involved in the disposition of serious criminal offenders from all over the nation. That nation now included Ireland, a fact which was underlined by the passage of the Escaping Offenders Act in 1804. This measure, initiated by Addington's government and completed (and subsequently amended) under Pitt's last ministry, facilitated the return of escaped offenders between Great Britain and Ireland, as a similar Act of 1773 had those of Scotland and England. Similarly nation-wide perspectives on crime and criminal justice underscored those changes in the administration of pardon after 1801 that were described in the previous chapter. An important corner had been turned in the mentality of statesmen at the centre.

Yet we must also be careful not to exaggerate the practical significance of this mental change. Although many statesmen after 1801 actively engaged the implications that followed on this mental shift, others continued to resist any full extension of regulatory activity by the central government. The ideal of domestic administration and regulation as a characteristically local responsibility proved extremely resilient. Thus, although Pelham had

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34 Add MS 40315 ff.85-6. Peel was particularly interested in ensuring the widespread application of the treadwheel; see Gatrell, Hanging Tree, 566-72 & 576-9; and Devereaux, "In Place of Death" (forthcoming).


36 13 Geo.III, c.31; 44 Geo.III, c.92; and 45 Geo.III, c.92. See also J.H.C. 59 (1803-4): 271, 278 & passim; and HO 49/5 pp.113-4.
James Neild participate with Graham in a comprehensive investigation of the entire hulks establishment in 1802, he was

not prepared to authorize Mr Neild to undertake a general inspection of the Gaols of the Kingdom, as it might imply a want of attention on the part of the magistrates who have unquestionably, in many instances within my own knowledge, taken infinite pains in regulating the gaols within their respective jurisdictions.\(^\text{37}\)

Pelham's concern was less with exposing those local authorities who had not met desirable standards of imprisonment than with not casting aspersions on those who had. The particular remained preeminent over the general. Like Pitt and his allies, Pelham (and many others) continued to view prison regulation as a fundamentally local responsibility. The government was only willing to exercise close regulation over those convicts indisputably under its sole supervision - those aboard the hulks. Even as late as the 1860s Sir George Grey, Home Secretary for thirteen years in the mid-Victorian era, continued to espouse the ideal of local self-government, even as the range of administrative responsibilities imposed upon his Department expanded almost year-to-year.\(^\text{38}\)

In the mid-1830s, Alexis de Tocqueville found the continuing antipathy of England's rulers to the principle of central regulation remarkable. The explanation given him by Bentham's literary executor, John Bowring, was two-fold. In part, Bowring cited fears of that same authoritarianism that had been invoked against central regulation during the eighteenth century:

> Your [ie.France’s] centralisation is a magnificent idea, but it cannot be carried out. It is not in the nature of things that a central government should be able to watch over all the needs of a great nation. Decentralisation is the chief cause of the substantial

\(^{37}\text{HO 43/13 pp.375-6. The reports produced by Graham and Neild are at HO 42/65 ff.94-102, 103-6 & 109-12; The text of the second and third is reproduced in J.Neild, An Account of the Rise, Progress, and Present State of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts Throughout England and Wales (1802), 307-22.}\)

\(^{38}\text{Smith, "Sir George Grey," 40-9 & passim.}\)
progress we have made in civilisation. . . . Centralisation is too good a bait for the
greed of rulers; even those who once preached decentralisation, always abandon their
doctrine on coming into power. 39

The second sentence is worth remarking on. Not only was central regulation undesirable; it
seemed to many a practical impossibility even if attempted. Post-Thatcherite disaffection with
the Welfare State had it anticipators. 40

II. Forces for Change

Changes were also occurring in the social and cultural imperatives - the problem of
crime, the specific problem of crime in the metropolis, and the onset of social and cultural
homogeneity - that informed the views of statesmen on crime and criminal justice. Some of
these changes, however, had a more than slightly paradoxical character.

Table 7.1 suggests that the pressure of numbers on the administration of criminal
justice in the metropolis was largely relieved by mid-1790s. As we will see, it continued to
be felt elsewhere in the nation, but there is little evidence of concern about this amongst
statesmen before 1802, when the anticipation of a peace-time surge in prosecutions and
convictions underscored the Addington ministry’s re-organization of transportation and the
hulks. In the event, the peace was short-lived and it was not until after 1815 that a major
upsurge occurred - far greater than that of the 1780s, which in turn had been far greater than
any other during the eighteenth century - and which had great implications for punishment.

More paradoxical were the changes in the perception of the metropolis as the main
focus of the government’s concern. On the one hand, there is evidence that the experience of


40For this theme, see M.J.Wiener, “The Unloved State: Twentieth-Century Politics in the Writing of
Table 7.1
Capital Convictions in the Metropolis, 1785-1825

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Sources: PP(HC) 1819.xvii.295-9; 1826-7.xix.199-200; and HO 6/4.

Crime that once had seemed unique to the nation's capital was now becoming more common in other parts of the nation. The sessional calendars of Lancashire were becoming so heavy that, in 1798, the county MPs secured legislation to establish an Annual General Quarter Sessions for the county as a whole. There were also signs that the number of felony prosecutions in places outside London was climbing. One assize per year had been normal practice on the Northern Circuit (save for York and Lancaster) but, in 1794, the County Palatine of Durham appealed for the establishment of a second annual session.

Manchester magistrates were particularly convinced that levels of criminal prosecution in their town were already matching those of London by the late 1780s. To relieve the

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41 Geo.III (P&L), c.58. See also M.DeLacy, Prison Reform in Lancashire, 1700-1850: A Study in Local Administration (Stanford, CA, 1986), 59-64 & 158-9.

pressure on the overburdened Manchester sessions, Thomas Bayley sought to establish a rotation system in imitation of the Middlesex model. In his proposal, four magistrates would have fifty assigned sittings each outside of scheduled quarter and petty sessions.\textsuperscript{43} The Chancellor of the Duchy of Lancaster, the first Lord Liverpool, shared Bayley's concerns, but feared that a subsequent proposal to establish a paid magistracy on the London model of 1792 would not be acceptable to the government. It could not be established without government money, and such a measure would open a hornet's nest because "there are other Towns in the Kingdom which will avail themselves of this precedent and claim a like Establishment for the same purpose, and which have in truth the like reason to assign in support." Liverpool nonetheless laid the proposal before Lord Pelham in 1802, who ruled as Liverpool suspected he would.\textsuperscript{44} Even as the experiences of other towns in the kingdom came to resemble that of the metropolis, statesmen continued to give the latter special priority. By the early nineteenth century then, it was clear to many statesmen that high levels of criminal prosecution were becoming a fact of life as they had been in London for more than a century. However the notion of London's distinctiveness survived or re-emerged in other ways.

One of these involved the abandoned Penitentiary scheme of 1779. The very preoccupation of the government with the problems of the metropolis, coupled with its unwillingness to impose uniform standards on all the nation's prisons, had encouraged advocates of prison reform to couch their arguments in terms of an expansion outwards from the centre. In particular, advocates of the 1779 scheme frequently argued that the nation's

\textsuperscript{43}Add MS 38447 ff.3-5.

\textsuperscript{44}Add MS 38450 ff.109-10. For similar fears regarding the rotation scheme, see Add MS 38310 ff.110-1. For Liverpool's correspondence with Pelham about a stipendiary magistracy, see Add MS 38311 ff.142-3; and Add MS 38450 ff.112-3.
capital should be the site of the first large-scale experiment, as much for symbolic as functional purposes. Both William Morton Pitt and Sir Charles Bunbury suggested this to Pelham during his tenure of the Home Department.\(^4^5\) To the extent that Millbank was the ultimate realization of such ambitions, the government might ultimately be said to have followed such reasoning.

Another persistent belief was that metropolitan offenders were more refractory than their provincial counterparts. In 1819 the supervising committee of Millbank Penitentiary asked the Home Secretary to limit the number of metropolitan offenders sent to that institution, as

from the Experience which the Committee have had of Prisoners from the Country as compared with those from Newgate and from the Gaols in the Neighbourhood of London, the chances of Reformation appear to be so much greater in the former .... Sidmouth agreed; he noted that "This Suggestion [was] to be attended to."\(^4^6\)

A third pattern of thought that sustained the notion of London’s uniqueness was the notion that, as policing and penal measures became more effective within the capital, they would have the effect of driving dangerous criminals outwards into areas of the nation that were less vigilantly policed and where punishments were perhaps neither so severe nor so certain. As early as 1785 a resident of Kent ascribed the rise in the number of violent property offenses in that county to "the rigorous prosecutions in London ...." Such views became increasingly common in the 1790s after the establishment of the Middlesex stipendiaries and the mounted and foot patrols.\(^4^7\) Years later, statesmen would invoke this belief in justifying the extension of policing reform to the provinces after 1829.

\(^4^5\) Add MS 33108 ff.411-2; and Add MS 33110 ff.460-1.

\(^4^6\) PC 1/67 (N.Thomas to H.Hobhouse, 7 April 1819; and Sidmouth’s endorsement).

\(^4^7\) GM 55 (1785): 951; HO 30/2 ff. 132-3 & 384-5; and HO 43/4 p.206.
The "migration theory" - the fear of the potential mobility of serious criminals - had underpinned government responsiveness to the provinces during the 1780s. It was also reflected in the Escaped Offenders Acts of 1773 and 1804/5, which provided for the return of convicts who escaped out of one part of the United Kingdom into another. The respective timing of these measures implied a belief that the mobility of serious criminals had greatly increased in recent years. That which related to England and Scotland was not passed until sixty-six years after the Union; that relating to Britain and Ireland was passed after only three.\footnote{See the references above at n36.}

As I suggested in the first chapter, an expanding and more widely circulated popular press may have generated a single culture of criminality for the nation at large.\footnote{See above, pp.31-2.} It remains an open question as to how far that cultural sensibility was shaped by the experience of the metropolis and how far it was informed by experiences outside. This is a subject which, as yet, no historian has tackled directly and at length. It may be that, in large measure, metropolitan criminality became the definition of criminality for the nation at large rather than that the experience of the nation simply became more like London's. Perhaps both were true to some extent. Perhaps no single culture of crime emerged, but rather many over which the metropolis acquired a cultural hegemony.

Such considerations are important because there was a growing sense amongst some statesmen that the government might actually have a necessary, nation-wide role in certain regulatory activities. We have seen this generally in the Addington ministry's transportation measures, and more specifically in the developments surrounding the administration of
pardon. This mentality may have been reinforced, as the work of Linda Colley implies, by
the experience of a generation of war with France. At the very least, by 1815 the idea of the
central government acting in ways that had immediate consequences throughout the nation
must no longer have seemed as unfamiliar as it would have in 1760. For many people,
admission to full political citizenship was one of the anticipated rewards for the sacrifices of
these years.\textsuperscript{50} From the perspective of statesmen, the experience of fighting a war that made
such heavy demands on administrative capacities over so long a period must have made
central administration and regulation, if not inherently desirable, at least less unfamiliar and
-Bowring's remarks to de Tocqueville notwithstanding - less inherently threatening. In the
seventeenth and eighteenth centuries, political elites spoke of central administration as a
threat to their political liberties. In the nineteenth century, they tended to view it more
narrowly as a threat to their economic freedom.\textsuperscript{51} Central regulation was still a threat to
liberty, but in decidedly more narrow terms than before.

III. Convicts and the State, 1760-1810: Conclusion

The convict crisis of the 1780s is often thought to reveal the limitations of eighteenth-
century government. In fact many ministers, parliamentarians and local officials were
actively engaged with questions of crime and punishment. But the real substance of their
activity is easily missed if we insist on an understanding of the state that views central
regulation as the only measure of effectiveness. The government of late eighteenth-century
Britain remained a self-consciously limited one, but it does not follow that statesmen were

\textsuperscript{50}L. Colley, \textit{Britons: Forging the Nation, 1707-1827} (New Haven, CT & London, 1992), 308-50 & 361-3;
and Colley, "The Reach of the State, the Appeal of the Nation: Mass Arming and Political Culture in the

\textsuperscript{51}S. Checkland, \textit{British Public Policy, 1776-1939: An Economic, Social and Political Perspective}
(Cambridge, 1983), ch.4.
not critically engaged with the problem of an increasing number of serious criminal offenders.

The role of the central government in domestic regulation was to support the activity of responsible authorities, not to dictate or impose upon them.\textsuperscript{52} The government rejected the Penitentiary scheme of 1779, but not without proposing a policing alternative that made perfect sense in context. It resisted attempts to make the close regulation of prison regimes a nation-wide requirement, not from an indifference to the plight of prisoners in unreformed gaols, but rather from a recognition that such standards did not yet command the wide support of the local authorities that had to finance and administer them. It pursued the renewal of transportation, not only because some local jurisdictions - most notably the nation's capital itself - were adamantly determined to transport large numbers of serious criminal offenders, but also because many authorities throughout the country still saw transportation as playing a vital role in their new distributions of penal practices.

In directing the renewal of transportation however, the central government nevertheless moved some way toward the de facto adoption of a custodial role in the disposition of serious offenders. In particular, the subtle but powerful significance of the changes made by the Addington ministry at the end of our period are often overlooked. The development of a centralized administration of criminal justice in Great Britain proceeded over a long period of time - much of it beyond that covered in this thesis. Moreover, much of its impetus came from the demands of the periphery rather than the ambitions or felt

imperatives of the centre. Once we recognize the extent to which this was the case, the
persistence of localism in the administration of criminal justice during the nineteenth century
seems less surprising than it might otherwise.\textsuperscript{53} Central regulation is not as easily realized
in practice as it is described in the abstract. It would be a rash scholar who would assert that
changing penal practices during the late eighteenth century could be explained solely on the
basis of the character of the state and the distribution of power within it. Such considerations
must be incorporated, however, if we are to understand those changes better.

\textsuperscript{53}See the references above at p.32 n87.
APPENDIX 7.1

Bills and Acts Cited

1730-59
17 Geo.II, c.5 - Rogues & Vagabonds Act
25 Geo.II, c.37 - Murder Act
31 Geo.II, c.24 - Pawnbrokers Act

1760-69
6 Geo.III, c.32 - Transportation (Scotland) Act
7 Geo.III, c.37 - Newgate Prison Act
8 Geo.III, c.15 - Transportation (Great Britain) Act
8 Geo.III, c.40 - Coventry Gaol Act

1770-74
10 Geo.III, c.28 - Essex Gaol Act
10 Geo.III, c.48 - Receivers (Jewels & Plate) Act (bill in Commons Papers, 22: 185-8)
12 Geo.III, c.65 - Surrey Gaol Act
Prisoners’ Relief bill, 1773 (in Commons Papers, 23: 231-4)
13 Geo.III, c.31 - Escaped Offenders (England & Scotland) Act
13 Geo.III, c.35 - Essex Gaol Act
13 Geo.III, c.58 - Gaols Clergymen Act
14 Geo.III, c.20 - Prisoners’ Relief Act (bill in Commons Papers, 24: 133-6)
14 Geo.III, c.59 - Prisoner’s Health (Popham’s) Act

1775-80
15 Geo.III, c.25 - Hertford Gaol Act
16 Geo.III, c.43 - Hard Labour (Hulks) Act (bills in Commons Papers, 27: 257-68, 269-80 & 311-42)
17 Geo.III, c.54 - Westmorland Gaol Act
17 Geo.III, c.58 - Warwick Gaol Act
18 Geo.III, c.17 - Cornwall Gaol Act
18 Geo.III, c.48 - Newgate Prison (completion) Act
18 Geo.III, c.62 - Hard Labour (Hulks) Act (renewal)
Hard Labour bill, 1778 (in Commons Papers, 28: 291-330)
Prisons Regulations bills, 1779 (in Commons Papers, 29: 75-82, 83-94 & 95-108)
19 Geo.III, c.46 - Pembroke Gaol Act
19 Geo.III, c.54 - Hard Labour (Hulks) Act (renewal)
19 Geo.III, c.74 - "Penitentiary" Act (bills in Commons Papers, 29: 171-204, 205-40 & 241-82)

1781-85
21 Geo.III, c.49 - Lord’s Day Act (bill in Commons Papers, 33: 131-4)
Houses of Correction bill, 1781 (in Commons Papers, 33: 191-202)
Rogues & Vagabonds bill, 1781 (in Commons Papers, 33: 307-24)
1781-85 (cont’d)
21 Geo. III, c.57 - Supply (including Newgate Prison grant)
21 Geo. III, c.74 - Gloucester Gaol Act
22 Geo. III, c.58 - Receivers Act (bill in Commons Papers, 34: 403-6)
22 Geo. III, c.64 - Houses of Correction Act (bills in Commons Papers, 34: 1-12, 13-26 & 27-38)
22 Geo. III, c.67 - Supply (including Newgate Prison grant)
23 Geo. III, c.20 - Salop Gaol Act
23 Geo. III, c.55 - Kingston upon Hull Gaol Act
23 Geo. III, c.78 - Supply (including Newgate Prison grant)
Receivers bill, 1783 (in Commons Papers, 35: 87-90)
Housebreakers bill, 1783 (in Commons Papers, 35: 91-4)
County Gaols bill, 1783 (in Commons Papers, 35: 377-84 & 385-96)
23 Geo. III, c.88 - Rogues & Vagabonds Act
24 Geo. III, s.1, c.12 - Prisoners’ Removal (Hulks) Act (bill in Commons Papers, 35: 427-34)
24 Geo. III, s.2, c.42 - Pawnbrokers Act
24 Geo. III, s.2, c.54 - County Gaols Act (bills in Commons Papers, 46: 29-40 & 41-64)
24 Geo. III, s.2, c.55 - Houses of Correction Act
24 Geo. III, s.2, c.56 - Transportation (England & Wales) Act (bill in Commons Papers, 46: 205-16)
25 Geo. III, c.10 - Gloucester Gaols Act
25 Geo. III, c.18 - Newgate Gaol Delivery Continuation Act
25 Geo. III, c.46 - Transportation (Scotland) Act
Metropolitan Police bill, 1785 (in Commons Papers, 46: 503-34)
25 Geo. III, c.93 - New Sarum Gaol Act
25 Geo. III, c.97 - Wood Street & Poultry Compters Act

1786-90
26 Geo. III, c.24 - Salop Gaol Act
26 Geo. III, c.55 - Middlesex House of Correction Act
27 Geo. III, c.58 - Surrey Gaol Act
27 Geo. III, c.59 - Devon Gaol Act
27 Geo. III, c.60 - Staffordshire Gaol Act
28 Geo. III, c.24 - Transportation Act (renewal)
28 Geo. III, c.69 - Inverness Gaol Act
28 Geo. III, c.82 - Chester Gaol Act
29 Geo. III, c.67 - Gaols Act (bill in Commons Papers, 64: 401-4)
Prisons Regulations bill, 1790 (in Commons Papers, 65: 301-14)

1791-95
Prisons Regulations bill, 1791 (in Commons Papers, 79: 1-18)
31 Geo. III, c.22 - Surrey Gaol Act
1791-95(cont’d)
31 Geo.III, c.46 - Gaols Regulation Act (bill in Commons Papers, 79: 221-36)
31 Geo.III, c.57 - Edinburgh Gaols Act
32 Geo.III, c.53 - Middlesex Justices Act (bills in Commons Papers, 79: 409-16, 417-28 & 429-40; & in Lords Papers 1792: 149-64)
32 Geo.III, c.82 - Bristol Gaol Act
32 Geo.III, c.104 - Carmarthern Gaol Act
34 Geo.III, c.60 - Transportation Act (renewal)
34 Geo.III, c.84 - Penitentiary Act (supplemental; bill in Lords Papers, 1794: 141-56)

1796-1800
36 Geo.III, c.75 - Middlesex Justices Act (renewal)
38 Geo.III(P&L), c.58 - Lancaster Sessions Act
39 Geo.III, c.51 - Transportation Act (renewal)
39 Geo.III, c.52 - Penitentiary Act (renewal; bill in Lords Papers, 1798-99[1]: 219-22)
39 & 40 Geo.III (P&L), c.53 - New Sarum Gaol Act

Post-1800
41 Geo.III (P&L), c.132 - Winchester Gaol Act
42 Geo.III, c.28 - Transportation Act (renewal)
42 Geo.III (P&L), c.47 - Aberdeen Gaol Act
42 Geo.III (P&L), c.96 - Boston Gaol Act
43 Geo.III, c.15 - Transportation Act (renewal)
43 Geo.III (P&L), c.58 - Kent Gaol Act
44 Geo.III, c.92 - Escaped Offenders (Britain & Ireland) Act
45 Geo.III, c.92 - Escaped Offenders (Britain & Ireland) Act
45 Geo.III (P&L), c.44 - Portsmouth Gaol Act
45 Geo.III (P&L), c.103 - Carmarthen Gaol Act
54 Geo.III, c.186 - Escaped Offenders Act
55 Geo.III, c.48 - Gaols Clergymen (Enhancement) Act
55 Geo.III, c.49 - Escaped Offenders (United Kingdom) Act
55 Geo.III, c.50 - Gaols Fees Abolition Act
4 Geo.IV, c.48 - Sentence of Death Act
4 Geo.IV, c.64 - Gaols Act
5 Geo.IV, c.84 - Transportation Laws (Consolidation) Act
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