

**The Origins of Late Eighteenth-Century Prison Reform in
England**

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Submitted in partial fulfilment of the degree of Ph.D.

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September 2007

Abstract

Previous research into prison reform in England has tended to assert that the late eighteenth century marked an important and unprecedented turning point in penal practice. Building on recent work which has complicated teleological understandings of the history of English penal practice, this thesis considers the origins of late eighteenth-century prison reform in England through an analysis of reform ideas and discourses over the period 1515 – 1800.

The thesis is divided into three stages of analysis: first, it considers the penal reform ideas which circulated in England during the sixteenth, seventeenth and eighteenth centuries, demonstrating continuities over time in the arguments advanced in favour of institutionalised hard labour. The thesis then analyses the reform discourse used by eighteenth-century penal reformers, first on a national level, and secondly on the local level through a comparative case study of reform activity in Gloucestershire, Lancashire and Middlesex. The cases made for reform in each of these counties shared some remarkable and important similarities, as did the reform language used at the national and the local level. The final stage of the thesis examines the implementation of reform in Gloucestershire, Lancashire and Middlesex, identifying what late eighteenth-century reformed prisons were designed to achieve and how reform was presented to the wider public audience.

The main argument of the thesis is that the prisons which were built at the end of the eighteenth century were the product, on the one hand, of the revived resonance of a penal reform discourse which first emerged in the sixteenth century, and on the other, of a sense of alarm and belief in improvement generated by local level reformers' strategic use of language. The main findings of the thesis are, first, that late eighteenth-century prison reform ideas and discourse formed part of a tradition which stretched back to the sixteenth century and, secondly, that language and culture played a decisive part in making late eighteenth-century prison reform happen.

Acknowledgements

First, I would like to thank my supervisor, Professor Bob Shoemaker, for his unwavering support and encouragement throughout the course of this and indeed my other academic projects.

I would also like to express gratitude to my family – particularly Joy, Carl, Bob and Edna – for their continued support throughout my research, and also to my friends for providing essential light relief and welcome distractions.

Thanks also to Chris, without whose technical support this project would have been far more protracted.

Finally, I would like to thank my partner Pippa for her relentless support, encouragement, patience and good humour and without whom this would not have been possible.

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Chapter 1: Introduction

1) Late eighteenth-century prison reform

During the last twenty years of the eighteenth century a wholesale reform of England's penal institutions was accomplished. These institutions were not the ad hoc buildings of the preceding period but expensive and unprecedented types of institution – reformed prisons. Over the course of the 1780s and 90s sixty new penal institutions were built and numerous existing prisons reformed on a plan offered by the Penitentiary Act passed in April, 1779.¹ Under the stipulations of the Act, criminals found guilty of all but the most serious offences could 'be ordered to solitary imprisonment accompanied by well-regulated labour, and religious instruction...not merely to deter others from the commission of like crimes, but also to reform the individuals in question.'² Although the two national penitentiaries that it proposed were never built, the Act proved more influential than even its chief architects had envisaged, eventually resulting in the creation of a national system of imprisonment used for the punishment of all but the most serious categories of criminals in England.³

The 1779 Penitentiary Act thus revolutionised punishment in England; it allowed the prison population to double between 1770 and 1800 and, in the process, for the first time made imprisonment the country's prime means of punishment.⁴ Given the impact that it had on English penal practice, it comes as little surprise that after almost a century of research

¹ For figures on the number of institutions constructed in this period see J. Howard, *The State of Prisons in England and Wales*, (1st edition, Warrington 1777) and R. Evans, *The Fabrication of Virtue*, (Cambridge, 1982), pp. 195 – 235.

² 19. Geo III, C. 74 (1779).

³ *Ibid.*

⁴ To give a sense of the rate of change, numbers sentenced to imprisonment at the Old Bailey rose from 40 (or 1.03% of all convicts) over the course of the 1750s to 698 (or 17.93%) over the course of the 1770s and 1,447 (or 37.16%) over the course of the 1790s. Statistics taken from 'The Proceedings of the Old Bailey Online', www.oldbaileyonline.org. Beattie noted similarly significant rises in the number of criminals sentenced to imprisonment in Surrey where levels of imprisonment for non-capital property offences rose from 6.1% in the period 1763-1775 to 54.1% in the period 1776-1782. See J. M. Beattie, *Crime and the Courts in England*, (Oxford, 1986), pp. 546 & 578.

into the subject, historians continue to engage with the issue of late eighteenth-century prison reform, aiming ultimately to respond conclusively to the central question: why did imprisonment at hard labour become the punishment of choice in late eighteenth-century England?

2) The foundations of the history of punishment

The reason that eighteenth-century English punishment has long engaged the attention of historians is to a large extent self-explanatory: the subject matter concerned is at once engaging and pertinent - a story which starts with brutal images of Tyburn and ends, via the apparently ruthless 'Bloody Code', with the creation of a network of recognisably modern prisons. Historians' unremitting interest in eighteenth-century punishment has stemmed, in short, from an enduring fascination with an apparent revolution in penal practice. At the heart of this fascination lies the issue of prison reform; what, historians ask, motivated the late eighteenth-century decision to replace seemingly backward punishments with an apparently more progressive, recognisably modern alternative? As is inevitably the case with an issue that has engaged attention for so prolonged a period of time, answers offered in response to this central question have been varied.

To Whiggish historians who laid the foundations of modern research into the history of punishment, the story of late eighteenth-century English prison reform was essentially one of moral and material improvement. The most influential contribution to the Whig narrative was made by Sidney and Beatrice Webb who, in 1922, published *English Prisons Under Local Government*, the first scholarly work to attempt to account for the emergence of English prisons.⁵ According to the Webbs, the late eighteenth century marked a watershed in penal practice inspired by contemporary improvements in moral values. The last two decades of the eighteenth century, they and Whiggish colleagues such as William Laurence Burn, John Roger Scott Whiting and Robert Alan Cooper

⁵ S. & B. Webb, *English Prisons Under Local Government*, (London, 1922).

argued, marked the moment at which 'appalling' penal institutions were replaced with enlightened alternatives, thanks to the progressive ideas of philanthropists like John Howard, Enlightenment theorists like Cesare Beccaria and Jeremy Bentham, and evangelical men and women of conscience like Elizabeth Fry and Sir George Onesiphorus Paul.⁶

The progressive theory at the heart of the Webbs' explanation of late eighteenth-century prison reform stemmed, somewhat inevitably, from their personal political beliefs. Along with George Bernard Shaw and Emmeline Pankhurst, the Webbs were founder members of the Fabian Society, a socialist organisation with a pervasive belief in the progressive improvement of society over time. Fabians were - and indeed still are - engaged in a battle for social equality which, its members believe, can only be achieved through a process of re-education aimed at improving society's morality. In 1844, the year it was founded, the society thus declared its long-term aim 'to reconstruct society in accordance with the highest moral possibilities.'⁷ In short, the Webbs believed in the possibility of progress over time, and that such progress was born of moral improvement. This philosophy impacted significantly on their interpretation of the past. To the Webbs, late eighteenth-century prison reform was a legislative manifestation of contemporary moral improvements as exhibited in the ideas, actions and 'remarkable qualities' of individuals like Howard, Beccaria and Fry.⁸ Whiggish accounts of prison reform produced in the early twentieth century were thus essentially narratives of improvement from the 'filth and stench', 'cruelty', 'apathy' and 'licentiousness' which was believed to have characterised sixteenth, seventeenth and eighteenth-century institutions, to the

⁶ Webbs, *English Prisons Under Local Government*, p. 18. For post-Webb Whig interpretations of penal reform see W. L. Burn, *The Age of Equipoise*, (New York, 1965), J. R. S. Whiting, *Prison Reform in Gloucestershire*, (London, 1975), R. A. Cooper, 'Ideas and their Execution: English Prison Reform', *Eighteenth Century Studies* 10:1, (1976), pp. 73 – 93. E. Stockdale, *A Study of Bedford Prison, 1660 – 1877*, (London, 1977), and U. Henriques, *Before the Welfare State*, (London, 1979).

⁷ Taken from the history of the Fabian Society provided on the Fabian Society website, www.fabian-society.org.uk

⁸ The Webbs on John Howard. *English Prisons Under Local Government*, p. 33.

innovative 'highly developed system' established in the late eighteenth century.⁹

In terms of content, *English Prisons Under Local Government* is an administrative history which charts improvements in prison management over time; to borrow the Webbs' own terms, a story of 'the transformation of the gaoler or master from an independent profit-maker into a salaried servant of the public authority.'¹⁰ Groundbreaking on two fronts - first, in that it provided the first insight into prison history in England at national *and* local level and, secondly, insofar as it offered the first explanation of the emergence of our contemporary penal system - *English Prisons Under Local Government* was an outstanding piece of empirical research which laid the foundations of prison history on which all subsequent related studies have been built.

Like many great groundbreaking works produced in the early twentieth century, however, the strength of the Webbs' work proved over time to be its greatest weakness. That is to say that notwithstanding the fact that *English Prisons Under Local Government* played a key role in illuminating the precise details of the history of prison administration in England, its administrative focus inevitably left little space for any consideration of the 'reality' or impact of the legislation and administration to which their attention was dedicated. Thus, while their work made an invaluable contribution to our understanding of the history of prison administration, the Webbs' work fell short of considering the history of prisons per se. The shortcomings of *English Prisons Under Local Government* lay not only in its approach, however, but also its content.

Although attractive for many generations as a schematic theory which imposed neat order on a complex history, the Webbs' explanation of changes in prison administration over time is now superseded. In an age when unbridled confidence in progress appears at once grandiose and

⁹ Webbs, *English Prisons Under Local Government*, p. 33.

¹⁰ *Ibid.*, p. 37.

naïve, it seems inadequate to say the least to define historical events by an uncritical belief in improvement. Preoccupied with the direction of change rather than its detail, Whiggish narratives are outmoded in the twenty-first century ultimately because, in looking for a consistent window on the past, they paid scant justice to the complexities of change over time. In sum, premised as it was on the superiority of the present over the past, the Whiggish interpretation of late eighteenth-century prison reform was, from the outset, evaluative and partial and is thus now largely discredited.

The foundations of modern research into the history of punishment were not laid exclusively, however, by Whiggish narratives. A different and important early contribution was made by Leon Radzinowicz in his 1948 publication, *The History of English Criminal Law and its Administration, Vol. 1*.¹¹ The first volume of Radzinowicz's immense history of criminal law was, like the Webbs' work, concerned with the issue of late eighteenth-century penal reform. Unlike the Webbs, however, Radzinowicz's interest in reform stemmed not from a desire to narrate a tale of moral and material improvement, but rather from an urge to detail the decline of capital punishment in the eighteenth and early nineteenth centuries. Radzinowicz's work was, as a result, at once more sophisticated and comprehensive than the Webbs' publication, charting the changing use of a variety of punishments over time through a survey of the history of capital statutes and an analysis of contemporary debates over the use of the death penalty.

According to Radzinowicz, late eighteenth-century prison reform was motivated not by an unspecific enlightenment revulsion at cruelty but by identifiable changes in penal theory driven by the recognition that the penal system was failing to solve and perhaps even exacerbating contemporary social problems. For Radzinowicz, it was this realisation - essentially pragmatic in nature - which drove men like Charles de

¹¹ L. Radzinowicz, *The History of English Criminal Law, Vol. 1*, (London, 1948).

Montesquieu, Cesare Beccaria, William Eden and Samuel Romilly to produce works which played a key part, first, in communicating widespread contemporary unease regarding the ineffectiveness of the capital code and, second, in laying down guiding principles for future legislation. Radzinowicz for the first time therefore identified that the seeds of late eighteenth-century penal reform lay not just in the big ideas of 'big thinkers' but also, and most fundamentally, in the practical experience of the failings of the eighteenth-century penal code. According to Radzinowicz, Englishmen like Eden and Romilly were, like their continental equivalents, inspired to consider the issue of penal reform in the eighteenth century fundamentally because they recognised that the existing penal system was failing. Taking the pragmatic argument still further, Radzinowicz suggested that late eighteenth-century English penal reforms were made viable thanks to precedents set by legislation passed over the course of the eighteenth century in Prussia, Sweden, Italy, France and Russia which, he said, demonstrated in clear terms the potential benefits and indeed costs of reforming the way in which the English punished their criminals.

Free from the assumptions that distorted Whiggish accounts of late eighteenth-century prison reform, Radzinowicz's research was more complex and insightful than work produced before it. Indeed, it is a testimony to both the content and approach of his work that Radzinowicz's *History of English Criminal Law* retains value and influence today, particularly in the observations that his analysis of the capital system and criminal trial allowed him to make about the declining use of capital punishment and the exercise of individual discretion in court.¹² Despite its notable strengths, however, Radzinowicz's account of

¹² Radzinowicz's arguments regarding the exercise of individual discretion in court played an important part in stimulating post-Marxist critiques of reductionist accounts produced in the 1980s. See, for example, J. H Langbein, 'Albion's Fatal Flaws', *Past and Present* 98 (1983), pp. 96 – 120, P. King, 'Decision Makers and Decision Making in the Criminal Law', *Historical Journal* 27 (1984), pp. 25 – 58 and T. A. Green, *Verdict According to Conscience*, (Chicago, 1988). As will be discussed later, his observation about the declining use of the capital code was highly influential in stimulating Douglas Hay's research in the 970s and 80s. See, for example, D. Hay, 'Property, Authority and the Criminal Law', in D. Hay et al. (eds.), *Albion's Fatal Tree*, (London, 1975), chapter 1.

eighteenth-century punishment was disappointing in a number of ways. Perhaps most notably, the first volume of his *History of English Criminal Law* concentrated almost exclusively on discussions about, and the application of, capital punishment and, in so doing, failed to locate its decline within the wider, pluralistic penal culture of the late eighteenth century. Radzinowicz's discussion of the use of transportation in the eighteenth century, for example, consisted of little more than a brief critique of a 'notoriously inefficient' branch of criminal justice.¹³ This lack of engagement with the issue of the rise of secondary punishments in the eighteenth century is a somewhat surprising omission given that the first volume of Radzinowicz's work on criminal law was ostensibly dedicated to a set of penal reforms which witnessed a decisive departure away from the very punishment to which his attention was in the most part dedicated. Radzinowicz's work failed also to detail precisely *which* offences were (and indeed were not) punished by death and the reasons why sentencing patterns may have changed over time.

The greatest weakness of Radzinowicz's account lay not, however, in his somewhat one-dimensional approach to eighteenth-century punishment. Sharing more in common with his predecessors than is obvious at first glance, Radzinowicz's *History of English Criminal Law* was, like the Webbs' and other Whiggish accounts, concerned ultimately with legal administration at the cost of any insight into the impact of reforms or with punishments per se. More than this, although Radzinowicz did not use progress as an explanatory tool in itself, *The History of English Criminal Law* nonetheless reproduced the basic shape of progressive change offered by Whiggish accounts. That is to say that, in full agreement with existing narratives, Radzinowicz identified the late eighteenth and early nineteenth centuries - in dramatic contrast to preceding periods - as the dawn of something new and unprecedented.

¹³ Radzinowicz, *The History of English Criminal Law*, Vol. 1, p. 126.

This essentially progressive understanding of change laid down by the Webbs and reinforced by Radzinowicz continued to inform historical analyses of prison reform throughout the twentieth century and arguably has never been entirely eradicated. Even the most avowedly 'radical' twentieth-century challenges to accepted wisdom on late eighteenth-century prison reform have thus been directed only at the *substance* of change (i.e. at explanations of *why* change occurred), its fundamental shape taken to a large extent as given and somehow immune to debate.

3) A radical re-evaluation?

The first wave of revisionist works on late eighteenth-century prison reform emerged in the 1960s as a result of developments both outside and, related to this, within the discipline. Events such as widespread economic instability and successive wars meant that analyses based on assumptions of unremitting progress had, by the 1960s, lost much of the persuasive power that they had once possessed.¹⁴ At the same time, the expansion of higher education in Britain fostered increased interdisciplinarity and, as a result, new social scientific approaches to history emerged which encouraged innovative research into correlations between social 'facts' such as crime and economic change. The 1960s witnessed also a marked politicisation of historical analysis thanks to the rise of radical politics, namely Marxism.

Keen to reconsider the past in line with the more 'social scientific', sceptical and radical terms in which some historians understood the world, interest in aspects of history considered to hold an implicit progressive bias was revived in the 1960s. Re-evaluations were driven at heart by concerns about contemporary society and therefore much attention was dedicated to the origins of modern institutions considered dubious in a world increasingly anxious, first, about the powers of the state and, related to this, the rights of the individual. To interpret modern

¹⁴ Illustrative of this shift was E. H. Carr's 1964 publication *What is History?* in which Carr, once a staunch progressive historian, retracted from the belief that history had any direction, settling instead for the proposition that the direction of history must be expected to change over time. See E. H. Carr, *What is History?*, (London, 1964).

institutions such as prisons, hospitals and asylums as the culmination of a story of progress was, radicals protested, to justify them in terms of their past. Some if not all of the new historiography was thus avowedly political, designed to offer intellectual support for contemporary campaigns urging the reform of various state institutions including the school, asylum, welfare system, juvenile court and, of course, the prison.¹⁵ The resulting re-evaluation of late eighteenth-century prison reform was, in some respects at least, revolutionary.

With the exception of George Rusche and Otto Kirchheimer's 1939 publication *Punishment and Social Structure*, which considered the relationship between prison regimes and emerging patterns of labour market discipline, studies of punishment produced prior to the 1960s and 70s did not attempt to locate punishment or penal reform in its wider social and economic context.¹⁶ Radical revisions were designed to correct this oversight. The programme of late eighteenth-century prison reform, revisionists urged, could not be understood separate from the socio-economic context in which it occurred. A consideration of that context, it was argued first by Gertrude Himmelfarb and Barbee-Sue Rodman and later by Rod Morgan, Michael Ignatieff and Robin Evans, demonstrated that penal reformers were driven not by ostensible humanitarianism but by a formidably severe disciplinary project.¹⁷

Revisionists argued that the motives for and programme of late eighteenth-century prison reform was more complicated than a simple revulsion at cruelty or impatience with administrative incompetence born

¹⁵ For revised histories of the urban school see M. Katz, *The Irony of Early School Reform*, (Harvard, 1968) and M. Lazerson, *The Origins of the Urban School*, (Harvard, 1971). For the welfare state see F. F. Piven & R. Cloward, *Regulating the Poor*, (New York, 1971). For asylums see A. Scull, *Museums of Madness*, (London, 1979), and for the juvenile court A. M. Platt, *The Child Savers*, (Chicago, 1969).

¹⁶ G. Rusche & O. Kirchheimer, *Punishment and Social Structure*, (New York, 1939).

¹⁷ G. Himmelfarb, 'The Haunted house of Jeremy Bentham' reprinted in *Victorian Minds*, (New York, 1968), pp. 32 – 81, B. S. Rodman, 'Bentham and the Paradox of Penal Reform', *Journal of the History of Ideas* 29 (1968), R. Morgan, 'Divine Philanthropy: John Howard Reconsidered', *History* 62 (1977), pp. 388 – 410, pp. 197 – 210, M. Ignatieff, *A Just Measure of Pain*, (New York, 1978) and Evans, *The Fabrication of Virtue*.

of moral enlightenment. Contemporary reformers' critiques of eighteenth-century punishment were driven, they argued, by a *more* not less ambitious conception of power. The history of prison reform was thus incorporated into a history of the philosophy of authority and the exercise of class power more generally. As mentioned above, revisions were driven to a large degree by the rise of radical politics. Particularly influential was Marxism which, in urging that at the heart of all history lay the history of class conflict, to some extent revolutionised the study of history. History, Marxists urged, is subject to the inexorable control of economic forces which move all human societies along the road to socialism through a predetermined set of stages. It was capitalism, the stage occupied during the late eighteenth century, to which re-evaluations of prison reform drew attention.

First published in French in 1975 and in English two years later in 1977, Michel Foucault's *Discipline and Punish* played a key part in stimulating Marxist re-evaluations of the history of prison reform.¹⁸ Concerned at heart not with the history of punishment but with the emergence of a new disciplinary ideology and regime at work across society as a whole, Foucault's *Discipline and Punish* argued that the new system of punishment which emerged in the late eighteenth century resulted from a new modality of political power embedded in the emerging modern state. As R. R. Sullivan summarised in his recent analysis of Foucault's argument, 'By means of quiet punishments, mild but repeated, privately enacted, increasingly solitary and systematically applied over long periods, the state [Foucault argued] gradually gained access to the soul of the prisoner, and eventually it gained control.'¹⁹

¹⁸ M. Foucault, *Discipline and Punish*, (New York, 1978). While not explicitly Marxist in character, Foucault's materialist account of late eighteenth-century prison reform engaged Marxist historians and played a key part in stimulating new research. For an analysis of the relationship between Foucault and Marxism see, M. Olssen, 'Foucault and Marxism: rewriting the theory of historical materialism', *Policy Futures in Education* 2:3, (2004), pp. 454 – 482.

¹⁹ R. R. Sullivan, 'The Birth of the Prison: Discipline or Punish?', *Journal of Criminal Justice* 24:5, (1996), p. 450.

Influenced by Foucault but narrower in scope, Ignatieff's 1978 publication *A Just Measure of Pain* brought the history of punishment into sharper focus by concentrating less on the philosophy of authority and more on how changing power structures impacted on penal practice at the end of the eighteenth century.²⁰ While the fundamental argument of Ignatieff's contribution was typical of revisionist approaches to the history of punishment insofar as it urged that prison reformers were driven not by humanitarianism but by aspirations of class control, *A Just Measure of Pain* was arguably the most valuable of all revised accounts because it provided a qualified explanation of precisely *why* reformers were driven by the desire to increase mechanisms of social control.

Taking an explicitly Marxist stance, Ignatieff identified that, located in its specific historical context, late eighteenth-century prison reform coincided with the 'industrial revolution'. It was the corresponding rise of capitalism rather than the emergence of some unspecific humanitarian urge which, Ignatieff argued, provides the context in which prison reform should be understood. Reformers were driven, he urged, by an ambitious class-based conception of power; far from the enlightened invention of humanitarian reformers, the institution born of late eighteenth-century prison reform was, Ignatieff argued, a tool of social control designed by the new factory-owning bourgeoisie as a means of monitoring social fluidity and reinforcing structures of power and production. According to Ignatieff, imprisonment appealed to the late eighteenth-century state because the combined forces of industrialisation and a received sense of lawlessness in society convinced those in charge that England was facing a crisis in social control. In this context, building prisons which would 'loom over the workers' quarters and around it, a massive...fortress of the law,' was, he argued, a policy with considerable appeal.²¹ It was through drawing attention in this way to of the historically specific features of the social, cultural and economic context in which late eighteenth-century penal reforms took place that Ignatieff and fellow revisionists such as

²⁰ Ignatieff, *A Just Measure of Pain*.

²¹ *Ibid.*, p. 3.

Rodman and Morgan made their most valuable contribution to the history of prison reform in England. As one reviewer of *A Just Measure of Pain* concluded, 'It is that affinity between an institution and a cosmology that supplies the book's major thesis.'²² Despite offering an apparently more historically accurate explanation for the emergence of the modern prison than their predecessors, however, Marxist revisions offered by Ignatieff et al have proved over time to be excessively ambitious.

Highly ideological radical accounts have proved unconvincing over time because, put simply, they dealt too heavily in abstract social theory and demonstrated in the process insufficient concern for the sources. Preoccupied with a strict political agenda, Marxists framed their explanations of late eighteenth-century prison reform within a specific hypothesis of class conflict within which there was little space for the complexity and contradictions of historical reality. Paradoxically given that they aimed to place prison reform in its specific social and economic context, in removing prison reform from its real time and space and locating it within a conceptual framework which would have meant little in the age in question, Marxist accounts fell victim to what Ranke would have termed the 'dangers of presentism.'²³ Thus, ironically, just as traditional Whiggish accounts had prejudged the past by modern standards, so too did radical re-evaluations prioritise present-minded preoccupations over historical context.

That radical re-evaluations were over-theorised is evidenced by the critiques offered in a number of works published in response to them. Perhaps most important was Margaret DeLacy's 1986 'mole-hill' study of prison reform in late eighteenth-century Lancashire, which was designed to 'test the claims of frequently lofty radicals who view history from the heights of social theory whilst paying scant attention to how, or indeed if,

²² P. Rock, 'A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750 – 1850; a review', *The American Journal of Sociology* 87:3 (1981), p. 733.

²³ Cited in J. Tosh, *The Pursuit of History*, 3rd edition, (Essex, 2000), p. 5.

the reforms they discussed were actually carried out.²⁴ DeLacy's empirical analysis of prison reform concluded, first, that Marxist notions of class conflict simply did not exist at local level and, secondly, that revisionists had overstated the case for industrialisation as a catalyst for change. DeLacy found that not only did many improvements in prison administration in Lancashire take place outside of the period considered to constitute the 'industrial revolution', but also that the power to implement them remained squarely in the hands of the county's 'old establishment' – i.e. landowners and clergy - throughout the late eighteenth century and indeed beyond. These findings contributed to a growing body of thought which, in part as a result of postmodern scepticism towards organising categories such as 'class' and in part as an attempt to undermine growing interdisciplinarity with the social sciences, urged that history was by definition hostile to the sort of abstraction and generalisation exhibited in Marxist accounts.²⁵

Arguments expressed against the use of theory in the pursuit of history are, in many instances, born of prejudice. As any of the better examples of theoretical history will show, the potential pitfalls of abstraction to which traditionalists and postmodernists draw attention are not inevitable, and the result of the use of theory in historical analysis is thus most often an enrichment rather than impoverishment of historical understanding. However, as Ignatieff himself acknowledged in his 1984 revision of his own earlier work, in the case of the essentially free-reining revisionist theories of prison reform produced in the 1960s and 70s one unarguably encounters the damaging consequences feared by the 'anti-theorist' division of the discipline: 'historical reality,' Ignatieff conceded just six years after the publication of *A Just Measure of Pain*, 'is far more complex than the revisionists assumed, reformers were more

²⁴ M. DeLacy, *Prison Reform in Lancashire, 1700-1850: A Study in Local Administration*, (Manchester, 1986), p. 2.

²⁵ Contributions to this argument made in the 1960s and 70s included G. R. Elton, *The Practice of History*, (London, 1969), D. Thomson, *The Aims of History*, (London, 1969), M. M. Postan, *Fact and Relevance*, (Cambridge, 1971), and P. K. Conkin, 'Intellectual History' in C. F. Delzell (ed.), *The Future of History*, (Vanderbilt, 1977), pp. 129 – 130.

humanitarian than revisionists have made them out to be, and there are no such things as classes.²⁶

That is not to say, however, that Marxist accounts failed to contribute anything of value to the history of punishment; aside from drawing attention to the importance of the social, economic and political context of institutional change, the very fact that revisionists challenged conventional wisdom regarding late eighteenth-century prison reform meant that they opened up new lines of enquiry regarding the motives of reformers and, as a result, revived interest in the subject area. Notwithstanding the important questions that they raised, however, the substance of Marxist accounts is, it is fair to say, now wholly outmoded. As Joanna Innes and John Styles commented in their summary of historiographical trends published in 1986, the Marxist contribution to the history of punishment was fundamentally flawed by 'its glib assumptions about the all-transforming character of an "industrial revolution" which, it is increasingly clear, is incapable of bearing the explanatory demands placed upon it.'²⁷ Here, Innes and Styles draw attention to the fact that Marxist interpretations fail to convince in an age when the work of historians like Pat Hudson has demonstrated that the notion of an 'industrial revolution' is chimerical, and that economic change was in fact a long-term, gradual and characteristically uneven process.²⁸

The primary flaw of Marxist accounts – the manner in which they assigned the industrial revolution a major causal role in late eighteenth-century prison reform – was, somewhat ironically, born largely of the fact that 'radical' re-evaluations of the history of punishment were not radical enough. That is to say that although revisionists challenged the *substance* of traditional accounts (i.e. the established *explanation* of change), they failed to make any attempt to challenge existing notions of

²⁶ M. Ignatieff, 'State, Civil Society and Total Institutions: A critique of Recent Social Histories of Punishment' in S. Cohen & A. Scull, (eds.), *Social Control and the State*, (Oxford, 1983), p. 77.

²⁷ J. Innes & J. Styles, 'The Crime Wave' in A. Wilson (ed.), *Rethinking Social History*, (Manchester, 1993), p. 207.

²⁸ See P. Hudson, *The Industrial Revolution*, (Manchester, 1992).

the *shape* of change. As a result, Marxist re-evaluations fitted neatly into the 'Reform Perspective' first laid down by Whiggish historians, wherein the late eighteenth century was identified as a momentous turning point - the start of something novel and, in striking contrast to the preceding period, recognisably modern.²⁹ Marxist accounts acted only, therefore, to reinforce the dichotomy between the pre modern and modern eras first constructed by the Webbs in the early 1920s.

4) Beyond the dichotomy

While the first wave of re-evaluations of the history of punishment challenged interpretations of the substance of late eighteenth-century prison reform, more recently historians have been driven to probe more deeply into the history of pre-reform, eighteenth-century punishment to which narratives adopting a 'Reform Perspective', by definition, pay scant attention. That is not to say that analyses of the early eighteenth-century penal system were mutually exclusive of Marxist reinterpretations of late eighteenth-century penal reform; indeed, one of the first and arguably most important contributions to our understanding of pre-reform penal practice was made by Douglas Hay's edited work *Albion's Fatal Tree*, first published at the height of Marxist fervour in 1975.³⁰

Albion's Fatal Tree was born of the radical 'new social history' which emerged in the 1960s. A product of growing interest in 'history from below', Hay and his collaborators broke new ground in their recognition that the history of crime and punishment offered great potential as a means of accessing the experiences of the inarticulate; the history of crime and its punishment was, the introduction to their book explained, 'central to unlocking the meanings of eighteenth-century social history.'³¹ As its use of statistical analyses demonstrates, *Albion's Fatal Tree* was influenced not only by a new interest in history from below but also by

²⁹ This was perhaps inevitable given the fact that interest in the history of punishment was revived in the 1960s and 70s for the light that late eighteenth-century prison reforms were believed to shed on modern-day institutions.

³⁰ Hay et al. (eds.), *Albion's Fatal Tree*.

³¹ *Ibid.*, p. 13.

increased interdisciplinarity with social scientific approaches, to which the formulaic legal records with which most of the book's collaborators were concerned naturally lent themselves.

A study of the workings of the criminal trial, Hay's contribution to *Albion's Fatal Tree* – 'Property, Authority and the Criminal Law' – provided one of our first glimpses into the 'reality' of punishment in eighteenth-century England.³² Building on the groundwork laid by Radzinowicz, 'Property, Authority and the Criminal Law' concentrated on the *application* of the eighteenth-century penal code rather than subsuming such detail into an over-arching theory of the history of penal reform. Testimony to the strengths of this approach, Hay's essay confirmed an intriguing and crucial paradox at the heart of the eighteenth-century penal system first recognized by Radzinowicz; during a period famed for its 'Bloody Code', when Parliament called for a considerable number of property offences to be made punishable by death, the proportion of death sentences actually carried out, Hay found, was small and declining. Hay's work thus posed a serious challenge to existing accounts which sharply contrasted the relative barbarity of the pre and post-reform periods. His findings undermined the argument expounded by Whigs and radicals alike that during the late eighteenth century there occurred a shift from an uncivilised to a more civilised penal system. Building on Radzinowicz's earlier work, Hay demonstrated that to see the judicial practice as a simple reflection of the 'reality' of law was to over simplify a far more complex scenario wherein the discretion of those involved in its application played an apparently crucial role.³³ Hay's study was thus pioneering in the bridges that it built between the early modern and modern periods; it demonstrated, as James Sharpe and John Beattie has

³² D. Hay, 'Property, Authority and the Criminal Law', in Hay et al. (eds.), *Albion's Fatal Tree*, chapter 1.

³³ Disagreement exists as to where this discretion lay. In line with Marxist theory and thus with Ignatieff's argument, Hay identified it as subject to the control of a small eighteenth-century ruling class who used it to sustain their authority. Others have since taken issue with this argument; see Langbein, 'Albion's Fatal Flaws', *Past and Present* 98 (1983), pp. 62 – 120, King, 'Decision-makers and Decision-making in the English Criminal Law, 1750 – 1800', *Historical Journal* 27:1 (1984), pp. 25 – 58, and Green, *Verdict According to Conscience*.

since reinforced, that the period preceding the late eighteenth century was far from unvaryingly barbaric and thus that the shape of change laid down by traditional accounts and later reinforced by Marxist revisionists oversimplified a far more complex process of events.³⁴

Hay was not alone in complicating the accepted wisdom on crime and punishment in eighteenth-century England. For example, challenging the notion that there existed uncritical acceptance of the penal system in the period preceding the era of reform, Peter Linebaugh, another contributor to *Albion's Fatal Tree*, conducted an ethnographic study of the behaviour of crowds at Tyburn which revealed that the public actively expressed their distaste at certain elements of the ritual of capital punishment in the eighteenth century.³⁵ Elsewhere, and perhaps as a result of these developments, historians began for the first time to recognise the eighteenth-century penal system as pluralistic - to shift their focus away from the capital code and consider the fate of those convicts who were *not* executed. Thus, in 1987, Roger Ekirch produced the first full-length study of transportation to the American colonies which, he discovered, enjoyed its heyday in the mid eighteenth century.³⁶

By far the most important work produced as part of this trend, however, was John Beattie's 1986 book *Crime and the Courts in England*, a study of sentencing patterns in Surrey over the period from 1660 to 1800 which, to borrow Innes and Styles' evaluation, 'has broken most decisively with older habits and assumptions, both in its approach and in its conclusions.'³⁷ The value of Beattie's work lay fundamentally in the novelty of his approach. Building on Hay and Sharpe's observations that the eighteenth-century penal code was far from unvaryingly severe,

³⁴ See J. A. Sharpe, *Crime in Early-Modern England*, (London, 1984) and 'Civility, Civilizing Processes and the End of Public Punishment in England' in P. Burke, B. Harrison & P. Slack, (eds.), *Civil Histories*, (Oxford, 2000), pp. 215 – 230 and Beattie, *Crime and the Courts*.

³⁵ P. Linebaugh, 'The Tyburn Riot Against the Surgeons' in Hay et al. (eds.), *Albion's Fatal Tree*, chapter 2.

³⁶ R. Ekirch, *Bound for America*, (Oxford, 1987).

³⁷ Innes & Styles, 'The Crime Wave' in Wilson (ed.), *Rethinking Social History*, p. 230.

Beattie considered penal history through the study of sentencing, rather than the study of a particular form of punishment or indeed a study of laws. His approach was groundbreaking in the opportunity that it consequently offered to grasp in more detail the idiosyncrasies of eighteenth-century penal practice. Beattie's work also broke new ground in the sense that it shifted the established timeframe within which penal history was researched. Beginning at the Restoration, his study uncovered a rich history of penal experimentation which, together with the work of Hay and Sharpe, acted to irreversibly undermine the case of those arguing for the distinctiveness of penal practice in the late eighteenth century.

Approaching the history of punishment as he did through a study of sentencing, Beattie's work offered our first comprehensive insight into the extent of penal pluralism at work in the pre-reform era. The eighteenth century, Beattie found, was striking not for its 'bloodiness' but rather for its experimentation with secondary punishments including transportation, imprisonment, whipping and fining. Building on Radzinowicz and Hay's earlier works, Beattie found that in spite of, or indeed rather because of, the existence of the 'Bloody Code', eighteenth-century judges, juries, prosecutors and the crown exercised significant powers of discretion and often actively avoided applying the death penalty through varied means such as reducing the form of the original charge, manipulating the rules regarding awarding benefit of clergy or through the generous application of the royal prerogative of mercy.³⁸ These findings helped to contextualise historians' earlier observations that the number of executions carried out over the course of the eighteenth century was relatively small and, albeit inconsistently, declining.³⁹

³⁸ Beattie, *Crime and the Courts*.

³⁹ Figures from the Old Bailey show that a significant discrepancy existed in the eighteenth century between death sentencing and executions. Over the course of the 1770s, for example, 686 convicts were sentenced to death but only 8 executed. When compared to earlier in the century this represented at once a rise in the number of convicts sentenced to death and a decline in the numbers actually executed. See www.oldbaileyonline.org. For discussions of the decline of executions see Hay, 'Property, Authority and the Criminal Law', Hay et al. (eds.), *Albion's Fatal Tree*, chapter 1 and Sharpe, *Crime in Early-Modern England*.

Beattie's study not only expanded on earlier work which had revealed the complexities of pre-reform penal practice but also, by shifting backwards the timeframe within which penal historians traditionally worked, revealed for the first time the full complexity of the early eighteenth-century penal system. Thanks to the enduring 'Reform Perspective', historians before Hay and Beattie assumed that there was no early dissatisfaction with the penal code and, correspondingly, no shifts in penal practice. Beattie's research demonstrated that such assumptions were misguided. What emerged from his study was that there exists a far longer and more complex history of penal ideas and experiments than Whiggish and Marxist accounts have led us to believe. What was distinctive about the late eighteenth century, Beattie showed, was *not* discontent with the established system but rather, and quite simply, the extent to which existing complaints and ideas were effectively communicated and the influence that such arguments exerted.⁴⁰

Despite its enduring influence over the history of punishment, the dichotomy drawn between early-modern and modern penal practice has proved false. Driven by a desire to illuminate the workings of the pre-reform penal system, historians of recent times have found not only that eighteenth-century punishments were less barbaric and more complex in character than has been assumed, but also and correspondingly that to see late eighteenth-century prison reform as an isolated and momentous turning point is to oversimplify a more complex and nuanced process of change.

5) Rethinking the history prison reform

Recent research into the history of punishment has, therefore, presented a major challenge to those seeking to argue for the distinctiveness of late eighteenth-century prison reform. Thanks to certain historians' willingness

⁴⁰ An argument recently reinforced by J. Innes, "Reform" in English Public Life: the fortune of a word' in A. Burns & J. Innes (eds.), *Rethinking the Age of Reform*, (Cambridge, 2003), pp. 71 – 97 and by R. McGowen, 'The Problem of Punishment in Eighteenth-Century England' in S. Devereux and P. Griffiths (eds.), *Penal Practice and Culture*, (Basingstoke, 2004), pp. 210 – 227.

to look beyond the 'Reform Perspective', we now recognise that the eighteenth-century penal system in England was characterised more by experimentation with secondary punishments than it was by capital sentences. More than this, the work of Beattie in particular has demonstrated the crucial point that continuity as well as change was at work when the decision was made in 1779 to sanction the construction of recognisably modern prisons. By liberating ourselves from the misleading argument that late eighteenth-century prison reform was unprecedented we have over the course of the last two decades achieved a more nuanced grasp of the origins of late eighteenth-century penal reform.

Given that they aimed critically to investigate the 'Reform Perspective', it is perhaps inevitable that recent accounts have dedicated most of their attention to rethinking the *shape* (i.e. timing) of change rather than questioning its *substance* (i.e. explanations of it). While it convincingly demonstrated that both continuity *and* change were at work in the late eighteenth century, Beattie's work, for example, had little to say about exactly *why* penal reform happened when it did and precisely what was new and what was not. In short, Beattie did a better job at describing change than he did at explaining it. In order to understand late eighteenth-century prison reform more accurately, it is necessary to build upon recent developments and consider in more detail both its *shape* and its *substance*; i.e. to examine exactly why late eighteenth-century prison reform happened when it did, and precisely which elements of the reforms passed evolved over time, and which elements were perhaps more pioneering.

In order to analyse effectively the shape and substance of late eighteenth-century prison reform it is imperative to abandon a technique that has restricted the study of penal history since the early twentieth century: the tendency to separate the study of felonies and misdemeanours and their punishment. From the Webbs' earliest contribution onwards, historians have actively differentiated between serious and petty crimes, tending to focus their attention on felonies and,

consequently, on the punishments attached to felonies. Summary or petty offences and responses to them are, correspondingly, less well researched. Although understandable given that this was a fundamental distinction made in English law, the practice of separating the study of petty and serious crime has significantly limited our insight into penal history fundamentally because to see the two sorts of offences in isolation is to construct a false dichotomy.

Throughout the early modern and modern periods criminal behaviour was perceived by contemporaries in terms of a 'slippery slope' whereby it was believed that petty criminals, if left unchecked, developed into more hardened and serious offenders; 'Few have been hanged for a felony,' prison reformer George Onesiphorus Paul stated in 1783, 'that might not have been saved to the community by the correction of an early misdemeanour.'⁴¹ From the sixteenth century onwards petty and serious crimes were perceived not to exist in isolation of one another but rather at extreme ends of the same scale. Since petty crimes were identified as the first phase of more serious criminal behaviour, contemporaries dedicated much of their innovative attention and energy to the punishment of petty offences. The punishments attached to petty crimes thus provide a rich insight into penal practice and innovation not just in relation to petty crimes but to crime more generally. Any thorough account of the origins of late eighteenth-century prison reform must therefore pay attention to the punishments attached not just to felonies but also to misdemeanour offences; as Paul Griffiths recently argued, 'Once we mingle misdemeanours and felonies into a single story, the contingent character of change will be plain to see.'⁴²

In acknowledgement of this, some valuable attention has been paid to the house of correction, a sixteenth-century penal innovation designed for the

⁴¹ Paul, *A State of the Proceedings on the Subject of a Reform of Prisons*, (1783), p. 50.

⁴² P. Griffiths, 'Punishing the English' in Devereux & Griffiths (eds.), *Penal Practice and Culture*, p. 26.

punishment of petty criminals charged with summary offences.⁴³ Interest in the house of correction is well placed; not only will our understanding of the institution expand our insight into summary offences and their punishment, but it also promises to increase our awareness of arguably the most pioneering and important penal experiment in the history of punishment. As England's first penal institution designed not only to punish but also rehabilitate its inmates, any study of late eighteenth-century prison reform must inevitably pay considerable attention to the early modern house of correction. Thanks to Beattie, late eighteenth-century penal reforms are now currently located in a context stretching back to 1660. However, while briefly discussing houses of correction, like most other accounts of eighteenth-century crime and punishment Beattie's work concentrated almost exclusively on felonies and thus obscured the influence exerted by the house of correction on prison reform ideas of the late eighteenth century. A study which examines the punishments attached to both felonies *and* misdemeanours will inevitably extend back further still the timeframe within which we study penal reform, since arguably the most important punishment for petty offences – the house of correction – was first introduced over 100 years earlier than Beattie's timeframe in the mid sixteenth century.⁴⁴

Some historians have already begun to cast their eyes back to the period before 1660 and recognise that established wisdom regarding the shape of change is in need of some reconsideration. McGowen's recent essay 'The Problem of Punishment in Eighteenth-Century England', for example, traces some of the arguments made by late eighteenth-century penal reformers back to 1651.⁴⁵ Meanwhile, building on a connection first made by Rusche and Kirchheimer in 1939 and later expanded by Spierenburg Innes' 1987 article on houses of correction suggested that a more radical re-shaping of the history of punishment might be necessary

⁴³ See J. Innes, 'Prisons for the Poor' in F. Snyder & D. Hay (eds.), *Labour, Law and Crime*, (London, 1987), pp. 42 – 122, R. Shoemaker, *Prosecution and Punishment*, (Cambridge, 1991), chapter 7 and P. Griffiths, 'Bodies and Souls in Norwich: Punishing Petty Crime' in Devereux & Griffiths (eds.), *Penal Practice and Culture*, pp. 85 – 104.

⁴⁴ England's first house of correction (Bridewell in London) was established in 1550.

⁴⁵ McGowen, 'The Problem of Punishment', pp. 210 – 227.

in light of the similarities that she identified between the house of correction and the reformed prison which emerged in the last two decades of the eighteenth century.⁴⁶ In discovering that houses of correction were used to punish a far wider range of offences than they were officially designed to, Robert Shoemaker's 1991 publication *Prosecution and Punishment* encouraged further a comparative analysis of the early modern institution and the reformed prison.⁴⁷ That we need to reconsider the shape of change has been suggested also by recent research into the 'Bloody Code', which has demonstrated that the eighteenth-century penal system was less dissimilar to its sixteenth-century equivalent than has been assumed. Evidence suggests, for instance, that the basic principles upon which capital statutes were based remained largely unchanged during the period from 1500 to 1800.⁴⁸ Research has found that a relatively high number of statutes were passed in the eighteenth century *not* because of an increasingly severe penal ideology but, first, because England was a more commercially diverse nation than ever before and new forms of property crime thus occurred, and, secondly, because Parliament was more effectively organised and thus met more frequently with the consequence that it was able to produce more legislation in a more efficient manner than had been possible in earlier periods.⁴⁹

Despite the complications that have been highlighted by accounts probing the pre-reform era, however, the history of punishment remains largely non-radical. Even in what one might term the 'post-Beattie era', the 'Reform Perspective' first laid down in the 1920s has not been wholly abandoned. George Fisher's 1995 article 'The Birth of the Prison Retold', for example, took no issue with repeating Ignatieff's 1978 argument and assigning the industrial revolution a major causal role in late eighteenth-

⁴⁶ See Rusche & Kirchheimer, *Punishment and Social Structure*, P. Spierenburg, *The Prison Experience*, (London, 1991) and Innes, 'Prisons for the Poor', pp. 81 - 82.

⁴⁷ Shoemaker, *Prosecution and Punishment*.

⁴⁸ See, for example, L. Davison, 'Public Policy in an Age of Economic Expansion', Harvard University Ph.D. dissertation, (1990).

⁴⁹ See J. Innes & J. Hoppit, 'Introduction' of J. Hoppit (ed.), *Failed legislation, 1660-1800*, (Hambleton, 1997).

century penal reform.⁵⁰ Reforms were driven, Fisher argued, by the need to create a means of punishment appropriate for dealing with the indiscipline of a new population of child labourers born of a revolution in production.⁵¹ During the 1780s, he concluded, 'a penal scheme marked by fitful bursts of shocking severity gave way to a metered, reasoned response to crime.'⁵² Other recent accounts, while less explicitly Marxist in nature, nonetheless similarly reinforce the 'Reform Perspective' by identifying the late eighteenth century as a decisive watershed in penal practice. McGowen's recent study of reform discourse, for example, while drawing attention to the fact that there existed unease with the penal status quo in the pre-reform era, concluded that the late eighteenth-century witnessed the dawn of an unprecedented, innovative system of punishment; 'there was no description of a place offered within England,' he argued, 'where this regime [the proposed reformed prison] already operated.'⁵³ By focussing on late eighteenth-century legislation and the influence of 'enlightenment' penal theory on reform ideas, Simon Devereaux and Anthony Draper's work has also helped to entrench the long-established notion that late eighteenth-century prison reform constituted a revolution in penal practice.⁵⁴

Notwithstanding the recent progress made by historians who have shaken the accepted narrative of change and re-defined the boundaries of the subject matter first laid down by the Webbs, the central question at the heart of penal history regarding the substance and shape of change - in short the precise nature of origins of late eighteenth-century prison reform - remains to be conclusively addressed. As evidence presented here has shown, we are yet to appreciate the precise timeframe within which we should consider late eighteenth-century prison reform and, as a

⁵⁰ G. Fisher, 'The Birth of the Prison Retold', *Yale Law Journal* 104:6 (April, 1995), pp. 1235 – 1324.

⁵¹ *Ibid.*, pp. 1235 – 1324.

⁵² *Ibid.*, p. 1236.

⁵³ McGowen, 'The Problem of Punishment', p. 222.

⁵⁴ See S. Devereaux, 'The Making of the Penitentiary Act, 1775 - 1779', *The Historical Journal* 42:2 (1999), pp. 405 – 433 and A. J. Draper, 'Cesare Beccaria's Influence on English Discussions of Punishment, 1764 – 1789', *History of European Ideas* 26 (2000), pp. 177 – 199.

result, are yet to accurately understand the origins of the ideas and tactics at play at the end of the eighteenth century.

6) The origins of late eighteenth-century prison reform

This thesis builds on the work of historians whose research has complicated established understandings of the shape of penal reform in England. Despite the shortcomings of their interpretation of late eighteenth-century prison reform, this and indeed all new research into the subject area is indebted to the contribution made by radical historians of the 1970s and 80s who first raised doubts over the motives behind prison reform and thus opened the issue up to new lines of enquiry. Any new research into prison reform and indeed the history of crime and punishment more generally is indebted also to Beattie's work which, as discussed above, has more than any other revolutionised our understanding of late eighteenth-century prison reform. As a result of shortcomings in established methodologies, however, our understanding of the precise shape of prison reform in England remains restricted and significant gaps in our knowledge of the substance of change thus persist.

As discussed above, it has been recognised in recent years that in order to understand the shape and substance of late eighteenth-century prison reform it is essential to consider petty and serious offences as one rather than in isolation of one another. Making the study of prison reform a study of the punishment of felonies *and* misdemeanours is a valuable exercise not only because contemporaries themselves associated the two types of crimes and, consequently, their punishment, but also because to focus exclusively on felonies and the punishments attached to them is, as Griffiths recently pointed out, to base one's understanding of English penal culture on only a small percentage of the punishments in use over the period from 1500 to 1800.⁵⁵ Taking heed of such observations, this

⁵⁵ Griffiths, 'Punishing the English', p. 2.

thesis will consider petty and serious offences and their punishment as a single phenomenon.

The thesis will make its starting point the early modern house of correction – an institution that has until now played only a modest part in the history of crime and punishment thanks to the fact that it was both an early modern invention and designed originally to punish petty offences as opposed to felonies.⁵⁶ As mentioned above, however, preliminary research has demonstrated that the house of correction – an institution designed both to punish *and* rehabilitate its inmates via a regime of physical discipline and moral rehabilitation - deserves penal historians' closer attention. This point was made most convincingly in Innes' 1987 study 'Prisons for the Poor', which broke new ground in the observations that it made regarding the influence of the house of correction on English penal culture.⁵⁷ Abandoning the old assumption that the house of correction was an inevitably unsuccessful experiment which disappeared from the penal system over the course of the eighteenth century, Innes observed that while in the late eighteenth century corrective imprisonment was no longer exclusively associated with the disorderly poor, the ideal of the corrective prison was nonetheless enduring.⁵⁸ Shoemaker's subsequent observation that the punitive role of the house of correction was much wider and more varied than has been assumed helped to reinforce further the suggestion made by Innes' research that there exist parallels between early-modern and modern penal practices.⁵⁹

Building on Innes' and Shoemaker's observations, this thesis will consider in more depth the precise details of the relationship between the early modern house of correction and late eighteenth-century prison reform; to what extent, it will ask, did the model of institutionalised punishment first

⁵⁶ As mentioned above, important research into the house of correction as a means of punishment has been undertaken by Innes, 'Prisons for the Poor' in Snyder & Hay (eds.), *Labour, Law and Crime*, pp. 81 – 82 and Shoemaker, *Prosecution and Punishment*.

⁵⁷ Innes, 'Prisons for the Poor', pp. 42 -122.

⁵⁸ *Ibid*, pp. 107 - 111.

⁵⁹ Shoemaker, *Prosecution and Punishment*.

introduced in the early sixteenth century provide a blueprint upon which later penal experiments were based? In order to answer this question adequately, it is necessary to study reform as aspiration and consider precisely the ideas and arguments which were made for prison reform over time. The study will combine modern and traditional methodologies, on the one hand analysing the language discourse used to promote penal reforms over the sixteenth, seventeenth and eighteenth centuries, and on the other conducting an analysis of the similarities and differences between the early modern house of correction and late eighteenth-century reformed prison.

Despite scepticism regarding the insight that language can provide into any sort of historical 'reality', historians have over recent years come to recognise the special value of analysing what people wrote and said in the past. Thus, heeding Gareth Stedman-Jones' warning about conflating words and ideas, and accepting that what people say is less a reflection of reality and more a deliberate intervention or contrived representation, historians have begun to study language not as a means of accessing historical 'fact' but rather as an insight into contemporary preoccupations.⁶⁰ In short, language was in the past as it is in the present a powerful tool employed to present ideas and make arguments in a particular way and, as such, is a rich source of insight into contemporary aspirations and concerns.

The subject matter in question here naturally lends itself to a study of language given the rarely recognised fact that late eighteenth-century prison reforms were *not* mandatory but instead voluntarily adopted by officials at the local level as, when and if it was deemed necessary. Thus, just as Joanna Innes found that sixteenth-century penal institutions were less the creatures of 'local government' than has been widely assumed, so their late eighteenth-century equivalents were far *more* subject to the influence of local officials than is suggested by accounts preoccupied with

⁶⁰ See G. Stedman-Jones, *Languages of Class*, (Cambridge, 1983).

notions of the eighteenth-century centralised 'state'.⁶¹ What those promoting penal reforms at local, ground level said about their cause - exactly how it was promoted and the benefits it was urged to have - was supremely powerful and ultimately determined whether or not reform occurred, and the study will thus prioritise language and culture as a means of accessing why reform happened when it did.

Building on Margaret DeLacy's groundbreaking study, this thesis approaches prison reform as an essentially local, ground level phenomenon, facilitated but not dictated by national reform literature and Parliamentary statute. Considering reform at the local level allows one an insight not only into exactly how reform happened but also into precisely who was involved in the process, what they argued and what motivated the decision to adopt the reforms offered in the Penitentiary Act. By recognising the fact that late eighteenth-century prison reform had ultimately to be sanctioned by 'lay' officials concerned with dealing with community issues as frugally and constructively as possible, the thesis fits in with a long tradition of works aimed at discrediting political histories which portray eighteenth-century society as dominated by an all-powerful elite with conspiratorial aspirations of class domination and little regard for the welfare and concerns of their wider community.⁶²

In terms of sources, the first part of the study will draw on a comprehensive collection of printed penal reform material published in the sixteenth, seventeenth and eighteenth centuries. Such material was selected, first, for the insight that it can provide into the sorts of penal reform ideas which circulated over time and, secondly, for what it can tell us about the way in which these ideas were communicated to their audiences. Printed reform material thus provides an opportunity to identify continuity and change over time not just in reform discourse – i.e. the specific ways in which reform was talked about – but also in the ideas

⁶¹ See Innes, 'Prisons for the Poor' and 'Changing Perceptions of the State', *Journal of Historical Sociology* 15:1 (March, 2002), p. 108.

⁶² The most influential contribution to this critique was made by L. Davison, T. Hitchcock, T. Keirn & R. B. Shoemaker (eds.), *Stilling the Grumbling Hive*, (Stroud, 1992).

expressed and arguments made by reformers in terms of what was perceived to be wrong with the existing penal system and, perhaps most importantly, what was understood to constitute the solution to those perceived problems and why.

The value of studying material of this sort was demonstrated recently by McGowen in his 2004 essay 'The Problem of Punishment in the Eighteenth Century', which sought to understand what sort of ideas about punishment circulated in the eighteenth century through an analysis of 'scattered comments in magazines, newspapers and obscure pamphlets.'⁶³ McGowen's study showed that by considering printed reform material as a single discourse one can identify the significance of what might otherwise simply be considered isolated and uncommon utterances. In short, his study of reform material successfully demonstrated 'the presence of considerable uneasiness with prevailing penal options' during the eighteenth century which might otherwise have gone unnoticed.⁶⁴

Building on McGowen's work, this study will analyse the content of printed penal reform material published throughout the period 1515 – 1800. Focussing on printed material results inevitably in a bias towards the latter part of the period. That is to say that the volume of printed material produced prior to the expiration of the press licensing act was inevitably modest compared with the volume produced in the early eighteenth century which, in turn, was dwarfed by the volume of material produced by the end of the same century when more material from a more varied range of voices was published on the topic of penal reform than ever before. Notwithstanding a bias in the volume of sources over time, however, by considering printed reform material as a single discourse which expanded as time progressed, this study seeks to identify the emergence of a particular type of penal culture in England

⁶³ McGowen, 'The Problem of Punishment', p. 212.

⁶⁴ *Ibid.*, p. 213.

and thus locate late eighteenth-century reform discourse, ideas and arguments and in their full historical context.

In order to understand the relationship between the reform material published on the national level over the period 1515 - 1800 and the reform which occurred at the local level at the end of the eighteenth century, the second part of the study will focus on sources from ground level produced in the period immediately before late eighteenth-century penal reforms were passed. Documents produced by magistrates pushing for reform in Gloucestershire, Lancashire and Middlesex will be analysed for what they can reveal about precisely how and why late eighteenth-century penal reform 'happened'. Limitations on the remit of this study inevitably means that coverage of the reform process at local level is by no means exhaustive. Sources have been selected, however, for how effectively they respond to questions regarding the relationship between national and local level reform arguments and language: Did local level reformers employ the same penal reform discourse as circulated on the national level, or did they face a different set of challenges? The documents selected are a collection of committee minutes, pamphlets, reports and private letters which together provide an insight, first, into the nature of the difficulties that reformers faced in passing penal reform and, secondly, into how such problems were overcome.

Finally, the study will consider the closing stages of reform, drawing on a variety of sources from local level in order to analyse the extent to which late eighteenth-century penal reform was the result of long term trends in penal ideas, arguments and experiments and the extent to which it represented something more groundbreaking. To this end administrative sources including committee minutes, surgeons' reports and chaplains' reports have been selected for what they can show us about the system of punishment which emerged in the late eighteenth century. Were the new institutions which were built at this time designed to enforce an innovative means of punishment? If not, to what extent was the model of

reformatory imprisonment on offer based on existing modes of punishment? This section of the study will build upon the chief theme of the thesis insofar as it will centre on the role that language played in making reform happen in its final stages. Sources have thus been selected for what they can tell us about the workings of language within this stage of the reform process.⁶⁵

This thesis builds perhaps most perceptibly, then, upon McGowen's aforementioned article which not only demonstrated the value of shifting one's focus away from penal theory and towards the content of what people were saying about the penal system but also, in tracing arguments for penal reform back to the mid seventeenth century, contextualised Beattie's re-evaluation of the shape of penal reform over time.⁶⁶ Like works of a similar vein that came before it, McGowen's study of reform language concentrated on the whole on expressions of *dissatisfaction* with the penal code rather than on the alternatives being proposed.⁶⁷ As mentioned above, when it came to penal solutions the essay took on a somewhat progressive bias insofar as McGowen argued that the prison born of late eighteenth-century reform ideas was an unprecedented institutional departure.⁶⁸

Building on pre-existing work that has demonstrated that dissatisfaction with the penal code was expressed prior to the late eighteenth century, unlike McGowen's work this study will analyse reform language for what it can tell us about continuities and changes in the *substance* of reform ideas over time; i.e. it will focus on the alternatives promoted by contemporaries rather than detailing their complaints. The thesis will not

⁶⁵ Due to the fact that this study is dedicated in this way to understanding how change occurred with a focus on the workings of language, the precise details of the relationship between the house of correction and late eighteenth-century prison particularly in terms of post-reform practice is something which can unfortunately receive only limited attention here, and might be expanded in the future by the consultation of different sorts of sources, particularly county sessions books and orders of the court.

⁶⁶ McGowen, 'The Problem of Punishment', pp. 210 – 231.

⁶⁷ See, for example, Sharpe, 'Civility, Civilizing Processes, and the End of Public Punishment', pp. 215-230.

⁶⁸ McGowen, 'The Problem of Punishment' , p. 222.

only consider the punishments offered as alternatives to the capital code over the course of the sixteenth, seventeenth and eighteenth centuries, but also the justifications offered as to *why* the proposed alternatives were deemed preferable.

Analysing published arguments promoting penal reform across the sixteenth, seventeenth and eighteenth centuries, this study pushes back the boundaries within which we currently consider late eighteenth-century prison reform. It will be argued that there exist significant continuities over the course of the period from 1515 to 1800 in the arguments made for penal reform, both in terms of the alternatives that were promoted *and* in terms of the justifications made for such alternatives. The central argument on offer is that over the course of the sixteenth, seventeenth and eighteenth centuries there developed a considerable reform discourse which, thanks to cultural changes, possessed a renewed and powerful resonance at the end of the eighteenth century. Thus, while acknowledging the role played by social and economic forces in making penal reform a critical issue at the end of the eighteenth century, the thesis posits that it was the workings of language and culture which made reform happen. Indeed, it will be argued that while the increased resonance of established penal reform discourse played a crucial part in affording an established mode of punishment a renewed appeal in the late eighteenth century, ultimately it was only after the strategic use of language at local level that penal reforms were realised.

The thesis is thus concerned at heart with the workings of language within the reform process. It is proposed that by analysing the arguments made for reform over the period 1515 - 1800 we can access not just the evolution of reform ideas and arguments but also the emergence of reform discourses which, it is argued, played a crucial role in making prison reform happen at the end of the eighteenth century.

In part as a means of correcting the findings of London-centric studies that suggest that the capital was the driving force behind penal reform in England,⁶⁹ in part in response to developments in our understanding of the dynamic nature of the relationship between local activity and national reform,⁷⁰ and in part as a result of the acknowledgement that penal reform was a local phenomenon, the study will consider late eighteenth-century prison reform in three different English counties: Gloucestershire, Lancashire and Middlesex. Thanks to the volume of material available on the subject of penal reform, Gloucestershire and Lancashire have been the subject of prison histories in the past. Such studies have, however, approached the subject matter from different perspectives, using the available material to very different ends than will be the case in this instance. Whiting's study of Gloucestershire, for example, was essentially a celebration of the life and work of George Onesiphorus Paul, and thus detailed the county's reform process within a traditional, Whiggish framework. DeLacy's 1986 study of prison reform in Lancashire, meanwhile, was an empirical work which, while making important observations regarding the influence played by the spread of typhus in the specific timing of prison reform, was designed at heart to correct Marxist theory rather than to offer an alternative narrative of the precise origins of late eighteenth-century prison reform.⁷¹ No doubt as a consequence of its proximity to the capital, Middlesex has, in contrast, remained essentially unstudied as the site of late eighteenth-century prison reform.

Gloucestershire, Lancashire and Middlesex have been selected not only because in isolation they each offer rich sources of evidence on late

⁶⁹ Perhaps the most important recent contribution to this trend was John Beattie's *Policing and Punishment in London, 1660 – 1750* (Oxford, 2001), which portrayed the capital as *the* hot bed of change when it came to the issue of penal reform.

⁷⁰ The case for the importance of local activity in making change happen was made most powerfully in by Davison (eds.), *Stilling the Grumbling Hive*, for example pp. xi-liv. The existence of local political interest and activity has been highlighted also by Peter Clark in *British Clubs and Societies*, (Oxford, 2000), introduction and, taking a more general perspective, Tim Blanning in *The Culture of Power and the Power of Culture*, (Oxford, 2000), part I.

⁷¹ See Whiting, *Prison Reform in Gloucestershire* and DeLacy, *Prison Reform in Lancashire*.

eighteenth-century prison reform, but also because in combination they afford the study a rich comparative element. On a basic level, the three counties are geographically diverse - loosely representative of the north, centre and south of England. Each county possessed, indeed still possesses, very different qualities and quantities of territory with access to very different sorts of natural resources. As a result Gloucestershire, Lancashire and Middlesex have very different economic, social and political histories and yet, despite such disparities, during last two decades of the eighteenth century each county invested in the model of reformed imprisonment offered by the 1779 Penitentiary Act. Together, the three counties provide a representative insight into the peculiar and, perhaps more importantly, common features of the process of prison reform that occurred in late eighteenth-century England.

The importance of looking at eighteenth-century regional political activity in itself – i.e. as a means of picking out typical features of how local areas operated rather than using localities simply as a means of case-studying atypical responses to events like the Wilkite agitations⁷² – has been stressed by Jeremy Black, who has observed that ‘the stress on vitality and importance of the regional aspects of politics, on the county community, in the sixteenth and seventeenth centuries and, more recently, in the medieval period has not been matched in work on the eighteenth century.’⁷³ Black’s suggestion that the balance of power between national and local level deserves reconsideration is supported by the few works published on the topic which show that there were clear limits to oligarchy and deference in eighteenth-century England. Work by John Bourne, John Phillips and later Jane Fiske, for example, has demonstrated the existence of significant influential powers at local level.⁷⁴ Analysing how late eighteenth-century prison reform occurred at

⁷² See, for example, J. Money, *Experience and Identity: Birmingham and the West Midlands, 1760 – 1800*, (Manchester, 1977) and J. E. Bradley, *Religion and Revolution, and English Radicalism*, (Cambridge, 1990).

⁷³ J. Black, ‘Eighteenth-Century English Politics’, *Albion* 25 (1993), p. 429.

⁷⁴ J. Bourne, *Georgian Tiverton*, (Torquay, 1986), J. A. Phillips, ‘From Municipal Matters to Parliamentary Procedures’, *Journal of British Studies* 27 (1988), pp. 327 – 251 and J. Fiske (ed.), *The Oakes Diaries*, (Woodbridge, 1990).

the local level will, it is hoped, contribute to a growing body of evidence which points to the existence of a far more pluralistic and participatory eighteenth-century political system than has traditionally been assumed.

* * * * *

The thesis will start with a brief history of Gloucestershire, Lancashire and Middlesex, outlining precisely what was distinctive about each area and where each stood in social, political and economic terms when the decision was made at the end of the eighteenth century to invest in the Penitentiary Act. The study will then move on to outline the history of penal reform ideas in England over the course of the sixteenth, seventeenth and eighteenth centuries, drawing attention to similarities over the course of this period both in penal reform ideas and in the specific social, political and economic contexts in which penal experimentation took place. Then, the study will focus in on the eighteenth century and consider the language used by eighteenth-century penal reformers on the national platform, drawing attention to the way in which the appeal of institutionalised hard labour was rejuvenated thanks largely to the new resonance of time-honoured penal reform discourse in an 'enlightened' and optimistic cultural context.

The study will then progress to consider the second stage by which late eighteenth-century prison reform 'happened' by analysing how reform was promoted to those with the power to sanction it at county level. Attention will be drawn to key disparities between how reform discourse was employed at national and local level, elucidating in the process exactly how late eighteenth-century prison reform 'actually happened'. Finally, the thesis will consider reform as achievement, analysing the role played by language in promoting new institutions in the 'public sphere' at local level and, in the process, drawing conclusions as to the interaction of continuity and change in penal practice over time and thus the origins of late eighteenth-century prison reform.

Chapter 2: The Counties

1) Introduction

During the last two decades of the eighteenth century there occurred a wholesale rebuilding of England's prisons, with over sixty new institutions built or adapted along the guidelines offered by the 1779 Penitentiary Act. Such extensive institutional investment provides the historian with a rich and varied record from which to draw evidence about late eighteenth-century prison reform. In order to grasp the intricacies of that process, I have selected to study three counties with varied economic and, correspondingly, social and political histories. Such variations will, it is hoped, provide an insight into the complexities of the appeal of the reformed prison in late eighteenth-century England.

The three counties in question – Gloucestershire, Lancashire and Middlesex – vary from one another in a number of fundamental and important ways. As already acknowledged, on a very basic level they to some extent representative of the north, centre and south of England. At the same time, each county possessed very different qualities and quantities of territory which, in turn, afforded them access to very different sorts of natural resources. As a result each of the three counties developed very different economies over different timescales. Taking full advantage of its rich natural resources, Gloucestershire, for example, thrived from the eleventh century onwards as a highly successful manufacturing region. Indeed, by the thirteenth century the county was the cloth-making capital of England, exporting materials not only throughout Britain but also to Europe and beyond. Lancashire, in contrast, remained what J. K. Walton described as 'an obscure, remote, insular and backward corner of England' until it was transformed by industrial developments over the course of the eighteenth century.⁷⁵ Middlesex, meanwhile, existed somewhere between these two extremes; rich in woodland but with a poor quality natural terrain, the county

⁷⁵ J. K. Walton, *Lancashire: a social history, 1558 – 1939*, (Manchester, 1987), p. 7.

remained largely unaffected by early-modern economic developments in production. Indeed, the county began significantly to expand its agrarian economy and experiment with the manufacture of goods only from the sixteenth century onwards when the expanding metropolis provided a lucrative market that could be exploited by neighbouring counties.⁷⁶

Such variation in economic development inevitably meant that there existed disparities in the three counties' social structures. Given the time span over which its economy had developed, Gloucestershire's communal bonds and social relations were, by the eighteenth century, firmly established. Thus, in support of Adrian Randall's observation that reactions to the changes wrought by eighteenth-century industrialisation were 'shaped by its impact,'⁷⁷ while the largely undeveloped counties of Lancashire and Middlesex were on the whole content to embrace the economic opportunities offered by eighteenth-century mechanisation, in Gloucestershire machinery threatened the established socio-economic status quo, and workers there consequently launched a 'sustained and determined resistance' to the same machinery that was readily welcomed elsewhere.⁷⁸

Industrialisation was thus a more problematic process in Gloucestershire than it was in areas with less traditional, established trades. On the one hand mechanisation offered the county the opportunity in the eighteenth century to expand an already impressive woollen industry, but on the other it challenged its monopolisation of that industry. Indeed, over the course of the eighteenth century Gloucestershire experienced a significant period of economic decline as competitors in the new towns of counties like Lancashire began to produce goods in a way and at a cost with which Gloucestershire's traditional domestic output systems simply could not compete. As a result, mechanisation for the first time created a significant conflict of interests in Gloucestershire, between those involved

⁷⁶ See *Victoria History of the County of Middlesex, Vol. 2*, (London, 1969).

⁷⁷ A. Randall, *Before the Luddites*, (Cambridge, 1991), p. 7.

⁷⁸ *Ibid.*, p. 4.

in the manual production of cloth and those selling it to the open market who fell under pressure to stay ahead of an increasingly spirited industry by investing in machinery that threatened the status of the working population.

In Lancashire, change was at once less internally problematic and more dramatic. As mentioned above, prior to the eighteenth century the county was relatively remote and isolated, dominated by independent, rural-based artisans. Thanks to industrialisation, over the course of the eighteenth century the county was transformed into a more cohesive and integrated network of regional machine-based industries which traded throughout the world. While increased internal integration as opposed to tension characterised eighteenth-century Lancashire, however, the extent of the change experienced by the county – in the form of new technology, new industry, the building of turnpike roads and a corresponding demographic explosion – inevitably meant that it too experienced a considerable degree of social, economic and political upheaval.

Middlesex's response to the industrial developments of the eighteenth century was different again from those in Gloucestershire and Lancashire. Given its rich woodland and proximity to the capital, the county's economy was for a large part of its history essentially secure and constant – a service economy centred around providing London with its basic resources, particularly food. Unlike Gloucestershire, therefore, the county's early economy was based not on manufacture but almost exclusively on agriculture, including the exploitation of its woodland. By the end of the sixteenth century such woodland was greatly diminished, and fears were expressed that the county's lack of alternative trade would lead to its economic downfall.⁷⁹ Hardship was avoided, however, thanks to the sprawling growth of the neighbouring metropolis. Thanks to London's dramatic expansion, from the sixteenth century onwards rural Middlesex developed into a series of intensively farmed agrarian centres.

⁷⁹ Randall, *Before the Luddites*, p. 87.

At the same time, other parts of the county were swallowed up by the growing metropolis and transformed into new manufacturing centres of specialist luxury goods, predominantly silk and watches.

Over the course of the eighteenth century Middlesex thus morphed into an increasingly active and commercialised agricultural and industrial centre active in sectors of production which reflected the fact that it had become increasingly under the influence of its wealthy and well-populated neighbour. As was the case in Lancashire, contemporary industrial advances did not challenge Middlesex's existing economy but rather promised to expand employment opportunities and facilitate economic expansion. Unlike in Lancashire, however, by the end of the eighteenth century the county faced a period of relative decline as the cost of manpower and land in the capital simply could not compete with the comparatively modest rates available to investors in northern towns.

* * * * *

By the end of the eighteenth century Lancashire and Middlesex had been transformed from modest agrarian areas to highly-populated, urbanised regions. Gloucestershire too, while less dramatically transformed in character, experienced the same forces of economic change and, as a result, faced a very different set of prospects than it had in preceding decades. While united in their upheaval, however, the differences between the three counties at the end of the eighteenth century were perhaps more marked than at any point in their history; Lancashire was at that time thriving and expanding at a greater rate than ever before, and indeed than any other English county at the time. Thanks to the very same re-distribution of investment on which Lancashire thrived, Middlesex experienced a simultaneous and uncharacteristic period of economic decline. Decline too threatened Gloucestershire, where owners of production were forced to balance the inevitable need to increase productivity with the pressure to respect the existing, tight-knit systems of production on which its social structure was based.

Perhaps the only thing that Gloucestershire, Lancashire and Middlesex shared in common at the end of the eighteenth century was a heightened sense of social tension accelerated by unprecedented rates of economic change. That is not to argue, of course, that social tensions did not exist before the late eighteenth century. Simplistic notions of a pre-industrial 'golden age' have been rightly scorned, most notably by Dorothy George who pointed out that, '[m]any of the evils which have regarded as the direct result of the industrial revolution were a characteristic of the domestic system as much as of the factory system which superseded it.'⁸⁰

Notwithstanding the fact that social problems existed prior to the late eighteenth century, it remains true that the last two decades of the century witnessed unprecedented rates of economic change and, as a result, a new peak in social tensions – be it a result of the dislocating effects of unfamiliar prosperity or decline. As traditional community bonds broke down, trades became overstocked and workers' status became degraded, social and political tensions were dramatically exacerbated, as was the prospect of social problems such as poverty and vagrancy. The art of local politics in late eighteenth-century England was thus to some extent transformed from the earlier art of managing people with moderation, foresight and forbearance to, as the Hammonds put it, a more insecure, anxious and perhaps reactionary 'art of preserving discipline amongst a vast population destitute of the traditions and restraints of a settled and conservative society.'⁸¹

During the last two decades of the eighteenth century, therefore, the people of Gloucestershire, Lancashire and Middlesex shared a sense of insecurity born of very different experiences of economic and, correspondingly, social and political upheaval. In Lancashire, the period was one of unprecedented economic expansion and opportunity. In

⁸⁰ M. D. George, *England in Transition*, (London, 1953), p. 136.

⁸¹ J. L. & B. Hammond, *The Skilled Labourer*, (London, 1979), p. 211.

Middlesex, the same period was one of life-threatening decline at worst and mixed fortunes at best, while in Gloucestershire there occurred an upsurge in the ongoing battle between the forces of continuity and change. At that time each county had very different experiences of penal reform. Middlesex and Lancashire, for example, had invested significantly in improving their prisons in the early 1770s, while Gloucestershire was devoid of any investment in its penal institutions for over a century. Each county's local officials at the same time expressed a range of very different though related concerns: those in urban Lancashire and Middlesex were anxious over apparently rising tides of riot, crime and immorality, while those in the relatively rural Gloucestershire remained preoccupied with the long-established notion of 'social indiscipline'.

Despite important variations in their long and short term experiences, their principal concerns and their aspirations for the future, during the last twenty years of the eighteenth century officials in all three counties opted to invest in the model of reformed imprisonment offered by the Penitentiary Act. By analysing in each instance exactly how that decision was made, we can grasp the character of late eighteenth-century prison reform in all its complexity.

2) Gloucestershire

To borrow Albion Urdank's description of the county, Gloucestershire was a 'principal seat of the cloth trade in the West of England' which 'possessed a thriving woollen industry from the twelfth century until the advent of the Industrial Revolution.'⁸² Over the period from 1000 to 1700 Gloucestershire evolved from a parochial county into one of England's most successful rural manufacturing centres with, by the early seventeenth century, a population of over 210,000 producing cloth of world renown.⁸³ Key to the county's success was its location; a rich supply of natural resources from the nearby Cotswolds and Vale of

⁸² A. Urdank, 'Economic Decline in the English Industrial Revolution: The Gloucester Wool Trade, 1800 – 1840', *Journal of Economic History* 45 (1985), p. 427.

⁸³ For details of the county's population growth see Rollinson, *The Local Origins of Modern Society*, p. 3.

Severn combined with its fast-flowing springs, streams and rivers meant that Gloucestershire's setting was naturally conducive to economic success. It was thanks to this ready supply of fresh water combined with its relatively isolated location, for example, that the county avoided falling victim to the ravages of the Black Death. Gloucestershire's rural, relatively isolated situation also meant that labour there remained relatively cheap throughout the early modern period. Economic success was fostered also by Gloucestershire's rich, arable land which meant not only that it was largely self-sufficient but also that the county could survive on agricultural by-employments during slumps in the cloth trade.

It comes as little surprise, therefore, that by the eighteenth century Gloucestershire was an established and highly successful manufacturing county with a correspondingly established social structure. Organised on an outworking, piece-work basis whereby clothiers bought stock and paid workers to process it in their own homes, Gloucestershire's woollen industry fostered what one might term a two-tier social structure in the county. In his in-depth study of the woollen industry, Richard G. Wilson described the clothier's role as 'an amalgamation of merchant and industrialist, but moreover a paymaster.'⁸⁴ 'The structure of the [woollen] industry divided between paymasters and craft-conscious workers..., ' Wilson found, 'created a pattern of aggressive and sometimes very bitter industrial relations.'⁸⁵

In Gloucestershire relations between clothiers and workers appear, in fact, to have been largely congenial; the two groups, though socially divided, were united by shared interest and mutual dependence. Indeed, the mutual dependence fostered by Gloucestershire's economy appears to have cultivated generally co-operative social relations. Thus, Urdank found that 'an essential compatibility' existed in Gloucestershire 'between

⁸⁴ R. G. Wilson, 'The Supremacy of the Yorkshire Cloth Industry' in N. B. Harte & K. G. Ponting (eds.), *Textile History and Economic History*, (Manchester, 1972), p. 226.

⁸⁵ *Ibid.*, p. 227.

Nonconformity and the Establishment.⁸⁶ Evidence suggests that Gloucestershire's community concerns were in the main related to external rather than internal threats to the county's stability. Typical, for example, was a piece of legislation passed in 1559 which stated that 'all travelling communities are to be removed from the county' after fears had been expressed that outsiders may have upset the economic and social status quo.⁸⁷ As mentioned above, it was not until the dawn of pressure to mechanise the county's established means of production in the eighteenth century that any noteworthy conflict of interests between clothiers and workers in Gloucestershire emerged and, as a result, that the county witnessed the emergence of Wilson's 'bitter industrial relations.'⁸⁸

'From the most remote period of the woollen manufacture until recent times,' Rees' 1819 Cyclopaedia reported of Gloucestershire, 'very few if any mechanical improvements had been introduced to it.'⁸⁹ 'That it would have been better for general society if it had so remained,' he went on, 'we readily admit; but after the improved modes of working cotton were discovered this was impossible.'⁹⁰ Change in eighteenth-century Gloucestershire was as disruptive as it was inevitable. Prior to mechanisation there had existed a mutual reliance between wealthy clothiers and skilled workers. Between 1750 and 1850, however, competition from Yorkshire and emerging northern 'new towns' usurped the county's long-standing premier position in the cloth industry and, as Julia Lacey-Mann's study showed, placed great pressure on Gloucestershire's producers to invest in new machinery to keep up with the pace of change.⁹¹ The gradual introduction of machinery saw the erosion of that mutual dependence thanks largely to an inevitable

⁸⁶ A. Urdank, *Religion and Society in a Cotswold Vale*, (Berkeley, 1990), p. 125.

⁸⁷ Cited in *Victoria History of the County of Gloucestershire, Vol. 2*.

⁸⁸ Wilson commenting on general trends in the woollen industry during the eighteenth century in 'The Supremacy of the Yorkshire Cloth Industry' in Harte & Ponting (eds.), *Textile History*, p. 227.

⁸⁹ A. Rees, *Cyclopaedia: Vol. XXXVIII*, (London, 1819), p. 13.

⁹⁰ *Ibid.*, p. 13.

⁹¹ J. Lacey-Mann, *The Cloth Industry in the West of England from 1640 – 1880*, (Oxford, 1971), pp. 175 – 176.

reduction in the value of labour. The problems caused by mechanisation were not only, however, economic; as Adrian Randall observed in his study of the pre-industrial English woollen industry, 'Work plays a vital part in conferring social status and shaping social relations.'⁹² A sense of self-worth among workers is key to social harmony, and the introduction of mechanisation to Gloucestershire's manufacture meant that workers who had once considered themselves to be artisans essentially independent from their clothier masters began to lose their social as well as economic independence and, correspondingly, status.⁹³ In short, the rise of mechanisation saw the birth of a conflict that had until the eighteenth century 'lay latent' thanks to established structures of mutual dependence.⁹⁴

From around 1740 onwards there thus begin to appear comments from workers in Gloucestershire which alluded to resentment born of an increased sense of social and economic isolation. One weaver at the time complained, for example, that since production rates had increased his clothier 'travelled above a hundred miles' to sell cloth while the weavers 'stayed at home to hear the news of further work.'⁹⁵ Around the same time discussion began in the local press regarding a number of uprisings among the county's disgruntled workers. The 'riotous spirit' as the *Gloucester Journal* termed it, resulted from increased unemployment among weavers as well as a decrease in the wages of those able to find work in an increasingly mechanised industry.⁹⁶ Over the course of the eighteenth century the *Gloucester Journal* delivered a series of 'public messages' filled with insightful prejudice. The sentiments expressed in the publication were, it is fair to say, representative of the outlook of the privileged members of the county who both produced and purchased it. Typical, then, was a front page article published at mid century entitled

⁹² Randall, *Before the Luddites*, p. 285.

⁹³ *Ibid.*, p. 29.

⁹⁴ *Ibid.*, p. 29.

⁹⁵ Cited in Rollinson, *The Local Origins of Modern Society*, p. 41.

⁹⁶ *Ibid.*, p. 239.

An Essay on Riots which viciously attacked rioting workers labelling them, among other things, 'idle' and 'debauched'.⁹⁷

Over the course of the eighteenth century there occurred, therefore, a distinct breakdown in the relationship between elite clothiers and their workers in Gloucestershire. An acceleration in the use of machinery in the last three decades of the century saw the social problems associated with unemployment and low wages penetrate the county on a previously unforeseen scale. At the time the attitude among elite clothiers towards their workers remained as unsympathetic and apparently out-of-touch as it had been at mid century; 'The woollen workers,' a local official reported in 1800, 'want to work but five days a week and remain idle at the alehouse the other two.'⁹⁸ The benefits of a mechanised workforce were, elites seemed to believe, clear to see. Economic misfortune was by no means exclusive, however, to Gloucestershire's weavers. The distinctly more anxious and insecure attitude of the county's middle and upper classes from the mid eighteenth century onwards was arguably born in the most part from the fact that they too suffered at the hands of an increasingly competitive and mechanised woollen industry. Thus, as a result of over-speculation on the one hand and failure to follow Yorkshire's lead and adopt steam power on the other, by the turn of the century Edward Sheppherd, the largest clothier of the lower district of Gloucestershire, was declared bankrupt.⁹⁹

Late eighteenth-century Gloucestershire was, therefore, a very different county to that that had existed in the period from 1500 to 1700. Change was essentially born of an inevitable move towards mechanisation which created a conflict of interests between clothiers and workers and witnessed, as a result, the rise of problems associated with economic hardship and social alienation. The opposition to industrialisation

⁹⁷ Cited in Rollinson, *The Local Origins of Modern Society*, p. 221.

⁹⁸ *Ibid.*, p. 31.

⁹⁹ Lacey-Mann, *The Cloth Industry*, pp. 190 – 191. The precise rate at which Gloucestershire's clothiers adopted steam power and reasons for it is subject to debate. See Urdank, 'Economic Decline', *Journal of Economic History* 45, pp. 427 – 433.

expressed by Gloucestershire's working population seems to have been on the whole misunderstood by the county's bench of traditional landowning officials who interpreted the problems which arose in the wake of mechanisation as the product of social indiscipline rather than economic deprivation or political antagonism. There was, inevitably, *some* degree of acknowledgement of the economic hardships experienced by the county's working population among those on the Gloucestershire bench. In 1795, for example, magistrates drew up a table showing what they considered to be the minimum weekly income for the 'industrious poor', pledging that the parish would make up the remainder in cases where workers were being underpaid.¹⁰⁰

At the same time, however, there remained a preoccupation with the notion that social problems in the county resulted not from the *inability* to find work but rather from an *unwillingness* to work among what was perceived to be a largely debauched and idle workforce.¹⁰¹ As David Rollinson observed, the introduction of machinery in eighteenth-century Gloucestershire 'created distance between the landed masters and the landless, establishing new world views and patterns of local administration in response.'¹⁰² In short, mechanisation restructured social and economic relations in Gloucestershire, developing new mentalities and entrenching new types of social conflict. It is perhaps unsurprising that in the midst of such a period of transition and instability Gloucestershire invested in what was promoted at the time as a new solution to a new set of social problems – a series of reformed prisons.

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Over the period 1783 to 1791, Gloucestershire's penal system was transformed from one severely criticised during John Howard's 1776

¹⁰⁰ *Victoria History of the County of Gloucestershire, Vol. 2*, pp. 169 -70.

¹⁰¹ See extracts from the *Gloucester Journal* in Rollinson, *The Local Origins of Modern Society*, chapters 9 & 10.

¹⁰² *Ibid.*, p. 43.

inspection for its 'ruinous condition' and 'lack of regulation'¹⁰³ to one celebrated to the extent that magistrates across England used its example as a means of promoting reform among sceptical members of their own county benches.¹⁰⁴ Over this period Gloucestershire's magistrates lobbied for and sanctioned the construction of five new penal institutions for the county built along a design provided by the 1779 Penitentiary Act. The new institutions, the Act explained, would see all but the county's most serious categories of prisoners 'ordered to solitary imprisonment accompanied by well-regulated labour and religious instruction.'¹⁰⁵ The aim of the reformed prisons, the Act went on, was 'not merely to deter others from the commission of like crimes, but also to reform the individuals in question.'¹⁰⁶

Such institutions would have held great appeal among a traditional bench which considered the county's growing social problems to have arisen as much from social indiscipline as from economic hardship. Thus, in an opening speech promoting penal reform in 1783, George Onesiphorus Paul - Gloucestershire's foreman of the grand jury - spoke of the need to invest in new prisons because there had been 'a general increase of immorality' across the county.¹⁰⁷ The 'present state of abandoned morals', Paul continued, called for nothing less than 'a general and entire correction of the principles of prisons' which would produce, he said, 'that amendment of morals and obedience to law, which are essential to the general interests of civil society.'¹⁰⁸

During the eight year period from 1783 to 1791 the county's prison reform committee lobbied for and eventually sanctioned the construction of four new houses of correction and a new county gaol. The decision to invest vast sums of the county's money in such mass reconstruction was made

¹⁰³ See the section on Gloucestershire in Howard, *The State of Prisons*, pp. 346 - 352.

¹⁰⁴ Both Lancashire and Middlesex, for example, cited reforms made in Gloucestershire as influential in their decisions to invest in the Penitentiary Act.

¹⁰⁵ The opening of The Penitentiary Act (1779), 19 Geo. III., C.72-74, (1779).

¹⁰⁶ *Ibid.*

¹⁰⁷ Paul, *Considerations on the Defects of Prisons*, (1783), p. 3.

¹⁰⁸ *Ibid.*, p. 3.

thanks largely to the work of the aforementioned Onesiphorus Paul. Typical of the magistrates who led local-level reform movements at the end of the eighteenth century, Paul was highly-educated with a liberal, radical political outlook. The son of a textile manufacturer, economic success afforded Paul access to the world of the landed gentry. That he was what one might term 'first-generation privileged' perhaps accounts for the fact that Paul's character combined an unusual mixture of self-conscious compassion for the less fortunate with somewhat stern asceticism.

Paul's role in promoting reform in Gloucestershire was two-fold. First, he played a key part in providing information to the rest of the county bench. During his opening moves for reform in 1783, for example, he outlined to his fellow officials details of the faults found by Howard during his inspection of the county's existing institutions, before communicating the implications of such faults for the general population.¹⁰⁹ Paul also provided information on existing laws, drawing the bench's attention, for instance, to their legal obligations in terms of providing and funding penal institutions.¹¹⁰ The second, and arguably most important, role played by Paul was as facilitator of reform. Late eighteenth-century institutional investment came at a hefty cost - a fact that concerned the Gloucestershire bench which informed Paul in 1784 that his 'impractical theory' could not be met by the county rates.¹¹¹ No doubt in part in response to such fiscal concerns expressed at local level, Paul approached central government to discuss the financial problems faced by counties wishing to invest in the Penitentiary Act and received a grant for the purchase of land on which to construct the county's new Penitentiary House. In 1784, along a plan designed by Paul himself, a new set of statutory rights were introduced whereby local authorities were given the power to mortgage the expenditure required for penal reform on

¹⁰⁹ Paul, *Second Address on the Subject of a Reform of Prisons*, (1783).

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*, p. 2.

the value of county rates.¹¹² For the first time the complete destruction, removal and rebuilding of England's prisons thus became financially viable thanks almost exclusively to Paul's efforts.

By 1791, as the social problems born of economic hardship in Gloucestershire had reached a new height and after a drawn-out building process dogged both by bureaucracy and a series of practical disruptions including unreliable workmen, the death of the chief architect and a surprise visit from King George III, Gloucestershire's fully reformed penal system was fully operational.

3) Lancashire

Unlike Gloucestershire, Lancashire was – and indeed still is – one of England's largest counties. The county was divided early in its history into six hundreds, each of which was further separated into divisions. These divisions were then subdivided into parishes which, because they were so large, were further split into townships – the basic unit of administration. Lancashire was thus not only isolated externally from other counties but also, thanks to its complicated organisation, internally incoherent. Communication between the county's various elements was limited not only by its divisive administrative organisation but also by its naturally rough and hilly terrain which did little to foster relations outside of one's immediate locality.

Despite isolated pockets of coal-mining and evidence of some fabric spinning activity, relatively few natural resources meant that during the early modern period Lancashire depended on husbandry as its prime employment. This was notwithstanding the poor quality of its terrain which meant that farming was largely inefficient and unproductive. As a result, self sufficiency was often the best that Lancashire's inhabitants achieved. Unproductive, isolated, inward-looking, a victim of the ravages of the Black Death and, in its wake, severe famine - Lancashire could not have

¹¹² 24 Geo. III, c.54, 55.

been more different from Gloucestershire in the period from 1500 to 1700. Prior to the eighteenth century the county was, to borrow Margaret DeLacy's description, 'one of the poorest and most backward counties in England.'¹¹³ The rise of investment in new towns over the course of the eighteenth century, however, marked a distinct change in Lancashire's fortunes.

Unhindered by the entrenched economic interests that existed in counties like Gloucestershire, in the eighteenth century Lancashire's lack of natural dynamism turned in its favour, allowing the county to embrace technological advances with little concern for what had gone before. Indicative of the differences between Gloucestershire and Lancashire's responses to industrialisation were their respective reactions to the introduction of perhaps the most famous of all eighteenth-century inventions - the Spinning Jenny, a multi-tool spinning wheel invented at mid century which doubled a worker's average output by dramatically reducing the amount of work needed to produce yarn. Whereas the reluctant launch of the Jenny by clothiers in Gloucestershire led to a 'riotous mob of weavers' assembling together 'with the intention to destroy under the cover of night the machine recently erected by clothiers,'¹¹⁴ in Lancashire the machine was hailed by local commentators as 'epoch-making' in the 'wonderful opportunities' that it offered the county's working population.¹¹⁵

Thanks to rising investment in northern towns, over the course of the eighteenth century Lancashire developed into one of England's most wealthy, productive and densely populated counties. To give some impression of the rate of the county's expansion, the population of Manchester, its largest town, tripled over the period from 1751 to 1793.¹¹⁶ Thomas Percival, an influential local doctor, attributed the town's rapid

¹¹³ DeLacy, *Prison Reform in Lancashire*, p. 20.

¹¹⁴ Extract from the *Gloucester Journal* (1776) cited in Rollinson, *The Local Origins of Modern Society*, p. 72.

¹¹⁵ *Victoria History of the County of Lancashire, Vol. 2*, (London, 1907), p. 302.

¹¹⁶ See J. Stobart, *The First Industrial Region: North-West England c.1700 - 60*, (Manchester, 2004).

growth to 'the astonishing and sudden increase of the cotton manufactory.'¹¹⁷ As Percival's use of the term 'increase' suggests, some of Lancashire's workers were involved in the textile industry prior to the eighteenth century. One visitor reported in 1641, for example, that 'The town of Manchester in Lancashire must be herein remembered, and worthily for their encouragement commended, who buy the yarn of the Irish in great quantity and, weaving it, return to Ireland to sell.'¹¹⁸ That such trade already existed in the county may well explain why Lancashire became one of the leading producers of cotton in the eighteenth and nineteenth centuries; one early twentieth-century historian certainly believed this to be the case when he asserted that '[a]ll the evidence points to the conclusion that Lancashire beyond any county in England had a natural aptitude for the cotton manufacture largely derived from a spirit of industry practiced for generations in hand spinning.'¹¹⁹

While it is important to bear in mind that spinning and related trades were not entirely novel in the eighteenth century, it is equally important to acknowledge that prior to this time such industry remained on a modest, domestic scale, was to a large extent undertaken as a by-employment during periods of agricultural dearth, and that the 'cottons' produced were in fact fustians and hence not comparable to products of the later period. The impact of eighteenth-century mechanisation in Lancashire was therefore significant to say the least. Unlike in Gloucestershire, it pleased rather than destabilised the working population, offering them the opportunity to improve existing manufacture and enabling them for the first time to produce pure cotton fabric to rival that manufactured elsewhere in the world. It is thus fair to say that over the course of the eighteenth century, while developments were naturally uneven, Lancashire was transformed in the true sense of the word.

¹¹⁷ T. Percival, *Observations on the State of the Population of Manchester*, (1789), p. 4.

¹¹⁸ *Victoria History of the County of Lancashire*, Vol. 2, p. 301.

¹¹⁹ *Ibid.*, p. 301.

At mid century Lancashire's expanding textile industry was given a significant boost when it began to draw business, and as a result manpower, away from the capital on a greater scale than ever before. Cheaper land, labour and resources in the north saw investors increasingly begin to relocate industries in 'new towns' such as those in Lancashire. A hat manufacturer thus informed a House of Commons committee in 1764 'that the price of labour in France is about one Half cheaper than that in London; but that in the North of England Labour is much cheaper;' and that he had, 'on that Account, established a manufactory there, as several other Hatters of London had done.'¹²⁰

Increases in production from mid century onwards encouraged a trend already underway whereby limited domestic scale manufacture in Lancashire was increasingly replaced with more large-scale businesses employing larger groups of workers than those found in domestic and small workshop structured industries such as those in Gloucestershire and Middlesex. Change was thus dramatic in Lancashire in the sense that rather than witnessing a *shift* in the balance of existing power structures as occurred in Gloucestershire, there emerged instead a completely new set of economic and correspondingly social relationships. As John Rule and later Jon Stobart have observed, while the notion of 'industrial revolution' is outmoded, over the course of the eighteenth century Lancashire's manufacture nonetheless shifted from comprising a collection of largely isolated independent rural-based workers into an increasingly complex and centralised system of putting-out.¹²¹ Lancashire was, to use Stobart's terms, 'the vanguard of technological and organisational developments,'¹²² morphing over the course of the eighteenth century from an inward-looking series of 'backward' regions, into a mosaic of mutually-dependent specialist textile districts with 'complementary relationships of co-operative activity.'¹²³ The impact that

¹²⁰ *Journal of the House of Commons*, 29: 5 (March, 1764).

¹²¹ See J. Rule, *The Labouring Classes in Early Industrial England*, (Essex, 1986), introduction and Stobart, *The First Industrial Region*, p. 64.

¹²² *Ibid.*, Stobart, p. 64.

¹²³ R. Capello, 'The City Network Paradigm', *Urban Studies* 37:11 (2000), p. 1925.

this had on the outlook of those who experienced the transformation is difficult to overestimate.

Thanks to economic developments, from mid century onwards there developed 'a coherent regional identity and consciousness' in Lancashire – an advance encouraged by the introduction of increasingly large-scale workplaces which brought people together not only physically but also psychologically. The 'profound regionalisation' which occurred in the period 1750-1800 was something that an established county like Gloucestershire simply did not experience to anything like the same extent at that time.¹²⁴ Change in eighteenth-century Lancashire was hence less internally problematic than in Gloucestershire but, at the same time, more dramatic. As a result of economic and technological developments new, highly populated urban centres were created which brought people together on a scale rarely seen outside of the capital. As mentioned above, over the period from 1751 to 1793 Manchester's population tripled. A census of 1811 reported that town housed no fewer than 170,000 inhabitants.¹²⁵

Many of those living in centres like Manchester and Preston were drawn there from beyond the borders of Lancashire by the lure of self-improvement. Owing to its proximity to the port of Liverpool, for example, in the last two decades of the eighteenth century when investment in northern industries reached a peak, the county was flooded by immigrants from Ireland. Thus, in 1791 magistrate Thomas Butterworth Bayley was moved to complain that the cotton trade had 'its attendant evils' among which was 'a very numerous and *foreign* population (especially from Ireland), estranged, unconnected, and in general composed of persons who are in a species of exile.'¹²⁶

¹²⁴ D. Gregory, ' "A New and Differing Face in Many Places": three geographies of industrialization' in R. A. Dodgshon and R. A. Butlin (eds.), *An Historical Geography of England and Wales*, (London, 1990), p. 372.

¹²⁵ Cited in *Victoria History of the County of Lancashire*, Vol. 2, p. 309.

¹²⁶ *Letter from Bayley to Henry Dundas*, (July, 1791), P.R.O, H.O. 42/6.

Rapid population growth inevitably led to the rise of acute social problems, especially during times of economic dearth. Thus, local historian John Aikin complained in 1795 that the county's greatest concern should be 'the closeness with which the poor are crowded in offensive, dark, damp and incommodious habitations.'¹²⁷ Although the county had embraced the opportunities offered by the introduction of machinery like the Spinning Jenny earlier in the century, a characteristically volatile 'boom and bust' economy, a flooded labour market and the corresponding degrading of workers' wealth and status meant that by the 1780s machinery was looked on less favourably by Lancashire's working population than it had once been. At that time machinery represented not the opportunity to improve one's lot but, as was the case in early eighteenth-century Gloucestershire, a threat to one's role in the industrial process.

As mentioned above, the shape of industrialisation in Lancashire has been misrepresented by distorted notions of an 'industrial revolution'.¹²⁸ In reality, industrialisation in Lancashire was, as Pat Hudson explained, 'a slow process which was by no means completed even for the weaving process by the mid [nineteenth] century.'¹²⁹ Notwithstanding the fact that change was more gradual than has often been recognised, however, it is true to say that by 1780 Lancashire was expanding at a more rapid rate than ever before. At that time not only was the county's population growing at an unprecedented rate, but its industries were becoming increasingly centralised and mechanised in order to deal with pressures to increase output at competitive rates. As a result of this and of the 'boom and bust' nature of the textile industry, during the last two decades of the century reports circulated of 'much ferment among the working population at large' many of whom saw themselves deprived of their

¹²⁷ J. Aikin, *A Description of the County from the Thirty or Forty Miles around Manchester*, (1795), p. 12.

¹²⁸ See Rule, *The Labouring Classes*, introduction and Stobart, *The First Industrial Region*, introduction.

¹²⁹ Hudson, *The Industrial Revolution*, p. 120.

accustomed means of livelihood by new inventions in cotton spinning and by new competition for employment.¹³⁰

Those who *were* employed at the time faced the prospect of significantly reduced wages thanks to the constant supply of cheap labour both from within and outside of the county. Thus, while at mid century a weaver could expect to earn 15 shillings per week, by 1811 the same wage averaged at only 5 shillings per week.¹³¹ As a result, in the late eighteenth century reports circulated in Lancashire's press of 'the destruction of the new spinning machinery' and of 'sullen resentment' among workers towards their apparently indifferent superiors.¹³² In short, by the last two decades of the eighteenth century Lancashire had been transformed into one of Europe's largest and most significant manufacturing counties, but this in turn developed new mentalities and introduced new types of socio-economic problems and conflict. It is perhaps unsurprising that in the midst of such a period of transition and instability Lancashire invested in the prevailing solution to social problems – a series of reformed prisons.

* * * * *

Over the ten year period from 1784 to 1794, Lancashire's two houses of correction at Preston and Salford as well as its county gaol at Lancaster were reformed along the guidelines offered by the 1779 Penitentiary Act. The decision to invest large sums of money in such mass reconstruction and alteration was, like in Gloucestershire, thanks largely to the work one reform-minded individual - the Salford Hundred magistrate Thomas Butterworth Bayley. Bayley served on the Salford bench from 1766, when he was just 22, until his death in 1802. Throughout that time he was a dominant influence. Typical of the magistrates who led the reform movement, he was highly educated but had a liberal, radical political outlook. Like George Onesiphorus Paul, Bayley was the son of a textile

¹³⁰ Cited in *Victoria History of the County of Lancashire, Vol. 2, p. 308.*

¹³¹ *Ibid.*, p. 309.

¹³² *Ibid.*, p. 308.

manufacturer whose success allowed him access to the world of the landed gentry. That he was, like Paul, 'first-generation privileged' perhaps accounts for the fact that Bayley's personality combined the same unusual mixture of compassion and asceticism. Bayley possessed a strong sense of sympathy for the disadvantaged and as a result played a prominent part in the numerous contemporary charitable initiatives of his age. To Bayley, prison reform was just one example of how more privileged sectors of society could help the less fortunate; 'Penal Law,' he said in 1799, 'is a system of charity to prevent crimes; not of malice to destroy offenders.'¹³³

It was thanks to Bayley's considerable enthusiasm for prison reform that Lancashire began to rebuild its dilapidated penal institutions before the Penitentiary Act in the early 1770s. Between 1770 and 1775, for example, his efforts led to the comprehensive rebuilding of the house of correction at Manchester, later replaced by the New Bailey in Salford. Such early expenditure perhaps goes some way to explain why it took Lancashire longer than some other counties to adopt the reforms offered by the Penitentiary Act. The Act was one much admired by Bayley who, in the early 1780s, urged that it was 'the most effectual mode of punishment' available to the county insofar as it was designed 'both to *prevent* offences and to *reform criminals*.'¹³⁴ His fellow magistrates were, however, less enthusiastic - a point demonstrated in Bayley's private letters which bemoaned the fact that the Lancashire bench considered reforms to be 'little more than chimerical and expensive *experiments*.'¹³⁵ It was only in 1784 following the passing of Paul's legislation allowing counties to borrow money for prison rebuilding that Bayley managed to persuade his fellow magistrates to discuss the prospect of prison reform.

The unprecedented growth of the county's economy, population and social problems during the last two decades of the eighteenth century

¹³³ Thomas Butterworth Bayley, *County Palatine of Lancaster: To the Special Constables of Manchester and Salford*, (1783), p. 4.

¹³⁴ Bayley to Lord Sydney cited in DeLacy, *Prison Reform in Lancashire*, p. 74.

¹³⁵ *Ibid.*, p. 74.

saw prison reform become an issue deemed by even the most hesitant members of the Lancashire bench as deserving of their attention. That demographic growth and a corresponding rise in social dislocations was key to generating interest in penal reform in Lancashire is testified by the justifications offered for its consideration. In a document produced in 1783, for example, Bayley urged that prison reform was vital given 'the great increase in the inhabitants of this trading county' which left the existing prisons 'crowded beyond what was possible to be conceived.'¹³⁶ As was the case in Gloucestershire, concerns were expressed also regarding the spread of immorality, but this time *within* the institutions themselves rather than the county as a whole; Lancashire's prisons needed to be reformed, Bayley urged, because existing prisons were 'wretched schools of wickedness, where many persons...are doomed for destruction.'¹³⁷

Unlike in Gloucestershire and symptomatic of the fact that Lancashire was a county of predominantly urban as opposed to rural communities, concern was also expressed regarding the county's crime rate. Be it in response to real or perceived increases in offences, anxiety about criminal activity grew considerably over the last two decades of the eighteenth century. At the time complaints about the 'enormous,' 'amazing,' 'alarming,'¹³⁸ and 'truly alarming'¹³⁹ crime rate abounded with unprecedented frequency. In real terms, Lancashire's prosecution rate during the last two decades of the eighteenth century was, in fact, relatively low. Hence, in 1787 Lord Liverpool wrote to the county's presiding justice congratulating him that 'in consequence of the activity of the magistrates,' 'this populous county of Lancaster affords so few offences to try.'¹⁴⁰ Thanks to the dislocating effects of urbanisation, however, the perceived threat of crime was nonetheless 'real' and thus

¹³⁶ *The Report of Samuel Clowes the Younger and Thomas Butterworth Bayley Esquires of the State of the House of Correction at Manchester*, (1783), p. 1.

¹³⁷ *Ibid.*, p. 1.

¹³⁸ *Richard Townley's letter to the editor of the Manchester Mercury*, (March, 1775), p. 9.

¹³⁹ *Manchester Mercury*, (January, 1774), p. 4.

¹⁴⁰ Letter from Lord Liverpool to Lord Loughborough (August, 1787) cited in G. Fisher, 'The Birth of the Prison Retold', p. 1249.

added weight to campaigns urging the reform of an apparently failing penal system.

In 1794, after a series of drawn-out building processes hindered in what became a typical fashion by both bureaucracy and practical disruptions, Lancashire boasted three new houses of correction and a reconstructed country gaol, all built along the design offered by the Penitentiary Act.

4) Middlesex

Bound by three rivers with a terrain consisting largely of barren marshland, Middlesex is a 'naturally unattractive' county physically and, as a result, economically.¹⁴¹ Until the eleventh century the county remained an 'uninhabited borderland of the capital', its location making it little more than a landing ground and harbour for visitors - or indeed invaders - of London.¹⁴² Thanks to its location and the poor quality of its terrain, Middlesex never entirely shed its natural subservience to the capital. In the eleventh century Henry I set down in law what would transpire to be the long term, sometimes problematic relationship between the county and its dominating neighbour; 'For fiscal purposes,' the King declared, 'London and Middlesex under any name are indivisible.'¹⁴³ The county was, in short, granted to the capital to provide farmland principally for the provision of its food – a relationship that remained until the Local Government Act of 1888.

London was thus the all-dominating factor in Middlesex's history; a fact proven in the county's modest early-modern population and in the absence of county nobility and gentry. There were, of course, benefits in this for the county; thanks to the market provided by the bordering city, by the end of the fourteenth century Middlesex possessed one of the most secure, if not prosperous, economies in England.¹⁴⁴ Given the fact that its landscape was so different from London's, around this time the county

¹⁴¹ *Victoria History of the County of Middlesex, Vol. 2*, (London, 1911), p. 15.

¹⁴² *Ibid.*, p. 16.

¹⁴³ *Ibid.*, p. 16.

¹⁴⁴ *Ibid.*, p. 61.

began to attract visitors keen to escape the capital; 'There is hardly a man of distinction,' one contemporary commented at the end of the fifteenth century, 'who does not at some time in his career build a house or own a small property in Middlesex.'¹⁴⁵

Thanks to its rural appeal, Middlesex proved an increasingly popular retreat for urbanites keen to flee the bustling capital during the early modern period. As Margaret Pelling's study of responses to the development of towns demonstrated, the early modern English were not convinced urbanites but rather 'skirters' who placed great emphasis on escaping to rural retreats not only for leisure but for the good of their health;

For the English it could be surmised, an integral part of towns was those elements which did not so much adorn them as deny their supremacy and provide a means of escape – their gardens and rivers, and the meadows, lanes, springs and woods that surrounded them, and which provided the fresh air which was so valued.¹⁴⁶

Rural Middlesex's proximity to the capital therefore saw it attract a number of seasonal residents as well as regular, non-residential visitors. Metropolitan living was, Pelling found, essentially mobile and there existed a strong tendency among London's residents to move between the capital and its rural suburbs 'on a periodic, even daily basis.'¹⁴⁷ Such escape was driven both by fear of the 'monster' of the capital as a place of disease, crime and political unrest, but also by a lament for what had been lost as a result of urbanisation in London. Over the course of the early modern period, as the natural environment in the capital became increasingly artificial, there developed in response a desire for the

¹⁴⁵ *Victoria History of the County of Middlesex, Vol. 2*, (London, 1911), p. 28.

¹⁴⁶ M. Pelling, 'Skirting the City?' in P. Griffiths & M. S. R. Jenner, *Londonopolis*, (Manchester, 2000), p. 156.

¹⁴⁷ *Ibid.*, p. 154.

sensual pleasures, fresh air and freedom of the rural escape – a desire fulfilled by rural Middlesex.¹⁴⁸

Middlesex did not, of course, remain unaffected by industrial developments in the neighbouring capital. From the sixteenth century onwards those sections of the county which lay close to the capital were transformed by its unprecedented economic expansion. To give some impression of the rate of the capital's growth at this time, though constantly challenged by high rates of disease, its population exploded from 120,000 in 1550 to 675,000 in 1750, by which point it was Europe's largest capital city.¹⁴⁹ As Peter Clark and Paul Slack have noted, from 1560 onwards the most dramatic rates of growth occurred outside the City walls in counties like Middlesex and, to a lesser extent, Surrey.¹⁵⁰ Indeed, the City's population, they found, remained essentially constant throughout the sixteenth and seventeenth centuries while, at the same time, the capital as a whole grew four-fold.¹⁵¹ Perhaps the most uniform development in early modern London, Clark and Slack concluded, was 'the divorce of the City and the Metropolis.'¹⁵² Roger Finlay and Beatrice Shearer neatly summed up the shape of the expansion taking place; the seventeenth century, they observed, 'witnessed an important transformation in the character of the metropolis, with a change of emphasis from the municipality to the suburbs.'¹⁵³

Over the course of the seventeenth century the areas immediately surrounding the City, including the southerly borders of Middlesex, were thus transformed by the forces of urbanisation. In some areas of Middlesex this resulted in a predominant shift from land to manufacturing-based industry, as well as in correspondingly unprecedented rates of

¹⁴⁸ Pelling, 'Skirting the City?', p. 154.

¹⁴⁹ See V. Harding, 'The Population of London, 1550 – 1700', *London Journal* 15:2 (1990), p. 112 and A. L. Beier & R. Finlay (eds.), *London 1500 – 1700: the Making of the Metropolis*, (Essex, 1986), pp. 3 - 4.

¹⁵⁰ P. Clark & P. Slack (eds.), *Crisis and Order in English Towns*, (London, 1972), p. 38.

¹⁵¹ *Ibid.*, p. 38.

¹⁵² *Ibid.*, p. 38.

¹⁵³ R. Finlay & B. Shearer, 'Metropolitan Government in Crisis' in Beier & Finlay (eds.), *London 1500 - 1700*, p. 43.

demographic growth; 'Middlesex may now properly be considered,' a contemporary commented in the 1650s, 'as a demesne to the metropolis.'¹⁵⁴ The manufacturing trades of urban Middlesex – most commonly silk weaving and clock-making but encompassing a wide variety of trades – entered a new phase of growth at the end of the seventeenth century following the accelerated pace of immigration into London from other parts of England and beyond; 'A great advantage hath accrued to the whole nation,' a Middlesex resident commented on the arrival of immigrants from France and the Netherlands in the late 1690s, 'and there is benefit to the neighbourhood that these strangers may serve as patterns of Thrift, Honesty, Industry and Sobriety.'¹⁵⁵

The reason that London's phenomenal growth during the sixteenth and seventeenth centuries was greatest in areas immediately bordering the City was to some extent because such peripheral areas were largely free from the restrictive influence of guilds. As Clark and Slack have acknowledged, the majority of the growth that affected English towns between 1500 and 1700 occurred in those areas where there was 'an absence of stringent community control.'¹⁵⁶ Martin Daunton found that in the eighteenth century too, levels of economic development depended upon the degree of corporate control in the area of question, with rates of expansion inversely proportional to the existence of guilds.¹⁵⁷ The relative waning of guild control in seventeenth and eighteenth-century Middlesex when compared with the capital certainly appears to have fostered an enterprising spirit, and over the course of this period there emerged various sectors of skilled industries producing luxury items for London's fashionable residents and wealthy visitors.¹⁵⁸ As Leonard Schwarz

¹⁵⁴ Cited in *Victoria History of the County of Middlesex*, Vol. 2, p. 61.

¹⁵⁵ *Ibid.*, p. 97.

¹⁵⁶ Clark & Slack (eds.), *Crisis and Order*, p. 33.

¹⁵⁷ M. J. Daunton, 'Towns and Economic Growth in Eighteenth-Century England' in E. A. Wrigley (ed.), *Towns and Societies*, (Cambridge, 1978), p. 123.

¹⁵⁸ It should be noted that disagreement exists over the extent to which guilds exercised control over handicraft and retail trades in the capital before and after the eighteenth century. See J. R. Kellet, 'The Breakdown of Guild and Corporation Control of the Handicraft and Retail Trade in London', *Economic History Review* 2nd Series, 10 (1958), pp. 381 – 394.

observed, the nature of the trend-driven products produced in Middlesex fostered a domestic system of production; 'Since fashions changed quickly,' he noted, 'so production remained small scale.'¹⁵⁹

Middlesex's rural areas at the same time also benefited from the expansion of the capital. London was not merely a mighty manufacturer but also, and correspondingly, a significant consumer. Indeed, in 1724 Daniel Defoe went so far as to describe the capital as the engine of the country's economy, commenting on the 'general dependence of the whole country upon the city of London for the consumption of its produce.'¹⁶⁰ The concentration of population and wealth in the capital meant that, at mid century, it did indeed consume vastly more goods than any other city in England. Perhaps most basic of such goods were foodstuffs, which Middlesex's rural regions played a key part in providing. Fredrick Jack Fisher's research demonstrated that the county's rural areas were transformed during the seventeenth and eighteenth centuries into vast allotments. The capital, he observed, 'diffused throughout Middlesex a prosperity that could be enjoyed by all willing and able to provide the 'small acchates' that it needed.'¹⁶¹ As a result, population growth occurred not just in urban Middlesex, but also in rural areas which, Finlay and Shearer found, 'from 1640 grew at about the same rate as the metropolis as a whole.'¹⁶²

As was the case in eighteenth-century Lancashire, early modern Middlesex was ripe for industrialisation. Unlike in Gloucestershire, economic expansion appealed to rather than destabilised the county's working population. Thus while Middlesex was transformed over a longer period of time and in a less dramatic fashion than was the case in Lancashire, by the eighteenth century it was nonetheless a very different county to that which had existed a century earlier. Taking advantage, first,

¹⁵⁹ L. D. Schwarz, *London in the Age of Industrialisation*, (Cambridge, 1992), p. 32.

¹⁶⁰ D. Defoe, *A Tour Thro' the Whole Island, Vol. 1*, (1748), p. 3.

¹⁶¹ F. J. Fisher, *London and the English Economy*, (London, 1990), p. 70.

¹⁶² Finlay & Shearer, 'Metropolitan Government in Crisis' in Beier & Finlay (eds.), *London 1500 - 1700*, p. 53.

of the massive numbers of people heading to the capital and, second, of its defacto gild-free status, the county's economy and population grew at a phenomenal rate throughout the period from 1700 to 1760.

As was the case in Lancashire, unprecedented economic and demographic expansion inevitably resulted in social problems, especially since Middlesex's trade in luxury goods was, like the large part of its agricultural economy, essentially seasonal.¹⁶³ The county's proximity to the capital meant that arguably it felt the negative effects of urbanisation more powerfully than anywhere else in the country. Records show that as early as 1600 over 5,000 migrants per year arrived in Middlesex to undertake apprenticeships.¹⁶⁴ Even taking into account the decline from the late seventeenth century onwards in the number of people arriving in the capital to take up apprenticeships, the total number of migrants heading to London and settling in Middlesex was vast and, until the second quarter of the eighteenth century, grew year-on-year.¹⁶⁵ As a result, vagrancy was a very real concern for the county's bench throughout the early modern period.¹⁶⁶

A flooded labour market combined with dependence on a seasonal market for the consumption of many of its products was further problematised by economic downturns caused by war and peace, resulting in an unstable economy for workers and employers alike in eighteenth-century Middlesex. Indeed, riots over wages became so common late in the century that in 1777 magistrates met to discuss at length the possibility of developing laws which might mediate between

¹⁶³ The market for the luxury goods produced in Middlesex was cyclical, with demand rising considerably during 'holiday' seasons when wealthy visitors keen to invest in the latest fashions flooded the capital.

¹⁶⁴ Beier & Finlay (eds.), *London 1500 - 1700*, p. 15.

¹⁶⁵ According to Wrigley around 6,000 migrants settled in London every year at this time. See E. A. Wrigley, 'Urban growth and agricultural change: England and the continent in the early modern period', *Journal of Interdisciplinary History* 15 (1985), pp. 683 - 728.

¹⁶⁶ Aware that it was to a large extent *its* lure that had created Middlesex's social problems, City authorities went some way to try and solve the tensions it had created in the county. In 1594, for example, London Magistrates pledged to help fund the construction of a house of correction in Clerkenwell to deal with Middlesex's growing vagrant population.

employers and their employees and thus get 'to get to the root of the tumultuous meetings of journeymen etc.'¹⁶⁷ The sense of anxiety felt in Middlesex was exacerbated by the fact that, from around mid century onwards, the capital experienced significant periods of economic decline for the first time in over 200 years.

A large part of London's appeal in the eyes of migrants was the fact that wages there were significantly higher than elsewhere in the country. Finlay and Beier estimate that in the seventeenth century wages in the capital were around 50 per cent higher than those in the provinces.¹⁶⁸ Hence, Schwarz found that in 1650 over 75 per cent of those living in English towns lived in London.¹⁶⁹ By 1750 this proportion had dropped to just 56 per cent, and by 1801 only 40 per cent of the urban population lived and worked in London. The reason for the relative decline was, as discussed above, the emergence a considerable number of 'new towns' in the north of the country. The relatively cheap price of land and labour in such 'new towns' meant that from mid century onwards investors were increasingly inclined to locate their businesses outside of the capital. Such problems were only exacerbated by the relatively high cost of living in the capital. By 1780 the impact of long term trends was being strongly felt, with real wages in London dropping to a rate almost 30 per cent lower than those earned by equivalent workers in Lancashire.¹⁷⁰ London did, of course, still have a number of advantages on its side in the late eighteenth century: it remained the largest and most concentrated market in Europe and retained its access to the largest port in the country. Notwithstanding this, however, over the course of the eighteenth century a significant number of trades were relocated elsewhere and, as a result, London experienced a period of relative decline. As Schwarz commented, what was noticeable was that by the 1750s and 60s London was just one centre of production where at the start of the century it had been *the*

¹⁶⁷ Cited in C. R. Dobson, *Masters and Journeymen: a pre history of industrial relations, 1717 – 1800*, (London, 1980), p. 91.

¹⁶⁸ Beier & Finlay (eds.), *London 1500 - 1700*, p. 17.

¹⁶⁹ Schwarz, *London in the Age of Industrialisation*, p. 2.

¹⁷⁰ Figures taken from E. W. Gilboy, 'The Cost of Living and Real Wages in Eighteenth-Century England', *Review of Economic Statistics* 18 (1936), pp. 134 – 143.

national centre of industry.¹⁷¹ Indeed, decline was so marked in late eighteenth-century London that its population, although still growing, was sustained only thanks to a significant downturn in the death rate which resulted from improvements in sanitation.¹⁷²

The second half of the eighteenth century was thus a period of upheaval for those living and working in and around the capital. It therefore comes as little surprise that the period from 1750 to 1800 saw contemporaries in Middlesex become increasingly concerned about the state of morals in the county. Such concerns were to some extent a result of the fact that criminal activity in London and its surrounding areas was, given the unstable economic conditions, relatively high. Hence, in the mid 1770s not only did Middlesex spend an almost unrivalled £1,000 per year apprehending vagrants, but its justices also transported no fewer than 40 per cent of all transports in England and Wales, despite the fact that only 10 per cent of the population lived in the area.¹⁷³

The fear of crime and concern about the state of morals more generally was a common theme in material produced by commentators on London throughout the eighteenth century, but particularly from mid century onwards. This was to some extent a result of the fact that, as the figures above demonstrate, crime was indeed relatively prevalent in the capital. The cessation of transportation to America in 1776 and corresponding crisis in punishment did nothing to ease fears about crime in and around the metropolis. It is vital to appreciate at the same time, however, that the fear of crime in and around London was, as appeared to be the case in Lancashire, out of proportion to 'actual' rates of offending (which cannot in fact ever be known). This was because throughout the eighteenth century understandings of criminal activity were largely impressionistic. That is to say that contemporaries did not have the means by which to measure crime with any accuracy. Unaware of the concept of per-capita

¹⁷¹ Schwarz, *London in the Age of Industrialisation*, p. 35.

¹⁷² *Ibid.*, p. 236.

¹⁷³ J. Innes, 'Managing the Metropolis', *Proceedings of the British Academy* 107 (2000), pp. 55 - 56.

rates of offending, crime in the eighteenth century was measured simply by counting the incidence of trials, a fact that assured contemporaries that rising immorality was an indisputable reality; 'The good of counting,' Dr Johnson confidently declared in 1783, 'is that it brings everything to a certainty which before floated indefinitely.'¹⁷⁴ At the same time, the impression that crime was on the increase was sustained by the expansion of print which inevitably led to a greater awareness of criminal activity.

Simply counting the incidence of trials of course misrepresented the rate of crime in real terms. As Beattie pointed out, 'the steady rise of indictments over the eighteenth century can be largely accounted for by rises in the population.'¹⁷⁵ Even at their highest levels and even in the capital, eighteenth-century crime rates were modest compared to modern standards.¹⁷⁶ Irrespective of the reality that lay behind their despair, however, those living in and around London believed that crime was ripening to new dreadful heights at the end of the eighteenth century. Indeed, concern over criminal activity was so powerful in the capital that its usually divided, somewhat mutually hostile magistrates were willing to come together and deal with the issue as a single administrative body.

As Joanna Innes has observed, despite the fact that Middlesex's relatively low-status late eighteenth-century bench was generally scorned by their elite City equivalents, metropolitan authorities were willing to work as one when it came to dealing with the issue of crime prevention since uneven success in law enforcement would have acted simply to relocate rather than deal effectively with the problem. 'In the sphere of law enforcement,' Innes found, 'the case for rationalisation was more successfully made [than it had been when dealing with other political

¹⁷⁴ Cited in J. Boswell, *The Life of Johnson*, (London, 1791), ed. R. W. Chapman (London, 1970), p. 1221.

¹⁷⁵ Beattie, *Crime and the Courts*, p. 213.

¹⁷⁶ Notwithstanding this, it is important to acknowledge that the 1780s witnessed the highest rate of indictments at the Old Bailey than at any other point in the century. See www.oldbaileyonline.org

issues].'¹⁷⁷ Thus in the 1780s, as the failure of the hulks, the Gordon Riots and the problems associated with demobilisation at the end of the war saw the fear of criminal activity reach new heights, London's various metropolitan authorities came together in order to deal with the capital's apparent state of crisis. During this period of transition and upheaval it is perhaps unsurprising that Middlesex's magistrates decided to invest in a reformed house of correction and prison.

* * * * *

In 1794 a new house of correction and a county gaol built along the design offered by the Penitentiary Act were opened in Clerkenwell, Middlesex. The investment required to fund such rebuilding was, as elsewhere, considerable. Indeed, the house of correction built in Middlesex was the biggest in the country, surpassed only by the construction of the Westminster house of correction in the early 1830s. The size of the institution required by Middlesex combined with the fact that magistrates had in recent years invested considerable sums of money to improve existing prisons may explain why the period of agitation for reform there was more drawn out than elsewhere in the country.

Thus, there was no less than a thirteen year gap between reform-minded magistrate William Mainwaring's first suggestion that prison reform might be necessary in 1781 and the opening of the two new institutions in 1794. As elsewhere, hesitancy stemmed to some extent from financial concerns. Indeed, the fact that when construction did eventually occur it was funded entirely by the borrowing mechanisms set up by Paul in 1784 makes it clear that discussions in 1781 were premature to say the least. As was the case in Lancashire, hesitancy stemmed also from experience: considerable spending on improving the county's penal institutions in the 1770s did little to persuade less enthusiastic members of the Middlesex

¹⁷⁷ Innes, 'Managing the Metropolis', p. 71.

bench that investing in prison reform was the answer to social problems. Indeed, if responses to suggestions made earlier in the century by Sir John Fielding and others to erect large scale workhouses were anything to go by, there existed little enthusiasm among metropolitan authorities for institutions which commanded extensive public resources.¹⁷⁸ Penal reform was further complicated in Middlesex by the issue of responsibility. There had in the past been some acknowledgement by City leaders that the social problems experienced in Middlesex were to a certain extent their responsibility. Despite agreeing to help fund a house of correction in sixteenth-century Middlesex, however, the City never paid its share of the costs. After a bitter legal battle county officials were forced to make up the deficit in funding by heavily taxing their residents.¹⁷⁹

Despite the fact that experience suggested that penal reform was a complicated, pricey, and seemingly never-ending process, the Middlesex Justices made the decision in the early 1780s to invest in the Penitentiary Act. After a six-year long building process hindered by, among other things, disagreements over building sites, disputes over architects' fees and unreliable construction workers, the new 'Penitentiary House' and reformed New Prison in Clerkenwell opened for prisoners in the summer of 1794.

5) Conclusion

Albeit in very different ways, one thing that is true of all eighteenth-century English counties is that they experienced the force of socio-economic change in a more striking way than ever before. Also true of the majority of those counties is that, irrespective of their social, economic and political circumstances, over the course of the last two decades of the eighteenth century they invested in the reforms offered by the 1779 Penitentiary Act.

¹⁷⁸ Innes, 'Managing the Metropolis', p. 71.

¹⁷⁹ For details see *Victoria History of the County of Middlesex, Vol. 2*, pp. 92 - 94.

At the end of the eighteenth century, Gloucestershire, Lancashire and Middlesex could not have been more different. At the time one county was jubilantly expanding, one struggling to remain as unchanged as possible, and one facing a period of unfamiliar mixed economic fortunes. As a result, each county had at the time very different concerns voiced by people with different attitudes towards change and experiences of prison reform. In Gloucestershire, a traditional county with a long and established woollen industry, a distinct tension existed in the late eighteenth century between the prospect of economic decline on the one hand, and the negative social repercussions of innovation on the other. At the same time in Lancashire, a county made up of many of England's 'new towns', fear about an increasingly coherent and apparently riotous workforce whose livelihoods were threatened by a flooded labour market on the one hand and mechanisation on the other was considerable. Concerns in Middlesex, meanwhile, resulted less from the perceived threat of England's shifting industrial economy and more from the associated problem of apparently rising tides of crime.

Despite these essential differences, however, magistrates in Gloucestershire, Lancashire and Middlesex made the decision during the last two decades of the eighteenth century to invest in the same, single model of prison reform offered by the Penitentiary Act. A study of the process whereby these decisions were made in each particular context will help us to understand late eighteenth-century penal reform in all its complexity, i.e. the common *and* peculiar forces that lay behind the adoption of the Penitentiary Act. The first stage of understanding the apparently universal appeal of the Penitentiary Act will involve a consideration of the origins of the model of reform that it offered to contemporaries.

Chapter 3: The History of Prison Reform Ideas

1) Late eighteenth-century prison reform

During the last twenty years of the eighteenth century a wholesale rebuilding of England's penal institutions was accomplished. At least sixty penal establishments were built or adapted during this period on a plan offered by the Penitentiary Act passed in April, 1779.¹⁸⁰ Despite the fact that, in theory at least, it for the first time made imprisonment the chief means of punishing criminals in England, the significance of the Penitentiary Act is easy to underestimate: it was passed largely in response to a crisis in punishment brought about by the end of transportation to America, and the two penal institutions that it proposed were, quite simply, never built. More than this, the legislation was permissive, its realisation subject to the sanction of characteristically uninterested officials at county level.

As discussed above, despite this the Act proved to be more influential than even its chief architects had envisaged - the two institutions it proposed eventually translated into a national system of imprisonment used for the punishment of all but the most serious categories of criminals. To quote David Eastwood, the Penitentiary Act 'influenced penal practice not through the construction of a national penitentiary as envisaged by the Act, but through a series of local reforms.'¹⁸¹ Given the impact that it had on penal practice, it comes as little surprise that historians have dedicated considerable attention to the issue of late eighteenth-century prison reform; why, they ask, did imprisonment at hard labour become the punishment of choice in late eighteenth-century England?

¹⁸⁰ For figures on the number of institutions constructed in this period see Howard, *The State of Prisons in England and Wales* and Evans, *The Fabrication of Virtue*, pp. 195 – 235.

¹⁸¹ D. Eastwood, *Governing Rural England: tradition and transformation in local government, 1780 - 1840*, (Oxford, 1994), pp. 247 - 248. See also, Ignatieff, *A Just Measure of Pain*, pp. 96 - 109, Evans, *The Fabrication of Virtue*, chapter 4, and DeLacy, *Prison Reform in Lancashire*, pp. 79 - 115.

As discussed in chapter one, responses to this central question have been diverse, influenced by a range of preoccupations from Whiggish theories of progress to Marxist notions of class-based social control. As also discussed above, for a variety of reasons - from an apparent fixation with the 'Reform Perspective' to historians' separation of the study of the punishment of felonies and misdemeanours - the central question regarding why imprisonment at hard labour became the punishment of choice in late eighteenth-century England remains to be adequately addressed. In order to breathe new life into our understanding of the origins of late eighteenth-century prison reform it is necessary to build upon the work of historians like Hay, Sharpe, Beattie and Innes and to consider the proposals made by the Penitentiary Act in their full historical context.

2) The history of prison reform

i) The sixteenth century

During the sixteenth century, following precedents set by European institutions and in an attempt to remedy the dual problems of deviancy and poverty, the English government adopted a new kind of penal institution which for the first time aimed to use imprisonment to punish *and* reform its inmates. Imprisonment had been a feature of the English penal system since medieval times but had been employed only to hold criminals awaiting trial or punishment, or those retained for non-payment of fines - not as a punishment in itself. Extremely ambitious, the house of correction was differently conceived, designed ultimately to reform petty criminals considered to be deserving of punishment yet capable of improvement.

The first house of correction, Bridewell, was opened in London in 1553 as part of a series of hospitals founded to solve the problem of poverty in the

city, and was widely referred to as a 'hospital for the poor.'¹⁸² Those imprisoned in this and other sixteenth-century houses of correction which followed were petty criminals - rogues, vagabonds, sturdy beggars and other idle and disorderly persons - whose behaviour placed them in a grey area somewhere between poverty and criminality. Designed as they were to serve at once as punitive facilities and agents of social transformation, houses of correction provide the first example of socially constructive punishment in England. Where did the contemporary belief in institutional transformation come from?

Key to the house of correction's appeal was the sixteenth-century faith in the power of religion to overcome immorality. Sixteenth-century Christians shared the long-held view that it was ignorance of the Christian faith which led men into immoral habits. The answer to the problems of vice and immorality as exhibited by petty criminals thus lay in their religious re-education, an end facilitated by their institutionalisation. Such notions were considerably reinforced by the Reformation. Indeed, the specific timing of the emergence of the house of correction can be accounted for to some extent by the activity of the newly created Anglican Church. The Reformation saw a significantly increased focus on the need to raise standards of Christian belief and, more importantly, Christian conduct. If the sixteenth-century Christian's main concern was the salvation of the soul, it was natural that sin, the main obstacle to that salvation, should loom large in his or her preoccupations. Perhaps in part as a means of justifying itself, the central objective of the Church in sixteenth-century England was turning the population into good Christians, a task which involved not just getting people into church, but waging an all-out war on immorality.

As a result of the Reformation, therefore, during the sixteenth century there existed an increased premium on controlling personal conduct.

¹⁸² See, for example, E. G. O'Donoghue, *Bridewell Hospital: palace, prison, school; from the death of Elizabeth to modern times*, (London, 1929).

Fears over sin and disunity in religion resulted in what Sharpe described as an 'increase in governance' - namely the introduction of an unprecedented programme of regulatory statutes which, rigorously enforced, witnessed a dramatic increase in levels of criminal prosecutions across the country.¹⁸³ In this context, an institution which provided the opportunity to reform the spiritually ignorant, sinful element of society held significant appeal.

Another influential factor in the appeal of the house of correction in the sixteenth century was the existence of contemporary concern about sturdy beggars: those members of society believed to have deliberately adopted a parasitic and idle lifestyle. Throughout the century a strong line of argument emerged that minor offences derived from the habits and way of life of the idle poor. These habits, it was thought, could be corrected by retraining offenders to be hard working members of society. From the early sixteenth century onwards the importance of putting the 'idle' to work was made all the more convincing by a mercantilist ideology which penetrated deep into the British psyche.¹⁸⁴ The notion that the nation's wealth depended upon its ability to export in excess of its imports saw society recognise productivity in general and hard labour in particular as the backbone of the nation's wellbeing.

Originally designed as a 'House of Occupations', a key element of the house of correction's appeal therefore lay in the fact that it would, for the first time, *create* institutionalised work opportunities for those petty criminals who either refused to work or were unable to find it. It is important to note that central as it was to living an honest Christian life, hard labour was advocated also by those seeking the religious rehabilitation of the sinful. During the sixteenth century, therefore, there

¹⁸³ Sharpe, *Crime in Early Modern England*, p. 171.

¹⁸⁴ For the impact of mercantilism in England from 1500 onwards see R. B. Ekelund, *Politicized Economies: monarchy, monopoly and mercantilism*, (Texas, 1997) and M. G. Davies, *The Enforcement of English Apprenticeship. A Study in Applied Mercantilism, 1563 – 1642*, (Cambridge, 1956).

developed a pervasive belief in the reformatory potential of hard labour, be it out of economic or spiritual concern. Thus, while individuals such as Thomas More promoted hard labour as a means 'by which every man [criminal] might be put in a method to live and so be preserved from the fatal necessity of stealing and dying for it,'¹⁸⁵ others drew attention to how it was key to re-educating the nation's 'wicked and ungodly persons.'¹⁸⁶

Hard labour appealed also to those concerned with the costs of dealing with the nation's petty criminals. Given that it was believed that inmates' labour would contribute significantly to the costs of their imprisonment, institutionalised hard labour was seen as a self-funded means of dealing with an element of society that many deemed undeserving of public support. That this was a central concern is illustrated by the wording of an Act of 1609 which, while stipulating the construction of a house of correction in each county, went to great lengths to reassure magistrates that inmates 'shall in no sort be chargeable to the county for any allowance...but shall have such and so much allowance as they deserve by their own labour and work.'¹⁸⁷

The practical role that the house of correction would play was also an important part of its appeal. Indeed, a further intention in establishing houses of correction appears to have been to enhance the capacity to police the streets; i.e. to keep them clear of beggars, the homeless and destitute. According to contemporaries, the streets of sixteenth-century English cities were flooded with beggars and vagrants. Such individuals were the subject of much contention, accepted in some cases as genuine unfortunates and viewed in others as deliberately adopting a parasitic and idle lifestyle. It was for the dual purpose of punishing and aiding such members of society that houses of correction were first devised - a point

¹⁸⁵ T. More, *Utopia*, (1515), ed. G. M. Logan & R. M. Adams, (Cambridge, 1989), p. 21.

¹⁸⁶ Taken from a draft bill presented to Parliament in 1621 urging hard labour as a means of overcoming 'ungodly' behaviour. Cited in W. Notestein, F. H. Relf, & H. Simpson (eds.), *Commons Debates: 1621*, Vol. 7, (New Haven, 1935), p. 54.

¹⁸⁷ 7 Jac. 1c. 4 (1609).

supported by early patterns of construction which show the house of correction to have been an initially urban phenomenon built in response to the social and economic problems occasioned by rapid demographic growth.¹⁸⁸

During the sixteenth century, therefore, a number of factors combined to give the house of correction a wide and therefore significant appeal. The extent of such appeal is testified by the dramatic spread of institutions across the country. Following experimentations with urban institutions, as mentioned above an Act was passed in 1609 stipulating that each county must provide 'one or more fit and convenient house or houses of correction...for suppressing and punishing rogues, vagabonds and other idle, vagrant and disorderly persons.'¹⁸⁹ By 1631 all English counties had a house of correction, amounting to a total of over eighty institutions nationwide. Given its broad appeal, it is perhaps unsurprising that houses of correction possessed a markedly sustained appeal, with new institutions constructed throughout the period from 1553 to 1780. The extent of England's passion for the reforming institution becomes clear when compared with the rest of Europe. Spierenburg's exhaustive research of Dutch archives found, for example, that only nineteen houses of correction were built in the Dutch Republic by 1780.¹⁹⁰ In the same year Germany had only forty four institutions, while England topped the table of institutional investment with no fewer than 172 houses of correction.¹⁹¹

The sixteenth-century house of correction therefore held significant appeal and, as a result, quickly assumed a central role in the punishment of petty offences in England. Such popularity was achieved thanks to the

¹⁸⁸ See Innes, 'Prisons for the Poor', pp. 49 – 61 and Shoemaker, *Prosecution and Punishment*, p. 166.

¹⁸⁹ 7 Jac. 1c. 4 (1609).

¹⁹⁰ P. Spierenburg, (ed.), *The Emergence of Carceral Institutions*, (London, 1984), introduction.

¹⁹¹ *Ibid.*, introduction.

fact that the institution was the product of a wide range of hopes and ideas. Fashionable humanist thinkers saw the institutions as sites of social transformation and progress; supporters of the Reformation were enthusiastic about the opportunity houses of correction offered to undertake religious re-education and spiritual rehabilitation, while more pragmatic thinkers were attracted by the idea of clearing the streets and putting the idle to work at times of social and economic instability. Common to all of the sometimes conflicting strands of sixteenth-century opinion was the belief that petty criminals could be restored to an honest way of life, be it spiritually, physically or indeed both.

Sixteenth-century society's adoption of the house of correction was motivated also, however, by a final crucial factor yet to be comprehensively investigated by historians.¹⁹² The appeal of a novel penal institution designed to reform as well as punish its inmates was generated also by a growing contemporary dissatisfaction with the existing penal system. As discussed in chapter one, the history of punishment has traditionally been portrayed as a simple record of progress away from the horrors of execution towards more humane punishments such as transportation and imprisonment. Within this narrative, early-modern punishment is cast in barbaric contrast to the reforms of later times. As Radzinowicz, Hay, Beattie, Sharpe and McGowen have recognised, however, the reality was far more complicated than a simple story of advancement.¹⁹³

¹⁹² It should be noted that a recent article by Randal McGowen addressed the fact that dissatisfaction with the penal status quo existed prior to 1666, the date set down by John Beattie. See McGowen, 'The Problem of Punishment' in Devereaux & Griffiths (eds.), *Penal Practice and Culture*, pp. 210 – 231. The same was pointed out a year earlier by Joanna Innes in ' "Reform" in English Public Life' in Burns & Innes (eds.), *Rethinking the Age of Reform*, p. 76.

¹⁹³ Radzinowicz, *The History of English Criminal Law, Vol. 1*, Hay et al. (eds.), *Albion's Fatal Tree*, Beattie, *Crime and the Courts*, Sharpe, 'Civility, Civilizing Processes and the End of Public Punishment in England', pp. 215 – 230 and McGowen, 'The Problem of Punishment', pp. 210 – 231.

In contrast to the barbaric image of early modern punishment portrayed in the descriptions offered by contemporaries such as Bernard Mandeville and William Hogarth and as perpetuated by Whig historians, execution in the early modern period was a relatively rare occurrence.¹⁹⁴ Using evidence from the archives of the Court Sessions of the Palatine of Chester which provide the most complete record of indictments for felonies in early modern England (1550–1750), Sharpe found, for example, that capital sentences were awarded at a rate of only about eight per year in the 1580s.¹⁹⁵ Figures from across the country confirm the discrepancy between the image of the ‘bloody’ early modern period and the reality of penal practice. Executions in Cheshire and Essex, for example, averaged at around ten each per year.¹⁹⁶ Even during periods of significant socio-economic dislocation, for example during the poor harvest years of the 1620s, executions were rare - practiced at an average rate of around sixteen per year. Executions occurred even less frequently in the seventeenth and eighteenth centuries, reducing to an average of only one per year in Cheshire and Essex in the period 1800-1810.¹⁹⁷

Fundamentally, Sharpe’s figures demonstrate that execution was a much more rare phenomenon in the early modern period than is often assumed. Even taking into account a rise in capital sentences in the early seventeenth century which resulted from severe economic disruptions, religious insecurity and a corresponding increase in governance, it is fair to say that the early modern period saw a steady shift away from a penal

¹⁹⁴ See B. Mandeville, *An Enquiry into the Causes of Frequent Executions at Tyburn*, (London, 1725) & Hogarth’s images, for example ‘The Execution of Tom Idle’, ‘Industry and Idleness’ and ‘Cruelty in Perfection’ in R. Paulson, *Hogarth’s Graphic Works: Vol. 1*, (New Haven, 1965).

¹⁹⁵ Sharpe, ‘Civility, Civilizing Processes and the End of Public Punishment in England’, p. 217.

¹⁹⁶ Sharpe, *Crime in Early Modern England*, pp. 63 – 65.

¹⁹⁷ *Ibid.*, ‘Civility, Civilizing Processes and the End of Public Punishment in England’, p. 218.

regime centred on capital punishment.¹⁹⁸ The reasons for fluctuations in executions are very difficult to discern, influenced as they were by complex socio-economic changes such as demographic growth and the dislocations born of harvest failures and war. However, what is clear is that other factors were at work. From the sixteenth century onwards there emerged a body of adverse comment on capital punishment which, over the course of following 200 years, developed into a persuasive discourse of penal reform.

Contrary to the typical characterisation of early modern attitudes to their penal system, Joanna Innes' recent study of reform language found that by the late sixteenth century at the latest, 'the notion that English law might need reform was current,' a point supported by the appointment in 1597 of a Parliamentary committee to 'consider reforming the excessive number of superfluous and burdensome laws.'¹⁹⁹ Over the course of the sixteenth century, Innes observed, an enduring connection was forged 'between the terms "reformation" and "law".'²⁰⁰ Recent work by Randall McGowen on early reform material has also helped to correct the notion that there existed an uncritical acceptance of the penal system in the period prior to the seventeenth century.²⁰¹ It comes as little surprise, therefore, to find that as early as the beginning of the sixteenth century - a period considered by historians to lie well outside of the reforming decades - individuals began to express disquiet at the English penal system and make suggestions for its reform.

One of the first published critiques of the English penal system appeared in 1515 in Thomas More's *Utopia*, a political work which described an imaginary island nation whose ideal political system should, it was

¹⁹⁸ Between 1600 and 1620, when capital punishment was most common, executions were practised at an average rate of around thirty per year. See Sharpe, *Crime in Early Modern England*, pp. 63 – 65.

¹⁹⁹ Innes, 'Reform in English Public Life', p. 76.

²⁰⁰ *Ibid.* p. 76.

²⁰¹ McGowen, 'The Problem of Punishment', pp. 210 – 227.

implied, be adopted in England. More was elected to the office of Lord Chancellor in 1529, and his work was thus more than mere fictional fantasy and possessed considerable political weight. Indeed, his numerous publications on the law are recognised to have had a major influence on the English legal system, introducing in the sixteenth century, for example, the notion of equity in law in order to ensure 'natural justice' for all. The critique of the English penal system offered by More in *Utopia* was, therefore, likely to have been of considerable significance at the time it was published.

The execution of all but the most serious categories of felons was castigated in *Utopia* as both harsh and ineffective.²⁰² Hanging was, More commented, 'neither just in itself nor good for the public.'²⁰³ At the heart of his objection lay the issues of severity and prevention; 'as the severity is too great,' he commented, 'so the remedy is not effectual.'²⁰⁴ Given the low levels of execution at the time, it comes as little surprise that More made the point that the probability of escaping punishment was one of the greatest encouragements to commit crime, an argument repeated 200 years later by eighteenth-century penal reformers.²⁰⁵ Stressing further the inability of capital punishments to act as an effective deterrent, More also pointed out that, as criminals were more often than not economically motivated, so 'no punishment how severe soever is able to restrain those from robbing who can find out no other way of livelihood.'²⁰⁶

Designed to paint an image of an ideal state, More's *Utopia* proceeded beyond a mere critique of the existing penal system to make a series of recommendations for its reform. At the heart of his vision of improvement

²⁰² More, *Utopia*.

²⁰³ *Ibid.*, p. 16.

²⁰⁴ *Ibid.*, p. 16.

²⁰⁵ See, for example, H. Fielding, *An Enquiry into the Causes of the Late Increase of Robbers*, (Dublin, 1751).

²⁰⁶ More, *Utopia*, p. 19.

lay a more measured and constructive system of punishment more often associated with the reformist critiques offered by Cesare Beccaria and Jeremy Bentham. Thus, More suggested that sixteenth-century society 'ought not to approve these terrible laws that make the smallest offence capital, nor of that opinion of the Stoics that makes all crimes equal,' but instead develop a series of laws which were 'mild and gentle to make them [felons *and* petty criminals] see the necessity of being honest.'²⁰⁷

Key to any system of constructive punishment, More argued, was education, 'for if you suffer people to be ill educated, and their manners to be corrupted from infancy, and then punish them for these crimes to which their first education disposed them, what else is to be concluded but that you first make them thieves and then punish them?'²⁰⁸ Victims of unjust social circumstances,²⁰⁹ felons and petty criminals ought not merely to be punished, More urged, but also helped. Taking the example offered by the Romans and the Persians, according to More an ideal method of punishing *and* re-educating criminals was hard labour - a punishment 'by which every man might be put in a method how to live and so be preserved from the fatal necessity of stealing and dying for it.'²¹⁰ Creating work opportunities for criminals who 'would willingly work but can find none that will have them' was thus More's solution to increasing levels of crime.²¹¹ The house of correction, as discussed above, was groundbreaking in the sense that it did just that. More's work provides an example of the progressive, humanist ideology that encouraged the adoption of the house of correction in sixteenth-century England. More than this, *Utopia* suggests that sixteenth-century Bridewells were born not only as a combined result of developing humanist ideology, traditional Christian belief, and concern for the

²⁰⁷ More, *Utopia*, p.21.

²⁰⁸ *Ibid.*, p. 21.

²⁰⁹ For more on More's belief that deviancy stemmed from experience which, in turn, was the responsibility of the rulers of the 'commonwealth' see J. H. Hexter, *More's Utopia: The Biography of an Idea*, (London, 1952), pp. 71 – 81.

²¹⁰ More, *Utopia*, p. 21

²¹¹ *Ibid.*, p. 21.

nation's morals and financial welfare, but also thanks to a developing critical discourse on the existing penal system.

Although very little published material circulated in the sixteenth century, More was not the only contemporary to offer a critique of early modern penal practice. Thus, fifteen years after *Utopia* was first published, Thomas Starkey put forward a similar argument in his publication, *A Dialogue between Pole and Lupset*.²¹² Like More's work, Starkey's publication was political and optimistic - a book which catalogued the weaknesses of the sixteenth-century political system before offering a vision of its reform. Echoing More, Starkey portrayed political and economic abuses in the English system as imbalances in the four humours, and his proposed reforms as remedies to such weakness; 'remove the cause [of crime],' he said, '& schortly you schal fynd remedy.'²¹³ According to Starkey the cause of felonies and petty crimes was idle behaviour which, in turn, was born of a lack of education; 'the cause of theft spryngyth,' he said, 'of the idul route & of yl education of youth.'²¹⁴ Starkey's publication was, like More's, centred on a criticism of the severity and futility of existing capital punishments; 'the ordur of our law also in the punnyschment of theft,' he said, 'ys over strayte...for wyth us for every lytyl theft a man ys by & by hangyd without mercy of pyte.'²¹⁵

It should be noted that both More and Starkey reserved their adverse comment on capital punishment for all but the most serious categories of offences. Neither contemporary called for the abolition of capital punishment per se, but rather for a re-evaluation of its application when it came to the majority of felonies. Thus, Starkey, made clear the fact that, whilst death was an inappropriate punishment for *some* felonies, 'robbery by the hye ways wyth murder & mansloughter wold be...justely wyth most

²¹² T. Starkey, *A Dialogue between Pole and Lupset*, (1530), ed. T. F. Mayer, (Camden Society, 4th series: 37, 1989).

²¹³ *Ibid.*, p. 131.

²¹⁴ *Ibid.*, p. 131.

²¹⁵ *Ibid.*, p. 80.

cruel deth punnyschyd.²¹⁶ As figures demonstrate, selectivity in the application of capital punishments had by the sixteenth century become commonplace, with only a minority of offences punished by death. It is therefore fair to claim that More and Starkey's work, while naturally exaggerated for rhetorical impact, was representative of a wider enthusiasm among judges and magistrates for proportional punishments which acknowledged the difference between serious and less-serious crimes.

A man who placed great faith in the power of education to overcome political and economic ills, Starkey's recommendation for an improved system of punishment for felons was, like More's, centred around their re-education; 'I thynke ther but few fautys in our common wele,' he commented, 'but they may be resolved to that pryncypal crels to the yl educatyon.'²¹⁷ Starkey's vision of re-education was, again like More's, focused on the concept of hard labour. According to Starkey, creating work opportunities for felons had three key benefits; it would punish them physically, allow them to develop habits which would guide them from the 'idul route' at the heart of their offending, while at the same time allowing them to contribute something back to the society that they had injured.²¹⁸

I would thynke hyt gud that the felon schold be take & put in some commyn worke as to labur in byldyng the wallys of cytes & townys or els in some other maynyfycal work whych payne schold take be more grevuse to them then deth & so by theyr lyfe the commyn welth schold take some profyt for as we resonyd befor dethe is over strayte punnyschment for al such theft pryvely commytted but robbery on the hye ways wyth murder & mansloughter.²¹⁹

²¹⁶ Starkey, *Dialogue*, p. 131.

²¹⁷ *Ibid.*, p. 131.

²¹⁸ *Ibid.*, p. 131.

²¹⁹ *Ibid.*, p. 131.

More and Starkey's comments go far to support current arguments which urge that capital punishment was not accepted as uncritically in the early modern period as has been supposed. More than this, such material illustrates that a body of adverse comment on capital punishment which, as will be demonstrated, went on to develop into a significant reformist discourse, began in a century considered by historians to lie well outside of the major 'reforming decades'. The ideas expressed by More and Starkey - their enthusiasm for a system of more measured and constructive secondary punishments centred on hard labour – allow us to see the reduction in execution rates, the birth of the house of correction, and indeed the passing of a statute in 1576 authorising judges to sentence clerical felons to a stint of hard labour in a county jail or local house of correction in a new light.²²⁰

ii) The seventeenth century

Over the course of the seventeenth century the reformist discourse initiated by men such as More and Starkey gained considerable momentum.²²¹ During this period there developed a more general sense of disquiet about the severity, disproportion and, fundamentally, ineffectiveness of the law - a trend driven by the tumultuous effects of war, by the rise of social problems associated with urbanisation in the capital and by the rise of radical politics.²²² Demonstrating the extent of such disquiet was Oliver Cromwell's speech at the opening of Parliament in 1656 which urged members to reform the 'abominable laws' that made it possible 'to hang a man for six pence, three pence, I know not what.'²²³ Although not a particularly representative figure, Cromwell's critique echoed arguments being put forward by disparate sectors of seventeenth-century society.

²²⁰ For more on this Act and its impact see Innes, 'Prisons for the Poor', pp. 70 - 74.

²²¹ See D. Veall, *The Popular Movement for Law Reform, 1640-1660*, (Oxford, 1970).

²²² 7 Jac. 1c. 4 (1609).

²²³ W. C. Abbott (ed.), *The Writings and Speeches of Oliver Cromwell*, Vol. IV, (Cambridge, 1937), p. 274.

Thirty-five years earlier in 1621, for example, a draft bill was presented to Parliament lamenting the ineffective nature of imprisonment - a punishment to which an increasing amount of attention was dedicated at a time when the capital code became ever more criticised. The draft stated that, 'long imprisonment in common gaoles rendreth such offenders [thieves] the more obdurate and desperate when they are delivered out of the gaols, they being then poor, miserable and friendless.'²²⁴ The alternative urged by the bill was institutionalised hard labour, a punishment which had assumed an increasingly prominent role in the English penal system from 1609 onwards and the passing of 7 Jac. 1c. 4 which, as mentioned above, stipulated that each county must build at least one house of correction. The same argument was made by the Privy Council which, in 1631, urged judges and magistrates to take advantage of the Act passed in 1576 and imprison more felons in existing houses of correction.²²⁵ To make this a practical prospect it was recommended that houses of correction should from thereon in be built adjacent to county gaols.

As was the case in the preceding century, arguments made against the existing penal system in the seventeenth century were varied. Addressing the issue of penal reform from a spiritual point of view, for example, Sir Edward Coke commented in 1644 'what a lamentable case it is to see so many Christian men and women strangled on that cursed tree of that gallows.'²²⁶ Adverse comment on the penal system was made also during the interregnum by what one might term more radical sectors of seventeenth-century society. In June 1652, for instance, a petition was submitted to Parliament from the inhabitants of London and its surrounding areas demanding that punishments should be made more

²²⁴ Commons debates, 1621, cited in Notestein, Relf, & Simpson (eds.), *Commons Debates*, p. 54.

²²⁵ Book of Orders (1631), cited in J. P. Kenyon (ed.), *The Stuart Constitution*, (Cambridge, 1966), p. 501.

²²⁶ E. Coke, *The Third Part of the Institutes of the Laws of England*, (London, 1644), p. 24.

proportional to offences; 'No man be punished in a mean manner for a great fault,' it demanded, 'nor highly for a small.'²²⁷ At the same time the Levellers incorporated reformist discourse into many of their political tracts. In 1647, for example, they submitted their *Large Petition* to Parliament which demanded, among other things, that the government should 'proportion punishments to offences so that no man's life may be taken, his body punished, nor his estate forfeited but upon such weighty and considerable causes as justly deserve punishments.'²²⁸

Leveller critiques of the seventeenth-century penal system were expressed perhaps most forcefully in the writings of one of its most vociferous writers, Samuel Chidley. Uttering sentiment more readily associated with eighteenth-century reformers, Chidley echoed More when he argued that the death penalty was itself an invitation to commit serious crimes given, first, the lack of proportion between the punishment of theft and murder, and secondly, the reluctance to prosecute when the most likely punishment was death.²²⁹ To punish felonies by death, Chidley argued, again echoing his predecessors, was 'inhumane, bloody, barbarous and tyrannical,' the rule of equity demanding only a life for a life.²³⁰

Like More and Starkey before them, the Levellers not only critiqued the existing penal system but also made suggestions for its reform. While their proposals for the punishment of felons included expiation by compensating the injured party or, in cases where financial compensation was not available, corporal punishment such as whipping, the Levellers' most frequently advocated alternative to capital punishment was hard

²²⁷ *The Humble Petition of divers constant adherents to this Parliament (inhabitants of London, Westminster, Southwark and places adjacent, (29th June, 1652), p. 54.*

²²⁸ 'The Large Petition', (March, 1647) cited in Wolfe, D. M. (ed), *Leveller Manifestoes of the Puritan Revolution*, (London, 1967), p. 140.

²²⁹ See *The Only Right Rule for regulating the laws and liberties of the People of England*, (28th January, 1653), pp. 9 – 10.

²³⁰ S. Chidley., *A Cry against a Crying Sin*, (14th April, 1652). Reprinted in *Harleian Miscellany* (8), p. 16.

labour. The offender, it was proposed in 1652 in agreement with the aforementioned Act of 1631, could work either for the person who had suffered or, alternatively, 'in a prison or house of correction and be put to some useful work for a length of time determined by the nature of the offence.'²³¹ Chidley expanded on this idea, suggesting that institutionalised hard labour would give felons the opportunity to earn their keep and work off the value of their crime under reasonable conditions with sufficient food, sleep and rest.²³²

The fiscal value of putting felons to hard labour appealed also to an anonymous author who, in 1651, suggested that 'murtheres and felons and such like capital offenders' should not be hanged but instead be put to work; 'were it not good,' he asked, 'if all such and other prisons were made workhouses, where Felons may remain, and be forced to get their bread and to earn out that debt they may have robbed any person of?'²³³ Appealing to 'the view of all that require the reformation of grievances,' the author questioned 'whether it ought to be so practiced amongst us, to take away life for theft', concluding that imprisoning felons at hard labour was a preferable alternative not only because it was fiscally sound and 'rather more agreeable to the Scripture,' but also because – as a punishment that could be metered 'according to the offence' – it was a proportional and therefore a more effectively preventative alternative to the existing capital system.²³⁴

The idea that felons might be punished via some form of hard labour was not, therefore, by any means novel when introduced by the Penitentiary Act in 1779. As evidence of reform discourse and experimentation with new legislation illustrates, from the early sixteenth century onwards

²³¹ 'The Anti-Leveller's Antidote', (August, 1652), cited in Wolfe, D. M. (ed), *Leveller Manifestoes of the Puritan Revolution*, (London, 1967), p. 20.

²³² Chidley, S., *A Cry against a Crying Sin*, (14th April, 1652), Wolfe (ed.), p. 16.

²³³ D. T., *Certain Queries or Considerations to Presented to the View of All That Require the Reformation of Grievances*, (London, 1651), p. 22.

²³⁴ *Ibid.*, p. 22.

institutionalised hard labour appealed to contemporaries as an effective means of dealing not only with petty offenders but with all but the most serious categories of criminals. As discussed above, the appeal of the house of correction was broad and seventeenth-century praise for the system of punishment it enforced is thus not difficult to find; 'I commend most houses of relief and correction,' contemporary law reformer Sir Francis Bacon commented, '...where the impotent person is relieved, and the sturdy beggar buckled to work, and the unable person also not maintained to be idle...but sorted with such work as he can manage and perform.'²³⁵ 'Few are committed to the House of Correction or working house,' Sir Edward Coke agreed, 'but they come out better.'²³⁶

Be it for the punishment of misdemeanours or felonies, the appeal of institutionalised hard labour was wide-ranging in the early modern period. To the Levellers and other theorists opposed to the existing system it appealed in the sense that it was a measured, more humane and constructive alternative to an unjust, severe and futile capital penal code. To others, hard labour appealed as a punishment primarily because of its fiscal value; putting criminals to work continued to make great sense during a century that saw mercantilist ideology develop into a dominant economic policy.²³⁷ Others, no doubt concerned at the contemporary tendency to apply the death penalty only in the most extreme of cases, drew attention to the punitive benefits of punishing felonies by institutionalised hard labour as opposed to the available alternatives such as branding and pardons. Urging severity in punishment, Thomas Firmin argued in 1681, for example, that felons ought to be put to hard labour since 'this would be a good means to prevent that Wickedness [lack of retribution].'²³⁸

²³⁵ Cited in S. S. Tollit, 'The First House of Correction for the County of Lancashire', *Transactions of the Lancashire and Cheshire Antiquarian Society* 105, p. 71.

²³⁶ *Ibid.*, p. 71.

²³⁷ For a discussion of British mercantilism see K. Morgan, 'Mercantilism and the British Empire, 1688 – 1815' in D. Winch & P. K. O'Brien (eds.), *The Political Economy of British Historical Experience*, (Oxford, 2002), pp. 165 – 191.

²³⁸ T. Firmin, *Some Proposals for the Employment of the Poor*, (1681), p. 41.

Also drawing attention to the punitive benefits of imprisoning felons, a 1695 publication entitled *Solon Secundus* urged that ‘...to an *English Man*, so fond of Liberty, [imprisonment] would be more formidable than that ignominious Death.’²³⁹ The loss of liberty inherent in imprisonment was, the author argued, just one of the multiple benefits of institutionalised hard labour. Not only, his pamphlet stated, was institutionalised hard labour appealing on a punitive level, but it was also fiscally sound *and* would lead to the reformation of criminals. Felons should, the author argued, be ‘sent to a Work-house, and there to remain till he should, by his Labour, pay the Prosecutor the full summ,’ in addition to whatever it cost to maintain him in prison.²⁴⁰ ‘This long Confinement, and hard Service,’ he went on, ‘would baulk his stomach, and spoil his Appetite to the old way of Padding, and every Gang and Knot would be broke and dispers’d.’²⁴¹

Institutionalised hard labour appealed also to those who continued to invest in the ancient belief that criminal behaviour was born of an ignorance of the Christian faith. Physical toil would, it was believed, facilitate spiritual rehabilitation. Hence, Reverend William Crawshaw’s seventeenth-century vision of ideal punishment involved physical suffering; ‘Even the basest and worst men,’ he said, ‘trained up in severe discipline, under the sharpe laws, a hard life and much labour, do prove good members of the commonwealth.’²⁴² Crawshaw stressed the importance of hard labour in the spiritual rehabilitation of criminals; hard labour would, Crawshaw urged, act as a ‘spiritual physicke,’ its effect on the body rendering the criminal ‘purged from corruption of sinne.’²⁴³

²³⁹ Anon., *Solon Secundus, or Some Defects in the English Law with the Proper Remedies*, (1695), p. 14.

²⁴⁰ *Ibid.*, p. 12.

²⁴¹ *Ibid.*, p. 14.

²⁴² W. Crawshaw, *Sermon Preached in London before the Right Honorable the Lord Lawarre*, (London, 1610), p. 2.

²⁴³ *Ibid.*, pp. 2 – 3.

Belief in the importance of religious enlightenment in overcoming anti-social behaviour grew considerably over the course of the seventeenth century thanks to the exertions of various 'Reformation of Manners' campaigns. The term 'Reformation of Manners' is used by historians to refer to a series of major campaigns launched at different times between the sixteenth and eighteenth centuries designed to alter moral standards and behaviour by attacking what their proponents saw as godlessness, immorality and vice. Far from a unitary movement, the Reformation of Manners campaign was a cluster of interrelated movements launched over time and space in response to social and political upheavals which inevitably bred concern for moral standards.

In the early seventeenth century the Reformation of Manners campaign was irrevocably linked to the spread of Protestantism which, in turn, was linked with a new sense of ideal 'Englishness'.²⁴⁴ Early in the century England had been a Protestant kingdom for just over a generation. While initial conformity to its tenets was fairly rapid, the greater and more fundamental task of bringing home the Protestant version of God's teachings to the mass of the population remained to be fulfilled. The task of achieving mass observation of Protestant scripture was ultimately an exercise in reforming the habits of those deemed to be living 'un-Christian' lives through a process of religious re-education. Social and economic upheaval caused by population growth, rising prices, epidemic disease and an influx of the poor made such a task seem all the more imperative. The exertions of the Reformation of Manners campaign went far to posit religious enlightenment as key to eradicating improper, immoral behaviour from seventeenth-century England and thus to ensuring a 'decent' national identity.²⁴⁵

²⁴⁴ See T. Claydon & I. McBride (eds.), *Protestantism and National Identity*, (Cambridge, 1998).

²⁴⁵ For discussion of the early seventeenth-century reformation of manners campaign see K. Wrightson, *English Society*, (London, 1982) and M. Ingram, 'Reformation of Manners in Early Modern England' in P. Griffiths, A. Fox & S. Hindle (eds.), *The Experience of Authority in Early Modern England*, (London, 1996), pp. 47 – 88.

The long-standing association of 'proper' religious observance with 'proper' behaviour therefore held a new resonance in the seventeenth century, especially in those urban areas where socio-economic difficulties made immoral behaviour appear particularly rife. Thus, at different times over the course of the century, small groups of men gathered in London to find ways of opposing what was widely regarded as a dangerously rising tide of immoral behaviour. Their aim was to root out drunkenness, profanity, non-observance of the Sabbath, gambling and other vices – to effect, in short, a reformation of manners. Although its motivations were to some extent political, the late seventeenth-century Reformation of Manners campaign was fundamentally driven by religious sensibilities.²⁴⁶ Hence, a pledge made in the 1693 declared the society's aim to be to promote, 'the advancement of the honour and service of almighty God.'²⁴⁷

The reformative potential of hard labour appealed to the Reformation of Manners campaign as a means of correcting the immoral behaviour exhibited by those members of society who occupied the grey area between social indiscipline and crime. As had been the case in the previous century, contemporaries invested in the early belief that certain 'immoral' habits exhibited by criminals were born of an ignorance of the Christian faith. Key to the process of re-educating such criminals, they believed, was hard labour as enforced in the house of correction which was, after all, an essential element of an honest, Christian life.²⁴⁸

Thanks to the broad appeal of the concept of hard labour as a means of punishment, the seventeenth century marked a pivotal moment in the history of the house of correction. By the end of the century Bridewells

²⁴⁶ For the social and political motivations of the Reformation of Manners campaign see Shoemaker, 'Reforming the City: The Reformation of Manners Campaign in London, 1690 – 1738' in Davison, (eds.), *Stilling the Grumbling Hive*, pp. 99 – 120.

²⁴⁷ An 'agreement' from 1693 cited in Radzinowicz, *A History of English Criminal Law Vol. 2*, p. 431.

²⁴⁸ For a detailed analysis of the Reformation of Manners campaigns' use of houses of correction as a means of punishment see Shoemaker, 'Reforming the City' in Davison (eds.), *Stilling the Grumbling Hive*, pp. 99 – 120.

were performing a more significant role in punishing petty offences than ever before. Commitments to the house of correction in Westminster over the period from 1680 to 1725, for example, rose by at least 86 per cent, while in Middlesex commitments increased by 165 per cent over the period from 1660 to 1725.²⁴⁹ Commitments changed not only in quantity but also, and crucially, in character. Given the growing dissatisfaction with the severity and ineffectiveness of the existing penal system and growing enthusiasm for institutionalised hard labour, it is not surprising that the remit of the model of corrective discipline emphasized for the idle and disorderly in the sixteenth century was extended at the end of the seventeenth century to punish also those criminals committing minor crimes such as petty theft and 'immoral acts' such as prostitution and idleness as actively prosecuted by the Reformation of Manners campaign. Scattered evidence shows that at the same time Assize judges were increasingly likely to take advantage of the Act passed in 1576 encouraging the punishment of certain felonies by institutionalised hard labour in houses of correction.²⁵⁰

²⁴⁹ Shoemaker, *Prosecution and Punishment*, pp. 166 – 167.

²⁵⁰ See J. Innes, 'Prisons for the Poor', pp. 70 - 74.

iii) The early eighteenth century

By the late seventeenth century, therefore, adverse comment on the existing penal system and a growing faith in the punitive, fiscal and spiritual benefits of institutionalised hard labour saw a punishment previously reserved for petty criminals employed more widely than ever before. By the turn of the eighteenth century published discussions of the punishment of felonies was extensive, a trend encouraged on the one hand by the expiration of the Press Licensing Act in 1695 and on the other by growing anxiety regarding rising crime rates. Reformist discourse at the time focused in the main on promoting the extension of reformatory institutionalised hard labour, as first argued by More and Starkey 150 years earlier. In 1701 Timothy Nourse put forward the by then well-established argument that all but the most serious categories of criminals would be most effectively punished by a spell of disciplinary hard labour in a house of correction;

for lesser criminals, as pick pockets, petty-larceny, pimps, common-whores, sheep stealers, coney-catchers, hedge-breakers, and other like offenders, whose crimes deserve not death, twere very good they were condemn'd to *bridewell* for a year or two, or more, as the nature and circumstances of their crimes do require...²⁵¹

Not *all* contemporaries agreed, of course, that the solution to the apparent penal crisis lay simply in the extension of the remit of institutionalised hard labour. Capturing the sense of panic about rising crime rates early in the century, the anonymous author of *Hanging Not Punishment Enough*, also published in 1701, for example, demanded that dramatic action be taken to increase the severity of penal inflictions. Since bad man had apparently grown worse, he argued, so good men

²⁵¹ T. Nourse, *Campania foelix. Or, a discourse of the benefits and improvements of husbandry*, (1701) p. 229.

must 'grow less merciful.'²⁵² Notwithstanding his promotion of physical punishment, it is interesting that even a member of society so in favour of capital punishment conceded that such punishments should be reserved for the most serious offences and that as a general rule if 'ill men' could be made good, the state was obliged to follow such a course of action.²⁵³

That Timothy Nourse's vision of how best to 'cure' ill men was representative of wider early eighteenth-century opinion is supported by the Act of 1706 which, building upon the aforementioned statute of 1576, sanctioned judges to commit convicted felons who had been allowed benefit of clergy to a period of between six months and two years in a house of correction or workhouse. Once imprisoned felons would be 'set to work and kept at hard labour' and be given 'such due correction as shall be fit and necessary in that behalf.'²⁵⁴ Although largely abandoned in 1718 in favour of mass transportation, the Act of 1706 introduced a reformatory and measured system of punishment for felons that has never been wholly abandoned.

The sanctioning of reformatory imprisonment for certain categories of felons in 1706 was neither a wholly original departure nor, given the historical context, a surprising one. The specific timing of the Act was encouraged by a number of short term factors. Perhaps most prominent among such factors was the war of Spanish succession then in progress which exacerbated problems with transportation which had been experimented with as a means of punishing felons in the preceding century.²⁵⁵ Another short term catalyst for reform was the failure of branding on the cheek which had also been experimented with but, according to contemporaries, had failed to act either as an effective punishment or deterrent. Timothy Nourse's description of branding on the

²⁵² Anon., *Hanging Not Punishment Enough*, (1701), p. 1.

²⁵³ *Ibid.*, p. 22.

²⁵⁴ 5 Anne c. 6 (1706).

²⁵⁵ It is important to note that some believe that transportation was also adopted in the hope that it might reform felons' behavior. See Beattie, *Crime and the Courts*, p. 473.

cheek as 'a punishment of no great pain, and of short continuance,'²⁵⁶ summed up contemporary attitudes to a punishment which seemingly had only negative consequences.²⁵⁷ The disruptions of war and the failure of existing penal expedients, combined with such dislocating occurrences as poor harvests and re-coinage made the early eighteenth-century government keen to act resolutely to counter apparently rising tides of crime and immorality in England. War was influential not just in terms of adding a sense of crisis to the reform cause, but also, as John Roland Dinwiddy demonstrated, in the sense that it was in immediate post-war periods that governments were most likely to reflect on the state of their nation and to enact, as a result, ambitious domestic policy - a pattern which undoubtedly presents itself in the case of penal reform.²⁵⁸

While the specific timing of the Act of 1706 was dictated by short term factors, however, its substance was not. As discussed above, the concept of punishing wider categories of criminals in a way that had been reserved for the disorderly poor in houses of correction was circulating in England from the sixteenth century onwards. As also mentioned above, reform ideas had occasionally been translated into tangible legislation prior to 1706. A little-known statute passed in 1576, for example, authorised judges to commit clerical felons for a stint of hard labour in the county jail for up to one year. As mentioned above, this Act was given fresh life in 1631 by the Privy Council who urged that judges and magistrates take advantage of it and imprison felons in local houses of correction.²⁵⁹ Evidence thus shows that some felons were being punished in houses of correction prior to 1706, presumably as an alternative to the capital sentences and periods of imprisonment in county jails so criticised by contemporaries. Thus, in 1705 eleven women convicted of capital

²⁵⁶ Nourse, *Campania foelix*, p. 230.

²⁵⁷ Ultimately, being branded on the cheek meant that criminals could not escape their criminal past and found it difficult to find employment and return to an honest life.

²⁵⁸ See J. R. Dinwiddy, *Radicalism and Reform in Britain, 1780 – 1840*, (London, 1992). For more on the propensity for governments to focus on domestic policy in the post-war era see H. M. Scott (ed.), *Enlightened Absolutism*, (Basingstoke, 1990).

²⁵⁹ See Kenyon (ed.), *The Stuart Constitution*, p. 501.

offences at the Old Bailey were pardoned by the Queen on the condition that they were 'removed to the prison Bridewell, London to labour as idle and disorderly persons.'²⁶⁰

In the early eighteenth century, however, there was a new impetus for reform. At this time not only did short term developments lend a sense of urgency to the situation, but reformist arguments had developed to such an extent that the solution to the contemporary crisis in punishment seemed more obvious than ever before. That penal reform ideas were to some extent evolutionary in nature is testified by similarities in the intellectual contexts of the sixteenth and early eighteenth centuries. As discussed above, the house of correction was originally born of a number of ideological currents, the result of which was a wide appeal amongst disparate groups seeking, amongst other things, a more measured yet rigorous punishment and physical and spiritual rehabilitation. The same was true in the early eighteenth-century when, in the face of its own penal crisis, reformers held the same diverse range of multiple penal objectives.

The recurrence of problems associated with social and economic dislocation saw early eighteenth-century society face the same pressure to deal more effectively with apparently rising tides of dissolute behaviour as their contemporaries had 200 years previously. At the same time enthusiasm for the multiple benefits of hard labour continued to grow, a trend exaggerated by continued investment in the mercantilist belief that productive labour was the source of national wealth, and by the belief that criminals should pay for the punishment that they necessitated. A concerned member of society articulated both of these viewpoints when, in 1726, he sent an address to Parliament urging that certain criminals should not merely be imprisoned but put to some form of work, as was practiced 'in Holland and some other places,' in order to pay for their

²⁶⁰ Cited in Beattie, *Crime and the Courts*, p. 498.

debts and eventually 'let him have his liberty in order to get his livelihood.'²⁶¹

Spiritual rehabilitation also continued to feature centrally in reformist discourses of the early eighteenth century. As discussed above, the belief that immoral behaviour sprang from an ignorance of the Christian faith was one which had been central to justifications for the house of correction in the sixteenth century, and which was bolstered significantly by Reformation of Manners campaigns in the seventeenth century. The early eighteenth century saw continued support for this campaign and a continued belief in society's duty to restore its members to the condition in which God had created them, a point illustrated by the popularity of the efforts of the Society for the Promotion of Christian Knowledge from 1699 onwards.

Given its historical context, the Act of 1706 was, therefore, an unsurprising piece of legislation inspired by ideas which had developed over the course of the previous 200 years. The Act for the first time introduced mass imprisonment to the English penal system and, despite being permissive, in some places temporarily transformed the punishment of felons. In the London and Middlesex Sessions of Gaol Delivery in the period from 1710 to 1718, for example, over 500 felons were committed to hard labour, representing about 20 per cent of all those convicted of property crimes. In Devon over the same period the figure was 25 per cent.²⁶² At the same time judges at the Old Bailey sentenced substantial numbers of felons to terms of hard labour after they had been burned on the hand.²⁶³ This represented a significant shift away from capital punishments towards a more constructive, reformatory alternative.

²⁶¹ Anon., *Reasons Against Confining Persons in Prison for Debt*, (London, 1726), p. 1.

²⁶² Innes, 'Prisons for the Poor', pp. 88 – 89.

²⁶³ See *The Proceedings of the Old Bailey* (www.oldbaileyonline.org) and Beattie, *Crime and the Courts*, (Oxford, 1986), p. 499.

In spite of the belief that houses of correction were penal instruments with real and distinctive potential, however, the experiment of 1706 met with little success. This was because, despite the pressure the Act put on Bridewell keepers who became responsible for keeping felons under heavy security, and despite a new strain put on buildings built to cope with only a fraction of the prisoners they received following the passing of the Act, county magistrates were given no power to help keepers cope with their new burdens. The consequent overcrowding significantly undermined efforts to reform inmates and, as a result, figures showed that between five and ten per cent of those sentenced to hard labour in metropolitan Bridewells in the wake of the Act of 1706 either returned subsequently for a further term or were ultimately hanged.²⁶⁴

Given the range of expectations invested in it and the severe lack of resources allocated to it, experimentation with mass imprisonment at hard labour was to some extent doomed from the outset. As discussed above, contemporary society was horrified at perceived increases in the incidence of crime, a situation significantly exaggerated by demobilisation at the conclusion of the war in 1714. Even if Bridewells *had* been sufficiently funded by magistrates, in the circumstances it would have appeared that the institution was failing in its endeavour to perform the social transformation that its proponents had promised. By 1718 there was, once again, a crisis in punishment. High levels of prosecution were sustained in the preceding years, and in the circumstances politicians, judges and magistrates became increasingly eager to devise measures that would remove offenders more permanently from the community.

Consequently, in 1718 the Transportation Act was passed. Ambitious efforts to reform all but the most serious categories of offenders with imprisonment at hard labour were put on hold, replaced with a

²⁶⁴ Innes, 'Prisons for the Poor', p. 90.

punishment deemed more appropriate to a society which perceived levels of crime and immorality to be spiralling beyond their control. It is important to note, however, that as well as the value it held as a relatively cheap and easy means of exiling felons, transportation also appealed to that growing section of society that believed in more constructive punishments. Such people hoped that the harsh discipline of a foreign society might encourage felons to become more productive members of society. Hence, as early as 1663, a condemned thief argued that he should be transported to the colonies in order to 'amend' his life 'for the future.'²⁶⁵

Whilst the imprisonment of felons did not develop in a major way in the early eighteenth century, the Act of 1706 represented a significant benchmark in the history of English punishment. In short, the Act recognised imprisonment at hard labour as a punishment appropriate not just for the disorderly poor but for all but the most serious categories of criminals. After 1706, the conviction that imprisonment was a legitimate penal alternative and the belief that the reformatory punishment of the house of correction might do more to prevent crime than the capital system and its alternatives was never wholly abandoned.

iv) The mid to late eighteenth century

During the late eighteenth century imprisonment at hard labour re-emerged at the heart of the English penal system. Between 1779 and 1800 a large scale rebuilding of England's penal institutions took place, with each of the new prisons built on a plan offered by the Penitentiary Act passed in April, 1779.²⁶⁶ The Penitentiary Act was born of the same tradition that saw, first, the birth of the house of correction and, secondly, the extension of the remit of reformatory imprisonment in 1576, 1631 and 1706. That late eighteenth-century penal reform had evolved from a

²⁶⁵ Cited in Beattie, *Crime and the Courts*, p. 473.

²⁶⁶ See Howard, *The State of Prisons* and Evans, *The Fabrication of Virtue*, pp. 195 – 235.

tradition of reformist ideas by then over 250 years old is testified by similarities in both the practical and intellectual contexts of the sixteenth, early eighteenth and late eighteenth centuries.

As noted above, both the house of correction and the Act of 1706 were born of a perceived need to deal more rigorously with apparently rising tides of crime and immorality. Sixteenth and late seventeenth-century insecurities resulted from dislocations associated with urbanisation, with houses of correction established initially by city governments striving to grapple with urban social problems. In the early eighteenth century thanks to the disruptive effects of war, re-coinage, and poor harvests, immorality and dissolution appeared to have reached similar crisis levels. At the same time, problems with existing forms of punishment recurred, be it in terms of their failure to achieve the ends required or disruption in their application.

Institutional investment in the sixteenth and early eighteenth centuries had been encouraged also, of course, by intellectual factors. As discussed above, both the house of correction and the Act of 1706 – and indeed the legislative experiments in the interim – were born of a number of recurring ideas which afforded them a wide appeal among disparate groups seeking more measured yet rigorous punishment, physical and spiritual rehabilitation, a fiscally-sound penal system and a more robust national workforce. Both in terms of practical, short term motivations and intellectual, long term influences, late eighteenth-century institutional investment followed the same blueprint of penal reform that had developed over the course of the previous 200 years or so.

During the late eighteenth century, for example, significant social and economic dislocations meant that it was once again widely believed that a more rigorous means of punishment was required to deal with rising tides of crime and immorality. Contributing perhaps most significantly to the

sense of crisis was unprecedented urban growth which, by the end of the century, had transformed many English towns from small regional centres to rapidly expanding cities. That change was momentous was demonstrated by Wrigley who found that over the period from 1700 to 1800 the population of some English towns, including Birmingham and Manchester, grew at a rate of between 159 per cent and 274 per cent, with urban demographic growth across the country as a whole accelerating most markedly in the latter years of the eighteenth century.²⁶⁷ Over the course of the eighteenth century, the social problems that had previously been most marked in London were thus felt also in the provinces.

Offering apparently limitless possibilities of economic and social improvement, towns attracted huge numbers of people of diverse social and economic standing. Sharing limited space with unfamiliar people during periods of considerable social and economic upheaval inevitably bred a sense of unease and, in some places, panic. Whilst in reality it is most likely that crime rates at the time increased only in line with demographic growth, contemporaries had no means by which to measure the incidence of crime and were appalled by what they perceived to be a very real crisis in English morals. As early as 1720 newspapers in the capital reported that the nation was 'spiralling to new levels of criminal immorality.'²⁶⁸ Eight years later, Daniel Defoe expressed a feeling of panic when he reported that immorality was 'ripening to new dreadful heights.'²⁶⁹

The sense of alarm over apparently rising tides of crime and immorality continued in a cyclical pattern throughout the century at times when economic problems resulted in social upheaval. Panic tended to peak when the ongoing tumultuous effects of urbanisation were exacerbated

²⁶⁷ Wrigley, 'Urban Growth and Agricultural Change' in Borsay (ed.), *The Eighteenth-Century Town, 1688 – 1820*, p. 49.

²⁶⁸ *Applebee's Original Weekly Journal*, (24th February, 1720), p. 3.

²⁶⁹ D. Defoe, *Street Robberies Considered*, (1728), p. 49.

by other factors such as demobilisation. In 1749, for example, shortly after the close of war, Horace Walpole wrote with distress that, 'there is little news from England, but of robberies,' proceeding to comment that, 'one is forced to travel, even at noon, as if one was going to battle.'²⁷⁰ In 1751, shortly after a government committee had been established to find ways of suppressing increasing numbers of offences, Henry Fielding published his influential *Enquiry into the Causes of the Late Increase of Robbers*, which lamented the rise of immorality in England in a characteristically dramatic tone.²⁷¹

Disquiet over criminal activity rose once again in the following decade. In 1763, at the end of the seven years war, a contributor to the *Gentleman's Magazine* fretted that 'Robberies, frauds and thieveries were never more practiced than at present.'²⁷² Later that decade even the King's speech was focused on the subject of crime, reminding members of Parliament of the need to 'suppress these audacious crimes and robberies of violence which are now become so frequent.'²⁷³ As mentioned above, from the mid eighteenth century onwards the dislocations once reserved for the capital began to be felt also in the expanding provinces. Thus, towards the end of the century concern was frequently expressed in Manchester at the town's 'enormous,' 'amazing,' 'alarming,'²⁷⁴ and 'truly alarming' crime rate.²⁷⁵ Be it real or imagined, the socially and economically unstable late eighteenth century saw the return of a profound sense of panic regarding the nation's criminal activity. At the end of the century, society was once again dealing with the dislocating effects of the close of war which, as illustrated by Hay, significantly exacerbated both the real and perceived need to deal more effectively with dissolute behaviour.²⁷⁶ As had been

²⁷⁰ H. Walpole, *Correspondence with Sir Horace Mann*, Vol. IV, ed. W. S. Lewis, W. Hunting Smith, & G. L. Lam, (New Haven, 1960), p. 111.

²⁷¹ H. Fielding, *Enquiry into the Causes of the Late Increase of Robbers*, (Dublin, 1751).

²⁷² Cited in Beattie, *Crime and the Courts*, p. 266.

²⁷³ Cited in R. Porter, *English Society in the Eighteenth Century*, (London, 1982), p. 67.

²⁷⁴ Richard Townley's letter to the editor of the *Mercury*, (March, 1775), p. 9.

²⁷⁵ *Manchester Mercury*, (January, 1774), p. 4.

²⁷⁶ D. Hay, 'War, Death and Theft in the Eighteenth Century', *Past and Present* 95 (1982), p. 124.

the case in the sixteenth and early eighteenth centuries, contemporaries drew attention to the need to deal more rigorously with apparently rising tides of immorality.²⁷⁷

Also common to the sixteenth, seventeenth, early and late eighteenth centuries, and instrumental in the specific timing of the Penitentiary Act, were failures in existing forms of punishment. Thanks to war in America, the late eighteenth century witnessed the disruption of the most common punishment for felons at the time: transportation. Thus in 1776, in order to address the problems resulting from the end of transportation, the Hulks Act was passed 'for the more severe and effectual punishment of atrocious and daring offenders.'²⁷⁸ Embodying contemporary faith in hard labour as a means of punishment for felons, the Act allowed judges to sentence male offenders who were liable to transportation to hard labour, specifically dredging the Thames. Crucially, following a precedent first set down in seventeenth-century legislation, the Act also allowed judges to sentence women, and men who were incapable of working on the river, to a term of hard labour in a house of correction. Three years later a more long term solution to the crisis in punishment was passed: the Penitentiary Act.

The opening of the 1779 Penitentiary Act explicitly stated that it was passed in response to the disruption of transportation during the war in America, designed to deal with those felons 'convicted of crimes for which transportation hath usually been inflicted.'²⁷⁹ The specific timing of the Penitentiary Act, therefore, like the first house of correction and the Act of 1706, can be accounted for by a sense of crisis born of a combination of social and economic dislocation and failures in existing penal methods.

²⁷⁷ It should be noted that, as Sharpe observed, although a marked sense of panic did exist, eighteenth-century concerns were expressed in far less apocalyptic terms than in the sixteenth century. Hence, whilst eighteenth-century commentators expressed worries over travelling through town or walking safely in the dark, their sixteenth-century counterparts were convinced that the moral universe in which they lived was on the point of collapse. See Sharpe, *Crime in Early Modern England*, p. 184.

²⁷⁸ 16. Geo. III, C. 43 (1776).

²⁷⁹ 19. Geo. III, C. 74 (1779).

While a sense of crisis can clarify reasons for the specific timing of the passing of the Penitentiary Act, however, it cannot explain the specific form of the solution chosen. As in the sixteenth and early eighteenth centuries, institutional investment in late eighteenth-century England was influenced significantly by intellectual factors. As discussed above, both the house of correction and the Act of 1706 were born of a number of recurring ideas which afforded them a wide appeal among disparate groups seeking more measured yet rigorous punishment and physical and spiritual rehabilitation. The same set of concerns were voiced in the late eighteenth century and, once again, saw imprisonment at hard labour emerge as England's punishment of choice.

From the sixteenth century onwards there had developed a discourse of adverse comment on capital punishment which promoted more moderate and constructive alternatives. The sentiments uttered by More and Starkey over 200 years previously were echoed by eighteenth-century counterparts keen to replace a failing largely capital system with more moderate and constructive alternatives. Thus, in January 1738, a letter was printed in the *Gentleman's Magazine* which summarised contemporary opinion in a manner eerily reminiscent of that offered by More over 230 years earlier;

It is the custom of quacks to saw off the limbs and arms which they have frequently corrupted themselves; but the skilful physician tries all the remedies he can, and is sure the member cannot be rendered useful. Will any man of sense maintain that these unhappy creatures whom we punish with death cannot be reclaimed and be made useful in some other sphere?²⁸⁰

²⁸⁰ Anon., 'Of a Right to Inflict Capital Punishment', *Gentleman's Magazine* VIII, (January, 1738), p. 15.

Over the course of the eighteenth century adverse comment on capital punishment and the promotion of more measured and constructive alternatives gained a new momentum and engaged more attention than ever before, in part thanks to increases in the publication of discursive journals and magazines such as *The Craftsman*, *Fog's Weekly Journal* and *The Gentleman's Magazine*. As was the case in the sixteenth and seventeenth centuries, arguments promoting more constructive punishments in the eighteenth century appear to have embraced both a concern that a lack of proportion between offences and punishment encouraged criminal behaviour, and the belief that a capital system of punishment for crimes was, in all but the most serious instances, simply unjust.

Perhaps most famous of all eighteenth century adverse comment on capital punishment was Cesare Beccaria's *On Crimes and Punishments*, written in Italy in 1764 and translated and published in English three years later in 1767. Timely and well-presented, Beccaria's publication played a key role in encouraging enthusiasm for the potential benefits of more moderate, proportional and constructive punishments at a time when a self-stultifying system was failing to deal effectively with increasing levels of criminal activity. Penal historians have, however, drawn too much attention to publications such as *On Crimes and Punishments*. As illustrated above, adverse comment on capital punishment was developing in England far before Beccaria, and his English equivalent Blackstone, published their famous works.²⁸¹ Following the precedent set by reformist material in the sixteenth and seventeenth centuries, from the early eighteenth century onwards pamphlets and books were published expressing dissatisfaction with the existing system and making recommendations for its reform along the lines offered later by Beccaria. As Beattie commented, Beccaria's work

²⁸¹ English reformer William Blackstone was a great admirer of Beccaria's work and his *Commentaries on the Laws of England* published between 1765 and 1769 are widely held to have replicated Beccaria's ideas more specifically for the English setting. See Draper, 'Cesare Beccaria's influence on English discussions of punishment, 1764-1789', *History of European Ideas* 26 (2000), pp. 177 – 199.

'provided support for conclusions already in process of formation.'²⁸² It is vital to recognise, however, that this was a process that had, by the late eighteenth century, been underway for almost 250 years.

Typical of eighteenth-century contributions to this reformist trend was a pamphlet published in 1727 in which the anonymous author asked whether capital punishment 'whereby the crimes have in no measure abated their force, be esteemed an undue treatment of that person?'²⁸³ Three years later a pamphlet written by Sollom Emlyn expressed the opinion that the failure to discriminate between crimes was, as many of his predecessors had urged, unjust; it must be observed, Emlyn argued, 'that our laws are very liberal of the lives of offenders, making no distinction between the most atrocious and heinous felonies and those of a lesser degree.'²⁸⁴ Also arguing that the capital system was unjust was an essayist who, in 1735, from a familiar spiritual perspective, drew attention to the fact that the capital system violated the principles laid down in Scripture and thus was inconsistent with 'right reason and natural equity.'²⁸⁵ 'All punishments,' the author concluded, 'ought to be apportioned to the Nature and Effects of the Crime; for if the Punishment exceeded the Crime, then that Excess can only be imputed to the Cruelty and Injustice of the law [of God].'²⁸⁶

According to writer Joshua Fitzsimmonds too, punishments needed to be reformed in order to become, as he described in 1751, more 'suitable to the nature of the crime.'²⁸⁷ Existing punishments for felons, he urged, 'might be very properly changed to hard labour and correction'.²⁸⁸

²⁸² Beattie, *Crime and the Courts*, p. 555.

²⁸³ Anon., *An Essay Concerning the Original of Society, Government, Religion and Laws, especially those of the Penal Kind*, (1727), p. 65.

²⁸⁴ Sollom Emlyn, *A Complete Collection of State Trials and Proceedings for High Treason*, (1730), p. viii.

²⁸⁵ Letter published in the *London Magazine* (1735), pp. 598 – 599.

²⁸⁶ *Ibid.*, pp. 598 – 599.

²⁸⁷ J. Fitzsimmonds, *Free and candid disquisitions on the nature and execution of laws in England*, (London, 1751), p. 45.

²⁸⁸ *Ibid.*, p. 45.

Similarly adverse to the existing capital system was John Scott whose 1773 pamphlet, 'Observations on the Present State of the Parochial and Vagrant Poor', repeated calls first made by More and Starkey that a differentiation needed to be made between serious and less serious felonies; 'Blood,' he conceded, 'undoubtedly requires blood but for the violations of property unaggravated by acts of cruelty, the laws of God, of nature, of equity, certainly require a very different penalty.'²⁸⁹ This opinion was shared by Dr William Smith, whose 1777 pamphlet 'Mild Punishments, Sound Policy' criticised the existing system of capital sentences and expressed the hope that, 'humanity will find a way to soften the rigid severity of the law.'²⁹⁰

A more measured system of punishment lay also at the heart of Robert Turnbull's 1796 vision of reform.²⁹¹ A year prior to his publication Turnbull had visited Philadelphia. The success of the moderate and constructive system of imprisonment introduced for the punishment of felonies there led him to critically assess the 'monstrous iniquity' of the English capital system and, in doing so, encourage magistrates yet to adopt the reforms offered by the Penitentiary Act;²⁹²

It needs no demonstration to prove that the heinous offence of murdering a fellow creature must imprint on the mind a much stronger sense of resentment than the petty offence of stealing a yard of cloth. The former pictures to the imagination the baseness of the human heart in its deepest dye, and naturally implants in the mind an eagerness to punish severely the perpetrator, while the latter will simply call forth a sentiment of sorrow for the frailties of a brother member...Upon what principle then, can the same

²⁸⁹ J. Scott, *Observations on the Present State of the Parochial and Vagrant Poor*, (London, 1773), p. 134.

²⁹⁰ Smith, *Mild punishments, sound policy*, (London, 1777), p. 4.

²⁹¹ R. J. Turnbull, *A Visit to the Philadelphia Prison*, (Philadelphia, 1796).

²⁹² *Ibid.*, p. 83.

punishment for these two offences be justified? Upon what ground is equity supported?²⁹³

By the last decades of the eighteenth century discussions of penal reform had developed into a considerable discourse for change. Notwithstanding differences in the *quantity* of material produced on the subject, its *quality* or *essence* – i.e. the criticisms made of the existing system and the alternatives proposed – reproduced arguments which had been in existence since the early sixteenth century. ‘Would not a *Magistrate* deserve much better of his County,’ one eighteenth-century essayist asked, ‘who preserv’d the Lives of Men, by forcing them into *Industry* and *Labour*, than in procuring them to be hang’d for *Offences*, which *Idleness* and *Want* had tempted them to commit?’²⁹⁴ Felons, another reformer urged, ought to be punished with institutionalised hard labour in order to ‘beget in them such a habit of industry as in the end will make them useful...members of the publick.’²⁹⁵

Demonstrating an appreciation of the very same list of multiple-benefits that had been urged since 1515, late eighteenth-century reformers drew attention not only to the value of institutionalised hard labour in terms of its punitive value, its utility, its economic viability and the opportunity it offered to make punishment more proportional, but also in the sense that it would allow for the spiritual rehabilitation of criminals. Some of the most prominent late eighteenth-century reformers adhered to the long-established belief that criminal habits were born of an ignorance of the Christian faith, and that such habits could be corrected with institutionalised hard labour.²⁹⁶ Most vociferous of such reformers was Jonas Hanway. Considering criminal behaviour to be born of religious ignorance, Hanway promoted imprisonment at hard labour as a means of

²⁹³ Turnbull, *A Visit to the Philadelphia Prison*, (Philadelphia, 1796), p. 82.

²⁹⁴ Letter published in the *London Magazine* (1744), pp. 433 – 444.

²⁹⁵ T. Robe, *Some Considerations for rendering the Punishment of Criminals more effectual*, (London, 1733), p. 47.

²⁹⁶ See, for example, Howard, *The State of Prisons*.

re-education; 'there is no other means for a young man, or an old one, to cleanse his ways,' he said, 'than by ruling himself after the work of God.'²⁹⁷ This 'work' would include a combination of physical toil and religious instruction since, as Turnbull explained in 1796, '*Moral*, though not always, is often the consequence of *physical evil*.'²⁹⁸

Faith in the importance of religious enlightenment in overcoming anti-social behaviour was expanded considerably in the late eighteenth century thanks to the revival of the Reformation of Manners campaign in the 1780s. As discussed above, far from a unitary movement, the Reformation of Manners was a cluster of interrelated campaigns launched over time and space in response to social and political upheavals which bred concern for moral standards. Such campaigns had last engaged attention in similarly trying circumstances in the late seventeenth and mid eighteenth centuries.²⁹⁹ The reformative potential of hard labour appealed to the revived late eighteenth-century Reformation of Manners groups as a means of correcting the immoral behaviour exhibited by all but the most serious categories of felons who, they argued, occupied a dubious area somewhere between social indiscipline and crime. Thus, just as it had done in the late seventeenth and mid eighteenth centuries, the Reformation of Manners campaigns played a key role in recruiting support for the punishment of felonies by imprisonment at hard labour during the last twenty years of the eighteenth century.³⁰⁰

The late eighteenth century witnessed a renaissance not only in the early belief that criminal habits were born of ignorance of the Christian faith, but also – thanks largely to the work of English demographer and political

²⁹⁷ J. Hanway, *Defects of the Police*, (London, 1775), p. iii.

²⁹⁸ Turnbull, *A Visit to the Philadelphia Prison*, (Philadelphia, 1796), p. 41.

²⁹⁹ Shoemaker, 'Reforming the City', *Stilling the Grumbling Hive*, pp. 99 – 120.

³⁰⁰ See J. Innes, 'Politics and Morals: the Reformation of Manners Movement in Later Eighteenth-Century England' in E. Hellmuth (ed.), *The Transformation of Political Culture*, (Oxford, 1990), pp. 57 – 118.

economist Thomas Malthus - in preoccupations with the nation's productivity. Whilst different from early modern mercantilism in many ways, by positing the theory that the nation's wellbeing depended upon the productivity of each individual member of its population, Malthusianism generated among late eighteenth-century society a very familiar preoccupation with exploiting all available manpower – a theory which helped to reinforce support for using institutionalised hard labour for the punishment of a wide range of offences.

* * * * *

Given the impact that it had on penal practice in England it comes as little surprise that historians have dedicated much time and attention to the issue of late eighteenth-century penal reform. A range of answers have been offered in response to the central question: how did imprisonment at hard labour become the punishment of choice in late eighteenth-century England? What historians have failed to appreciate is that part of the answer lies in a long history of reform ideas which circulated in England from the early sixteenth century onwards.

'By labour for punishment of the body, and separation and religion for repentance, so natures may be bridled, minds bettered and others terrified by their example.'³⁰¹ So seventeenth-century magistrate Michael Dalton described the aims of the house of correction. 'Offenders are to be ordered to solitary imprisonment accompanied by well-regulated labour, and religious instruction...not merely to deter others from the commission of like crimes, but also to reform the individuals in question.'³⁰² So read the opening of the Penitentiary Act of 1779.

³⁰¹ M. Dalton, *The Country Justice*, (1618), p. 122.

³⁰² Geo III, C. 74 (1779).

Far from a revolutionary institution born of the rise of religious humanitarianism or of new capitalist socio-economic relations, the penal solution to which society turned in the late eighteenth century was an established one which had featured centrally in arguments urging the reform of the English penal system since the sixteenth century. Reform arguments first uttered in 1515 evolved over the course of the sixteenth, seventeenth and eighteenth centuries into a considerable reformist discourse. By the late eighteenth century there was a substantial consensus of opinion that imprisonment at hard labour, 'which by inducing a habit of industry, and by the effects of that good habit, would be equally beneficial to the criminal and the public,'³⁰³ was the most effective means of dealing with all but the most serious categories of criminals in England.³⁰⁴

It is, of course, crucial to acknowledge that the notion of consensus is inherently problematic when the timeframe in question is as broad as it is here. That is to say that while reform arguments remained markedly constant over the course of the sixteenth, seventeenth and eighteenth centuries, the impact and meaning of those arguments would inevitably have varied according to the context in which they were uttered. Thus, those arguing for the extended remit of institutionalised hard labour in the sixteenth century made a far more pioneering argument than those arguing for the same reform in the late eighteenth century.

The resonance of reformers' arguments would also have varied according to the genre of the publication in question. Thus, however similar their messages, a pamphlet issued by the Levellers delivered a very different sort of argument than that of a major work by an author such as Thomas More who, in turn, was motivated by a different set of concerns from eighteenth-century pamphlet writers based in England's expanding urban

³⁰³ W. Eden, *Principles of Penal Law*, (London, 1771), p. 264.

³⁰⁴ It should be noted also that reasons for promoting penal reform varied, with some contemporaries endorsing the construction of reformed prisons, for example, simply on the grounds that they would be more aesthetically pleasing than existing institutions. See W. Hutton, *An History of Birmingham*, (Second edition, 1783), p. 336, and J. Hatfield, *A New Scarborough Guide*, (1797), pp. 44 – 45.

centres. Notwithstanding such complications, however, the continuities in reform arguments made over time are nonetheless striking. Indeed, the complexities of context and authorship which inevitably arise across such a broad timeframe arguably act only to render long term trends in reform arguments all the more significant.

Having identified the existence of considerable consensus of opinion over time, it is important to recognize that not *all* sections of society were convinced of the benefits of institutionalised hard labour. As late as 1812, for example, the pamphlet *Hanging Not Punishment Enough* promoting utmost severity in punishment was re-published and widely distributed throughout London.³⁰⁵ Almost a century earlier in 1731 at the same time as the Levellers urged the widened remit of institutionalised hard labour, George Ollyffe published an essay which urged that the only way to prevent felons from offending was to increase the terror of the death penalty.³⁰⁶ In 1788 the author of *A Tour, Sentimental and Descriptive* offered a different critique of reformatory imprisonment, this time by questioning the legitimacy of 'tampering with English spirits' in the manner practiced elsewhere in Europe.³⁰⁷ Three years later the author of *A Treatise on Civil Imprisonment* warned on a more general basis that the penal reforms offered by the Penitentiary Act should not be too hastily adopted since, 'the spirit of reformation is often rash and intemperate.'³⁰⁸

Although such adverse comments represent by far a marginal aspect of eighteenth-century opinion, they nonetheless help to demonstrate an essential and frequently overlooked point: that late eighteenth-century prison reform was far from inevitable. That is to say that, even given the considerable consensus of opinion regarding what constituted valuable

³⁰⁵ Anon., *Hanging Not Punishment Enough*, (Second edition, 1812).

³⁰⁶ G. Ollyffe, *An essay humbly offer'd, for an Act of Parliament to prevent capital crimes, and the loss of many lives; and to promote a desirable improvement and blessing in the nation*, (London, 1731).

³⁰⁷ Anon., *A tour, sentimental and descriptive, through the United Provinces, Austrian Netherlands, and France: interspersed with Parisian, and other anecdotes: with some observations on the Howardian system*, (London, 1788), p. 138.

³⁰⁸ T. Macdonald, *A treatise on civil imprisonment in England*, (London, 1791), p. 1.

and desirable penal reform at the end of the century, it did not automatically follow that that penal reform 'happened'. In short, ideas did not result in action. Rather, it was only after the intervention of *language* that ideas were translated into action.

Chapter 4: The Language of Prison Reform

1) The study of late eighteenth-century prison reform

Given that it resulted in the creation of a system of punishment that continues to dominate English penal practice today, it is difficult to disagree with Simon Devereaux's observation that the Penitentiary Act was 'one of the most forward-looking English penal measures of its time.'³⁰⁹ Notwithstanding its historical significance, however, it is crucial to acknowledge that isolated studies of the Act cannot in themselves explain how prison reform happened. That is, quite simply, because the Penitentiary Act was a permissive piece of legislation, its passage representative of just one stage of the complex process whereby late eighteenth-century prison reform 'happened'.

Despite this, and indicative of wider trends in the study of the Penitentiary Act, an article by Anthony Draper published in 2001 argued that the relationship between policy and practice was a straight-forward one; late eighteenth-century prison reform was born, Draper argued, thanks to a new consensus of support 'for Beccaria's dramatic mix of Rousseauian contract theory and Helvétian proto-utilitarianism.'³¹⁰ 'Imprisonment fitted well,' Draper concluded, 'with [William] Eden's desire for more humanity to be shown in the infliction of punishment, and for care to be taken of individual rights.'³¹¹ According to Draper, mass imprisonment emerged at the end of the eighteenth century thanks to a new theoretical consensus among prominent English penal reformers which was, his lack of discussion to the contrary suggests, somehow automatically translated into 'real' reform.³¹²

³⁰⁹ S. Devereaux, 'The Making of the Penitentiary Act, 1775 - 1779', p. 405.

³¹⁰ A. J. Draper, 'William Eden and Leniency in Punishment', *History of Political Thought* 22:1 (2001), pp. 110.

³¹¹ *Ibid.* p. 127. For more portrayals of late eighteenth-century penal reform as a wholly theoretical phenomenon see Draper, 'Cesare Beccaria's Influence on English Discussions of Punishment, 1764 - 1789', *History of European Ideas* 26 (2000), pp. 177 - 199, M. Maestro, *Cesare Beccaria and the Origins of Penal Reform*, (Philadelphia, 1973), and C. Phillipson, *Three Criminal Law Reformers: Beccaria, Bentham and Romilly*, (New York, 1923).

³¹² Draper, 'William Eden and Leniency in Punishment', pp. 106 - 130.

As discussed in chapter three, the particular model of penal reform on offer in the late eighteenth century was influenced by much more than the late eighteenth-century penal ideology of Cesare Beccaria and the enlightenment philosophies of Jean-Jacques Rousseau. That is to say that historians' fascination with 'great ideas' has acted to distort our understanding of the origins of the Penitentiary Act. More than this, however, accounts which focus on penal legislation tend also to ignore the fact that the system of imprisonment to which they refer was 'born' only when it was sanctioned at local level. Portraying the relationship between theory and practice as clear-cut, at no point do historians like Draper, Marcello Maestro and Coleman Phillipson address the complexities of the process by which the policy to which they refer was translated into tangible reality. In short, during a period of celebrated empiricism when the speculative and theoretical were negatively associated with foreign thought, presenting arguments based upon Rousseauian contract theory and Helvétian proto-utilitarianism was not enough to make penal reform happen.³¹³

In support of the argument that freely to associate late eighteenth-century penal theory and late eighteenth-century prison reform is to over-simplify a far more complex process, Simon Devereaux's article 'The Making of the Penitentiary Act' – in which he analysed the process by which penal ideas were translated into legislation – found that theoretical consensus among prominent reformers was by no means indicative of a wider social acceptance of the tenets of late eighteenth-century penal theory.³¹⁴ By looking beyond the ideas of key reformers and analysing instead the pragmatic process by which the Penitentiary Act was passed, Devereaux was able to make an invaluable observation: that penal theory bore little relationship to penal reform. Hindered most markedly by a persistent preference among legislators for transportation, the Act eventually

³¹³ For more on attitudes to theoretical reform in the late eighteenth century see Innes, 'Reform' in *English Public Life*, pp. 87 – 92.

³¹⁴ Devereaux, 'The Making of the Penitentiary Act', pp. 405 – 433.

passed in 1779, Devereaux found, embodied a decisive retreat from its original form. Modifications arose from a pragmatic appreciation among reformers of the limitations imposed by a lack of widespread faith in theoretical justifications for reform; 'the Act passed in 1779,' Devereaux concluded, 'was in fact a somewhat modest affair by comparison with the scheme originally envisioned by its principal architects.'³¹⁵

What Devereaux's investigation into the passing of the Penitentiary Act illustrates more widely is that the relationship between penal theory and penal reform is a complex one. To assume that key players such as William Blackstone and William Eden were, under the influence of Beccarian ideas, able to design a progressive, enlightened vision of reform which was then applied in practice is clearly to over-simplify a more complicated process. Limiting and altering the reforms originally proposed were the people involved in the legislative process who, as Devereaux so conclusively demonstrated, were largely unconvinced by the arguments made by penal theorists.

Despite his groundbreaking observations, Devereaux's article left a lot of questions unanswered. While performing an invaluable service in bringing the complexities of the relationship between theory and practice to the fore, his article fell short of his declared aim to provide an insight into the 'character' of penal reform in late eighteenth-century England.³¹⁶ A Parliamentary history focused on the way in which reluctance amongst members of Parliament undermined efforts to implement reform, Devereaux's work says much about what *did not* happen in the last two decades of the eighteenth century and very little about the character of the reform that *did* take.

As discussed above, the passing of the Penitentiary Act led ultimately to the construction and adaptation of over sixty penal institutions. As Devereaux himself commented, 'the 1780s proved to be a period of

³¹⁵ Devereaux, 'The Making of the Penitentiary Act, p. 405.

³¹⁶ *Ibid.*, p. 407.

intensive prison reconstruction amongst local authorities, many of these efforts undertaken in a self-conscious emulation of the system outlined in the Penitentiary Act.³¹⁷ Echoing Devereaux's findings, a number of recent studies have made the observation that the Penitentiary Act, to once again quote Eastwood, 'influenced penal practice not through the construction of a national penitentiary as envisaged by the Act, but through a series of local reforms.'³¹⁸ The question that existing penal histories have failed to address is exactly *how* such reforms came about. As evidence already presented has shown, the origins of late eighteenth-century prison reform were more complex than has been recognised, and so too was the process whereby the reforms offered by the 1779 Penitentiary Act were translated into 'action' at ground level.

2) Prison reform in practice

The key to understanding late eighteenth-century prison reform lies beyond the parameters of penal theory and Parliamentary procedure. In order to grasp the true 'character' of reform one must consider not only the full range of arguments and experimentation on which the Penitentiary Act drew, but also the process by which legislation became tangible reality. Reform is, and was, a pragmatic as much as an ideological process. Given that the Penitentiary Act was permissive, in order for reform to happen people outside of Parliament had ultimately to be convinced that the model of institutionalised hard labour on offer was worthy of the vast financial investment it required. Thus the realisation of late eighteenth-century prison reform relied ultimately upon what reformers said about it or, put another way, upon the way in which reform was represented to the people with the power to sanction it at local level. In short, it was what reformers said that the Penitentiary Act would achieve that 'made' reform happen.

³¹⁷ Devereaux, *The Making of the Penitentiary Act*, p. 432.

³¹⁸ D. Eastwood, *Governing Rural England: tradition and transformation in local government, 1780 - 1840*, (Oxford, 1994), pp. 247 - 248. See also, Ignatieff, *A Just Measure of Pain*, pp. 96 - 109, Evans, *The Fabrication of Virtue*, chapter 4, and DeLacy, *Prison Reform in Lancashire*, pp. 79 - 115.

In support of what the evidence presented above has started to suggest, even the most superficial analysis of 'common' attitudes – i.e. the those attitudes of people outside of Parliament – to late eighteenth-century penal reform reveals some key, as yet obscured, differences between 'official' and wider public opinion. As illustrated in chapter three, for instance, eighteenth-century society was far less adverse to change than their politicians apparently were. One of the most striking observations made by Devereaux was the extent of conservatism amongst contemporary Parliamentarians. The story of the Penitentiary Act's progression through Parliament was, he found, one of modification, retreat and reluctance. Devereaux found that the persistent preference for transportation among legislators significantly undermined efforts to introduce the Penitentiary Act. Each debate aimed at promoting the introduction of institutionalised hard labour for all but the most serious categories of felons resulted, he observed, in 'an enhanced optimism about and determination upon the resumption of transportation.'³¹⁹ As discussed in chapter three, the mood outside of Parliament was markedly different. Here there had developed by the late eighteenth century a considerable discourse of adverse comment on existing systems of punishment and enthusiasm for more measured and constructive alternatives, most commonly institutionalised hard labour. Among the existing punishments so criticised by those urging reform in the public sphere was the Parliamentarians' punishment of choice: transportation.

Transportation appears to have had its critics from the outset. From the passing of the Transportation Act in 1718 onwards it was criticised for what was seemingly an endless variety of shortfalls. In the 1720s, for example, local authorities frequently refused to employ it as a means of punishing petty felons as it meant that a family would be left in the care of the parish.³²⁰ Further objections were raised by those who deemed it to be an ineffectual way of punishing serious offenders who, they believed,

³¹⁹ Devereaux, 'The Making of the Penitentiary Act, 1775 - 1779', p. 428.

³²⁰ Beattie, *Crime and the Courts*, pp. 470 – 483.

could easily buy their freedom and return unpunished.³²¹ Beattie found that such concerns were widespread, especially in the urban setting where crime was most prominent; 'Within a few weeks of the Transportation Act,' he said, 'magistrates in the metropolis were complaining that large numbers of 'old offenders' sent to America were making their way back to England very quickly.'³²² The fear that transports could return too easily from America was expressed throughout the century, especially when crime rates were – or were perceived to be – at a high level.³²³ This, combined with a growing enthusiasm for more measured and constructive punishments, meant that it came as little surprise when a minority of MPs forwarded the idea in 1751 that hard labour in the dockyards should replace transportation as a means of punishing both petty and serious offences.

By mid century part of the argument against transportation sprang from the fact that it no longer held the benefit that its proponents had most vociferously stressed: terror. At that time the journey to America was faster and less dangerous than it once had been. This, combined with tales of felons returning unpunished or living prosperous lives in America, made many believe transportation to be, as Beattie put it, 'a positive inducement to commit a crime, rather than a deterrent.'³²⁴ As discussed above, a vigorous public debate arose in the 1750s on the 'principle of population', i.e. the effects that population had on the nation's wellbeing. Such debate drew attention to the potential detrimental effect not only of over population – an argument later made famous by Thomas Malthus³²⁵ – but also *depopulation*, a point testified by the considerable number of voluntarily supported hospitals which were founded across the country at mid century in a declared effort to encourage a large and healthy population. In this climate transportation made much less sense as a means of punishments than alternatives such as hard labour.

³²¹ See, for example, J. Poulter, *The Discoveries of John Poulter*, (Sherborne, 1754), p. 28.

³²² Beattie, *Crime and the Courts*, pp. 540.

³²³ *Ibid.*, pp. 540 – 541.

³²⁴ *Ibid.*, p. 541.

³²⁵ See T. Malthus, *Principles of Population of Population*, (1798).

During the last fifty years of the century criticism of transportation reached a climax. At this time even those considered to be pro-transportation could muster only faint praise; Sir John Fielding, for example, describing it as, 'the wisest punishment we have.'³²⁶ Over this period the notion that transportation had fatal weaknesses became widely shared, a point illustrated by its declining use from mid century onwards.³²⁷ In 1766, a judge in Surrey described transportation as a punishment which 'almost ceased to exist.'³²⁸ Five years later, William Eden felt comfortable candidly criticising his government's punishment of choice as, 'often beneficial to the criminal, and always injurious to society.'³²⁹ In short, when it came to the issue of punishment many people concerned with penal policy outside of Parliament clearly had a very different set of concerns and ideals than the majority of those in power. In dramatic contrast to their largely conservative and inert politicians, there was by the end of the century a real sense among certain English contemporaries that the country's penal system should be made at once more measured and constructive via the extended remit of institutionalised hard labour.

* * * * *

Late eighteenth-century prison reform was not the straight-forward product of late eighteenth-century 'enlightened' penal theory. The Penitentiary Act was born of a long tradition of reform arguments and penal experimentation. More than this, the Act was permissive and thus adopted only once late eighteenth-century local officials were engaged by arguments made in its favour. In short, reform 'happened' not solely as a result of Parliamentary debate nor as the automatic product of ideological discussion but also (and ultimately) as a result of how penal reform was represented, i.e. of what reformers told local officials penal reform would

³²⁶ Beattie, *Crime and the Courts*, p. 543.

³²⁷ *Ibid.*, p. 538.

³²⁸ *Ibid.*, p. 547.

³²⁹ Eden, *Principles of Penal Law*, p. 33.

achieve. In order to understand the true 'character' of late eighteenth-century prison reform it is therefore necessary to move away from the realm of ideas and politics and analyse instead the language used by reformers promoting reform in what one might term the 'public arena'.

As Joanna Innes recently reminded us, while it is important not to conflate words and ideas, the terms chosen by reformers in the past 'were not merely functional descriptors.'³³⁰ Rather, reform was promoted in a deliberate way, with particular terminologies selected for the associations that they had – associations that the language-users were alive to. Language is understood in this study in much the same way, in a manner that Spiegel might term 'post-linguistic-turn'.³³¹ Moving away from Saussurian theories of non-referentiality and Foucaultian notions of all-dominating *epistemes* which encouraged historians to abandon attempts to see language as a phenomenon of expression,³³² this thesis invests in an emerging actor-centred or 'neo-phenomenological' approach which, put simply, asserts that just because subjects are culturally determined does not mean that the subject is dead and thus deprived of agency.

Language users are here understood to be effective and self-aware agents whose actions were constrained but not wholly controlled by what Spiegel terms their 'cultural scaffolding'.³³³ This understanding of language and its users is influenced by cultural historians who have drawn attention to the way in which language acts as a determining force in one's understanding of the world - that language is, in short, a subjective force with the potential to represent 'reality' in numerous (but

³³⁰ Innes, "Reform" in English Public Life', p. 72.

³³¹ G. Spiegel (ed.), *Practicing History: New Directions in Historical Writing After the Linguistic Turn*, (London, 2005), chapter 1.

³³² For a discussion of de Saussure's ideas see P. Bourdieu, *Outline of a Theory of Practice*, trans. Richard Nice (Cambridge, 1977). That historians should "abandon any attempt to see discourse as a phenomenon of expression" was argued by Foucault in *The Archaeology of Knowledge and the Discourse on Language*, trans. A. M. Sheridan Smith (New York, 1972), p. 55.

³³³ G. Spiegel (ed.), *Practicing History*, p. 13.

not limitless) ways.³³⁴ Thus, rather than reflecting the world of which it is a part 'language' is understood here as a means of intervention or representation, the potential of which its users were aware of and played upon.

The term 'discourse' is a loaded one which has inevitable associations with Foucault whose work has forged strong links between it and notions of knowledge and power. According to Foucault 'discourse' should be strictly differentiated from language, referring as it does not simply to communication but to the power structures which underlie the parameters of communication and which in turn dictate the importance of certain types of communication. As Nicholas Dirks explained, to Foucault discourse is "about the conditions under which the world presents itself as real, about the way institutions and historical practices become regimes of truth and of possibility itself."³³⁵

The use of the term 'discourse' in this study is, however, quite different. Here, the term is used in a far less loaded sense as means of unifying groups of statements which have some unity of function (i.e. material promoting penal reform). Thus while borrowing from Foucault in the sense that it brings together statements which aimed to have the same effect or function, the study takes as given that the 'function' in question was simply to make penal reform happen and that, as discussed above, the reformers (i.e. language users) concerned had greater freedom to express themselves than Foucault's notion of 'discursive formations' and corresponding denial of agency allows.³³⁶

³³⁴ See L. Hunt (ed), *The New Cultural History*, (London, 1989), pp. 1 – 22. For more on the limits of representation and constraints of context see G. Spiegel's discussion of the 'social logic' of representations in 'History, Historicism and the Social Logic of the Text', *Speculum* LXV (1990), pp. 59 – 86.

³³⁵ N. B. Dirks, 'Is Vice Versa?' in T. J. McDonald (ed.), *The Historic Turn in the Human Sciences*, (Ann Arbor, 1996), p. 34.

³³⁶ M. Foucault, *The Order of Things: An Archaeology of the Human Sciences*, (New York, 1973), p. xxi.

When considered as a 'discourse', the material produced to promote penal reform throughout the sixteenth, seventeenth and eighteenth-centuries is striking in the sense that it is dominated by two particular 'languages': one medical and the other utilitarian. The reason that medical and utilitarian language dominated penal reform discourse over the course of the sixteenth, seventeenth *and* eighteenth centuries is complex.

On the one hand continuity in the sorts of language used to promote penal reform reflects to some extent the fact that reformers across the period in question shared a cause. That is to say that medical and utilitarian language perhaps dominated penal reform discourse because in combination the languages effectively communicated the full range of benefits of the model of punishment promoted throughout the period 1515 - 1800. Thus, on the one hand medical language powerfully communicated to those concerned foremost with the need to rehabilitate criminals the sense in which institutionalised hard labour could 'cure' or reform offenders, while utilitarian language effectively communicated the sense in which the punishment would serve a 'real', punitive, useful and fiscally-sound social purpose.

As already acknowledged, however, equating continuity in language with continuity in ideas is problematic. That is to say that while reform discourse may have remained notably constant in nature, its impact would inevitably have varied according to the context in which it was uttered. Thus, just as the impact of arguments promoting institutionalised hard labour for felons changed over time in the sense that they became progressively less radical and more mainstream, so medical and utilitarian language would have resonated to varied extents and with varied implications at different points in time. While the remarkably sustained use of medical and utilitarian language is testimony to the fact that together the languages offered an effective means of promoting the benefits of institutionalised hard labour, therefore, one should remain cautious to avoid oversimplifying the motives behind reformers' use of

such language over time. In order to understand precisely *why* such language was deemed an effective means of making change happen in the late eighteenth century it is necessary to consider the wider cultural context in which such language was uttered.

On turning attention to the wider cultural context of the late eighteenth century it is clear that the use of medical and utilitarian language was driven by more than just the fact that together the languages communicated the multiple benefits of the punishment in offer. Late eighteenth-century penal reformers' use of medical and utilitarian language was driven by more than the need to communicate what institutionalised hard labour could achieve. Rather, medical and utilitarian languages were strategically selected for the associations that they had with rational, 'enlightened' culture.

Within a culture preoccupied with rationalism and empiricism, medical and utilitarian language first uttered in early sixteenth-century penal reform material assumed a new significance. During the late eighteenth century established penal reform discourse thus assumed a new and powerful resonance, in the process affording an established model of punishment a refreshed appeal and, crucially, new potential. That the use of medical and utilitarian language constituted a strategic move on the part of reformers is testified by the fact there were numerous alternative ways of talking about punishment available to them at the time, most notably Beccarian discussions of measure in punishment communicated via the language of 'humanitarianism' which featured prominently in Parliamentary debates regarding the Penitentiary Act.

Precisely why medical and utilitarian languages were deemed the most effective means of promoting institutionalised hard labour to a wider, public audience at the end of the eighteenth century is, of course, a complex issue related in part to the heritage of the discourse, in part to the languages' combined ability to communicate the multiple benefits of the punishment on offer and in part to the fact that late eighteenth-century

culture prioritised pragmatism and empiricism over 'continental' conjecture which limited the remit of more theoretical alternatives. Whatever the case, what *is* clear is that during the late eighteenth century long-established penal reform discourse possessed a new resonance which its users were alive to and which played an important part in generating new levels of support for an established and to a large extent outmoded means of punishment.

3) Promoting prison reform

i) Introduction

During the late eighteenth century, thanks to the particular context in which they were expressed, long-established reform arguments assumed a new resonance. At the time there existed a general sense of enlightened optimism which prioritised all things rational and empirical and which gave people great faith in the power of man in general and legislation in particular to improve contemporary society. Hence, the ratification of late eighteenth-century prison reform depended at once on ideas rooted in sixteenth-century discourses and in a new sense of hopefulness born of late eighteenth-century progressive culture.

The sense of optimism which characterised late eighteenth-century English intellectual thought and afforded established medical and utilitarian penal reform discourses a new significance was born to some extent of what one might term a rising 'culture of science'. While not wholly supplanting traditional theological-based culture, over the course of the eighteenth century science transformed the way in which contemporaries perceived their world. Key thinkers at the time were, generally speaking, no longer primarily engaged by theoretical and spiritual debates but rather by objective and dispassionate studies of the human world. Representative of the wider cultural climate was Newton's 1728 publication *Chronology of Ancient Kingdoms Amended* which

claimed to have 'rectified' the established biblical chronology of the creation of the world using astronomical data.³³⁷

The influence of the rising culture of science is difficult to overestimate. Energetically promoted among diverse sections of society, it broadened horizons and bred hope on a wide scale. Thus, throughout the eighteenth century work such as that produced by physicist and mathematician Isaac Newton was published in various accessible formats, from a special edition 'for the Use of the Ladies' to numerous versions aimed at children of different ages.³³⁸ By the mid eighteenth century almost every town in Britain hosted sell-out scientific talks, with lecturers such as Desaguliers achieving celebrity status. In 1776 Benjamin Martin commented that 'scientific knowledge is now become a fashionable thing.'³³⁹ This supports Roy Porter's theory that the English enlightenment was a democratic process which evolved not through the writings of a small number of intellectuals, but through a general change in English culture³⁴⁰ - that the process was, in Black's terms, 'more like a communing of clubbable men than a clique or a conspiracy.'³⁴¹ In further support of this argument, Daniel Headrick's recent publication on the contemporary revolution in information and access to it located the origins of the western world's obsession with information in a cultural shift starting in 1700 which resulted in increased public demand for information about all types of 'rational' topics, from scientific material to maps, dictionaries and encyclopaedias.³⁴²

It is therefore fair to claim that by the late eighteenth century science was a, if not the, key tenet of English culture. Science's crucial contribution lay

³³⁷ I. Newton, *Chronology of Ancient Kingdoms Amended*, (1728). See also I. Newton, *Observations on Prophecies*, (1733).

³³⁸ See G. D. Meyer, *The Scientific Lady in England, 1650 - 1760*, (London, 1955).

³³⁹ J. R. Millburn, *Benjamin Martin: Author, Instrument Maker and Country-Showman*, (1976), p. 4.

³⁴⁰ R. Porter, *Enlightenment*, (London, 2000), introduction.

³⁴¹ J. Black, 'Eighteenth-Century English Politics', *Albion* 35:1 (2000), p. 31.

³⁴² D. Headrick, *When Information Came of Age*, (Oxford, 2000), chapter 1.

in the sense that it underwrote contemporary belief in intellectual advance, as well as in the faith that it gave to positive knowledge. Discrediting superstition, science for the first time demarcated between those things which were 'true' and those which were 'occult'. As a result, theories of good and evil which had formed the bedrock of understandings of human nature since medieval times were widely challenged by the rise of science and its anatomization of human nature. In Porter's terms, 'the pulpit was sidestepped for dispassionate, objective studies seeking a new truth.'³⁴³

Contrary to the claims of some late eighteenth-century contemporaries, however, the sidestepping of the pulpit for empirical study did not mark the downfall of belief in the importance of religious observance England.³⁴⁴ Far from abandoned, late eighteenth-century religion instead took on what Porter termed a more 'rational' character, one which saw Christianity cease to be deemed a given and become a matter of analysis and reason.³⁴⁵ For some, of course, rationality and religion simply did not mix, and the result was scepticism and rejection. For others, however, the two cultural forces were neatly integrated, and religious ideologies emerged which embodied, and helped to spread, the positivist Enlightenment concepts such as the innate similarity of man and human perfectibility.³⁴⁶

Over the course of the seventeenth and eighteenth centuries conviction progressively grew that social no less than natural events were fundamentally governed by natural law and could, therefore, be measured, analysed and corrected. Key to this process of anatomisation

³⁴³ Porter, *Enlightenment*, p. 160.

³⁴⁴ In 1726, for example, Daniel Defoe commented that 'no one in England believes any longer.' See D. Defoe, *A Tour Thro' the Whole Island*. For a similar portrayal of religious apathy see 'Diary of Parson Woodforde' in J. Uglow, *Hogarth: a life and a world*, (London, 1997).

³⁴⁵ Porter, *Enlightenment*, pp. 96 – 129.

³⁴⁶ See, for example, the work of William Wilberforce which embraced Lockean theories of human perfectibility, discussed in K. C. Belmonte (ed.), *W. Wilberforce: A Practical View of Christianity*, (New York, 1996).

was John Locke who, in the late seventeenth century, took the scientific principles of observation, analysis and intervention and applied them to the human being. Locke propounded that, understood as a machine, man could be analysed and fine tuned to play an optimal social role. The Lockean model of the human mind and the paradigm it suggested for the understanding of mankind at large was crucial to eighteenth-century belief in the potential of institutionalised hard labour.

Largely as a result of the work of Locke, there had developed by the late eighteenth century an established belief in the notion of human perfectibility.³⁴⁷ Developed further by the work of Adam Smith and David Hartley, the concept of the human as a machine perfectible through the accumulation of constructive knowledge and experience permeated deep into the late eighteenth-century psyche.³⁴⁸ In promoting the need to observe the 'universal principles of the subject', science transcended temporal and regional variations, drawing attention not only to the perfectibility of man, but also at the same time his innate sameness. Representative of this shift was the revived popularity at the end of century of the third Earl of Shaftesbury's 1711 publication *Characteristiks*. The book, which sought to uncover 'the basic capacities of all men,' clearly struck a chord with the late eighteenth-century English psyche.³⁴⁹

It would, of course, be naive to suggest that late eighteenth-century society was wholly optimistic about the world which surrounded it, and it is therefore important to acknowledge that enlightenment optimism coexisted alongside a large amount of pessimism, particularly about the state of the nation's morals. Indeed, prison reform arguably gained much of its currency as a topic of debate at the end of the eighteenth century

³⁴⁷ See, for example, D. Hume, *A Treatise on Human Nature*, (London, 1740) which promoted the idea of human perfectibility and critiqued notions of pre-destiny.

³⁴⁸ See W. P. D. Wightman & J. C. Bryce (eds.), *Adam Smith: Essays on Philosophical Subjects*, (London, 1980) and D. Hartley, *Observations on Man, His Frame, Duty and His Expectations*, (London, 1749).

³⁴⁹ Cited in L. E. Klein, *Shaftesbury and the Culture of Politeness*, (Cambridge, 1994), p. 2.

precisely *because* society was so concerned about the direction in which it was headed. Notwithstanding this, however, it is impossible to deny that enlightenment culture generated a very real sense of optimism regarding man's ability to *overcome* social problems and *change* the direction in which society was headed, and this optimism was no doubt made all the more determined by the existence of social problems which were in need of a 'cure'.

By the late eighteenth century science had spectacularly transformed ways of thinking. Man had become anatomised and, as a result, behaviour was no longer deemed to be predestined and unchangeable but environmental and perfectible. In short, the human being was a machine to be fine-tuned and perfected. Such ideas – symptomatic of a more general sense of optimism and progress – revolutionised the way that all types of behaviour, including deviancy, were understood and, as a result, helped to encourage new faith in an established model of punishment: institutionalised hard labour.

ii) The language of medicine

One of the late eighteenth-century's most vociferous penal reformers was Jonas Hanway, whose 1776 publication *Solitude in Imprisonment* provides an illustrative case study of the nature of late eighteenth-century reform discourse. Throughout his reform material Hanway used medical language both to describe the problems inherent in the existing penal system and to communicate the benefits of reformed imprisonment. He thus opened *Solitude in Imprisonment* by lamenting the fact that 'we have not yet taken the proper measures to season justice with mercy; the remedies prescribed [for criminal behaviour] being inadequate to a radical cure of the disease.'³⁵⁰ The aim of his publication, he went on, was to 'find a remedy for so malignant, chronic a distemper.'³⁵¹ 'Till we go deep into the cause of this disease,' Hanway urged, 'we shall be arrant

³⁵⁰ Hanway, *Solitude in Imprisonment*, (1776), p. 5.

³⁵¹ *Ibid.*, p. 5.

empirics of the cure.³⁵² The 'cure' Hanway offered was imprisonment at hard labour, which he argued would act 'like a medicine for the body,' remedying the 'moral disease' which manifested itself in criminal behaviour.³⁵³

This rhetoric borrowed from an established discourse of penal reform. Thus in his 1515 publication *Utopia*, Thomas More promoted measured and constructive punishments by stating that, 'He is an unskilful physician that cannot cure one disease without casting his patient into another: so he can find no other way for correcting the errors of his people, but by taking from them the conveniences of life.'³⁵⁴ Fifteen years later Thomas Starkey used the same sort of language to encourage the adoption of a more constructive approach to punishment. Portraying the existing penal system as a disease that raged in the four humours of the polity, Starkey urged England to reform its penal system, '& shortly you shall fynd remedy.'³⁵⁵

Medical language was also evident in reformist material produced in the seventeenth century. In his 1610 promotion of institutionalised hard labour, for example, Reverend William Crashaw spoke of how 'Christ is our true and spiritual physician, from whom and the virtue of whose merits we must receive all the spiritual physicke that can cure and save our sinful soules.'³⁵⁶ Discussing how criminals should be reformed both physically and spiritually, Crashaw urged that, where hard labour could train the body, so religion could 'purge souls from the corrupt humours and the infectious staine of sinne.'³⁵⁷ Also using medical language to urge penal reform was the author who called himself Solon Secundus who, in

³⁵² Hanway, *Solitude in Imprisonment*, (1776), p. 8.

³⁵³ *Ibid.*, pp. 28, 18 & 33.

³⁵⁴ More, *Utopia*, p. 29.

³⁵⁵ Starkey, *Dialogue*, p. 131.

³⁵⁶ W. Crashaw, *Sermon Preached in London before the Right Honorable the Lord Lawarre*, (London, 1610), p. 2.

³⁵⁷ *Ibid.*, pp. 2 – 3.

1696, castigated the universal application of hanging with the comment that 'Ketch is a cruel hard-hearted doctor [who] kills all his patients.'³⁵⁸

The use of medical language in promoting institutionalised hard labour continued throughout the eighteenth century. As mentioned in chapter three, for example, the pro-capital punishment author of *Hanging Not Punishment Enough* conceded that since felons were essentially 'ill men' they should, where possible, be cured.³⁵⁹ Similarly, in 1738 a correspondent wrote a letter to the *Gentleman's Magazine* promoting the abolition of the death penalty and adoption of more moderate and constructive alternatives. In terms evocative of More's 1515 publication he stated that 'it is the custom of quacks to saw off limbs and arms...but the skilful physician tries all remedies, and is sure the member cannot be rendered useful.'³⁶⁰ Similarly, in 1751, William Hay MP echoed the sentiments of Thomas Starkey and Rev. Crawshaw when he portrayed crime as a disease within "the vitals of the body politick."³⁶¹ Imprisonment at hard labour would, Hay urged, 'cure' the disease of which he spoke.³⁶² Two years later Henry Fielding published his *Proposal for Making an Effective Provision for the Poor*. Throughout the pamphlet Fielding used medical language to penal reform. The best way to deal with criminals, he argued, was to punish them with institutionalised hard labour and thus 'to allow the possibility of a cure, or the efficacy of a remedy for the purpose [their reformation].'³⁶³

Five years later in 1758, Joseph Massie produced a pamphlet promoting the adoption of a system of 'hard labour and hard fare' as a means of

³⁵⁸ Anon., *Solon Secundus, or Some Defects in the English Law with the Proper Remedies*, (1695), p. v.

³⁵⁹ Anon., *Hanging Not Punishment Enough*, (1701), p. 8.

³⁶⁰ Anon., 'Of a right to inflict capital punishment', *Gentleman's Magazine*, VIII (January, 1738). p. 14.

³⁶¹ W. Hay, *Remarks on the Laws Relating to the Poor*, (London, 1751), p. 30.

³⁶² *Ibid.*, p. 30.

³⁶³ H. Fielding, *A Proposal for Making an Effectual Provision for the Poor*, (London, 1753), p. 11. See also pp. 12 & 78.

reforming criminal behaviour.³⁶⁴ From the title page onwards Massie described his institutional solution as a 'cure' for 'the ravaging diseases of theft and common prostitution.'³⁶⁵ Using examples from Holland to reinforce his argument, Massie portrayed houses of correction as the cure of the disease that was criminal behaviour; 'In placing idle persons in such a place as they must either work or be drowned,' he argued, 'they [the Dutch] thereby cure the disease in every instance where it is curable.'³⁶⁶

Late eighteenth-century penal reformers were, therefore, far from revolutionary in their use of medical language. Given the cultural context in which the language of medicine was spoken, however, the discourse was arguably more powerful than at any point in its 250 year history in late eighteenth-century enlightened England. Indeed, it had to be. Unlike their predecessors, eighteenth-century penal reformers had to battle against a growing body of critical comment which drew attention to the fact that existing experiments with institutionalisation had failed to effect the reforms that they urged imprisonment at hard labour would achieve.

As early as 1717 a pamphlet concerned with 'the miseries of the poor', for example, urged that 'Our common Gaols and Bridewells (as now managed) rather harden than reform their Prisoners.'³⁶⁷ The same sentiment was echoed in a pamphlet published in 1730 which commented that 'as our gaols are commonly managed, it is to be feared, they breed up and harden more rogues, than the law either reclaims or removes.'³⁶⁸ By the end of the century even those promoting the extended remit of institutionalised hard labour were forced to recognise the shortcomings of existing experiments with the same model of

³⁶⁴ J. Massie, *A Plan for the Establishment of Charity Houses*, (London, 1758), p. 119.

³⁶⁵ *Ibid.*, pp. 1 & 20.

³⁶⁶ *Ibid.*, p. 119.

³⁶⁷ L. Braddon, *The Miseries of the Poor are a National Sin, Shame and Charge*, (1717), p. xxxiv.

³⁶⁸ S. Emlyn, *A Complete Collection of State Trials*, (1730), p. xii.

punishment. Thus in 1788 John Jebb promoted the adoption of penal reform by contrasting his proposals with existing 'dreary mansions' and 'doleful abodes of distress.'³⁶⁹ It therefore comes as little surprise that Hanway was not alone in recognising the utility of a discourse that lent established reformist arguments a sense both of authority and novelty.

The authority that medical language – and, related to this, medicine and the medical profession more generally – carried in the eighteenth century has been widely discussed by numerous historians, perhaps most notably Roy Porter.³⁷⁰ Porter identified that over the course of the eighteenth century and particularly towards the end of the century doctors were esteemed to such an extent that the relationship between a good life and good health became blurred and medical professionals as a result came to be seen as carriers of cultural wisdom whose powers of observation and skills in empiricism afforded them the ability to diagnose and treat social as much as physical maladies.³⁷¹ It is perhaps unsurprising, therefore, to find that there existed a trend at the end of the eighteenth century to employ medically trained personnel to undertake analyses of penal institutions and make recommendations for their reform.

Thus, in 1777 a pamphlet was published by Dr William Smith promoting imprisonment at hard labour as the most effective means of reforming 'the numerous disorders arising from defects in our penal code.'³⁷² Dr Smith's interest in prisons had been roused two years previously following a request by a local 'charitable committee' to investigate the prisons in the area in the hope that his comments would encourage penal reform.³⁷³ That the charitable organisation concerned chose a doctor to produce a report into the defects of existing penal institutions and make

³⁶⁹ Jebb, *Thoughts on the Polity and Construction of Prisons with Hints for Their Improvement*, (Bury St Edmund's, 1785), pp. 1 - 2.

³⁷⁰ Porter, *The Greatest Benefit to Mankind*, chapter x.

³⁷¹ *Ibid.*, chapter x.

³⁷² Smith, *Mild punishments, sound policy*, (London, 1777), p. 2.

³⁷³ *Ibid.*, *State of Gaols in London, Westminster and the Borough of Southwark*, (London, 1776), p. 18.

recommendations for its reform goes far to illustrate the authority that his opinions had at the time.

Five years later, in an effort to encourage penal reform in Maidstone, surgeon Thomas Day was asked by the western division of the county of Kent to write a report on the local prison for the county's Justices. Given that the majority of the recommendations made by Day concerned non-medical matters one can conclude that he was involved in the county's effort to reform its penal institution not because of his medical expertise but because of the authority that his title and profession conferred on the cause.³⁷⁴ The same was also true in Suffolk where, in 1785, Dr John Jebb was asked to undertake a general survey of the county's penal institutions and make recommendations for its reform.³⁷⁵

The material produced by medical professionals was, of course, in many ways different from that produced by lay reformers who employed medical *metaphors* rather than *knowledge* to promote the adoption of the Penitentiary Act. What the material produced by medical professionals testifies, however, is not only the extent of the faith which late eighteenth-century society invested in medicine and medical professionals, but also its preoccupation with the prevention and treatment of 'diseases' of the physical as well as moral sort. Fundamentally, the intervention of medical professionals in the reform process testifies not just the extent to which prison reform ideas emerged from contemporary developments in the understanding of contagious disease, but also the extent to which medical metaphor would have resonated powerfully and authoritatively in the late eighteenth-century.

³⁷⁴ T. Day, *Some Considerations of the Different Ways of Removing Confined and Infected Air*, (Maidstone, 1784). There was, of course, amongst some groups at the time serious concern with the incidence of gaol fever in England's penal institutions. It is important to note, however, that during the late eighteenth century medical research was cited with increasing frequency by reformers promoting at heart not an improvement in sanitary conditions but the physical and spiritual rehabilitation of criminals.

³⁷⁵ Jebb, *Thoughts on the Polity and Construction of Prisons with Hints for Their Improvement*, (Bury St Edmund's, 1785).

Where non-medically trained reformers were concerned, the easiest way to confer authority and novelty on the reformist cause was thus to employ medical language, a point clearly appreciated by Hanway and other late eighteenth-century penal reformers. In 1783, for example, an anonymous author published a pamphlet which described institutionalised hard labour as an 'easy and efficacious remedy' to England's crime problem.³⁷⁶ Promoting reform in a manner reminiscent of Starkey, the author described institutionalised hard labour for all but the most serious categories of criminals as 'that remedy which alone can restore sanity to this dreadfully distempered part of the body politick.'³⁷⁷ The author went on to describe how the 'detestable practices of wicked empirics' had seen many criminals who might have been reformed 'left in the last stage of a gangrene.'³⁷⁸ Only 'the greatest skill and address,' he concluded, 'can ever restore him to any real use' – the 'address' of which he spoke was institutionalised hard labour.³⁷⁹

Medical discourse was employed by reformers urging the adoption of the Penitentiary Act until the end of the century. In 1791, for example, Thomas Macdonald portrayed criminal behaviour as a disease that could only be cured by institutionalised hard labour – a means of punishment which was, he urged, 'A skilful physician.'³⁸⁰ Five years later Robert Turnbull used the same imagery when he described the growing crime rate as caused by the 'neglect or unskilfulness of the physician.'³⁸¹ Here too, the cure offered for the 'disease' in question was institutionalised hard labour.

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³⁷⁶ Anon., *The Means of Effectually Preventing Theft and Robbery*, (London, 1783), p. 83.

³⁷⁷ *Ibid.*, p. 94.

³⁷⁸ *Ibid.*, p. 94.

³⁷⁹ *Ibid.*, p. 94.

³⁸⁰ Macdonald, *A Treatise on Civil Imprisonment in England*, p. 92.

³⁸¹ Turnbull, *A Visit to the Philadelphia Prison*, p. 81.

Although long-established, the medical language used by late eighteenth-century penal reformers resonated more powerfully than ever before thanks to the 'enlightened' cultural context in which their rational statements were uttered. Through employing medical metaphor reformers went a long way towards representing institutionalised hard labour as a suitable means of punishment for a new, 'enlightened' age. Their cause was further reinforced by the equally strong resonance of the language of utility.

iii) The language of utility

An ancient philosophy first recorded in the work of Mo Tzu in 481 BC, utilitarianism is a pragmatic principle based on the understanding that all actions should result in genuine, practical benefits for as many people as possible.³⁸² The belief that actions should serve a useful, practical purpose was one which re-emerged with unprecedented influence in the late eighteenth century. At that time utilitarianism was inextricably linked with the rise of science and the substitution of rationality and empiricism for theory and myth. Eighteenth-century utilitarianism thus embodied contemporary impatience with the status quo and belief in the power for change supported by science. Like medicine, utilitarianism was empirical, rational and secular, and thus chimed in with society's new found belief in progress and perfectibility as promoted by contemporaries Francis Hutcheson and the Marquis de Condorcet. In short, the long-established language of utility with its focus on curing crime and restoring criminals to a sense of 'social usefulness' resonated powerfully in an enlightened culture preoccupied with constructive, quantifiable improvement.

In 1790 the Philanthropic Society urged that crime rates could only be decreased through institutionalising all but the most serious categories of

³⁸² For more on the origins of utilitarianism see G. A. Scarre, *Utilitarianism*, (Kent, 1996), pp. 1 – 44.

felons and training them in some 'useful labour'.³⁸³ The anonymous author of a pamphlet published seven years earlier in London was in complete agreement; 'I presume everyone will agree with me,' the author said, 'that idleness, or the want of useful employ, is the true, as well as the common cause of theft.'³⁸⁴ 'The country is deprived of the use and benefit from that large proportion of her inhabitants,' the author went on, 'who otherwise might be rendered of great utility and advantage to her.'³⁸⁵

The issue of utility lay also at the heart of Smith's 1776 promotion of institutionalised hard labour; 'What can be of greater consequence to a nation, or greater to glory to a king,' he asked, 'than to prevent the wretched from being still more so, to reclaim the profligate and abandoned, and render them useful members of the public?'³⁸⁶ Following a period of institutionalised hard labour felons would, he assured, be 'restored [to society] useful and valuable members of society.'³⁸⁷

The following year Howard produced his extensive work, *The State of Prisons*.³⁸⁸ The publication's findings played an instrumental part not only in the formulation of the Penitentiary Act, but also in persuading a number of magistrates to consider investing in the Act. In 1786, for example, a letter from the magistrate of Wymondham was published in the *Gentleman's Magazine* describing how having read *The State of Prisons* he had 'become determined to attempt a reformation of those crying evils of this county.'³⁸⁹ Furthermore, the majority of the sixty plus institutions built at the end of the eighteenth century - including in Bodmin, Lancashire, Oxford, Winchester, Dorchester, Chester and Middlesex - were dedicated

³⁸³ *An address to the public from the Philanthropic Society instituted in 1788 for the Prevention of Crimes and Reform of the Poor*, (London, 1790), p. 6.

³⁸⁴ Anon., *The Means of Effectually Preventing Theft and Robbery*, (London, 1783), p. 2.

³⁸⁵ *Ibid.*, p. 32.

³⁸⁶ Smith, *The State of Gaols*, (1776), p. 17.

³⁸⁷ *Ibid.*, p. 75.

³⁸⁸ Howard, *The State of Prisons*.

³⁸⁹ 'The Letter', *Gentleman's Magazine* LVI, (June, 1786), p. 484.

to John Howard.³⁹⁰ That Howard used utilitarian language to promote penal reform goes far to illustrate the extent to which the discourse resonated with the late eighteenth-century audience. Institutionalised hard labour was the most effective means of punishing felons, Howard urged, because of the opportunity that it offered to render them 'useful at home or abroad.'³⁹¹ Institutionalised hard labour would, he stated, 'correct the faults of prisoners, and make them for the future useful to society.'³⁹²

The same sentiment was expressed in Smith's 1777 publication *Mild Punishments Sound Policy*; 'The punishment of death,' Smith urged, 'is not really useful or necessary for the safety and good order of society.'³⁹³ Institutionalised hard labour, on the other hand, offered the chance 'to bring the malefactor to reason and a sense of his crime, to preserve the community from the bad effects of his wickedness, and to restore him again to the world a useful member of society.'³⁹⁴

Utilitarian language was employed also in J. Leroux's 1780 pamphlet on the capital's prisons.³⁹⁵ Leroux opened his work by expressing how the model of institutionalised hard labour offered by the Penitentiary Act - 'a plan with the advantages resulting from industry in useful and well-applied labour' - deserved much public attention.³⁹⁶ Addressing enduring fiscal concerns and echoing the reassurances offered as part of the Act of 1706, Leroux proceeded to explain that putting felons to hard labour, 'would not only be useful to the public but also be productive of profit, whereby the expenses of the prison may be lessened.'³⁹⁷ Five years later

³⁹⁰ The foundation stone of the New Bailey in Salford, for example, declared that the prison was 'a monument of the affection and gratitude of this County to that most excellent person....John Howard', while many other institutions featured a bust of Howard over their entrances. See R. Evans, *The Fabrication of Virtue*.

³⁹¹ ³⁹¹ 'The Letter', *Gentleman's Magazine* LVI, (June, 1786), p. 484.

³⁹² *Ibid.*, p. 484.

³⁹³ Smith, *Mild Punishments Sound Policy*, (1777), p. 32.

³⁹⁴ *Ibid.*, p. 13.

³⁹⁵ J. Leroux, *Thoughts on the Present State of the Prisons of this Country*, (London, 1780), p. 21.

³⁹⁶ *Ibid.*, p. 12.

³⁹⁷ *Ibid.*, p. 21.

reformer John Jebb employed utilitarian language in a similar manner. Only hard labour, he urged, could return criminals 'to a sense of right, to social usefulness.'³⁹⁸

Also urging the adoption of institutionalised hard labour was anonymous author 'V.M' who, in 1786, wrote a pamphlet addressed to officials in Middlesex titled *Thoughts on the Construction and Management of Prisons*. Expressing the hope that Middlesex's officials would be as 'fully convinced of the Utility of this mode of confinement' as their counterparts in other counties had been, the author advocated the adoption of the Penitentiary Act by arguing that it was legislation of 'unquestionable utility,' which would allow the felon 'to apply himself to some honest and useful employment and endeavour to establish a new and very different character in society.'³⁹⁹

The utilitarian language employed to promote institutionalised hard labour at the end of the eighteenth century was born of a long tradition. Thus, More's 1515 question, 'Do you propose any punishment that will be more useful to the public?' would have fitted seamlessly into the material produced by his counterparts over 250 years later, and indeed into work produced in the interim.⁴⁰⁰ Utilitarian language featured centrally, for example, in the Levellers' seventeenth-century promotion of institutionalised hard labour. Felons, they proposed, should be held 'in a prison or house of correction and be put to some useful work.'⁴⁰¹

Late eighteenth-century reformers' employment of utilitarian language was, therefore, far from revolutionary. Emphasizing the fact that institutionalised hard labour would have genuine, practical benefits had

³⁹⁸ Jebb, *Thoughts on the Polity and Construction of Prisons*, (1785), p. iv.

³⁹⁹ V. M., *Thoughts on the Construction and Management of Prisons*, (1786), pp. 21 & 19.

⁴⁰⁰ More, *Utopia*, p. 122.

⁴⁰¹ Chidley, S., *A Cry against a Crying Sin*, (14th April, 1652), Wolfe (ed.), p. 16.

been an essential part of reformist discourse since the sixteenth century. As was the case with medical language, however, utilitarian language had a new resonance in the late eighteenth century, linked as it was to the rise of science and the substitution of rationality and empiricism for theory and myth. To the late eighteenth-century mind utilitarianism was rational and progressive; it chimed in with society's new found belief in perfectibility and improvement. Thus, thanks to the particular climate in which it was spoken, utilitarian language afforded an old set of ideas an edge of modernity, progress and new potential.

* * * * *

In 1786 Samuel Romilly published his *Observations on a Late Publication* in which he considered contemporary trends in penal thought. Institutionalising all but the most serious categories of felons at hard labour was, he concluded, 'a wholly unobjectionable idea' insofar as 'it would instil into their [the criminals'] minds principles of religion and morality, instruct them in useful trades and furnish them with resources to become valuable members of society.'⁴⁰² Romilly's endorsement communicates neatly the fact that institutionalised hard labour remained popular across the period 1515 – 1800 because, unlike any alternative, it could appeal to a wide audience with a variety of different, often conflicting notions of what constituted an 'ideal' penal system.

Throughout the sixteenth, seventeenth *and* eighteenth centuries those promoting institutionalised hard labour communicated the benefits that they believed it to possess using medical and utilitarian language. As already discussed, the reason that these two types of language remained central to prison reform discourse throughout this period is complex, but most likely related at least in part to the languages' combined ability to

⁴⁰² S. Romilly, *Observations on a Late Publication Intituled "Thoughts on Executive Justice"*, (London, 1786), pp. 59 & 60.

communicate the multiple benefits of the model of punishment on offer. What is clear is that while reform discourse may have remained remarkably constant over time, its impact varied according to the context in which it was uttered. It was thus only in the late eighteenth century when the cultural conditions were ripe that penal reformers met with considerable success in convincing contemporaries that institutionalised hard labour, widely famed for its failure to impact on crime rates, was a punishment of real and significant value.

Chapter 5: The Language of Reform at Local Level

1) Introduction

Thanks to the new resonance of reform discourse, eighteenth-century prison reformers enjoyed great success in gaining support for imprisonment at hard labour, bringing to the country's attention the advantages it held as a punishment which was punitive yet constructive, enlightened yet conservative. MP William Hay's mid century comment that institutionalised hard labour 'answered the wishes of every man in the kingdom' gives some indication of the extent of success reformers had in bringing to light the multiple benefits of a traditional model of punishment in an optimistic, progressive age.⁴⁰³ Reinventing institutionalised hard labour was not enough, however, to make reform happen. As discussed in chapter four, the process whereby ideas were translated into reform was a complicated one. Thus, while the growing impact of utilitarian and medical language played a critical role in stimulating a new enthusiasm for a mode of punishment renowned to a large extent for its failures, communicating institutionalised hard labour's renewed potential was only one element of the task facing penal reformers at the end of the eighteenth century. At local level they faced a second, very different challenge.

'No steps can be taken,' Lancashire magistrate Thomas Butterworth Bayley warned, 'without a general approbation and actual concurrence of the persons of principal landed property in this county.'⁴⁰⁴ 'Reform,' Paul echoed in Gloucestershire, 'must depend upon an active concurrence of the liberal class of men to whom the execution of it is delegated.'⁴⁰⁵ At its final stages, the application of late eighteenth-century prison reform depended upon the consensus of magistrates, local gentry, nobility, clergy and other people of influence at ground level. Accountable for the decisions made and, perhaps more pressingly, the money spent in their

⁴⁰³ W. Hay, *Remarks Relating to the Poor*, (London, 1751), p. 27.

⁴⁰⁴ Lancaster Castle Committee Minutes (Manchester Session), QAL/1/1784/001 (January, 1784), p. 3.

⁴⁰⁵ Paul, *Second Address on the Subject of a Reform of Prisons*, (1783), p. 3.

respective counties, when it came to penal reform local officials had a very specific set of concerns that had to be addressed if prisons were to be rebuilt.

Generating support for reform at ground level depended not on officials' agreement with theoretical arguments for more humane, proportional and enlightened punishments. Nor did it hinge, as on the national platform, on generating their support for the purported multiple punitive and constructive benefits of institutionalised hard labour. Rather, at ground level penal reform was a pragmatic issue reduced to a somewhat vulgar calculation of the *necessity* of reform. In order for prison reform to happen reformers had ultimately to convince local officials that institutionalised hard labour was not simply a sound but more specifically a *necessary* investment that would prove worthy of the outlay it required. Over the course of the 1780s reformers realised that in order to make reform happen they must abandon any theoretical arguments that they may once have made and, to borrow Paul's terms, 'reduce ideas to a practical form.'⁴⁰⁶ An analysis of the language of reform at ground level demonstrates a dramatic change in discourse reflective of this realisation. In discussions with local officials reformers moved away from arguments that they had made stressing the novelty of imprisonment at hard labour and the multiple benefits that it held as a means of both punishing and correcting criminals, and focused instead on the practical benefits that reform offered the community in question.

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In a letter written in 1785 Thomas Butterworth Bayley, Lancashire's key penal reformer, expressed the frustration undoubtedly felt by many late eighteenth-century reformers at the change of approach that they were forced to take if they were to engage their audience at ground level. Commenting on the purely practical concerns of local officials in

⁴⁰⁶ Paul, *Second Address on the Subject of a Reform of Prisons*, (1783), p. 2.

Lancashire, Bayley bemoaned the fact that ‘the other great points of policy and humanity in the plan of the Penitentiary House, solitary imprisonment etc have been treated as chimerical and expensive *experiments*.’⁴⁰⁷ During the last twenty years of the eighteenth century in order to make reform happen a new type of reform discourse thus emerged: a dramatic and engaging language of necessity. This change in tone and shift in focus was to a large extent an inevitable product of the fact that legislation was at the time perceived as a means by which to improve society and was as a result judged by its common utility.⁴⁰⁸

2) Urging reform at local level

When actions are optional, language is powerful. What people say about their cause, the way its role and effects are described, is critical in sanctioning whether or not ideas are heard and translated into ‘action’. The flurry of prison reform at the end of the eighteenth century was achieved thanks to a two-stage process of agitation by penal reformers. The first stage of this process involved reinventing institutionalised hard labour for a new age – a task achieved thanks to the new resonance of established penal reform ideas and discourses. The second, final stage was undertaken at ground level and involved encouraging reform via the employment of a language of necessity. That is not to say, however, that there was no relationship between reform discourse used at national and local level. Indeed, as evidence will show, testimony to the significance of the ‘renewing’ function of the terminology, the promotion of reform at local level relied on the same utilitarian and medical-based language as circulated also on the nation platform. What was different at the local level, however, was the way in which utilitarian and medical arguments were employed. In short, at ground level utilitarian and medical arguments were used *not* as a means of highlighting the multiple benefits of institutionalised hard labour, but rather as a way of stressing the necessity of reform.

⁴⁰⁷ PRO, HO 42/6 (January, 1785).

⁴⁰⁸ For an overview of changing attitudes to reform over time see the introduction of Burns and Innes (eds.), *Rethinking the Age of Reform*, pp. 1 – 70.

At ground level reform discourse was dramatic and engaging, designed to portray reform as essential to the community's wellbeing. This represents a shift away from arguments made on the national platform which focused first and foremost on the nature of the punishment itself – its various punitive and corrective benefits. As evidence from the local level will show, only by reducing reform ideas to a somewhat crude demonstration of the practical benefits involved for the community in question could reformers hope to see their proposals sanctioned. Material produced in Gloucestershire provides an illustrative case study of exactly why and how reformers changed the way that they promoted reform at local level. Gloucestershire's most vociferous penal reformer was George Onesiphorus Paul, whose passion for improving the nation's penal institutions saw him become one of the country's most admired reformers. Indeed, as mentioned in chapter two, his work proved extremely influential, be it in terms of creating a financial framework for the mortgaging of the costs of penal reform or in terms of the blueprints that he provided for reform across the country, including in Lancashire and Middlesex.⁴⁰⁹

Over the course of the 1780s Paul wrote a number of important addresses urging prison reform. A paper written early in 1783 was typical of such material. In it he argued that reformed prisons were required in Gloucestershire in order to deal with 'the general increase in immorality' and the 'present abandoned state of morals' in the county.⁴¹⁰ Reform was imperative, he urged, because existing institutions were 'so shocking to humanity and so injurious an impediment to the course of public justice.'⁴¹¹ Later in his address Paul commented that he had 'long been convinced of the incompetence of the prisons of this county to every

⁴⁰⁹ During discussions of regarding building a new house of correction in Middlesex, for example, it was recommended that magistrates visit Gloucestershire in order to discuss the available options with officials there. See Committee Minutes for Building a New House of Correction, MA/G/CBF/31-78 (July, 1784), p. 2. Similarly, Lancashire's chief prison architect was ordered in 1794 'to go forthwith to Gloucester to view the county gaol and to examine carefully the internal arrangements.' See Lancaster Castle Committee Minutes (Manchester Session), QAL/1/1794/001 (January, 1794), p. 24.

⁴¹⁰ Paul, *A State of the Proceedings on the Subject of a Reform of Prisons*, (1783), p. 3.

⁴¹¹ *Ibid.*, p. 10.

purpose of public justice, as well as their inconsistency with every principle of humanity and benevolence.⁴¹² In conclusion he expressed the hope that 'the severest dispensation of justice' and the fact that 'we have manners that would disgrace a Banditti' would encourage local officials to sanction penal reform in Gloucestershire.⁴¹³

Arguments relating to issues such as justice, benevolence, humanity and immorality were typical of reform material produced by Paul and indeed other reformers at the time. In Lancashire in 1785, for example, magistrate Bayley expressed the hope that the Penitentiary Act would be adopted in light of the 'wisdom and humanity' of the mode of punishment that it offered.⁴¹⁴ The reaction to such material at ground level demonstrates the way in which Paul, Bayley and their pro-reform counterparts were required to change the arguments that they used if they were to succeed in persuading local officials to pass the reforms that they urged.

Later in 1783 Paul made a second address on the subject of prison reform, the content of which provides an insight into local officials' responses to his earlier reform discourse; 'I understand that the system recommended in my late address,' he said, 'has been considered an impractical theory.'⁴¹⁵ In the revised address Paul explained that 'it has been intimated to me that I should bring forward such proposals as would reduce my ideas to a practical form.'⁴¹⁶ Hence, he opened his second plea for reform by vowing to avoid using terms such as 'humanity' which, he said, had been 'understood in a much more comprehensive sense than I intended.'⁴¹⁷ The stark differences between Paul's first and second addresses on prison reform demonstrates the way in which reformers were forced to alter their discourse when in dialogue with local officials. Theoretical arguments regarding issues such as humanity, benevolence,

⁴¹² Paul, *A State of the Proceedings on the Subject of a Reform of Prisons*, (1783), p. 6.

⁴¹³ *Ibid.*, p. 49.

⁴¹⁴ Cited in Fisher, 'The Birth of the Prison Retold', p. 1260.

⁴¹⁵ Paul, *Second Address on the Subject of a Reform of Prisons*, (1784), p. 2.

⁴¹⁶ *Ibid.*, p. 5.

⁴¹⁷ *Ibid.* p. 4.

justice and immorality were forfeited for practical arguments which made reform a community issue and thus engaged local officials' attention. As Paul himself acknowledged, 'no reform can be taken without the general approbation of the persons of principle landed property in this county' and thus his job was to submit a plan of reform which appealed 'to people who, with equal good intentions, possess a weight of property and consequence within the county that will best ensure public confidence.'⁴¹⁸

Engaging the support of such people was not, as Paul found out in 1783, a matter of communicating theoretical arguments for reform but instead a case of urging its necessity. As Bayley similarly found in Lancashire, those who possessed the power to sanction reform were driven not by what one might term scholastic concerns about punishment but rather by what he described as 'selfish ideas of personal safety.'⁴¹⁹ At ground level people had to be convinced that reform was necessary in the sense that it would have practical, tangible benefits for the community concerned. It is thus unsurprising that in the period immediately following criticisms of his 'impractical theory' much of Paul's material was dedicated to asserting the fact that reform was designed to act in the community's – not the criminal's – interest.⁴²⁰ Paul thus opened his revised address in 1783 by reassuring his audience that 'the end of reform is of universal benefit and even *individual* interest,' before proceeding to stipulate the practical benefits that penal reform would have for the local community, in the process criticising existing penal institutions on the grounds that they were 'of the least benefit to the public.'⁴²¹ His concluding assertion in a paper published later that year that reform was 'essential to the well-being of society at large' summed up the change in perspective that he and indeed other reformers had to make if they were to persuade local officials to sanction the reforms that they promoted.⁴²²

⁴¹⁸ Paul, *Considerations on the Defects of Prisons*, (1783), p. 5.

⁴¹⁹ PRO, HO 42/6, (January, 1785).

⁴²⁰ Paul, *Second Address on the Subject of a Reform of Prisons*, (1784), p. 2.

⁴²¹ *Ibid.*, p. 11.

⁴²² Paul, *Considerations on the Defects of Prisons*, (1783), p. 35.

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As the evidence above begins to suggest, local officials were engaged not by discourses which promoted the *benefits* of reform but rather by a language of necessity which drew attention to the negative repercussions or the *costs* that would result if reforms were not adopted. It is this universal shift of focus from the positive to the negative which fundamentally differentiates arguments made for reform at ground level to those made on the national platform.

3) The language of necessity

i) Introduction

At ground level medical and utilitarian reform language was aimed not at promoting the benefits of a measured and humanitarian system of punishment. Nor was it aimed at drawing attention to the multiple benefits of a punitive yet constructive means of punishment. Rather, its aim was to stress the necessity of reform. Reform-minded officials realised that new prisons would only be built once those with the power to sanction reform believed it to be nothing less than a crucial investment. In order to make it such, those promoting reform spoke about their cause in a very particular engaging, dramatic and somewhat alarmist manner which portrayed penal reform as the solution to certain dangers that, they urged, threatened the community at the time. As evidence from Gloucestershire, Lancashire and Middlesex will demonstrate, late eighteenth-century prison reform was driven ultimately by fear, specifically the fear of disease which was an issue that, as discussed above, resonated powerfully at the end of the eighteenth century.

The role played by disease in late eighteenth-century penal reform was largely ignored by historians until DeLacy's research into prison reform in Lancashire was published in the mid 1980s.⁴²³ As DeLacy pointed out,

⁴²³ Two exceptions are Ignatieff in his *A Just Measure of Pain*, and Evans in *The Fabrication of Virtue*, both of whom acknowledged in general terms that disease may have played a role in urging penal reform.

the reason that gaol fever had not been considered decisive in late eighteenth-century penal reform prior to her work was two-fold. First, she observed, Whig historians considered epidemic disease so common in the eighteenth century that its incidence during the period in question was deemed unremarkable and historians 'thus neglected to realize the significance of the epidemic of the 1780s.'⁴²⁴ More recently, DeLacy argued, historians had relied too heavily on national sources and, as a result, had assumed too straightforward a relationship between legislation and reform. This resulted in a false belief that late eighteenth-century prisons were clean, hygienic places where disease was uncommon and therefore not a threat of any significance during the 1780s.⁴²⁵

DeLacy's ground-breaking study of local rather than national sources brought to light the role played by disease in late eighteenth-century penal reform; 'The timing of the decision to rebuild,' she said, 'suggests that neither Howard nor Parliamentary legislation played a decisive role.'⁴²⁶ 'The immediate precipitant of the decision to rebuild the gaols,' she continued, 'was the fear of fever.'⁴²⁷ DeLacy argued that the incidence of typhus in Lancashire was key to compelling local officials who might not have otherwise sanctioned reform to go ahead with the rebuilding of the county's prisons; '...the close correlation between the arrival of the epidemic and the universal decision to go ahead with massive construction,' she said, 'suggests that the threat of fever won the more cautious justices over to the recommendations of the activists.'⁴²⁸ Had it not been for the threat of epidemic disease, she argued, 'they [reformers] might have agitated indefinitely.'⁴²⁹

DeLacy's study of the role played by disease in the sanctioning of penal reform was significant; it showed for the first time how developments in the understanding of contagious disease made local officials fearful that

⁴²⁴ DeLacy, *Prison Reform in Lancashire*, p. 81.

⁴²⁵ *Ibid.*, p. 81.

⁴²⁶ *Ibid.*, p. 80.

⁴²⁷ *Ibid.*, p. 81.

⁴²⁸ *Ibid.*, p. 81.

⁴²⁹ *Ibid.*, p. 81.

gaol fever might spread outside the walls of their county institutions and threaten the welfare of wider society. Rebuilding prisons was to them largely a case of self-protection; 'Many of the judges and the greater part of the magistrates,' reformer Bayley thus lamented in Lancashire in 1785, 'have no *other* object in view than to prevent the contagion of gaol fever.'⁴³⁰ The central motivation for reform in Lancashire was, as Bayley put it, 'Fear and the selfish ideas of personal safety.'⁴³¹ Thanks to DeLacy's research, it is now evident that disease played a pivotal role in making reform happen at ground level. As Bayley's comments here show, and as DeLacy herself acknowledged, the key factor in sanctioning the go-ahead to rebuild prisons at ground levels was 'the fear of fever.'⁴³² What DeLacy did not analyse, however, was exactly how such fear was generated.

It is true that over the course of the 1780s gaol fever struck in England with some destructive effects. In Lancashire in 1783, for example, several people were killed at Lancaster Castle including, as DeLacy pointed out, the gaoler. One must also bear in mind that, as mentioned above, developments in the understanding of the spread of contagion in the eighteenth century would have added to local officials' fear of gaol fever and the threat that it posed to wider society. Over the course of the mid to late eighteenth century there developed a significant consensus among scientists, backed by the evidence of diseases like syphilis, that disease was spread by physical contact, specifically by contact with insalubrious environments – a development which inevitably led increased concern over the conditions of the nation's penal institutions, famed as they were for their poor conditions and overcrowding.⁴³³

Despite, or perhaps rather because of contemporary developments in miasmatic theory, however, it is very easy to exaggerate the incidence of

⁴³⁰ PRO, HO 42/6, (January, 1785).

⁴³¹ *Ibid.*

⁴³² DeLacy, *Prison Reform in Lancashire*, p. 81.

⁴³³ R. Porter, *The Greatest Benefit to Mankind: A Medical History of Humanity from Antiquity to Modernity*, (London, 1999), p. 259.

disease in late eighteenth-century England and its institutions and, as a result, to over-simplify the source of the fear that existed at ground level at the time. As evidence from Gloucestershire, Lancashire and Middlesex will show, the fear felt by local officials over the threat that typhus posed to their community was out of proportion with the real incidence and threat of the disease. This is, of course, to be expected; fear is a less than rational emotion rarely felt in proportion to the real threat at hand. It is nonetheless vitally important to note that the fear of disease felt at ground level was more complex than a simple over-reaction to the real incidence and impact of the disease. As an analysis of the language of reform at local level will demonstrate, the level of fear felt among local officials resulted in the main not from their direct experience of typhus – a disease which had thrived in English institutions since the sixteenth century and thus was nothing new – but rather from what penal reformers said about it.⁴³⁴

ii) Gloucestershire

An investigation of reform discourse at ground level must inevitably start with material produced in Gloucestershire. Although the new institutions eventually built and adapted there opened at more or less the same time as they did in other counties, Gloucestershire experienced a more well-documented period of agitation for penal reform than any other English county. This agitation was undertaken single-handedly by George Onesiphorus Paul who, as discussed above, was one of the country's most influential reformers. Indeed, the material he produced urging reform during the 1780s was published nationally and proved to be massively influential in making reform happen not only in Gloucestershire but across the country. Paul's addresses hence provide an insight into the language used to promote reform at ground level not just in his home county but across England as a whole.

Paul made his opening moves for penal reform at ground level in 1783

⁴³⁴ Porter, *The Greatest Benefit to Mankind*, pp. 26 – 27.

when he became foreman of the grand jury. By then 'long convinced' of the need to reform the county's penal institutions, in an address to local officials he expressed the ambitious scale of the reform that he hoped to achieve; 'By reform,' Paul announced, 'I mean nothing less than a general and entire correction of the principle of prisons.'⁴³⁵ By 1785 an Act stipulating the construction of five new, reformed penal institutions in Gloucestershire as well as the reform of the existing county gaol was passed.⁴³⁶ Paul thus met with great success in his quest to convince local officials to adopt the penal reforms offered by the Penitentiary Act. As an analysis of the language he used will show, such success was born largely of the fear that he generated among locals by deliberately employing discourses stressing the necessity of reform.

As stated above, before local officials provided him with feedback about his arguments, Paul's reform discourse was, like other reformist language at the time, what one might term largely theoretical. Prior to late 1783 Paul moreover urged reform in a positive way, stressing the benefits that rebuilding prisons would have for justice, humanity, benevolence and, importantly, for criminals as well as the wider community. In his first address of 1783, for example, Paul urged an entire correction of the principles of prisons on the grounds that existing institutions were inconsistent 'with every principle of humanity and benevolence' and because 'nothing less can produce that reform of manners, that return to good order and obedience to the law.'⁴³⁷

Paul's early promotion of the Penitentiary Act drew in the main on the benefits that it held as a corrective, constructive punishment; 'There is in every man,' he urged, 'an innate respect for the law which he never violates by the first offence without a compunction that leaves his mind open to correction.'⁴³⁸ 'Few men have been hanged for a felony,' he

⁴³⁵ Paul, *A State of the Proceedings on the Subject of Prison Reform*, (1783), p. 7.

⁴³⁶ Four new houses of correction at Littledean, Lawford's Gate, Northleach and Horseley and a new County Gaol all based on plans offered by the Penitentiary Act.

⁴³⁷ Paul, *A State of the Proceedings on the Subject of Prison Reform*, (1783), p. 7.

⁴³⁸ *Ibid.*, p. 50.

continued, 'that might not have been saved to the community for an early misdemeanour.'⁴³⁹ Initially, therefore, Paul attempted to convince local officials to rebuild prisons by drawing their attention to the constructive benefits new institutions would have for the criminal; 'Confinement to punish,' he urged, 'should also be confinement to reform. It should be a state of continual labour and of total seclusion from society – by the former to create a habit of industry – by the latter to force reflection of the mind.'⁴⁴⁰

The spiritual rehabilitation of criminals that reformed imprisonment would effect also featured centrally in Paul's early promotion of institutionalised hard labour; 'The terrors of a future world are essential,' he explained, 'to the reformation of men who have learnt to brave the powers of this.'⁴⁴¹ Reformed prisons were thus essential, he argued, insofar as they afforded the solitary imprisonment of criminals which was known to be 'the most sovereign corrector of a hardened heart.'⁴⁴² In a second address made at ground level later that same year Paul promoted reform by once again drawing attention to the benefits that reformed imprisonment would have for criminals, this time by highlighting how institutionalised hard labour would make for a more measured, proportional, humane and ultimately just punitive system; prisons, he said, 'should dispense with all possible precision the proportion of the sentence that the law prescribes.'⁴⁴³ Reformed imprisonment would, he urged, allow magistrates and justices to exercise their power legitimately by affording them the ability to recognise 'minute discriminations of offence and punishment' which was 'so essential a principle of English legislation.'⁴⁴⁴

Paul's early attempts to persuade local officials to adopt penal reforms were focused, therefore, on stressing the benefits that reformed prisons

⁴³⁹ Paul, *A State of the Proceedings on the Subject of Prison Reform*, (1783), p. 50.

⁴⁴⁰ *Ibid.*, p. 12.

⁴⁴¹ *Ibid.*, p. 37.

⁴⁴² *Ibid.*, p. 37.

⁴⁴³ Paul, *Considerations on the Defects of Prisons*, (1783), p. 9.

⁴⁴⁴ *Ibid.*, p. 9.

would have for the criminal and for the English judicial system more generally. Of course, even if he did not explicitly draw attention to the fact, more constructive and measured punishments would have also had positive effects for wider society. Such implied benefits were not enough, however, to persuade local officials to adopt the reforms that Paul promoted. Ultimately, Paul's early approach failed to engage the Gloucestershire board of local clergymen, landowners and other 'men of wealth' who were apparently uninterested in reforms designed in the main to correct criminals and improve the execution of the law. Only once Paul changed his approach and focused not on the *benefits* of reform for criminals but rather on the negative repercussions or the *costs* that would result for the community if they were not adopted could he engage his audience and make reform happen. Thus, in response to the feedback given to him in 1783 by local officials who complained of the 'impractical theory' of his previous material, one witnesses a dramatic shift of focus in Paul's material from the positive to the negative, and from the criminal to the community.⁴⁴⁵ From late 1783 onwards Paul abandoned his old reform discourse and adopted a new, dramatic and engaging language of necessity centred largely on a single issue: disease.

It is important to acknowledge that the issue of disease *did* feature in Paul's reform discourse prior to his change of approach in late 1783. It is significant, however, that his discussion of the subject in his early addresses was markedly different to his discussion of the same issue in his later material. In line with his other arguments, Paul's earlier addresses saw him use the issue of disease to bring to local officials' attention the ways in which penal reform would benefit both criminals and the penal process more generally. In his first ground level address on the issue of penal reform he thus commented that;

The state of health of prisoners in the county gaol during the last spring assize was so shocking to humanity and so

⁴⁴⁵ Paul, *Second Address on the Subject of a Reform of Prisons*, (1784), p. 2.

injurious an impediment to the course of public justice that it could not but appear to the gentlemen of the jury an essential part of their duty to enquire into the causes of so fatal an effect.⁴⁴⁶

Prior to his change of focus in 1783, Paul discussed gaol fever as an internal issue that affected criminals alone and which could, and should, be remedied by rebuilding prisons. Penal reform was essential, he argued, in order to ensure the wellbeing of prisoners and to guarantee humanity in punishment. Health among prisoners was required, he urged, on the grounds of justice as 'disease was not a justifiable addition to a sentence.'⁴⁴⁷ Disease therefore *did* feature in reform discourse prior to Paul's change of approach in late 1783. Its role at that time, however, was to draw attention to the multiple benefits that rebuilding prisons would have for the criminals imprisoned in them and for the justice system more generally.

From late 1783 onwards Paul approached the issue of disease in a very different way. The realisation that at ground level people were concerned about reform only if it was absolutely necessary and only if it would have practical benefits for the wider community saw him approach the issue of disease in a radical way – as a means of generating fear. In his second address to local officials in which he aimed to reduce the arguments for reform 'a practical proposition,' Paul's discussion of disease was thus markedly different.⁴⁴⁸ Unlike his earlier addresses, Paul used the issue of disease to draw attention not to the *positive results* to be expected from prison reform but rather to the *negative consequences* that would result for the community if they were not adopted. He thus opened his address by informing the audience that 'a fever continues to rage with fatal effects' in the county's prisons, proceeding to make it clear that the issue was

⁴⁴⁶ Paul, *A State of the Proceedings on the Subject of Prison Reform*, (1783), p. 46.

⁴⁴⁷ *Ibid.*, p. 46.

⁴⁴⁸ Paul, *Second Address on the Subject of a Reform of Prisons*, (1784), p. 23.

one which concerned the wider community;⁴⁴⁹ 'I am convinced,' he warned, 'that the miserable effects can not be confined within the walls of the prisons.'⁴⁵⁰ Paul then went on to muse as to the potential impact that gaol fever might have on the wider community; 'For so many fatal instances in so small a district,' he said, 'what a melancholy conclusion must be drawn of the general effect.'⁴⁵¹

The following year Paul wrote what transpired to be the final piece of reform material required to make reform happen in Gloucestershire. Almost unrecognisable when compared with his earlier reform material, his *Thoughts on the Alarming Progress of Gaol Fever* was, as the title suggests, dedicated exclusively to urging reform by drawing attention to the threat posed to the wider community by gaol disease. Interestingly, Paul introduced his pamphlet by acknowledging the fact that drawing the public's attention to the threat posed to them was an effective means of making penal reform happen; 'I have urged the danger arising to the public from their [prisons'] unhealthiness,' he confessed, 'as a motive to quicken our attention in the pursuit of decisive and effectual reform.'⁴⁵²

Given this declaration it is unsurprising that Paul's 1784 pamphlet was dedicated in its entirety to stressing the threat posed by gaol fever to the wider community; 'Gaol fever,' he warned, 'is now a general national calamity.'⁴⁵³ In a very deliberate attempt to generate fear among his audience Paul issued a warning to them that they might unknowingly be suffering from typhus already; 'Many entertain a very false opinion of the disease,' he warned, 'to suppose there is no infection unless attended by a raging malignant fever; but that is far from the case.'⁴⁵⁴ 'The first signs of the infection,' he continued, 'are generally mild, and may easily be mistaken for common chills.'⁴⁵⁵ 'In time however,' he warned, 'you will be

⁴⁴⁹ Paul, *Second Address on the Subject of a Reform of Prisons*, (1784), p. 64.

⁴⁵⁰ *Ibid.*, p. 64.

⁴⁵¹ *Ibid.*, p. 64.

⁴⁵² Paul, *Thoughts on the Alarming Progress of Gaol Fever*, (1784), p. 3.

⁴⁵³ *Ibid.*, p. 4.

⁴⁵⁴ *Ibid.*, p. 7.

⁴⁵⁵ *Ibid.*, p. 7.

attended with more violent symptoms.⁴⁵⁶ Paul was keen to assure his audience that the threat that he described was very real; 'Let it not be presumed,' he said, 'that it is the design of this publication to suggest weak and groundless fears.'⁴⁵⁷ 'It is my intent by exposing what is real danger,' he continued, 'to prove what is real security.'⁴⁵⁸ The 'real security' or solution of which Paul spoke was, of course, the reformed prison. Without replacing existing prisons, he urged, 'it is not possible to prevent a frequent return of the gaol fever.'⁴⁵⁹

In order to stress the necessity of reform further Paul proceeded to deliberate over what further effects might result if prisons were not rebuilt; 'It is extremely probable,' he warned, 'that a prisoner might bring the dreaded disease home to his family and half the parish.'⁴⁶⁰ 'A great degree of infection,' he continued, 'has undoubtedly been communicated thro' the county already.'⁴⁶¹ In a final calculated attempt to generate fear among his audience Paul dramatically concluded that 'in some parts [of the county] it [disease] probably lurks concealed under various names and appearances waiting to extend its baneful effects.'⁴⁶²

As evidence here shows, there was a marked shift in the arguments made and language used by Paul when promoting reform at ground level. Once a man who urged the adoption of institutionalised hard labour on the grounds that civil society required a more humane, measured, just and constructive system of punishment, in late 1783 Paul adopted a radical and innovative approach and, with it, an equally radical and innovative discourse which proved instrumental in achieving the reform that he strove for.

In 1785 the 'Act for rebuilding a new gaol, a penitentiary house and

⁴⁵⁶ Paul, *Thoughts on the Alarming Progress of Gaol Fever*, (1784), p. 7.

⁴⁵⁷ *Ibid.*, p. 22.

⁴⁵⁸ *Ibid.*, p. 22.

⁴⁵⁹ *Ibid.*, p. 22.

⁴⁶⁰ *Ibid.*, p. 22.

⁴⁶¹ *Ibid.*, p. 24.

⁴⁶² *Ibid.*, p. 24.

certain new houses of correction for the county of Gloucester' was passed.⁴⁶³ The justifications given for reform by the Act provide an insight into the arguments that engaged local officials and, ultimately, made reform happen. Stipulating from the outset exactly who the reforms were designed to benefit, the Act opened with the statement that the changes that would occur were designed to be 'of great public utility.'⁴⁶⁴ The wording of the Act demonstrates that Gloucestershire's officials were preoccupied not with issues relating to justice or humanity, nor with the punitive or constructive benefits of institutionalised hard labour. Rather the 'utility' of penal reform was rooted in the opportunity it offered to overcome gaol fever. The new prisons would be built, the Act stipulated, 'in order to pay more particular attention to the airiness, dryness and healthiness' of the county's penal institutions.⁴⁶⁵

Paul ultimately made reform happen in Gloucestershire by portraying the reformed prison as the key to the wider community's wellbeing. Only by abandoning his customary approach to reform and adopting language and arguments which generated fear among his audience could he hope to see his county's penal institutions rebuilt on the plan offered by the Penitentiary Act. That is not to suggest, however, that Paul's reform discourse alone made reform happen. Disease was, of course, a very real threat at the time. What it is vital to acknowledge, however, is that reformers like Paul played a critical part in shaping exactly how people perceived the *nature* of that threat and, more importantly, what people perceived the *solution* to that threat to be.

Although documents written from within Gloucestershire's unreformed institutions are scant, evidence from elsewhere in the country suggests that Paul significantly exaggerated the threat that gaol disease posed in Gloucestershire. In 1784, for example, Paul described gaol fever as 'a general national calamity' that had 'raged' in the country's prisons with

⁴⁶³ 25 Geo. III C.10 (1785).

⁴⁶⁴ Act for rebuilding a new gaol, a penitentiary house and certain new houses of correction for the county of Gloucester, QA/G 6/2 (1785).

⁴⁶⁵ *Ibid.*

varying intensity for a considerable number of years.⁴⁶⁶ Even the most superficial analysis of gaol surgeons' reports at the time illustrates that this was an exaggeration. Reports from the house of correction in Manchester produced in 1783 and 1784, for example, detailed very few illnesses. In both years reports show that, despite overcrowding, an average of only eight prisoners were ill at any one time, the majority of whom were suffering from physical injuries or venereal disease rather than any sort of contagious fever.⁴⁶⁷

A similar picture is painted by evidence from Middlesex. Throughout the 1780s surgeons' reports from the house of correction and county gaol there reported very little disease among prisoners. As was the case in Manchester, those prisoners cited as under the care of the surgeon were suffering not with contagious fever but with injuries and venereal disease. Indeed, reports produced in the 1780s suggested that Middlesex's penal institutions were not sites of epidemic disease but of good health, cleanliness and hygiene; 'The visitors observed with much satisfaction,' one inspector reported in 1781, 'that both prisons are kept in a neat and cleanly manner which may be justly ascribed to the unwavered attention and industry of those under whose care they are put.'⁴⁶⁸

This is not to suggest, of course, that the threat of gaol fever was fabricated by reformers in order to compel people to adopt the reforms that they promoted. Contagious disease did, as a result of the spread of typhus in increasingly urbanized communities, strike England's penal institutions in the 1780s with some sometimes horrendous effects. What this evidence illustrates, rather, is that Paul exaggerated the extent and threat of disease in Gloucestershire in order to instil sufficient fear to

⁴⁶⁶ Paul, *Thoughts on the Alarming Progress of Gaol Fever*, (1784), p. 4.

⁴⁶⁷ See Surgeons' Reports for the House of Correction at Manchester, Lancashire Record Office, QSP 2158-2174, (1783-84).

⁴⁶⁸ See Report of T. Gibbes, Apothecary to the New Prison and House of Correction, London Metropolitan Archives, MJ/SP/1781/July/006, (July, 1781). This makes perfect sense since the capital managed to sustain its population during the decline of the 1780s and 90s only as a result of the fact that there were significant improvements in public health and, correspondingly, a fall in the incidence of disease. See Schwarz, *London in the Age of Industrialisation*, pp. 236-7.

make reform happen. This claim is supported if one considers the nature of the arguments made by Paul at ground level. In each of his later direct addresses he made dramatic statements about the need to rebuild prisons based not on facts but rather on musings about what *might* happen and deliberations over what disastrous results *may* occur if reforms were not adopted. Paul's highly influential 1784 publication *Thoughts on the Alarming Progress of Gaol Fever* was, for example, not an empirical study but rather a fictional story that he wrote telling of a scenario that *might* have resulted if prisons remained unreformed. It was 'extremely probable,' Paul warned, that on his release a prisoner '*might* bring the dreaded disease home with him.'⁴⁶⁹ He closed his story with the observation that infection had 'undoubtedly' already spread across much of the county, and that it 'may' have lurked concealed waiting to spread further.⁴⁷⁰

Paul thus played a key role in exaggerating the threat posed to the community by gaol fever. Arguably even more critical, however, was the part that he played in persuading his audience of the solution to that threat. However real the threat of typhus in the 1780s, rebuilding prisons was not the omnipotent solution to the problem that Paul portrayed it as. Even if Gloucestershire's unreformed penal institutions were the *source* of typhus in the county, once the disease had spread into the community its incidence could not have been totally eradicated by building new prisons. Despite this, through employing the right sort of language and making the right sort of arguments Paul persuaded local officials that penal reform was *the* solution required to remove the danger posed to the wider community by contagious disease.

The process whereby penal reforms were passed in late eighteenth-century Gloucestershire therefore supports DeLacy's suggestion that 'the immediate precipitant of the decision to rebuild the gaols was the fear of

⁴⁶⁹ Paul, *Thoughts on the Alarming Progress of Gaol Fever*, (1784), p. 22.

⁴⁷⁰ *Ibid.*, p. 24.

fever.⁴⁷¹ Analysis of the language used by Paul at ground level, however, shows that the generation of such fear was more complex than may have been assumed, and that *language* rather than disease was key in making reform happen.

In support of this, evidence shows that disease was only one way in which Paul generated fear among those with the power to sanction to reform. In the process of his agitation he drew his audience's attention also to a number of other dangers threatening the community which, he urged, could only be remedied by rebuilding the county's prisons. In 1783, for example, Paul discussed the particular form of the reformed prisons he promoted not by drawing attention to the *benefits* that a cellular plan offered in terms of punishment and correction but by highlighting instead the *dangers* arising for the wider community from the association of different criminals in the county's existing institutions. Thus, playing on the fact that contagion theory had infiltrated contemporary understanding of the spread of moral no less than physical 'disorders', Paul warned his audience that 'here [in the county's prisons], the most ignorant are initiated, and naive ascend to higher mysteries of infamy and vice.'⁴⁷² 'Whilst persons committed for fines and lesser offences are associated with desperate and daring offenders,' he explained in an address later that same year, 'the confinement can prove no other than a seminary of vice and a certain introduction to the most infamous practices.'⁴⁷³ The quantity and variety of criminals associating with one another in the county's unreformed prisons was, he urged, 'so formidable a threat' that it should 'alarm every considerable man.'⁴⁷⁴

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The immediate precipitant to reform in Gloucester was fear. Although the dangers feared by local officials were 'real', Paul played a pivotal role in

⁴⁷¹ DeLacy, *Prison Reform in Lancashire*, p. 81.

⁴⁷² Paul, *A State of the Proceedings on the Subject of Prison Reform*, (1783), p. 48.

⁴⁷³ Paul, *Considerations on the Defects of Prisons*, (1783), p. 44.

⁴⁷⁴ *Ibid.*, p. 48.

dictating not just the extent of their fear but also, and more importantly, their perception of its causes and solutions. Only by abandoning his earlier approach and employing discourses which made the reformed prison a problem-solving device for the wider community did Paul make reform happen in late eighteenth-century Gloucestershire. As an admirer expressed in a poem dedicated to his achievements in penal reform, 'vain were that theory with mercy fraught the liberal Montesquieu hath taught.'⁴⁷⁵ In Gloucestershire mass imprisonment was born not of a general approval of theoretical arguments relating to issues such as humanity, justice, benevolence and proportion. Instead it was born of wholly practical, self-interested concerns - of a sense of anxiety manipulated by Paul's dramatic and engaging language of necessity.

iii) Lancashire

Agitation for reform in Lancashire happened at the same time as in Gloucestershire over the course of 1783 and 1784. Such agitation was undertaken almost exclusively by magistrate Thomas Butterworth Bayley, an influential leader among the local gentry who was dedicated to an active policy of reform. Thanks to the evidence and arguments that Bayley put forward, in 1790 Lancashire's local officials sanctioned a substantial programme of prison reform for the county. By 1794 Lancashire not only had a new 'Penitentiary House' but also a network of reformed houses of correction and a new county gaol rebuilt on the plan offered by the Penitentiary Act. Bayley therefore clearly enjoyed great success in his mission to introduce to Lancashire what he described in 1781 as the 'humane confinement' offered by the Penitentiary Act.⁴⁷⁶ As evidence from ground level will show, such success was born - as was the case in Gloucestershire - of a very specific and contrived set of reform arguments designed to engage his self-interested, pragmatically-minded audience.

⁴⁷⁵ Anon., Verses addressed to Paul on his benevolent scheme for the improvement of the county prisons, Gloucestershire Record Office, JQ/9.10, (1785).

⁴⁷⁶ PRO, HO 42/6 (January, 1785).

Bayley was, like Paul, a man whose passion for penal reform stemmed from what one might term scholastic roots. From his early teenage years Bayley was a passionate Wilkite who believed that the law must be clear and unambiguous and consistently and proportionally applied in order to maintain justice and deterrence. Bayley was also a keen Unitarian who strongly believed that the education of the lower orders could fulfil society's responsibility to promote freedom, tolerance and humanism. Hence his vociferous promotion of Sunday School education in Lancashire which, he said, would 'counteract the causes of increasing vice and misery by promoting the religious and moral instruction of the rising generation of the poor.'⁴⁷⁷ Bayley's passion for penal reform thus resulted from a number of convictions. First, reformed imprisonment was a measured and proportional means of punishment that would be consistently applied according to crime rather than status. Secondly, new prisons would facilitate the moral and religious instruction of people whose vices were, at heart, born not of innate badness but of an ignorance born of their socio-economic situation. Given his preoccupations it comes as little surprise that Bayley's early promotion of penal reform in Lancashire consisted of arguments regarding the multiple benefits that could be expected of it, first, for the criminal and, second, for the English penal system more generally.

In 1783 Bayley, along with Justice Samuel Clowes, undertook an inspection of Manchester's house of correction. The aim of their inspection was to illustrate the necessity of reform to their fellow magistrates; in their words to draw to local officials' attention 'the alterations and improvements requisite in the above gaol.'⁴⁷⁸ The arguments made by Bayley and Clowes focused exclusively on the multiple benefits to be expected from reformed imprisonment for the county's criminal element. Central to Bayley and Clowes' promotion of penal reform was hard labour. Reform should be sanctioned, Bayley

⁴⁷⁷ Cited in T. Percival, *Biographical Memoirs of the Late Thomas Butterworth Bayley*, (Manchester, 1802), p. 5.

⁴⁷⁸ *The Report of Samuel Clowes the Younger and Thomas Butterworth Bayley*, (1783), front cover.

argued, in order for criminals to be put to hard labour. His promotion of hard labour focused not on its potential punitive effects, nor on its fiscal value. Rather, Bayley urged hard labour, first, because it would produce an improvement in the attitude and health of prisoners and, secondly, on the grounds that it would effect the moral improvement so owing to them; 'It is well known,' he advised, 'that constant and laborious employment is most friendly to the principles and habits of virtue.'⁴⁷⁹ 'This then,' Bayley continued, 'should be the *leading* object of those who govern Houses of Correction; to make prisoners better men.'⁴⁸⁰ 'Their earnings &c,' he concluded, 'are *secondary* considerations.'⁴⁸¹

As was the case in Gloucestershire, the issue of disease featured in early reform material at ground level in Lancashire. As in Paul's initial addresses, Bayley's early reform material saw him use the issue to bring to local officials' attention the ways in which penal reform would benefit the county's criminals; 'Fresh air and the strictest attention to cleanliness it is well known,' he said, 'are of the greatest consequence to the health of prisoners.'⁴⁸² Improving the conditions of prisons in order to ensure the 'humane confinement' of criminals featured centrally in Bayley's early reform arguments.⁴⁸³ Improved conditions, Bayley argued, would not only ensure humanity in punishment but also help to effect the moral reformation of criminals; 'Cleanliness of body,' he urged, 'is extremely favourable to *purity* of heart and life.'⁴⁸⁴

Early reform material produced at ground level in Lancashire therefore focused, as it did in Gloucestershire, on stressing the benefits that reformed prisons would have, first, for the criminal and, second, for the English penal system more generally. Any benefits that reform would

⁴⁷⁹ *The Report of Samuel Clowes the Younger and Thomas Butterworth Bayley*, (1783), p. 3.

⁴⁸⁰ *Ibid.*, p. 3.

⁴⁸¹ *Ibid.*, p. 3.

⁴⁸² *Ibid.*, p. 3.

⁴⁸³ Lancaster Castle Committee Minutes, Lancashire Record Office, QAL/1/1783/010, (1783).

⁴⁸⁴ *The Report of Samuel Clowes the Younger and Thomas Butterworth Bayley*, (1783), p. 4.

have for the wider community were, in Bayley's own words, 'secondary considerations.'⁴⁸⁵ Even if Bayley did not explicitly draw attention to the fact, more constructive and measured punishments would, of course, have had positive effects for society as well as for criminals. Such implied benefits were not enough, however, to persuade local officials to adopt the reforms that he promoted. Ultimately, Bayley's early approach to reform failed to engage an audience who proved uninterested in reforms designed in the main to correct criminals and improve the execution of the law.

By 1784, following a continued period of inertia among local officials, Bayley realised that he would have to adapt his reform material if he was to engage his audience; 'No steps can be taken,' he urged that year at a meeting of the Lancaster Castle committee members, 'without a general approbation and actual concurrence of the persons of principal landed property in this county.'⁴⁸⁶ It was thus important, he went on, to take Gloucestershire's lead and 'call a meeting of the nobility, gentry and clergy of the same county to take the business into consideration.'⁴⁸⁷ The group of people who possessed the power to sanction reform in Lancashire were driven not by concerns about the justice and humanity of punishment but rather by what Bayley described as 'fear and the selfish ideas of personal safety.'⁴⁸⁸ Commenting on the purely practical, self-interested concerns of local officials, Bayley privately bemoaned the fact that 'the other great points of policy and humanity in the plan of the Penitentiary House, solitary imprisonment etc. have been treated as chimerical and expensive *experiments*.'⁴⁸⁹

As was the case in Gloucestershire, this realisation prompted a dramatic shift of focus in Bayley's reform material; a shift from the positive to the

⁴⁸⁵ *The Report of Samuel Clowes the Younger and Thomas Butterworth Bayley*, (1783), p. 3.

⁴⁸⁶ Lancaster Castle Committee Minutes, Lancashire Record Office, QAL/1/1784/001, (1784).

⁴⁸⁷ *Ibid.*

⁴⁸⁸ PRO, HO 42/6, (January, 1785).

⁴⁸⁹ *Ibid.*

negative, and from the criminal to the community. As he himself recognised, only once he changed his approach and focused not on the *benefits* of reform for criminals but rather on the negative repercussions or the *costs* that would result for wider society if they were not adopted could he engage his audience and make reform happen. In 1784 Bayley thus abandoned his old reform discourse and adopted a new, dramatic and engaging language of necessity in order to engage his fellow officials. As was the case in Gloucestershire, such material centred largely on a single issue: disease.

As also occurred in Gloucestershire, from 1784 onwards Bayley approached and described the issue of disease in a markedly novel way. The minutes of Lancashire's prison committee meetings in 1784 demonstrate the nature of this shift. During these meetings Bayley for the first time explicitly urged that penal reform was a community issue; 'the business respecting the state of gaols, houses of correction and prisons within the County Palatine of Lancaster,' he commented at the opening of the January Sessions, 'is of such magnitude and importance to the inhabitants of the said county that no measures should be taken regarding the same without the fullest investigation and enquiry.'⁴⁹⁰

Later that year Bayley addressed his fellow local officials for the second time. As was the case in Gloucestershire, his central argument for reform was the prevention of gaol disease. Once an issue related only to the need to make punishment more humane, in his later address Bayley's use of the subject of disease was completely transformed. No longer an internal issue affecting criminals alone, his later address portrayed disease as a very real and dangerous threat to wider society. The county's penal institutions, he declared, 'are now crowded with very great numbers of unhappy wretches many of whom are dangerously ill of the putrid fever.'⁴⁹¹ New prisons should therefore be built, he urged, 'so as to

⁴⁹⁰ Lancaster Castle Committee Minutes, Lancashire Record Office, QAL/1/1784/001, (1784).

⁴⁹¹ *Ibid.*

prevent the dreadful public calamities that may be occasioned by the increase of said distemper among the poor prisoners and from them spreading itself abroad.⁴⁹² Within a year, the prison committee had passed the substantial programme of penal reforms promoted by Bayley.

In an address of 1792 in which local officials celebrated the opening of a number of new institutions across the county, the committee declared that it had replaced Lancashire's old prisons with new, reformed versions because they were 'more generally useful to the county.'⁴⁹³ Those who had sanctioned penal reform in Lancashire were preoccupied not with issues relating to justice or humanity, nor with the constructive benefits of institutionalised hard labour for the criminal. Rather the 'utility' of reform was to be found in the opportunity it offered to overcome gaol fever; 'to promote health and salubrity' across Lancashire.⁴⁹⁴

As was the case in Gloucestershire, evidence from Lancashire suggests that Thomas Butterworth Bayley made reform happen by portraying the reformed prison as the key to the wider community's wellbeing. Only by abandoning his customary approach to reform and adopting language which generated fear and, in the process, made reform necessary could he hope to see his county's penal institutions rebuilt.

That is not to suggest, however, that Bayley's reform discourse alone made reform happen. As already acknowledged, disease was, of course, a very real threat at the time. What it is vital to acknowledge, however, is that, like Paul, Bayley played a critical part in shaping exactly how people perceived the *nature* of that threat and, more importantly, what people perceived the *solution* to that threat to be. As illustrated above, the threat of gaol disease in 1784 was far less considerable than was suggested by reformers at ground level, and certainly no more threatening than it had been the year previous when Bayley's arguments suggested that he was

⁴⁹² Lancaster Castle Committee Minutes, Lancashire Record Office, QAL/1/1784/001, (1784).

⁴⁹³ *Ibid.*, QAL/1/1792/007, (1792).

⁴⁹⁴ *Ibid.*, QAL/1/1794/001, (1794).

wholly uninterested in its potential impact on the wider community. Throughout the late 1770s and 80s resident surgeons at Lancashire's penal institutions reported very few illnesses. A representative example of reports produced throughout the 1780s, a report from Manchester house of correction in 1779 stated, for example, that 'all prisoners are well excepting Betty Hughes who is under care for venereal disease.'⁴⁹⁵

Evidence from within Lancashire's unreformed penal institutions demonstrates that both the incidence and nature of gaol disease was exaggerated by Bayley. In 1784, for example, while the number of prisoners under the care of the surgeon at Manchester house of correction was slightly higher than the previous year, the illnesses recorded were venereal disease, an itch, stomach pain and an ulcerated leg. This is a very different picture to that painted by Bayley who described the county's institutions at that time as 'crowded with very great numbers of unhappy wretches many of whom are dangerously ill of the putrid fever.'⁴⁹⁶

This is not to suggest, of course, that the threat of gaol fever was fabricated by Bayley in order to compel otherwise uninterested local officials to adopt the reforms that he promoted. What Bayley's reform material illustrates, rather, is that he *exaggerated* the extent and threat of disease in order to instil in his audience sufficient fear to make reform happen. Disease may well have been a feature of everyday life in Lancashire's unreformed penal institutions, but Bayley's claims bore no direct relationship to the real incidence or nature of that threat. This claim is supported by the fact that, as was the case in Gloucestershire, Bayley's dramatic statements regarding the need to rebuild prisons in Lancashire were based not on facts but rather on musings about what *might* happen if reforms were not adopted. Thus, in his influential 1784 address, Bayley warned local officials that reform was essential in order to prevent the

⁴⁹⁵ Surgeons' Report for the House of Correction at Manchester, Lancashire Record Office, QSP 2174/2, (1784).

⁴⁹⁶ Lancaster Castle Committee Minutes, Lancashire Record Office, QAL/1/1784/001, (1784).

spread of disease in the wider community which *might* occur if prisons were not rebuilt. Prisons were necessary, Bayley thus urged, 'to prevent the dreadful public calamities that may be occasioned by the increase of said distemper among the poor prisoners and from them spreading itself abroad.'⁴⁹⁷

Bayley played a key part not only in exaggerating the threat that gaol disease posed to the wider public but also in persuading officials that the solution to that threat was to reform the county's prisons. As discussed above, however real the threat of typhus was in the 1780s, rebuilding prisons was not the solution to the problem that reformers portrayed it to be. Even if Lancashire's unreformed penal institutions were the *source* of typhus in the county, once the disease had spread into the community its incidence could not have been totally eradicated by building new prisons. Despite this, by employing the right sort of language and making the right sort of arguments, Bayley persuaded local officials that penal reform was the solution required to remove the danger posed to the wider community by contagious disease and 'promote health and salubrity' throughout Lancashire.⁴⁹⁸

* * * * *

The process whereby penal reforms were passed in late eighteenth-century Lancashire supports DeLacy's suggestion that 'the immediate precipitant of the decision to rebuild the gaols was the fear of fever.'⁴⁹⁹ Closer analysis of the nature of that fear, however, shows that its generation was more complex than may have been assumed, and that language rather than disease was key making reform happen. Although the dangers feared by local officials were 'real', Thomas Butterworth Bayley played a pivotal role in dictating not just the extent of their fear but also, and more importantly, their understanding of its causes and

⁴⁹⁷ Lancaster Castle Committee Minutes, Lancashire Record Office, QAL/1/1784/001, (1784).

⁴⁹⁸ *Ibid.*, QAL/1/1792/007, (1792).

⁴⁹⁹ DeLacy, *Prison Reform in Lancashire*, p. 81.

solutions.

iv) Middlesex

In 1794 a reformed house of correction and county gaol were opened in Middlesex. Leading the agitation for reform and eventually superintending the construction of the county's new reformed prisons was magistrate William Mainwaring, described by *The Times* in 1802 in contrast to his socially inferior challengers as a representative of "the respectable people."⁵⁰⁰ Like Paul in Gloucestershire and Bayley in Lancashire, Mainwaring took an active part in advocating the merits of just legal system based on equality; "In our courts of justice," he rejoiced in a pamphlet published in 1793, "all are equal; high and low, rich and poor, all alike are under the care of our laws."⁵⁰¹ As was the case in Lancashire and Gloucestershire, however, at ground level such theoretical, conceptual concerns were forfeited for pragmatic, community-focused arguments for change.

No doubt as a result of the fact that Middlesex's magistrates had spent considerable sums of money on the county's penal institutions in recent years, the period of agitation for penal reform in Middlesex was more drawn out than elsewhere in the country. In 1781, no fewer than thirteen years before its two reformed institutions opened for prisoners, Middlesex's prison committee members started to discuss the issue of penal reform. Given Mainwaring's typically 'scholastic' approach, the arguments made for reform at local level were uncharacteristically pragmatic. Thus, as was the case in Gloucestershire and Lancashire, the arguments made at ground level in Middlesex were dramatic, designed to stress the necessity of reform in terms of the wellbeing of the wider community. 'The county's two gaols are so crowded,' the committee reported in 1781, 'that as the warm season approaches everything is to

⁵⁰⁰ Cited in Ignatieff, *Just Measure of Pain*, p. 135.

⁵⁰¹ 'Society for Preserving Liberty and Property Against Republicans and Levellers', *Associated Papers I* (1793), p. 16.

be dreaded that may arise from infection and epidemick disorder.'⁵⁰² Revealing exactly who penal reform was designed to benefit, the committee went on to express the fear that the gaol fever 'may prove fatal not only to the courts of justice but to the metropolis.'⁵⁰³

During the same meeting other arguments were put forward in favour of reforming the county's prison; 'convicts are sent to these [existing] gaols,' one committee member explained, 'and continue there for months and years, corrupting one another and forming confederacies dangerous to the public and subversive to all good order and good government.'⁵⁰⁴ Promoting the benefits that institutionalised hard labour and separation would have for the community further, another member of the committee warned that in existing prisons, 'Convicts, knowing that they have received their final sentence and that nothing worse can be inflicted are the most dangerous and desperate prisoners, ever making riots and encouraging others to misbehave.'⁵⁰⁵

Interestingly, the range of arguments made for reform in Middlesex were more varied in character than in Gloucestershire and Lancashire. Thus as well as arguments regarding the threat of disease and the birth of a criminal class, the discussion of penal reform in Middlesex was driven also, and related to this, by a distinct fear of crime. Over the course of the eighteenth century those living in and around the capital believed that crime was, to borrow Defoe's terms, 'ripening to new dreadful heights.'⁵⁰⁶ Such fear climaxed in the 1780s when, as figures from the Old Bailey proceedings demonstrate, indictments in the capital and surrounding counties reached an all time high.⁵⁰⁷

⁵⁰² Report of the Committee Appointed to Carry into Immediate Effect the Repairs of the New Prison and Clerkenwell Bridewell, London Metropolitan Archives, MJ/SP/1781/R/001, (January, 1781), p. 3.

⁵⁰³ *Ibid.*, p. 3.

⁵⁰⁴ *Ibid.*, p. 4.

⁵⁰⁵ *Ibid.*, p. 4.

⁵⁰⁶ Defoe, *Street Robberies Considered*, (1728), p. 49.

⁵⁰⁷ There were 5,953 indictments at the Old Bailey over the course of the 1780s compared with only 2,982 in the 1760s. See www.oldbaileyonline.org.

As was the case in Gloucestershire and Lancashire, at ground level in Middlesex theoretical and scholastic arguments for reform were forfeited for dramatic and engaging arguments which drew attention to the negative consequences that would result for the community in question if penal reforms were not adopted. As elsewhere, evidence shows that such arguments were exaggerated. In 1781 Middlesex's penal institutions were, at least in the context of other prisons across the country, exemplary. During his tour of prisons in England and Wales in 1777 only four years prior to the committee meeting on penal reform, for example, Howard praised both of Middlesex's penal institutions on a number of grounds. The county gaol, for example, was praised both for its administration and its conditions; 'As to the relief provided for Debtors by the benevolent act 32nd George II (commonly called the Lords act because it originated in their house),' Howard reported, 'I did not find [it] in all England and Wales except the counties of Middlesex and Surrey.'⁵⁰⁸ In terms of conditions, Howard congratulated the 'commodious' county gaol for its 'wholesome compartments' and 'generous' supply of food for prisoners.⁵⁰⁹ Praise was also awarded to the county's house of correction which, although somewhat overcrowded, nonetheless enforced the separation of prisoners by sex and offence in a way uncommon elsewhere in England and Wales.

Evidence from the early 1780s demonstrates that even *after* the extra strain put on them after disruptions to transportation, Middlesex's penal institutions were in a much better state than material promoting reform suggested. In terms of disease, the image painted by those urging penal reform at ground level was as exaggerated as that offered by their counterparts in Gloucestershire and Lancashire. Surgeons' reports from 1781 show that the 'dread' expressed by the Middlesex prison committee at the potential consequences of 'infection and epidemick disorder' was

⁵⁰⁸ Howard, *The State of Prisons*, p. 10.

⁵⁰⁹ *Ibid.*, p. 10.

significantly embellished.⁵¹⁰ Just two months prior to the prison committee meeting, Dr Thomas Gibbes produced a report on the state of health at the New Prison and House of Correction. Out of a total of 118 prisoners in the New Prison just five were ill. Out of 106 prisoners in the house of correction only eleven were ill. The nature of the illnesses suffered by prisoners in both institutions was non-contagious.⁵¹¹

Inspectors' reports on the two institutions from May of the same year confirm that such illnesses did not represent the beginnings of a typhus epidemic. Both prisons, the inspector reported, were 'in a proper state and the prisoners in good health and order.'⁵¹² The prisoners, the inspector went on, 'all appeared stout and in good health.'⁵¹³ 'Clerkenwell bridewell,' the inspector remarked, 'was particularly clean and neat.'⁵¹⁴

Further inspectors' reports were produced throughout 1781. The content of such accounts demonstrates that reformers not only exaggerated the incidence and threat of disease, but also the problem of overcrowding. In July 1781, during the summer so dreaded by reformers on the committee, independent inspectors reported that 'apartments are clean and airy' and that 'all prisoners are in good health and have no complaints.'⁵¹⁵ In August of the same year it was reported that visitors to the county's prisons had 'observed with much satisfaction that both prisons are kept in a neat and cleanly manner.'⁵¹⁶

Arguments made by reformers at ground level in Middlesex were thus similarly exaggerated to those made at ground level elsewhere in the country. Despite their claims disease did *not* pose a serious threat to the

⁵¹⁰ Report of T. Gibbes, Apothecary to the New Prison and House of Correction, London Metropolitan Archives, MJ/SP/1781/Jan/006, (January, 1781).

⁵¹¹ *Ibid.*

⁵¹² Report presented to the Committee Appointed to Carry into Immediate Effect the Repairs of the New Prison and Clerkenwell Bridewell, London Metropolitan Archives, MA/G/GEN/7-8, (May, 1781), p. 7.

⁵¹³ *Ibid.*, p. 7.

⁵¹⁴ *Ibid.*, p. 7.

⁵¹⁵ *Ibid.*, MA/G/GEN/10-12, (July, 1781), p. 10.

⁵¹⁶ *Ibid.*, MA/G/GEN/13-14 (August, 1781), p. 13.

wider community in Middlesex. Nor were the county's prisons so full that criminals mixed freely, forging dangerous confederacies in the process. As was the case in Gloucestershire and Lancashire, discrepancies between reform arguments and the 'reality' of the situation were born of the fact that reformers deliberately exaggerated the negative repercussions that inertia might have for the wider community in order to make reform happen. It is thus unsurprising that, as was the case elsewhere in the country, when penal reform was eventually sanctioned in Middlesex it was the practical, tangible benefits which, as one reformer put it, would act 'in the favour of this county' to which officials drew attention.⁵¹⁷

4) Conclusion

Evidence from ground level demonstrates that late eighteenth-century prison reform was driven ultimately by fear. Although the fears that drove reform were 'real', penal reformers played a pivotal role not only in exaggerating the extent of the threats at hand but also, and more importantly, in dictating how their causes and solutions were perceived. An analysis of the language of reform at ground level has demonstrated that DeLacy's observation that 'the immediate precipitant of the decision to rebuild the gaols was the fear of fever' tells only half of the story.⁵¹⁸ While the fear of typhus played a key role in making reform happen, closer analysis of the nature of that fear shows that its generation was more complex than may have been assumed, and that *language* rather than disease made reform happen.

Exactly why reformers at ground level took the approach that they did is simple to understand. Responsible for the decisions made and, more specifically, the money spent in their respective counties, local officials had to be convinced that penal reform was not only a sound but more importantly a necessary investment that would justify itself by producing positive tangible results for the wider community. They were thus

⁵¹⁷ V. M., *Thoughts on the Construction and Management of Prisons*, (1786), p. 24.

⁵¹⁸ DeLacy, *Prison Reform in Lancashire*, p. 81.

engaged not by discourses used at national level which promoted the *benefits* of reform for criminals but rather by a language of necessity which drew attention to the negative repercussions or the *costs* that would result for the wider community if reforms were not adopted. As mentioned above, these two very different approaches were far from unconnected; both employed a combination of the same utilitarian and medical arguments which had formed the bedrock of penal reform discourse since the sixteenth century. What differentiated national and local level reform language, rather, was the use to which such arguments were put.

A focus on the negative at local level resulted not just from the constraints of accountability placed on local officials but also from the nature of the audience with whom reformers communicated. Contrary to the claims of theorists such as Foucault and Ignatieff and traditional political historians like Lewis Namier, those in positions of power in eighteenth-century English towns were not a homogenous collective of ambitious, like-minded middle class men but rather a heterogeneous mix of the *nouveau riche*, old landed gentry and traditionalist clergy - people with very different perceptions of how their cities should be run. A pamphlet published in 1786 in Middlesex gives some impression of how difficult it was for reformers to mobilise the support of such a diverse group of people;

It is not, however, to be concluded that the opposition [to penal reform] originated from any bad or improper motive: for it is no more to be wondered at that a number of gentlemen, assembled together with different intentions should disagree concerning the manner of executing the business before them, that they should differ in their features, or complexion, or organs of sight.⁵¹⁹

⁵¹⁹ V. M., *Thoughts on the Construction and Management of Prisons*, (1786), p. 4.

A heterogeneous audience is, by its very nature, difficult to mobilise. As Linda Colley observed in her study of nationalism, diverse collectives of people with disparate ideas tend to be united 'not so much by consensus or homogeneity' as by factors which 'distinguish the collective self and its implicit negation.'⁵²⁰ Given the nature of their audience it was thus far more effective an approach for reformers at ground level to stress the negative rather than the positive in order to engage local officials' support for penal reform. That is to say that when it came to mobilising support for penal reform among local officials it was easier to generate a shared fear of the negative repercussions that inertia would have than it was to generate a common support for the multiple benefits of institutionalised hard labour.

As a combined result of accountability and heterogeneity, therefore, late eighteenth-century penal reforms were passed by generating fear via the calculated employment of a language of necessity. The arguments made for reform at ground level did not represent reformers' true opinions of why England's prisons should be rebuilt, and the frustration that they felt at their adapted approach was often clear to see. Such adjustments in approach were, however, absolutely essential if penal reforms were to be realised. Ultimately, what reformers said about their cause at ground level, the way that they portrayed reformed prisons as critical solutions to dangers that threatened the wider community, saw the reforms that they so passionately strove for become a reality.

⁵²⁰ L. Colley, *Britons: forging the nation*, (New Haven, 1992), p. 17.

Chapter 6: The Penitentiary and the House of Correction

1) Introduction

Thanks ultimately to the exertions of reform-minded officials at ground level, during the last two decades of the eighteenth century there occurred a wholesale reform of over sixty of England's penal institutions along a plan offered by the 1779 Penitentiary Act. Evidence presented so far has suggested that such reforms were part of a long tradition of reform arguments first voiced during the early sixteenth century. It has been demonstrated that from around 1515 onwards reformers began to question the legitimacy of existing forms of punishment and make suggestions as to appropriate alternatives. The most common among proposed substitutes was imprisonment at hard labour which had a considerably widespread, if not wholly unchallenged, appeal.

Evidence suggests, therefore, that late eighteenth-century penal reform ideas were perhaps more evolutionary in nature than has been widely acknowledged. The fact that legislation sanctioning imprisonment at hard labour for all but the most serious categories of criminals was passed both in the sixteenth and early eighteenth centuries goes far to support this assertion.⁵²¹ As already acknowledged this revelation is far from new. What is yet to be investigated, however, is the nature of the relationship between late eighteenth-century prisons or 'penitentiaries' and early-modern houses of correction. To what extent did reformed prisons reproduce a system of punishment which already existed? In order to begin to answer this question it is now necessary to progress beyond the realm of aspiration and consider reform at ground level; i.e. to examine how the institutions built in the 1780s and 90s were designed to function

⁵²¹ As discussed in chapter three, a statute was passed in 1576 sanctioning that felons awarded benefit of clergy could be imprisoned at hard labour in their local house of correction. As Sharpe observed, this was in part a result of contemporary dissatisfaction with the existing capital code as expressed by reformers at the time. See Sharpe 'Civility, Civilizing Processes, and the End of Public Punishment in England'. Also discussed in chapter three was the fact that, in a very similar context, an almost identical Act was passed in 1706 allowing clerigied felons to be sentenced to up to two years hard labour in a house of correction.

and to consider how they were perceived by the contemporaries who witnessed their construction.

* * * * *

Over the course of the 1780s and 90s officials in Gloucestershire, Lancashire and Middlesex authorised the construction of no fewer than twelve reformed penal institutions. Half of these were built in Gloucestershire where, between 1784 and 1791, four new houses of correction and a new 'Penitentiary House' were built and the county's traditional holding prison reformed.⁵²² In Lancashire over the ten year period from 1784 to 1794 two new houses of correction were built and the old county gaol at Lancaster reformed. Two reformed prisons – Clerkenwell Bridewell and the New Prison – were opened for prisoners in Middlesex in 1794. By considering, first, how these institutions were designed to operate and, secondly, how they were perceived by contemporaries, this chapter aims to decipher more precisely the 'character' of late eighteenth-century prison reform.

2) The penitentiary: a new departure?

Even the most superficial glance at any penal institution built or reformed in the late eighteenth century shows that they were not straightforward reproductions of the institutions that had existed before them. Take, for example, the old house of correction built in Lancashire in 1609 and the institution built to replace it in 1791 (figures 1 & 2). The most striking difference between the two institutions is the fact that one is immediately identifiable where the other is not. Old Hunt's Bank house of correction fits neatly into the landscape and is visible as a prison only on close inspection of the bars at the window, the pillory on the street outside and the prisoners' begging bags hanging out of the windows. Salford New Bailey on the other hand is immediately discernible thanks both to its size and its design.

⁵²² For more detail on the specific location of the houses of correction in Gloucestershire see Whiting, *Prison Reform in Gloucestershire*, pp. 99 – 180.

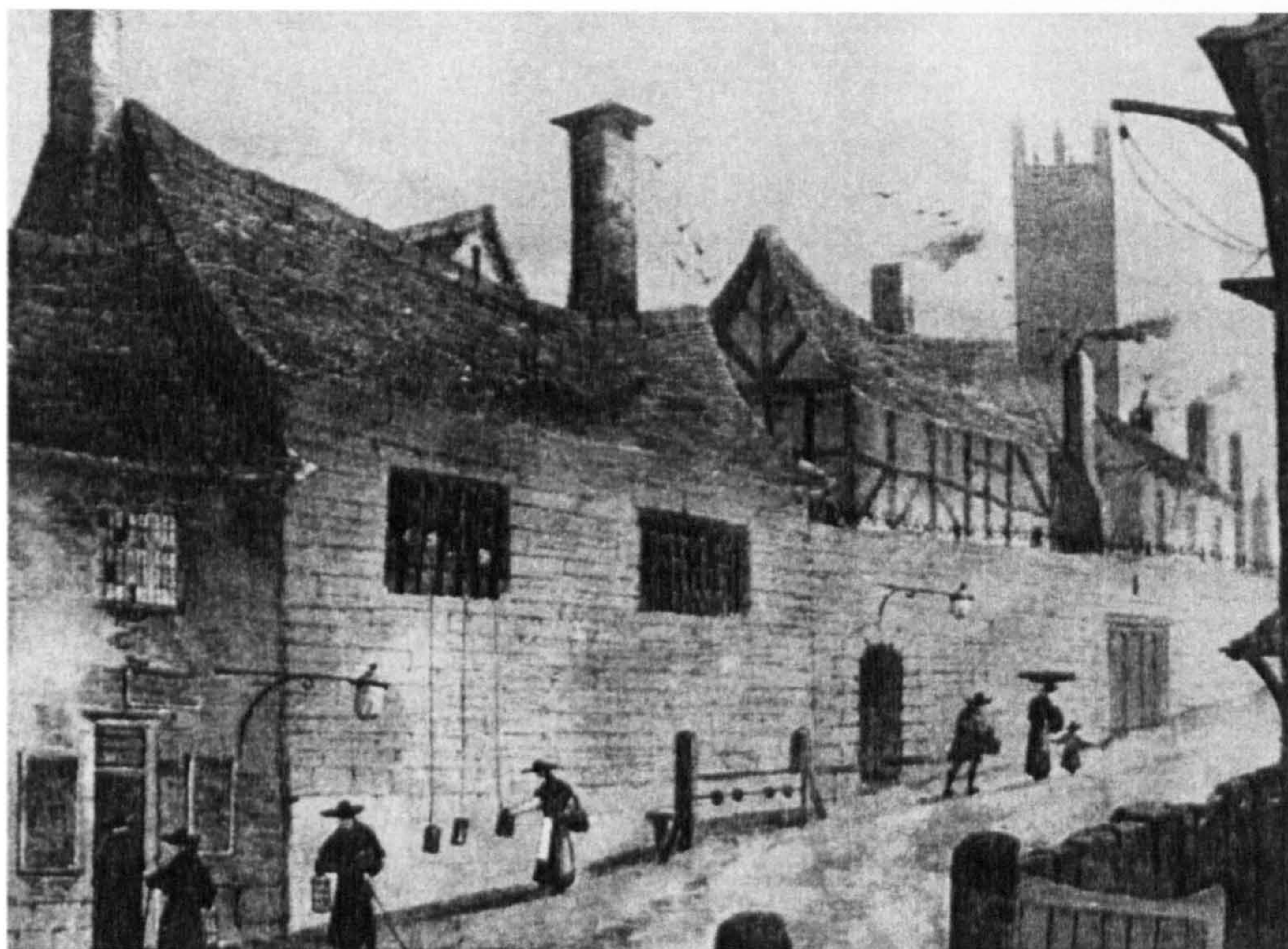


Figure 1: Old Hunt's Bank House of Correction, Salford (1609)

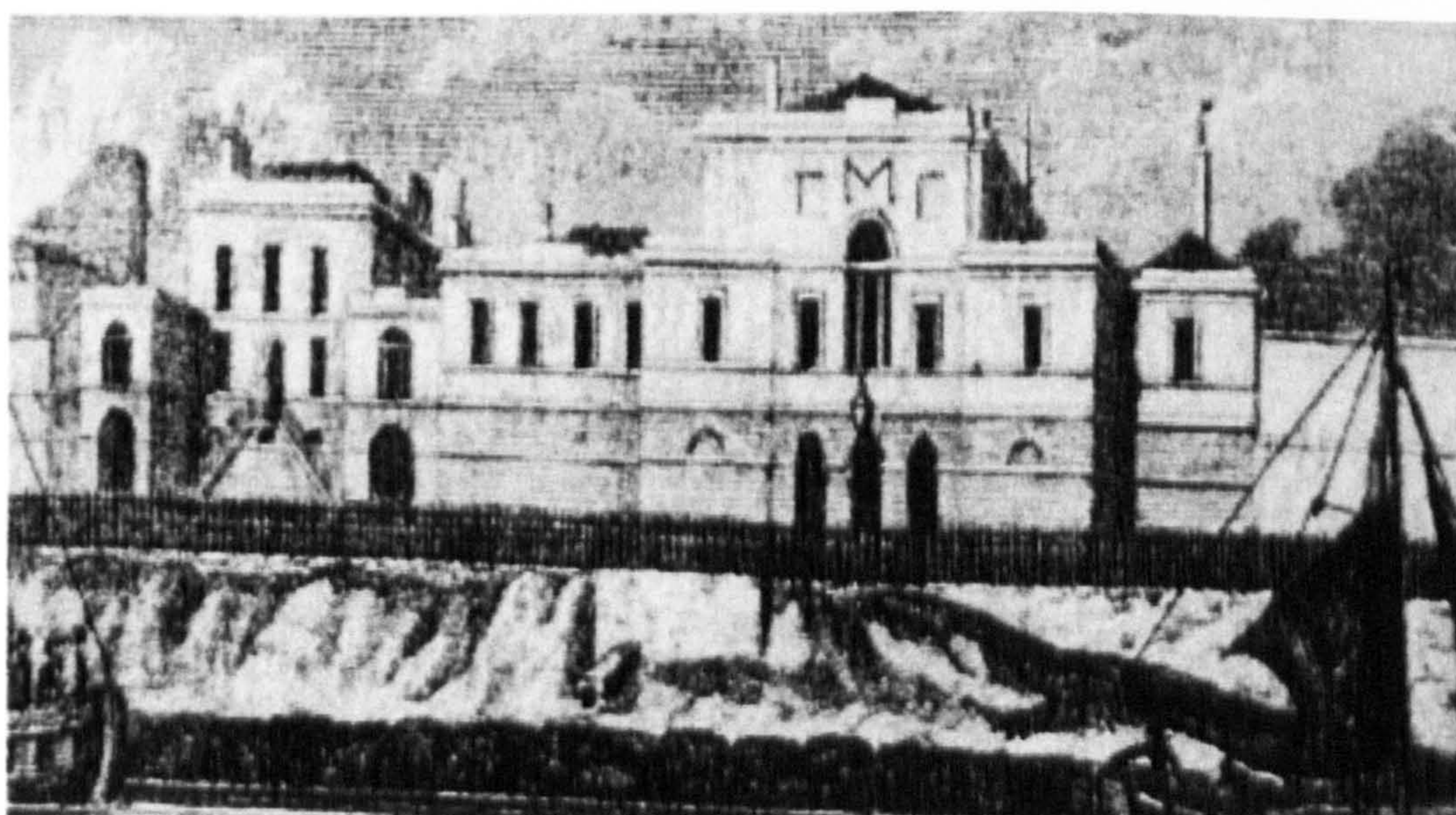


Figure 2: Salford New Bailey, Salford (1791)

Unlike earlier penal institutions, the prisons built in the late eighteenth century were purpose-built and thus inevitably had a greater physical impact on the built landscape than the institutions that they replaced. Such impact resulted to a large extent, of course, from the sheer size of the new prisons. An early modern house of correction such as that at Hunt's Bank in Salford was designed to hold no more than a maximum of around fifteen prisoners. Salford New Bailey, on the other hand, had a capacity of around 150. The same was the case wherever penal reforms took place. Thus the new Penitentiary House built to replace an early modern house of correction in Gloucestershire was designed to hold around 150 prisoners – ten times the capacity of its early modern equivalent.⁵²³ The impact of new institutions was exaggerated also by their formal and restrained architectural design which reflected the contemporary passion for ancient Classicism.⁵²⁴

The scale on which reformed prisons were constructed was, of course, an inevitable result of the fact that they were designed to punish both petty criminals *and* felons. More than this, under the regulations of the Penitentiary Act, reformed prisons were required not only to punish all but the most serious categories of criminals, but also to hold other sorts of prisoners such as debtors, those awaiting trial and those awaiting the death sentence. The reformed house of correction built in Middlesex in 1794 was thus described as responsible not only for the punishment of 'felonies and other atrocious offenders, and lesser offences' but also for the 'holding of prisoners of various classes committed for trial.'⁵²⁵ Reformed institutions built in the late eighteenth century were therefore designed to handle much larger and more varied prison populations than the penal institutions that they replaced - populations made up, as outlined by Gloucestershire's prison committee, of 'felons, debtors, fines,

⁵²³ For detailed figures see the Report of the Prison Committee, Gloucestershire Record Office, TRS/126, (October, 1783).

⁵²⁴ For more on prison architecture see Evans, *The Fabrication of Virtue*.

⁵²⁵ *Rules, Orders and Regulations for the Management of the New House of Correction for the County of Middlesex*, British Library, C.T.451.(8.), (1795), preface.

prisoners held on King's evidence, Bridewell prisoners and persons under the sentence of death.⁵²⁶

Late eighteenth-century prisons were, then, inevitably larger than the institutions that they replaced on account of the more significant role that they played in the penal system.⁵²⁷ To give some idea as to the extent of the impact that the Penitentiary Act had on England's prison population one needs only to consult records from the Old Bailey which show that the number of criminals punished by imprisonment in London rose from 39 in the 1760s to 698 over the course of the 1770s.⁵²⁸ Over the period from 1780 to 1789 the figure rose to 1,415.⁵²⁹ The percentage of convicts punished by imprisonment in London thus rose from 0.6 per cent to 23.3 per cent in the period from 1760 to 1789.⁵³⁰ A report published in Lancashire in 1783 described the strain put on existing institutions by this growth in the prison population;

From the alternations in the laws which have substituted the punishment of *long* imprisonments instead of transportation, this prison [Old Hunt's Bank House of Correction] is crowded beyond what is possible to be conceived.⁵³¹

The case was the same in Gloucestershire where, in the same year, Paul – again, stressing the threat of moral and physical contagion – reported that;

⁵²⁶ Description of the remit of the reformed gaol in Gloucestershire taken from the Report of the Prison Committee, Gloucestershire Record Office, TRS/126, (October, 1783), p. 2.

⁵²⁷ It is important to note also that felons held in the reformed prisons were inevitably subject to longer sentences (up to two years) which further added to the need for larger institutions.

⁵²⁸ Figures generated from a statistical search of The Proceedings of the Old Bailey, (www.oldbaileyonline.org/).

⁵²⁹ *Ibid.*

⁵³⁰ *Ibid.*

⁵³¹ *The Report of Samuel Clowes the Younger and Thomas Butterworth Bayley, (1783), p. 2.*

The ordinary wards of county prisons have become so dangerously crowded that it was found necessary immediately to pass the Act of 22. Geo. III to rebuild Bridewells on a principle answerable to the proposals of the former act.⁵³²

John Howard estimated that over the period 1776 to 1786 the prison population expanded by no less than 73 per cent and,⁵³³ as Ignatieff pointed out, the resulting crisis in prison population of the 1780s was for the first time felt not just in the capital but, as this evidence shows, across the country.⁵³⁴ An increase in the number of criminals punished with imprisonment led not only to the construction of larger, purpose-built prisons, but also to a greater emphasis on the separation of criminals (figures 3 & 4). As the plan of Old Hunt's Bank in Lancashire shows, early modern houses of correction were divided into wards within which, although where possible divided by sex, criminals were essentially free to mix. Over the course of the eighteenth century, however, concerns were commonly expressed regarding the mixing of different types of prisoners.⁵³⁵ As discussed above, the notion that immorality was contagious was common among contemporaries who were concerned that, by mingling with serious categories of criminals, less serious offenders might be pushed further down the 'slippery slope' of crime beyond the point of remedy.⁵³⁶ Houses of correction were thus commonly criticised in the eighteenth century on the grounds that they failed to separate vulnerable, usually young, less serious criminals from their more hardened counterparts. Justice of the Peace Henry Fielding's

⁵³² Paul, *State of the Proceedings on the Subject of a Reform of the Prisons*, (1783), p. 47.

⁵³³ Howard, *An Account of the Principle Lazarettos of Europe*, (London, 1789) p. 247.

⁵³⁴ Ignatieff, *A Just Measure of Pain*, p. 84.

⁵³⁵ This was most likely as a result of the fact that from 1706 onwards felons as well as petty criminals were increasingly likely to be sent to houses of correction.

⁵³⁶ In 1751, for example, a plan for the reformation of the house of correction in Middlesex urged the separation of prisoners in order to 'Prevent for the future the debaucheries I have recited above.' J. Ilive, *Reasons Offered for the Reformation of the House of Correction in Clerkenwell*, (1751), p. 43.

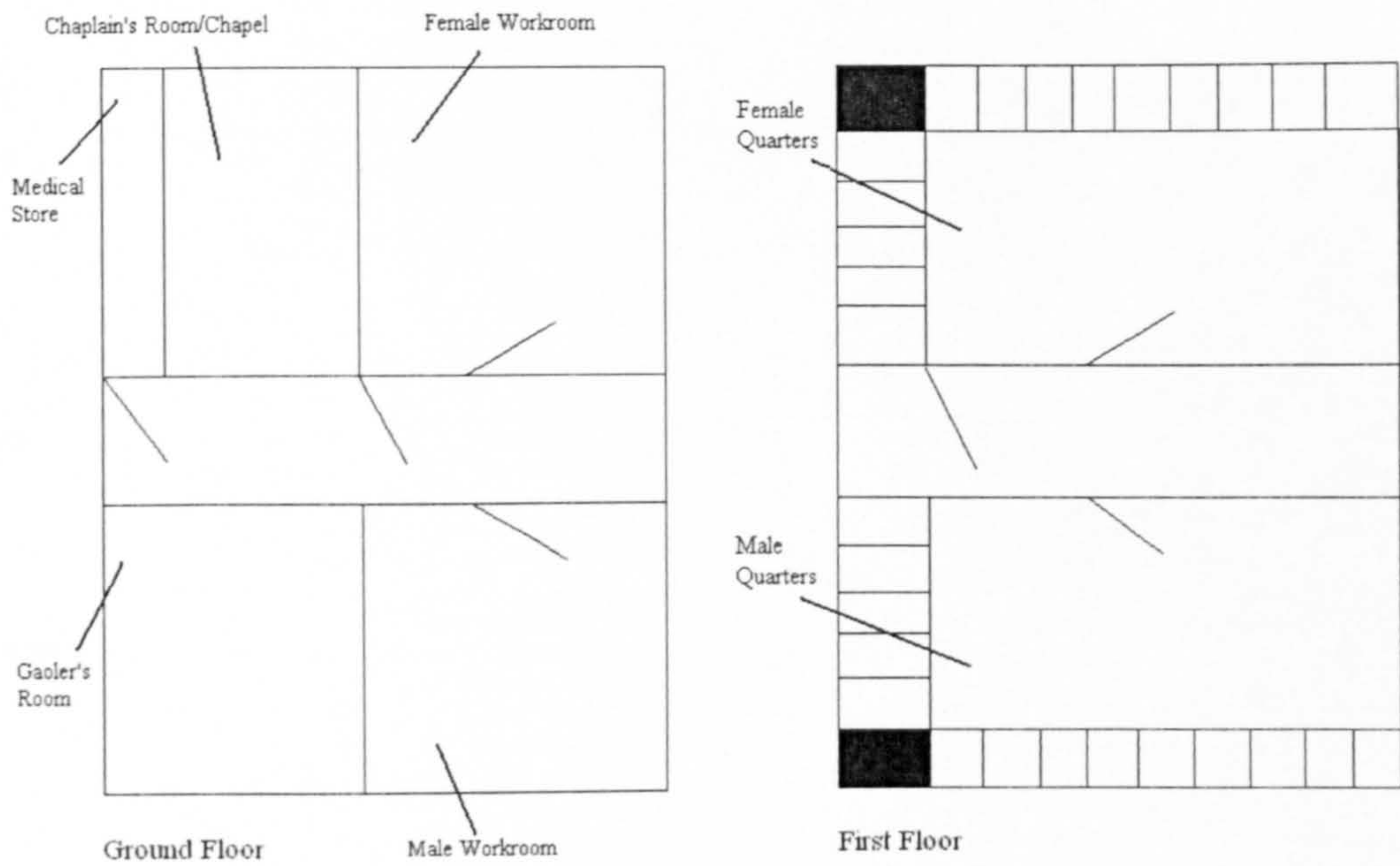


Figure 3: Plan of Old Hunt's Bank House of Correction, Salford (1609)

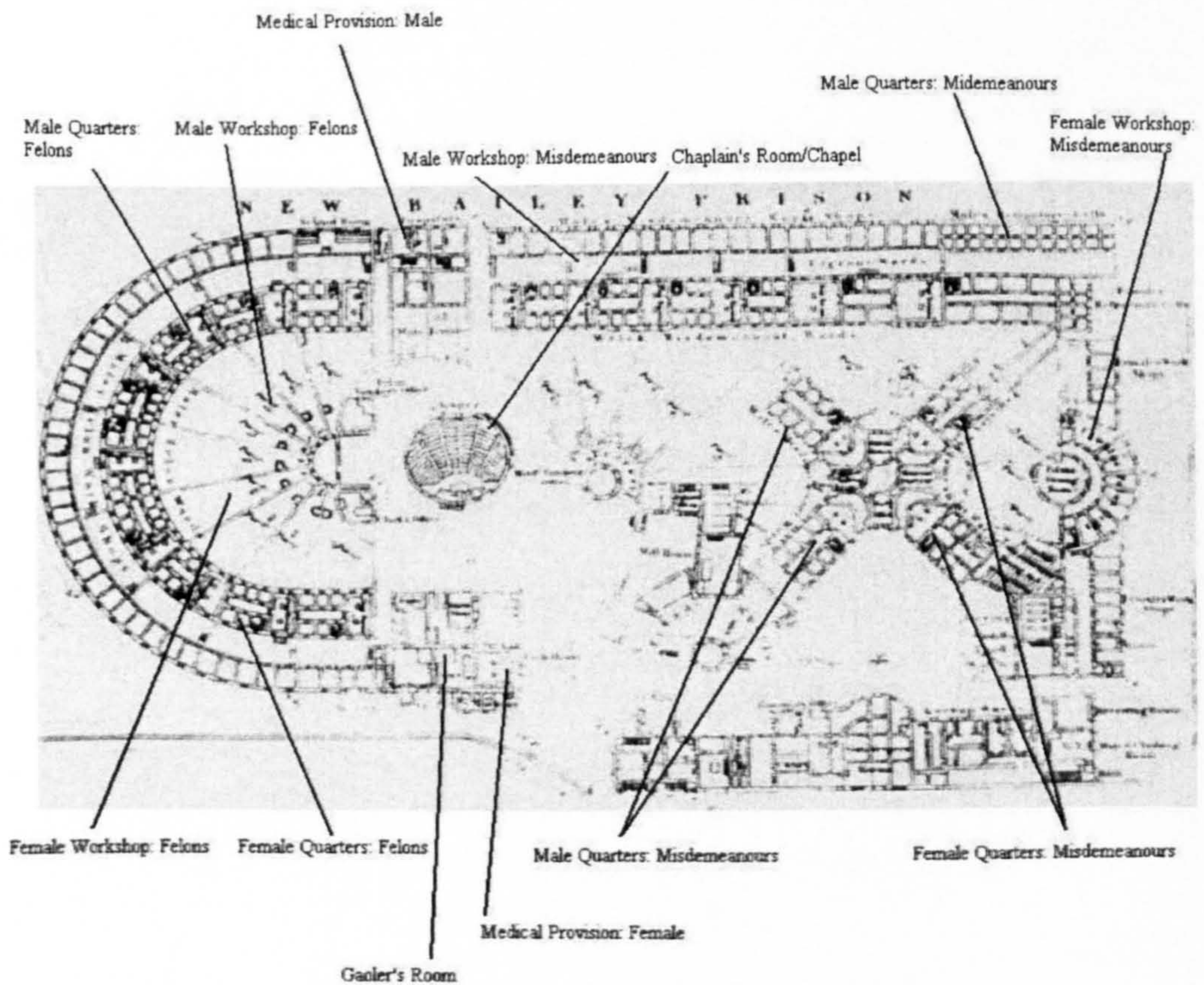


Figure 4: Plan of Salford New Bailey, Salford (1791)

critique summed up neatly contemporary fears over the moral contagion taking place in the country's unreformed penal institutions;

Whatever these Houses [of correction] were designed to be, or whatever they at first were, the Fact is, that they are at present in general, no other than Schools of Vice and Seminaries of Idleness.⁵³⁷

As discussed in chapter one, the 'slippery slope' understanding of criminal behaviour was not new in the late eighteenth century and therefore neither were concerns regarding the mixing of different categories of criminals. As early as 1701 concerns were expressed that when the experienced thief mixed with the youth, the latter were destined to be 'corrupted by 'em.'⁵³⁸ Far better, the concerned author thought, to isolate serious offenders so 'that they might not improve one another in wickedness.'⁵³⁹ The same arguments were made in a letter published in the *London Magazine* in 1746 which expressed dismay that 'The young novices are permitted to contract so intimate an Acquaintance and Familiarity with the old offenders, that our schools are rather the Schools and Nurseries of all Manner of Roguery and Wickedness, than proper places of Correction and Amendment.'⁵⁴⁰

The threat of moral contagion feared by late eighteenth-century reformers resulted to a large extent, therefore, from the continuation of long-established notions of criminal behaviour as a 'slippery slope'. As mentioned above, however, fear of the intermixing of different categories of criminals was deepened at the end of the century thanks to contemporary developments in the understanding of contagious

⁵³⁷ Fielding, *An Enquiry into the Causes of the Late Increase in Robbers*, (1751), p. 48.

⁵³⁸ Anon., *Hanging Not Punishment Enough*, (1701), p. 4.

⁵³⁹ *Ibid.*, p. 4.

⁵⁴⁰ Letter published in the *London Magazine* (1746), p. 12. See also Ilive's criticisms following a period of imprisonment in Clerkenwell Bridewell in *Reasons Offered for the Reformation of the House of Correction in Clerkenwell*, (1751).

disease.⁵⁴¹ Over the course of the century attention began to be drawn to the fact that moral as much as physical disease was spread by people living in too close proximity to one another. As Richard Mead's publication *A Short Discourse Concerning Pestilential Contagion* explained in 1720, moral and physical disease alike was believed to be 'attended with a degree of Malignity in proportion to the closeness and stench of the place.'⁵⁴² Thus reformers like Henry Fielding began to draw attention to the fact that 'Bad habits are as infectious by example, as the plague itself by contact.'⁵⁴³ As a result both moral and physical contagion were a particular concern in large institutions, especially prisons. Late eighteenth-century reformers therefore urged that the ideal prison would separate prisoners to guard against not only physical but also moral infection. Given the effectiveness of discourses stressing the threat of disease observed earlier, it seems sensible to conclude that the separation of criminals would have appealed also as a means of controlling physical disease. Indeed, Dr William Smith's late eighteenth-century reform material which argued that segregating prisoners was essential to the control of physical disease represented what was a significant body of material produced at the time promoting the physical rather than moral benefits of separation.⁵⁴⁴

Given contemporary understandings of contagion, it was to be expected that late eighteenth-century prisons would be designed in such a way as to allow for the effective separation of different types of offenders. Without separation, John Howard urged in 1777, less serious offenders would be

⁵⁴¹ That the 'slippery slope' understanding of criminal behaviour was well-established is testified by the long history of complaints regarding the mixing of criminals from the late seventeenth century onwards. See McGowen, 'The Problem of Punishment', pp. 210 – 231.

⁵⁴² R. Mead, *A Short Discourse Concerning Pestilential Contagion*, (Various editions from 1720 onwards), p. 42.

⁵⁴³ Fielding, *Enquiry into the Late Increase in Robbers*, (1751), p. 3.

⁵⁴⁴ Smith, *The State of Gaols*, (1776). For similar arguments see also Sir John Pringle, M.D., *A Discourse on Different Types of Air*, (1773), Dr W. Grant, *An Essay on the Pestilential Fever of Sydenham*, (1775), and Dr J. Heysham, *An Account of the Gaol Fever, or Typhus Carcerum*, (1782). In many cases moral and physical wellbeing were considered as one. Thus magistrates in Lancashire stated that 'cleanliness of body is extremely favourable to purity of heart and life.' See *The Report of Samuel Clowes the Younger and Thomas Butterworth Bayley*, (1783), p. 3.

'corrupted by the wicked conversation of the felons' and, as a result, 'become equally profligate.'⁵⁴⁵ Thus an essential difference between the penal institutions built before and after the Penitentiary Act are the provisions made for the separation of different categories of criminals in the latter. As the prison committee in Middlesex explained in 1784, reformed prisons were designed in such a way 'as shall allow those convicted of lesser offences to be kept separate from convicted felons and other atrocious offenders.'⁵⁴⁶ Prisons that failed to separate different categories of offenders in this way could prove, as Paul explained in 1783, 'no other than a seminary of vice, and a certain introduction to the most infamous practices.'⁵⁴⁷

The belief that immorality was as contagious as physical disease influenced a further essential difference between reformed and unreformed penal institutions: a new focus on solitude. During the last two decades of the eighteenth century reformers began to argue that solitary confinement was key to the reformation of the country's criminals. Perhaps the most ardent supporter of solitary imprisonment was Jonas Hanway who, in 1776, declared that solitude was the only true means 'for a young man, or an old one, to cleanse his ways.'⁵⁴⁸ 'What can be the consequence of associating prisoners,' Hanway asked, 'but reciprocal office in a fraternity of thieves?'⁵⁴⁹ Stressing the importance of solitude as opposed to the mere separation of different categories of criminals, Hanway urged that;

Solitude will accomplish the work [reformation] not in a vague, formal and unmeaning manner, but by creating a real change in the heart; to raise them that are fallen;

⁵⁴⁵ Howard, *The State of Prisons*, p. 24.

⁵⁴⁶ Meeting of the Select Committee for Building a New House of Correction for Middlesex, London Metropolitan Archive, MA/G/CBF/31, (January, 1784), p. 3.

⁵⁴⁷ Paul, *Considerations on the Defects of Prisons*, (1783), preface.

⁵⁴⁸ Hanway, *Solitude in Imprisonment*, (1776), pp. 7 – 8.

⁵⁴⁹ *Ibid.*, p. 77.

and guard those who are most subject to be assailed.⁵⁵⁰

Great attention was thus paid to devising a way in which offenders might be put to solitary confinement. In practice, thanks to the expense of constructing and organising such a system, provisions were not as extensive as Hanway and others had originally envisaged. As Paul pointed out during a meeting in Gloucestershire in 1783;

The advantages of a prison will multiply in proportion to the separation of prisoners. Yet, in this case as in many others, our theory may go beyond practicability. Too many separations may occasion confusion to the keeper and surpass the powers of an architect properly to arrange.⁵⁵¹

Such practical limits, combined with the concern expressed by some contemporaries regarding 'the dreadful consequences which have been found to result from urging the punishment of solitary confinement to an injurious extreme,' resulted in reformed prisons providing only a limited number of solitary cells.⁵⁵² These cells were reserved for inmates who displayed a particularly marked lack of discipline and thus functioned not merely as a means of encouraging reflection but also as an additional method of punishment. The rules and regulations for the reformed house of correction in Preston, Lancashire thus stated that 'the governor has the power to punish the several offenders for offences committed herein by closer [solitary] confinement.'⁵⁵³ Whatever its prime function, solitary confinement was a new departure in the late eighteenth century and as

⁵⁵⁰ Hanway, *Solitude in Imprisonment*, (1776), p. 44.

⁵⁵¹ Paul, *A Second Address on the Subject of a Reform of Prisons*, (1784), p. 66.

⁵⁵² Taken from the *Rules, Orders and Regulations for the Management of the New House of Correction for the County of Middlesex*, British Library, 103.I.27, (1799), preface.

⁵⁵³ *Rules, Orders and Regulations to be Observed and Enforced for the Government of the House of Correction at Preston, Lancashire* County Record Office, QGV/2/2, (1793), p. 2.

such a characteristic which differentiated reformed prisons from those penal institutions which existed before them.

* * * * *

Penal reforms passed in the late eighteenth century created a network of prisons which were, in a variety of important ways, distinct from those that had existed before them. It is essential to recognise at the same time, however, that some of the 'novel' elements of the late eighteenth-century prisons highlighted above differed from what had gone before more in terms of *application* rather than *substance*. That is to say that the differences between the early modern house of correction and the late eighteenth-century reformed prison resulted in some instances from a new set of pragmatic rather than philosophical concerns and were, as a result, essentially practical as opposed to ideological in nature.

Thus, reformed prisons were larger than early modern houses of correction because their punitive remit was far wider in the late eighteenth-century than it was at any point previously. Meanwhile, greater attention was paid to the separation of criminals as a result of the fact that a greater range of different categories of criminals was for the first time imprisoned in single penal institutions. In fact, the 'new' focus on separation in reformed institutions was less novel than has been suggested. Given Shoemaker's observation that a greater variety of criminals were imprisoned in houses of correction than has traditionally been assumed, it comes as little surprise that concerns over the separation of criminals have been expressed since the sixteenth century when, as Evans put it, 'evil communication was [understood to] destroy innocence and corrupt good manners.'⁵⁵⁴ Some of the apparent 'differences' highlighted here between early modern houses of correction and reformed prisons thus perhaps resulted not from a late eighteenth-century shift in penal ideology but, more simply, from the fact a that long-

⁵⁵⁴ Evans, *The Fabrication of Virtue*, p. 6.

system of punishment was given a more significant role in the penal system. To precisely what extent, then, did reformed prisons reproduce an existing system of punishment?

3) The penitentiary: operation

In 1618, magistrate Michael Dalton described the aims and form of the early modern house of correction; 'Labour for punishment of the body, and religion for repentance,' was enforced he said, 'so natures may be bridled, minds bettered and others terrified by their example.'⁵⁵⁵ Over 150 years later, the opening of the 1779 Penitentiary Act described how inmates held in England's reformed prisons were 'to be ordered to solitary imprisonment accompanied by well-regulated labour and religious instruction...not merely to deter others from the commission of like crimes, but also to reform the individuals in question.'⁵⁵⁶ The two defining elements of the internal regimes of late eighteenth-century prisons - religious instruction and hard labour - were identical to those of the early modern house of correction. A substantial body of evidence from within the reformed prisons in Gloucestershire, Lancashire and Middlesex supports the suggestion made by these statements: that reformed prisons were part of a long tradition of reformatory imprisonment first enforced in the early modern period.

* * * * *

As discussed in chapter three, among the reforms promoted by late eighteenth-century penal reformers was the age-old idea that criminals should be 'instructed by sensible clergymen so that their tempers and very souls may be re-discovered.'⁵⁵⁷ As the stipulations outlined in the Penitentiary Act quoted above suggest, such propositions did not fall on deaf ears, and religious instruction assumed as important a part in the

⁵⁵⁵ Dalton, *The Country Justice*, (1618), p. 122.

⁵⁵⁶ The opening of The Penitentiary Act, 19 Geo. III., C.72-74, (1779).

⁵⁵⁷ Hanway, *Solitude in Imprisonment*, (1776), p. 41.

internal regime of late eighteenth-century prisons as it had enjoyed in early modern houses of correction.

The rules and regulations produced for the new penal institution opened in Clerkenwell, Middlesex in 1794 give some indication of the extent of the role played by religious instruction in England's reformed prisons; 'Prisoners convicted of felonies and other atrocious offenders, and prisoners convicted of lesser offences' would receive regular religious instruction, the regulations stipulated, because 'much of our hopes of the prisoners' reformation will depend upon the zealous and conscientious as well as prudent discharge of his [the Chaplain's] duty.'⁵⁵⁸ Such duties were considerable; the chaplain was required not only to take daily religious services but also, where possible, to visit each prisoner personally on a daily basis and provide them with material which would facilitate their 'moral and religious instruction.'⁵⁵⁹

The rules and regulations produced for the same institution in 1799 show in more detail the extent of the role played by the Chaplain in England's reformed prisons. The Chaplain, the regulations stated, 'could not be too highly respected and esteemed.'⁵⁶⁰ Indeed, 'in view of his extraordinary merit and attention,' magistrates urged that his wage ought to be increased.⁵⁶¹ The level of hope invested in institutionalised religious rehabilitation in late eighteenth-century Middlesex is unsurprising given earlier statements made by reformers there which argued that 'the foundation of a vicious course of life is laid in the neglect and contempt of all means of information, and all religious duties whatsoever.'⁵⁶²

⁵⁵⁸ *Rules, Orders and Regulations for the Management of the New House of Correction for the County of Middlesex*, British Library, C.T.451.(8.), (1794), p. 23.

⁵⁵⁹ *Ibid.*, p. 24.

⁵⁶⁰ *Rules, Orders and Regulations for the Management of the New House of Correction for the County of Middlesex*, British Library, 103.I.27, (1799), p. 10.

⁵⁶¹ *Ibid.*, p. 11.

⁵⁶² V. M., *Thoughts on the Construction and Management of Prisons*, (1786), p. 19.

The religious rehabilitation of criminals was equally as important in the reformed penal institutions built in Lancashire. Prisoners held in the reformed prison in Preston, for example, were rewarded with an extra allowance of food on Sundays if they successfully completed the three key elements of their daily routine, one of which was 'due attendance to religious worship.'⁵⁶³ Reports produced by the prison's resident Chaplain illustrate that religious rehabilitation was as important in practice as it was in theory. Thus as late as 1825, Chaplains' reports speak of daily visits to prisoners' cells, of daily religious services, and daily sessions of religious education.⁵⁶⁴ Reports frequently suggested that such efforts met with some success; Preston's most well-known Chaplain, the Rev. John Clay, reported in 1826 for example that 'newly-roused feelings of religion frequently evince themselves among the prisoners.'⁵⁶⁵

From its opening in 1791 until its closure in the mid nineteenth century, the internal regime of Salford New Bailey, Lancashire centred in a similar fashion around the provision of religious education. As late as 1846, the resident Chaplain there reported that 'the religious services of the chapel and the visitations [to prisoners] form part of my daily duty.'⁵⁶⁶ The abundant books and pamphlets circulated by the resident Chaplains demonstrates the extent of the intellectual - and indeed financial - investment in the religious reformation of criminals imprisoned in Salford New Bailey.⁵⁶⁷ Religious instruction was equally as significant in Gloucestershire's reformed prisons. This was to be expected given the Chairman of the grand jury's declaration in 1783 that the county's prisons

⁵⁶³ Rules, Orders and Regulations to be Observed and Enforced for the Government of the House of Correction at Preston, Lancashire County Record Office, QGV/2/2, (1793), p. xxi.

⁵⁶⁴ See the chaplain's report from March 1825 reproduced in W. L. Clay, *The Prison Chaplain*, (London, 1861), pp. 123 - 125. Unlike other employees, chaplains' jobs did not depend upon meeting certain targets and so, unlike governors' journals which tend to present a rose-tinted image of prison life, their reports can be relied upon as a source of dependable information about the day-to-day functioning of reformed prisons.

⁵⁶⁵ Report for March 1826 reproduced in Clay, *The Prison Chaplain*, p. 133.

⁵⁶⁶ *Report of C. F. Bagshawe, Chaplain at Salford New Bailey Salford*, (1846), p. 4.

⁵⁶⁷ Among the materials distributed were Gibson's *Conversations on ye Liturgy and Talbot's Great Importance of a Religious Life and Serious Exhortation*. Cited in L. Andrew, 'A Chaplain's Journal, 1825', *The Transactions of the Lancashire and Cheshire Antiquarian Society*, XLV, (1930), p. 25.

ought to be reformed in such a way as to 'force reflection of [the criminals'] mind.'⁵⁶⁸ 'Attention to religious duties,' Paul urged, 'can by no means be an indifferent part of regulation – the terrors of a future world are essential to the Reformation of men who have learnt to brave the powers of this.'⁵⁶⁹ Two years after this statement was made an Act sanctioning the reform of the county's penal institutions stated that all of the new prisons would be designed to 'promote the true purposes of punishment' including, among other things, the employment of resident chaplains and the construction of a number of solitary cells to encourage spiritual reflection.⁵⁷⁰

Religious instruction thus played a central part in the model of constructive imprisonment enforced in late eighteenth-century prisons. The felons and petty criminals sentenced to periods of imprisonment in England's new institutions could expect to attend daily religious service and take part in prayer sessions in purpose-built prison chapels, to receive personal visits from the resident Chaplain, to be given didactic moral and religious material to read and, if necessary, be imprisoned in a solitary cell designed to encourage their spiritual reflection and repentance.

While little evidence exists to afford an insight into the day-to-day functioning of early modern houses of correction what is clear is that the institutions were in the very least *designed* to rehabilitate their inmates spiritually. As Robert von Hippel's study of houses of correction across Europe found, the purpose of early modern institutions was to educate inmates in a moral as well as physical sense.⁵⁷¹ Religious instruction was,

⁵⁶⁸ Paul, *State of the Proceedings on the Subject of a Reform of the Prisons*, (1783), p. 12.

⁵⁶⁹ *Ibid.*, p. 12.

⁵⁷⁰ Act for building a new gaol, a penitentiary house and certain new houses of correction for the county of Gloucester, Gloucestershire County Record Office, Q/AG 6/2, (1785), p. 16.

⁵⁷¹ R. Hippel, *Die Entstehung der Modernen Freiheitsstrafe und des Erziehungs-Strafvollzugs*, (1932) cited in Spirenborg, *The Prison Experience*, p. 26.

he found, understood by contemporaries to be key to the re-socialisation process which early-modern houses of correction were designed to achieve.⁵⁷² Thus, according to Gustav Radbruch, English houses of correction 'had their roots set in a Protestant ethic.'⁵⁷³ Since petty crime and sin were undifferentiated in the sixteenth century, so inmates in houses of correction were viewed as ungodly and in need of spiritual guidance. Thus Spierenburg found that during the sixteenth and seventeenth centuries in houses of correction across Europe religious tracts, most commonly 'the proverbs of Solomon and the books of Ecclesiastes', were read to aloud and formed a key part of inmates' re-socialisation process.⁵⁷⁴

Thanks to the sustained association made between crime and sin, late eighteenth-century prison regimes continued to enforce a system of religious education among their inmates which was first practiced (or at the very least designed to be practiced) in the early-modern house of correction. Since criminal behaviour was believed to result not just from spiritual ignorance but also, and related to this, from idle tendencies, religious instruction was just one element of the system of punishment practiced in late eighteenth-century prisons. Equally important to a prisoners' reformation, it was believed, was enforced hard labour.

As discussed in chapter three, the belief that criminal behaviour was born of a lack of industriousness was an old one which had helped to widen the appeal of the house of correction during the sixteenth century when urbanisation made 'idle and disorderly' behaviour appear endemic. The association made between idle and criminal behaviour was an enduring one. Thus, since 'those vicious dispensations which idleness produced and nurtured can only be subdued, corrected and reformed by the

⁵⁷² R. Hippel, *Die Entstehung der Modernen Freiheitsstrafe und des Erziehungs-Strafvollzugs*, (1932) cited in Spierenburg, *The Prison Experience*, p. 26.

⁵⁷³ G. Radbruch, *Elegantiae Juris Criminalis* (1950), cited in Spierenburg, *The Prison Experience* p. 27.

⁵⁷⁴ *Ibid.*, p. 177.

introduction and establishment of habits of industry,' late eighteenth-century reformed prisons enforced regimes of hard labour analogous to those first practiced in the early modern house of correction.⁵⁷⁵

Once reserved for the punishment of the disorderly poor in houses of correction, hard labour was enforced on an unprecedented scale in reformed prisons; 'In the construction of every prison,' officials in Gloucestershire stated, 'attention must be paid to the means of industry.'⁵⁷⁶ A common book of rules and regulations for all of the reformed prisons in Lancashire confirms that the enforcement of labour was a central feature of the new prisons' design; 'Due provision shall be made in every prison,' the rulebook stated, 'for the enforcement of hard labour for all prisoners.'⁵⁷⁷

As was the case in the sixteenth century, justifications offered for the enforcement of hard labour in England's reformed prisons varied from reductionist arguments regarding covering the costs of imprisonment, to more constructive arguments showing a concern to provide prisoners with the skills and funding necessary to live an improved life on their release. Thus while officials in Lancashire stressed the need to put *all* prisoners (including those awaiting trial) to work in order to 'support their subsistence,'⁵⁷⁸ members of the prison committee in Gloucestershire echoed arguments made by their equivalents in Middlesex that the

⁵⁷⁵ *Rules, Orders and Regulations for the Management of the New House of Correction for the County of Middlesex*, British Library, 103.I.27, (1799), p. 2.

⁵⁷⁶ Paul, *State of the Proceedings on the Subject of a Reform of the Prisons*, (1783), p. 34.

⁵⁷⁷ *Rules and Regulations for the Government of the Common Gaol of Lancaster and the Houses of Correction at Preston, Kirkdale and Salford*, Lancashire County Record Office, QGV/1/4, (1826), p. 2.

⁵⁷⁸ *Rules and Regulations for the Government of the Common Gaol of Lancaster and the Houses of Correction at Preston, Kirkdale and Salford*, Lancashire County Record Office, QGV/1/4, (1826), p. 38.

county's prisoners would be put to hard labour because 'living idly makes prisoners debauched.'⁵⁷⁹

Overall, evidence suggests that, as was the case in the sixteenth century, late eighteenth-century officials tended to draw attention to the multiple benefits of enforced hard labour, rather than any single benefit in particular. At the same time as making the argument that hard labour was essential since debauchery was born of idle living, Gloucestershire officials, for example, emphasised also the financial benefits of institutionalised work, stressing that the model of reformed imprisonment on offer would mean that prisoners could 'work for their subsistence.'⁵⁸⁰ Officials in Lancashire, meanwhile, drew attention to the punitive benefits of hard labour, commenting in January 1794 that all prisoners held in Lancaster Castle 'ought to work a wheel as is done at Oxford etc,' on the grounds that such labour was 'difficult but practicable.'⁵⁸¹ In Middlesex justifications generally tended to be more vague, loosely describing the multiple benefits of hard labour by commenting that it was 'a leading step towards their [prisoners'] amendment.'⁵⁸²

Whatever the specific justifications offered for it, hard labour was arguably the most important feature of late eighteenth-century reformed imprisonment. The rules and regulations enforced in the new prisons built in Preston and Salford demonstrate the extent of the role that it played; 'Every person committed to this prison,' the regulations stated, 'is to be kept at hard labour every day except Sundays, Christmas day and Good Friday for so many hours as the different seasons of the year will allow,

⁵⁷⁹ Act for building a new gaol, a penitentiary house and certain new houses of correction for the county of Gloucester, Gloucestershire County record Office, Q/AG 6/2, (1785), p. 25.

⁵⁸⁰ Paul, *Second Address on the Subject of a Reform of Prisons*, (1784), p. 72.

⁵⁸¹ Lancaster Castle Committee Minutes, Lancashire County Record Office, QAL/1, (January, 1794), p. 3.

⁵⁸² *Rules, Orders and Regulations for the Management of the New House of Correction for the County of Middlesex*, British Library, C.T.451.(8.), (1794), p. 16.

not exceeding twelve hours.⁵⁸³ The first set of regulations produced for the reformed prison in Clerkenwell, Middlesex demonstrated a similarly steadfast commitment to the enforcement of hard labour;

It being unquestionably true that the proper employment of prisoners is one leading step towards their reformation, especially when united in due degrees of solitary confinement, the governor is to provide means of setting to work all persons sentenced to hard labour or not.⁵⁸⁴

Regardless of whether it was born of economic, punitive or moral concern, officials in all three counties demonstrated a strong belief in the importance of making their inmates more 'industrious' members of society. Echoing arguments first made in the sixteenth century, magistrates devoted much energy to making sure that hard labour was enforced in order to, in the words of the Middlesex bench, 'prevent the evils attendant upon idleness amongst prisoners.'⁵⁸⁵ 'In the construction of every prison,' Paul declared, 'attention must be paid to the means of industry, for habits of industry once lost are not easily regained.'⁵⁸⁶ Thus legislation passed permitting the construction of a series of new prisons in Gloucestershire stipulated that all inmates were to be set to hard labour on the grounds that 'living idly and unemployed [the prisoners] become debauched, and come forth instructed in the practice of thievery and lewdness.'⁵⁸⁷ A document recording justifications for the release of prisoners from

⁵⁸³ Rules, Orders and Regulations to be Observed and Enforced for the Government of the House of Correction at Preston, Lancashire County Record Office, QGV/2/2, (1793), p. i.

⁵⁸⁴ *Rules, Orders and Regulations for the Management of the New House of Correction for the County of Middlesex*, British Library, C.T.451.(8.), (1794), p. 16.

⁵⁸⁵ *Rules and Orders for the Management and Internal regulation of the House of Correction for the County of Middlesex*, British Library, B739, (1803), p. 18.

⁵⁸⁶ Paul, *State of the Proceedings on the Subject of a Reform of the Prisons*, (1783), p. 34.

⁵⁸⁷ Act for building a new gaol, a penitentiary house and certain new houses of correction for the county of Gloucester, Gloucestershire County Record Office, Q/AG 6/2, (1785), p. 25.

Lancaster Castle in Lancashire demonstrates the degree of importance attached to inmates developing habits of industry in the late eighteenth century. Without exception, all prisoners released from the prison between 1790 and 1799 were freed on the grounds that they were 'industrious', 'very industrious' or, in some cases, 'orderly and industrious.'⁵⁸⁸

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The model of reformatory imprisonment adopted in late eighteenth-century England was undeniably part of a long tradition of reformatory imprisonment first practiced in the early-modern house of correction. Both institutions were designed to reform their inmates via religious rehabilitation and, more prominently, hard labour which suggests that there existed important continuities over time in the understanding of the cause of certain types of crime and thus how best to treat it.

It is at the same time crucial to acknowledge, however, that there existed vital differences between the reformed prison and the house of correction. In introducing mass, long-term imprisonment on a previously unforeseen scale, the Penitentiary Act was undeniably transformative in the impact that it had on penal practice in England. More than this, while the origins of the internal regime enforced in reformed prisons undoubtedly lay in earlier penal experiments, it was nonetheless in many ways groundbreaking in character. Thus, the emphasis placed on solitary confinement in the late eighteenth century reflected not only an unforeseen level of concern about the spread of physical disease but also an unprecedented level of concern about the importance of criminals 'achieving a right sense of their condition.'⁵⁸⁹ The belief that criminals should be kept in 'total seclusion from society'⁵⁹⁰ in order to reflect upon

⁵⁸⁸ A List of All the Crown Prisoners Employed in His Majesty's Gaol the Castle of Lancaster, Lancashire County Record Office, QSP 2419/71, (1790 – 1799).

⁵⁸⁹ Hanway, *Solitude in Imprisonment*, (1776), p. 4.

⁵⁹⁰ Paul, *State on the Proceedings on the Subject of a Reform of Prisons*, (1783), p. 12.

their crimes and develop 'a real change in the heart'⁵⁹¹ was particular to the late eighteenth century, hence the novel use of the term 'penitentiary' - i.e. an institution designed to induce penitence - at that time. Indeed, the very fact that the use of the term 'penitentiary' in the naming of the 1779 Penitentiary Act was unprecedented in the late eighteenth century goes a long way in itself to suggest late eighteenth-century penal reform represented at least on some level an important break with what had before.

As suggested by the physical differences between the two institutions in figures 1 & 2 and 3 & 4, reformed prisons were not simple reproductions of the early -modern house of correction. Important similarities did exist between the two institutions' internal regimes which were indicative of certain continuities in the understanding of the cause of crime and thus its solution. Notwithstanding such long-term trends, however, it is impossible to deny that the reformed prison represented an important break with the past, both in terms of the scale of its operation *and* the substance of the system of punishment that it enforced. In short, late eighteenth-century reformed prisons were not houses of correction in the well-established and widely-recognised sense of the term. It is thus significant that when discussing reform at local level contemporaries opted overwhelmingly to refer to new institutions as 'houses of correction'.

While the use of the term 'house of correction' by the late eighteenth-century penal reformers no doubt reflected the fact that contemporaries were alive to the relationship between it and the reformed prison, what is interesting about its sustained circulation is that there was an alternative descriptor on offer at the time which contemporaries opted overwhelmingly *not* to use. Thus the term 'penitentiary' with its associations with innovation and originality was rejected in favour of a descriptor which was more backward-looking and thus conservative in

⁵⁹¹ Hanway, *Solitude in Imprisonment*, (1776), p. 44.

nature. Precisely why this was the case becomes clear when one considers the cultural context in which local officials communicated their decision to reform local prisons to their wider audience.

4) The penitentiary: language and perception

Joanna Innes' research into the use of the term 'reform' in English history demonstrated that late eighteenth-century society did not embrace the notion of innovation.⁵⁹² Sitting somewhat uneasily with the established assumption that the period was one of transformative and unprecedented change, Innes found that during the last two decades of the eighteenth century the notion of innovation alluded to negative rather than positive change. That there existed a certain degree of what one might term 'cultural opposition' to the notion of innovation is testified by the frustrated comments of Samuel Romilly who, in 1790, lamented 'that horror at innovation, which seems so generally to prevail among us.'⁵⁹³ That his hopes were not realised is confirmed by his comment in 1808 that there continued to exist 'a stupid dread of innovation.'⁵⁹⁴

Innes thus found that during the late eighteenth century 'reform' was associated not with innovation but moreover (although not exclusively) with more ameliorative notions such as 'renovation', 'regeneration', 'renaissance' and 'revival'.⁵⁹⁵ Large degrees of cultural opposition to innovation meant that change was only possible, or was at the very least more palatable, when represented as improvement - as an endeavour to exploit enlightened advances in order to perfect what already existed. Indeed, far from a means by which to introduce revolutionary new ways of managing society, in the late eighteenth century reform was perceived as means by which to *counter* revolution insofar as it denoted a return to the nation's 'first principles.'⁵⁹⁶ Given the cultural context in which late

⁵⁹² Innes, ' "Reform" in English Public Life', p. 73.

⁵⁹³ *Ibid.*, p. 73 from *Memoirs of the Life of Sir Samuel Romilly*, 3 Vols., (London, 1840).

⁵⁹⁴ *Ibid.*, p. 73.

⁵⁹⁵ *Ibid.*, p. 72.

⁵⁹⁶ Innes & Burns, 'Introduction', *Rethinking the Age of Reform*, p. 18.

eighteenth-century penal reform occurred, it is perhaps unsurprising that reformers opted *not* to stress the innovative characteristics of reformed imprisonment but rather to represent the model of punishment offered by the Penitentiary Act as an improved version of the existing early-modern house of correction.

The theme of improvement certainly dominated eighteenth-century penal reform material. A significant contributor to the narrative of improvement was Henry Fielding, Justice of the Peace in London and one of the eighteenth century's most vociferous penal reformers. Fielding was perhaps at his most passionate in his 1751 publication *An Enquiry into the Causes of the Late Increase in Robbers* in which 'the provision for the poor and the punishment of felons' was discussed at a time when there existed widespread concern about apparently endemic levels of crime in the capital.⁵⁹⁷ Vice, Fielding concluded, was more prevalent than at any point in the nation's history: 'Where then,' he asked, 'is the remedy?'⁵⁹⁸ One solution, he argued, lay in the improvement of the country's existing penal institutions. Since crime resulted from idleness and the 'great cure for idleness was labour,' so Fielding urged magistrates 'to reform the present conduct of the Bridewells' so that their internal regimes were more rigorously enforced and petty criminals and felons alike could thus be transformed into 'more useful members of society.'⁵⁹⁹

Jacob Ilive's 1757 publication on the Clerkenwell house of correction in Middlesex deemed penal reform to constitute improvement rather than innovation in much the same way.⁶⁰⁰ The declared aim of Ilive's publication was, first, to demonstrate 'the present state of this gaol, the debauchery of the prisoners and the miserable condition they are in,' before proceeding to outline 'proposals in what manner these evils may be

⁵⁹⁷ Fielding, *Enquiry into the Causes of the Late Increase in Robbers*, (1751), front cover.

⁵⁹⁸ *Ibid.*, p. 50.

⁵⁹⁹ *Ibid.*, p. 50.

⁶⁰⁰ Ilive, *Reasons Offered for the Reformation of the House of Correction in Clerkenwell*, (1751).

prevented in the future.⁶⁰¹ Like Fielding, Ilive believed that the key to making the English penal system more effective lay not in generating new ideas but rather in perfecting existing modes of punishment; 'It is proposed,' Ilive stated, 'that this Gaol shall hereafter be governed in much the same Manner, and as near possible, by the same Means, as is practised by the Citizens of London, in their Government of the House of Correction in *Bridewell* project.'⁶⁰² By 'reforming, re-establishing and reconstituting' Clerkenwell house of correction the institutions could, Ilive urged, could become a penal solution of 'great utility.'⁶⁰³

Fielding and Ilive's shared belief that the house of correction could, via a series of organisational and structural changes, be made a valuable mode of punishment was shared by many of their late eighteenth-century equivalents. In 1776 reformer Jonas Hanway, for example, promoted the model of reformed imprisonment eventually passed by the Penitentiary Act; 'The proposition being made,' he said, 'is far from being new.'⁶⁰⁴ Like his predecessors, Hanway understood penal reform in terms of enhancement rather than novelty – a task of improving what already existed rather than introducing something new; 'Let a greater number of prisons be forthwith built,' he urged, 'larger, stronger and better calculated for the purpose of secure confinement, with a more rational and humane correction.'⁶⁰⁵ Ten years later a pamphlet addressed to magistrate William Mainwaring discussed proposals to build a new prison in Middlesex. Passing the reforms outlined in the Penitentiary Act would, the author explained, 'render the prison we are speaking of a *House of Correction* in the best and fullest sense of that word.'⁶⁰⁶ 'I am sure you are already thoroughly convinced,' he concluded, 'viz. the propriety and the necessity

⁶⁰¹ Ilive, *Reasons Offered for the Reformation of the House of Correction in Clerkenwell*, front cover.

⁶⁰² *Ibid.*, p. 5.

⁶⁰³ *Ibid.*, pp. 52 & 56.

⁶⁰⁴ Hanway, *Solitude in Imprisonment*, (1776), p. 74.

⁶⁰⁵ *Ibid.*, p. 13.

⁶⁰⁶ V. M., *Thoughts on the Construction and Management of Prisons*, (1786), p. 20.

of the measures already pursued, and now pursuing, in the establishment of a well-regulated House of Correction for this county.⁶⁰⁷

As already acknowledged, the tendency to characterise reform as improvement no doubt reflected in part the fact that there existed 'real' links between the reformed prison and the house of correction. Even disregarding the similarities between their internal regimes, as penal institutions which enforced imprisonment as a punishment in itself it is only sensible to assume that contemporaries would have drawn parallels between the house of correction and reformed prison. What is nonetheless interesting, however, is the way in which contemporaries who spoke about reform opted so overwhelmingly *not* to use the descriptor 'penitentiary'. Indeed, it is telling that on the rare occasions that the term was used, reformers were anxious to reassure their audiences that the change of which they spoke was not groundbreaking in nature. Thus, on revealing the programme of reform that would be enacted in Gloucestershire to a meeting of local officials, Paul was quick to assure his audience that;

The said 'Penitentiary House' shall be considered as a House of Correction for the county of Gloucestershire, and be subject to the various statutes and provisions made and now in force for the managing, regulating and repairing of houses of correction.⁶⁰⁸

Even in Gloucestershire - arguably the most pro-actively reforming county in England when it came to penal policy - the use of the term 'penitentiary' was, then, problematic. Indeed, on closer inspection of his reform material

⁶⁰⁷ V. M., *Thoughts on the Construction and Management of Prisons*, (1786), p. 29.

⁶⁰⁸ Act for building a new gaol, a penitentiary house and certain new houses of correction for the county of Gloucester, Gloucestershire County record Office, Q/AG 6/2, (1785), p. 31.

Paul's preference for established descriptors is perceptible. In 1783, for example, he urged that it was 'necessary immediately to pass the Act of 22. Geo. III' in order 'to rebuild *Bridewells* on a principle answerable to the proposals of the former act (14. Geo. III).'⁶⁰⁹

The same was true in Middlesex, where the reformed prison built in Clerkenwell along the lines offered by the Penitentiary Act was described at a public meeting by those who authorized its construction as little more than an extended house of correction. Mainwaring thus declared that the prison committee has decided to pass the penal reforms offered by the Penitentiary Act on the grounds that the existing house of correction was 'much too small for the numbers committed to it.'⁶¹⁰ As a result, he said, an adjoining plot of land was purchased and the old house of correction extended and altered to meet the Act's recommendations.⁶¹¹ Magistrates in Salford, Lancashire described their new institution in precisely the same way. Thus, a report published in 1783 which was available for public consumption concluded that;

From the great increase of the inhabitants of this trading county, from the number of *felons* who are confined here for trial at the Quarter Sessions...and from the alteration in the laws which have substituted the punishment of *long* imprisonments, instead of transportation, this prison is crowded beyond what is possible to be conceived...It ought therefore to be extended and considered not merely a *Bridewell* or house of correction but as a *County Gaol*.⁶¹²

⁶⁰⁹ Paul, *State of the Proceedings on the Subject of a Reform of the Prisons*, (1783), p. 70.

⁶¹⁰ Cited in C. W. Chalklin, 'The Reconstruction of London's Prisons, 1770 – 1779', *London Journal* 9:1 (1983), p. 25.

⁶¹¹ *Ibid.*, p. 25.

⁶¹² *The Report of Samuel Clowes the Younger and Thomas Butterworth Bayley*, (1783), p. 2.

Five years later Salford's officials made public the details of capital that they had borrowed from local wealthy residents in order to help fund penal reform. The money collected would help, they said, 'to pay towards the defraying the expenses of building the new House of Correction for the Hundred of Salford.'⁶¹³

When describing to the wider public the new institutions that would be built in their respective counties there was, therefore, an overwhelming tendency to use the term 'house of correction' or its equivalent 'Bridewell' at the expense of the novel label, 'penitentiary'. Given the wider cultural context in which reform was discussed it is clear that this represented a strategic choice on the part of reformers who were alive to the fact that at the time change would be more palatable and thus less problematic if it was deemed to constitute improvement rather than innovation. Of course, as already acknowledged, there were many forces at work during what was a complex process of agitation and reform, and the preference for the descriptor 'house of correction' resulted from more than just the need to hoodwink a conservative public into thinking that change was less revolutionary than in reality it was - a point testified by reformed prisons' internal documents.

On its opening in 1791 the rules and regulations for the reformed prison built in Salford, for example, stipulated that said regulations should be fully conformed to 'by all persons committed to this house of correction.'⁶¹⁴ Thirty five years later magistrates produced the annually revised set of regulations for the prison under the title, 'Rules for the Better Government of the House of Correction in Salford.'⁶¹⁵ Seven years later in 1811, the last available set of rules for the prison were published

⁶¹³ On Salford Rates to Defray the Cost of Salford New Bayley, Lancashire County Record Office, CTM/1, (1788), p. 1. See also Order of Confirmation of Mortgage Agreements, Lancashire County Record Office, QSP/2238/15, (1788).

⁶¹⁴ *Rules, orders and regulations for the government Salford New Bailey*, (1791), p. 3.

⁶¹⁵ *Rules for the Better Government of the House of Correction in Salford*, Lancashire County Record Office, QGV/4/1, (1826), front cover.

entitled: 'The Rules and Regulations for the Government of the House of Correction at Salford.'⁶¹⁶

Further internal reports show the same tendency. Thus, the various resident surgeons at Salford produced their *Reports on the Health of Prisoners in the House of Correction in Salford* throughout the period from 1778 to 1830 without deeming it necessary to alter the title once reforms had taken place in the early 1780s.⁶¹⁷ Chaplains' reports produced from the same prison as late as 1842 continued to refer to it as 'Salford house of correction'.⁶¹⁸ The same was the case elsewhere. Thus just as the reformed prison in Preston was referred to throughout the period from 1793 to 1856 as 'Preston House of Correction'⁶¹⁹ so too was the reformed prison in Clerkenwell, Middlesex referred to as 'Clerkenwell House of Correction' until its demolition in the mid nineteenth century.⁶²⁰

What these documents and others like it produced in Gloucestershire and Middlesex demonstrate is that the practice of labelling reformed prisons 'houses of correction' was not merely a short term tactic designed only to make change less problematic for those imposing it on their local communities. The use of the descriptor 'house of correction' in private, post-reform reports is testimony to the fact that the labelling of reformed prisons represented more than mere strategy - i.e. that associations were made between the two institutions which, whether more 'real' or

⁶¹⁶ Cited in the *Reports of the Several Committees of Commissioners of the Manchester Police*, (1833), p.12.

⁶¹⁷ See Surgeons' reports from Salford House of Correction, Lancashire County Record Office, QSP.

⁶¹⁸ See, for example, *Chaplain's Report for the New Bailey House of Correction*, (1842).

⁶¹⁹ See, for example, *Rules, Orders and Regulations to be Observed and Enforced for the Government of the House of Correction at Preston*, Lancashire County Record Office, QGV/2/2, (1793), and *Chaplains' Reports for the House of Correction at Preston (1825 - 1856)* in Clay, *The Prison Chaplain*.

⁶²⁰ See, for example, *Rules, Orders and Regulations for the Management of the New House of Correction for the County of Middlesex*, British Library, C.T.451.(8.), (1795), *Ibid.* British Library, 103.I.27, (1799), *Rules and Orders and Regulations for the Management and Internal Regulation for the House of Correction for the County of Middlesex*, London Metropolitan Archives, B739, (1803), and J. Burk, *J. Burk's Pamphlet About Conditions at the House of Correction in Clerkenwell*, (1799).

perceived in character, reflected the indisputable fact that reformed prisons and early-modern houses of correction were part of the same penal tradition.

This does not, of course, take away from the fact that late eighteenth-century local level reformers spoke to their wider public in a consciously strategic manner. It is impossible to deny that there existed crucial differences between reformed prisons and houses of correction, and the decision to describe new institutions *not* as 'penitentiaries' but 'houses of correction' or 'Bridewells' thus represented a strategic choice on the part of reformers who were alive to the fact that change was more desirable in the late eighteenth century when represented not as innovation but as improvement and a return to first principles.

Chapter 7: Conclusion

1) Introduction

As discussed at the opening of the thesis, historians' unremitting interest in eighteenth-century punishment has stemmed from a fascination with an apparent revolution in penal theory and practice. Understood to have replaced an infamously 'Bloody' penal code with a network of recognisably modern prisons, late eighteenth-century prison reform has traditionally been deemed to represent a watershed in penal history – the dawn of something progressive and, as is so typical of understandings of changes that occurred in the late eighteenth-century, dramatic and unprecedented. Over the past twenty years or so historians have begun to complicate our understanding of late eighteenth-century penal reform by drawing attention, first, to the fact that dissatisfaction with the penal status quo existed prior to 1780 and secondly, to the fact that the changes brought about by late eighteenth-century penal reforms were less than revolutionary. Despite such developments, however, it is fair to say that the history of punishment has in recent years remained remarkably non-radical.

That is to say that, although thanks largely to Beattie's work on penal experimentation we now understand that penal reform was more evolutionary than has been appreciated, we have remained ignorant as to the precise details of what was new about late eighteenth century penal reform and more importantly, what was not. We have, in short, uncovered significant gaps in our knowledge but have failed to offer a convincing alternative narrative of late eighteenth-century penal reform. As a result, the 'Reform Perspective', which has distorted understandings of penal reform since the 1920s has, to some extent, been allowed retain its influence over the history of penal reform in England.⁶²¹ This thesis responds to this shortcoming. Building upon the progress made by Beattie, it offers an alternative, evolutionary narrative of penal reform

⁶²¹ See, for example, Fisher, 'The Birth of the Prison Retold', pp. 1235 – 1324 and McGowen, 'The Problem of Punishment', pp. 210 – 227.

which, in stressing the case for continuity over change, aims to help discredit the 'Reform Perspective' once and for all.

2) Findings

Building on Beattie's work, the thesis is backward-looking in the sense that it has as its focus the origins of late eighteenth-century penal reform. Taking into account historians' observations about pre-reform penal experimentation, precisely why, the thesis asked, did late eighteenth-century prison reform happen when it did? Why did late eighteenth-century English society invest both financially and ideologically in a mode of punishment which was renowned for its past failings?

In drawing attention to the crucial role played by a reform discourse which had its foundations in the sixteenth century, the thesis challenges not only established understandings of the shape of change but also, and consequently, established understandings of its substance. Supporting arguments already instigated by Beattie, Innes, Sharpe and McGowen, the findings demonstrate that the dichotomy drawn between modern and early modern punishments is a false one.⁶²² Evidence shows that arguments made in favour of imprisoning felons at hard labour were first made in the early sixteenth century. More than this, it has been demonstrated that the specific terminology used to communicate the benefits of widening the remit of institutionalised hard labour remained unchanged over the course of the sixteenth, seventeenth and eighteenth centuries. Thus the same medical and utilitarian languages remained at the heart of reform discourse throughout the period 1515 to 1800 which, notwithstanding variations in context and meaning over time, reflects important continuities in the understating of the cause of and thus solution to certain types of criminal behaviour.⁶²³

⁶²² Beattie, *Crime and the Courts*, Innes, 'Prisons for the Poor', Sharpe, 'Civility, Civilizing Processes, and the End of Public Punishment in England', and McGowen, 'The Problem of Punishment'.

⁶²³ The same multiple benefits which arguably continue to afford imprisonment its central role in the modern penal system.

What this research has demonstrated most powerfully is the crucial role played by language in the reform process. Evidence has shown that language played a critical part, first, in the sense in which it afforded reformatory imprisonment a renewed appeal in the late eighteenth century. That is to say that while the cause of prison reform was given a new impetus by socio-economic conditions and the contemporary penal crisis in the 1770s, 80s and 90s, the nature of the solution chosen to these problems was dictated by the renewed resonance of established reform discourse in the 'enlightened' cultural context of the late eighteenth century. It was not just changes in the cultural context, however, which made reform happen. While the renewed resonance of medical and utilitarian language played a decisive part in affording reformatory imprisonment new potential at the end of the eighteenth century, this represented just one stage of the reform process.

Evidence has shown that language played a further crucial part at ground level where reformers spoke about reform in such a way as to make it appear an effective solution to community problems. What this demonstrates is that penal reformers were alive to the contexts in which they operated, and thus adapted what they said about reform according to the environment in which they promoted it. In short, late eighteenth-century penal reformers selected their language strategically in order to make reform attractive to the audience with whom they engaged. This not only tells us something about the power of historical actors to effect change in the past, but also about the interventionist power of language and representation.

A focus on language has also raised further interesting questions about the apparently contradictory nature of late eighteenth-century culture. Thus, while 'enlightened' and progressive, late eighteenth-century England was apparently nonetheless backward-looking. Supporting observations made by Innes, the linguistic strategies used by late eighteenth-century penal reformers has demonstrated a contemporary rejection of the notion of innovation and a corresponding preoccupation

with the notion of improvement. Thus, in order for reform to happen (or at least for it to be less problematic than it might have been) reformed prisons were fashioned not as ground-breaking institutions for a new age but as enlightened, perfected manifestations of existing penal institutions.

As discussed in chapter six, it is important to disentangle linguistic strategy from mere description. That is to say that late eighteenth-century prison reform was promoted as improvement not just because of the existence of a cultural opposition to innovation but also because to some extent that is what it represented in real terms. Thus, evidence has shown that in design if not in practice, the reformed prison reproduced certain core elements of an established method of punishment first practiced in the early-modern house of correction. In short, the prisons built in the late eighteenth century were not wholly groundbreaking, but neither were they the straightforward reproductions of what had gone before them, and it is therefore significant that reformers opted to use language which made associations with the past rather than descriptors which emphasised the innovative elements of the reforms on offer. In this way the study makes interesting observations not just about the workings of language in the reform process but also about the relationship between so-called 'modern' and 'early modern' cultures which were perhaps less dissimilar than historians tend to acknowledge.

More generally speaking, the thesis helps to contextualise historians' observations regarding penal pluralism in the pre-reform era, locating experiments with institutionalised hard labour in a more long-term context than has been offered before. The study, in effect, adds 'meat' to Beattie's 'bones' in the sense that it analyses with more precision the origins of late eighteenth-century prison reform and makes some observations as to the extent to which is offered something new and the extent to which it built on an established penal tradition. The 'birth' of the recognisably modern prison should be understood, the thesis suggests, as the culmination of long-term trends in penal thought - trends which first

emerged in the sixteenth century and which resulted in experimentation with the imprisonment of felons in 1576, 1631, 1706, 1776 and 1779.

3) Wider implications

The attention that the thesis draws to continuity over change will, it is hoped, help to further discredit misleading understandings of the shape of the history of penal reform. By making more explicit the fact that the recognisably 'modern' prison was born of long-term developments, the study helps to reinforce the argument that the dichotomy drawn between the modern and early modern worlds of punishment is a false one. In so doing the thesis aims to help sustain the trend already underway to abandon the 'Reform Perspective' and study late eighteenth-century prison reform *not* for the insight that it provides into the beginnings of the 'modern', 'progressive' world but rather for what it can tell us about the past - namely in this case about the relationship between early modern and modern ideas and discourses.

The thesis demonstrates that, in terms of penal policy, ideas and discourse, the sixteenth-century state was active, experimental and influential. Supporting previous observations regarding the reality behind the supposedly barbaric early-modern penal code, it demonstrates that early-modern society was more 'modern' in character than is commonly appreciated. Correspondingly, given the precise nature of the penal reforms it adopted, late eighteenth-century society was more 'early modern' and, therefore, less progressive in character than is generally appreciated. Late eighteenth-century government responded to a crisis in punishment not with a revolutionary penal alternative but with an established, arguably 'safe' solution first devised in the sixteenth century and discussed and experimented with by contemporaries over the preceding 250 years. In short, late eighteenth-century society was far less different from and far less hostile to its predecessors than progressive historical accounts acknowledge.

As well as helping to complicate our understandings of the shape and substance of change over time, the thesis has also drawn attention to the fact that reform in English history has been a pragmatic as much, indeed if not more, than it was an ideological exercise. The study has thus shown that the construction of reformed prisons depended ultimately *not* upon reformers' ability to communicate the ideological benefits of reform, but rather upon their ability to stress its non-revolutionary (and thus achievable) character as well as its pragmatic benefits.

Demonstrating the crucial influence that language had on making reform happen in the late eighteenth century will, it is hoped, encourage further exploration of the relationship between change, language and culture in the past. Furthermore, given what it has shown us about the role played by ground-level concerns in the implementation of Parliamentary policy the study will, it is hoped, encourage an appreciation of the history of crime and punishment as a means of understanding how eighteenth-century society was governed; i.e. as a means of accessing exactly what constituted the machinery of government, and of understanding exactly what limitations and preoccupations existed to limit the free-reigning abuse of power. In short, it is hoped that the thesis will contribute not only to our understanding of the history of punishment, reform and the workings of language but also to a body of historiography which helps correct portrayals of the eighteenth century as an essentially oligarchic period of history.⁶²⁴

4) Further research

Given the findings of this thesis, attention might be dedicated in the future to the issue of penal reform in the sixteenth century. Precisely where, one

⁶²⁴ Portrayals of eighteenth-century England as a place where the public were disempowered and under increasing governmental control continue to be produced. See, for example, M. Fissell, *Patients, Power and the Poor in Eighteenth-Century Bristol*, (Cambridge, 1991). Important contributions to the historiography of wider political activity include P. Langford, *Public Life and the Propertied Englishman*, (Oxford, 1991), pp. 139 – 206, Davison (eds.), *Stilling the Grumbling Hive*, pp. xi-liv, Blanning *The Culture of Power and the Power of Culture*, part I and Clark in *British Clubs and Societies*, introduction.

might ask, do the origins of penal reform discourse lie? In light of the fact that arguments urging the institutionalisation of all but the most serious categories of criminals circulated as early as 1515, one might ask whether the early modern house of correction was, in fact, less ambitious and more conciliatory in nature than we currently appreciate. More attention might also be paid to the precise nature of the relationship between the house of correction and reformed prison, for example to the particular types of religious material which circulated in the two institutions and the nature of the hard labour enforced in each, in order to understand with more precision the workings of continuity and change over time and thus the precise nature of the role played by ameliorative reform language at the end of the eighteenth century.

Attention might also be dedicated to considering more county case studies, not just in those places where reform happened but also where it did not. Considering in more detail those instances where penal reformers failed in their efforts to promote the reformed prison would provide a more in-depth insight into the character and workings of reform discourse. Thus study would also benefit a consideration of other sources which discussed penal reform, most notably newspapers which (particularly if divided into national and local subcategories) would provide further insight into the reform arguments and languages which circulated in England in the eighteenth century.

5) Concluding thoughts

In approaching the history of punishment as a history of language, this study has demonstrated that we have perhaps failed to understand the precise shape of changes in penal practice over time and also, and related to this, its precise substance. In approaching the history of punishment as a history of the punishment of *all* crimes it has been possible to recognise that it was sixteenth rather than late eighteenth-century government which arguably proved most inventive, experimental and influential when it came to reforming the penal system. In acknowledging that late eighteenth-century penal reforms were an

ultimately local phenomenon, the study has revealed also the crucial importance of reform-minded officials at ground level, and the fact that it was *their* arguments and *their* strategic employment of language as opposed to the ideas of contemporary 'big thinkers' such as Beccaria and Howard which proved instrumental in making reform happen.

More fundamentally, the thesis supports arguments already underway that the implied notion of revolution that has so long engaged eighteenth-century penal historians' attention is a chimera propounded by accounts preoccupied in one way or another with the concept of progress. In deconstructing the sense of drama at the heart of penal history one hopes that interest in the subject matter will not decline but rather be re-directed – i.e. that the history of crime and punishment will be studied for the light that it can shed on continuity as well as change.

* * * * *

This thesis has demonstrated that, despite its failures, the appeal of mass imprisonment has been sustained over time thanks to the fact that, unlike any alternative, its multiple benefits appeal to a range of people with diverse, often conflicting notions of what constitutes an 'ideal' penal system. Locating the origins of ideas, arguments and discourse in the sixteenth century, the study has shown that the notion of mass institutionalisation is more embedded in English culture than we have hereto realised and, subsequently, that the model of punishment offered by the 'modern prison' was developed in a very different time to deal with the needs of a very different sort of society than exists today. More than this, the thesis has also demonstrated that the rhetoric of reform and improvement expressed by modern politicians is one that has resonated with falsely optimistic audiences for almost 500 years. Perhaps only once such false hopes are abandoned and we recognise the *necessity* of radically rethinking the penal system might a more effective means of dealing with the problem of crime emerge.

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