CHAPTER 4

Capital Punishment, Posthumous Punishment and Pardon

Abstract Capital punishment is understood in the context of the First World War. Those executed by their own country were shot at dawn under the authority of the British Army Act 1881.
Chapter 4 opens by attempting to understand 'the shot at dawn' policy as deterrent and posthumous punishment. It does so from a multiplicity of perspectives: a fictive account of what being shot at dawn might have been like; a more formal perspective of the facts and reasons behind the 'shot at dawn' policy; its inconvenient longer-term consequences; and examples of a variety of cases where individuals are tried, sentenced and executed. The corollary of posthumous punishment, both short and long term, is posthumous redemption through pardoning. This chapter proceeds by looking at arguments for and against posthumously pardoning those shot at dawn. While both cases have merit, there is a lack of conceptual clarity on how to decide which is the better. With this in mind, there is an attempt to put forward an argument for posthumous pardoning. To end, posthumous punishment and pardoning is understood in its historical long-view, in order to show how such concepts are subject to continuity and change over time.

Keywords Capital and posthumous punishment · Posthumous pardon and symbolic redemption

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The Shot at Dawn Policy During the First World War

Execution: The Fictive Reconstruction of Being Shot at Dawn

The condemned private spends his last night in a small room, alone with his thoughts before his execution at dawn. He might be writing painful letters to family and friends. He is also likely to be encouraged to drink heavily in order to be insensible during execution. The private is guarded by two military policemen (MPs or redcaps) and ministered by a chaplain.

The condemned man's commanding officer (CO) orders a company of men to witness the execution, wanting to set an example to other would-be deserters. Meanwhile a firing squad assembles, sick with nerves, in the dawn light. Some of the men know the condemned and have mixed feelings about his fate, some even carrying deep resentment at having to execute him. Their rifles have been pre-loaded—one with a blank—to take some of the individual responsibility away from shooting their fighting pal.

The condemned is led, blind drunk, to a post by two redcaps, his hands tied behind his back. The lieutenant waits at the side of the shooting party, with a medical officer (MO). The lieutenant (Lt.) gives the order to shoot the prisoner. Some deliberately shoot wide. Two of the men vomit on the spot. The MO checks the prisoner over and concludes that the private is mortally wounded but not dead. The young lieutenant, with shaky hands, administers the *coup de grâce*: a bullet to the head.

A military ambulance stands by to take the corpse off to be buried. That same evening the battalion colonel writes a letter to the private's parents informing them that their son has been shot at the front. He leaves the message deliberately ambiguous, sparing the man's family any difficult feelings about his execution (see also Johnson 2015).

Punishment and Execution in Historical Context

The corollary of being a 'good soldier', a disciplined effective fighter that followed orders, was a 'bad soldier' that threatened discipline and the army's effectiveness as a fighting force. Being a 'bad' soldier inevitably led to punishment of various forms: field punishments, and a court martial for offences punishable by death.

In practical terms, military law was enshrined in the Manual of Military Law (MML), which was 'a formidable weighty tome', providing commentary on how the law stood in 1914, originally articulated in the statutory Army Act 1881. Every possible offence and misdemeanour, large and small, and how it ought to be interpreted, was set out in the MML (Corns and Hughes-Wilson 2002, pp. 44–46). While the MML was not something that soldiers, or indeed most officers, carried around with them, soldiers were made aware which offences were punishable and for what reasons: such information being available to them in summary form, at the back *the soldier's small book*—which they received on enlistment (Corns and Hughes-Wilson 2002, p. 342).

There were four kinds of court martial in 1914: the Regimental Court Martial (RCM) ; the District Court Martial (DCM); the General Court Martial (GCM); and, the Field General Court Martial (FGCM) (Corns and Hughes-Wilson 2002, p. 89). Most of those sentenced to be executed and shot at dawn were tried and sentenced by the FGCM, as this was the swift arbiter of military justice in the field and designed to expedite serious crimes normally reserved in peace time for the DCM or GCM, which was presided over by a legally trained Judge Advocate (Corns and Hughes-Wilson 2002, pp. 93–94).

The FGCM would consist of three officers: normally a brigade commander (a major or above), a captain and a lieutenant. While there were usually no professional lawyers on an FGCM, the case was reviewed in a post-sentencing procedure by a Deputy Judge Advocate General (DJAG), who made sure there were no miscarriages of justice on technical legal terms (Putowski and Sykes 2014, p. 17). The accused could choose a 'prisoner's friend', usually an officer, to help defend him (Putowski and Sykes 2014, p. 14). This practice became more commonplace as the war went on. Even so, over 10% of those executed did not have representation, known euphemisically as a prisoner's friend (Putowski and Sykes 2014, p. 20).

The prisoner could object to the composition of the sitting panel if he thought an officer might prejudice his case. The officer who convened the court martial could not sit on it and the most junior officer was the one who voted first, ensuring that he would not defer to his superiors judgment (Holmes 2004).

After sentencing by Court Martial (CM) there was important post-sentencing procedure where the accused had to wait in order for officers higher up the chain of command to append comments on the sentence of the CM, before it was passed to the DJAG and Commander-in-Chief

(C-in-C). Their comments held weight and could influence the C-in-C and his final decision on whether or not a guilty verdict was to lead to the death sentence.

This system was introduced post-April 1915 and included the following categories of appended comments:

- The medical record of the soldier. A judgement and comment from an MO on the fitness of the soldier for action;
- Whether or not the accused was a good soldier. Was he a good fighting man with a good character? The soldier's CO contributed to this category;
- The state of regimental discipline. Was the verdict to be upheld because the man needed to be made an example of for the sake of discipline? Such comments were often reserved for senior officers of the rank of Brigadier General or above (see Putowski and Sykes 2014, p. 18).

An FGCM could only recommend a particular verdict. Over and above the judicial decision the execution of sentencing was still subject to post-sentencing procedure.

The first category was subject to errors of medical judgment, where those regarded as cowards may have actually been affected by shell-shock. However, those we now consider wrongly judged as cowards could well have been 'correctly' diagnosed as not suffering from shell-shock—given the historic limits of medical understanding at the time. We need to be careful not to re-write history by overriding technically correct medical decisions then, with new medical understanding about shell-shock and post-traumatic stress that we have today.

The second category was probably more problematic in respect to ensuring fairness. Judgments about what constituted a 'good' as opposed to a 'bad' fighting soldier were often based on hearsay evidence pased up the line of command and that often reflected a set of values held by a senior officer in the post-sentencing process about how the rank and file were expected to behave. Senior officers' 'damning remarks' could have had an influence on the C-in-C who was the final judge as to whether a soldier was to be executed. Comments from the 'château generals' were filtered through a very different cultural and

class experience and could be particularly harsh when cowardice was suspected (Putowski and Sykes 2014).

By far the most unfair criterion was the third, where some decisions to execute came down to whether or not those convicted should be made an example of for the sake of others. Those tried and convicted under military law were all subject to fortune and whether officers higher up the chain of command deemed it necessary to execute for the sake of example and regimental discipline. Regimental discipline seems to have been connected to how much pressure the Army was under, so at the opening of the Somme campaign (July 1916) Sir Douglas Haig's judgment to execute has in hindsight been criticised as 'defective' (Putowski and Sykes 2014, p. 12). In sum, the final decision to execute or commute might be considered fairly arbitrary in some cases—just deserts relying on what was militarily expedient on top of what was technically correct in terms of military justice served.

Despite such concerns about post-sentencing, 9 out of 10 sentenced of a capital crime had their sentence commuted by the C-in-C who had the final say in capital cases (Putowski and Sykes 2014; Corns and Hughes-Wilson 2002) .

Corns and Hughes-Wilson break down that statistic as follows:

> During 4 August 1914 to October 1918 there were approximately 238,000 courts martial resulting in 3080 death sentences. Of these only 346 were carried out, which break into the following categories of offences on active service:
> Mutiny 3
> Desertion 266
> Cowardice 18
> Disobedience of a lawful order 5
> Sleeping at post 2
> Striking a superior officer 6
> Casting away arms 2
> Quitting post 7
> Murder 37 . (Corns and Hughes-Wilson 2002, pp. 103–104)

Aftermath of the Shot at Dawn Policy—Some Critical Reflections

It is deeply questionable whether or not the army's short-term deterrent policy was successful.

Executing soldiers for a range of military offences was met with mixed reactions, largely depending on how the rank and file perceived the

fairness of justice done. On more than one occasion, soldiers who had served with those sentenced harboured anger and resentment against their commanders for making such decisions, especially where there was a spike of executions within a battalion for the sake of example.

The Australian army didn't have a capital punishment policy (Corns and Hughes-Wilson 2002, p. 391) and seemed by comparison to operate well without it. Another comparison is with the German army. The German army did have a court martial system and capital punishment. Unlike the British and some Commonwealth nations, it involved a much more rigorous court martial system, where legal professionals for defence and prosecution maintained very high standards of military justice in front of a legally trained judge (Barton 2016).

One of the most concerning aspects of British military justice during the First World War was that it did not employ legal professionals, given the fact that there were, potentially at least, plenty available (Corns and Hughes-Wilson 2002, p. 94). CMs were rarer in the German army, there being a policy of officers disciplining their men in the field as they saw fit (Barton 2016). Moreover, compared to the British army with 346 executed, the German army executed only 18 men (Barton 2016; Corns and Hughes-Wilson 2002).

Psychologically it is not at all clear that the deterrent effect of execution motivated soldiers. As Corns and Hughes-Wilson have argued, it is not fear of being shot by one's own side that motivates soldiers to fight, but a discipline that comes from working in a 'tightly knit group and fighting for each other in a life threatening crisis' (Corns and Hughes-Wilson 2002, p. 456). Finally, looking back, it seems deeply illogical for an army to pride itself on training its soldiers only to undermine this confidence by anticipating that they should be made an example of for ill-discipline during war.

Probably the saddest consequence of the policy flowed from the hardship and shame that this policy caused on the family left behind. The widows of those shot at dawn were often denied an army pension. Relatives of the executed were left stigmatised, as the stain of familial dishonour remained long after the *raison d'être* of deterrence for execution had expired.

The intention behind the policy was not to punish or dishonour the family of those executed. Commanding officers often went out of their way to avoid telling the next of kin the exact circumstances surrounding the death of a loved one. There were a few good reasons why this was done. The most pragmatic was that it was bad publicity for the army;

being censorious about the execution policy would have undermined the army's recruitment policy, which relied on Kitchener's volunteers once trained professionals—the British Expeditionary Force (BEF)—required significant reinforcement as the war progressed.

The deterrent motivation behind these military executions was short term. That is, the posthumous punishment of being dishonoured for being shot as a 'coward' or a 'deserter' was designed to instil order and discipline in the fighting troops.

The character of such retributive justice appears to have no long-term malicious intention. There is ample evidence to show that COs were often compassionate to families by sparing them the truth, that post-war governments were sympathetic, if secretive, about the details of those executed, and that the War Graves Commission made no distinction between those fallen in action and those shot at dawn.

The secretiveness around the shot at dawn policy, however, caused problems after the war. It fuelled parliamentary scrutiny and eventually galvanised campaigners years later into uncovering the truth and demanding justice (Corns and Hughes-Wilson 2002, pp. 403–447). It also angered relatives who felt deceived as to the true fate of a loved one who had been shot. George Ingham's father, for example, felt angry at being deceived as to why his son had been shot. When the War Graves Commission re-contacted George's father and asked him what he would like carved on his son's headstone, the angry parent who had learned truth about his son, requested a stand out inscription that reads: '*Shot at dawn one of the first to enlist a worthy son of his father*' (Corns and Hughes-Wilson 2002, p. 259).

It is worth distinguishing intended and unintended outcomes. The intended military outcome of the shot at dawn policy was to execute according to the rule of military law and dishonour for the sake of example. The unintended outcome of the shot at dawn policy was that this human stain of dishonour lingered for years afterwards, affecting families for many generations. For example, Terence Highgate the great nephew of Thomas Highgate who was shot for desertion on 8 September 1914, was still preoccupied, in 2014, with having his relative's name inscribed on the local war memorial in Shoreham, Kent (Kentlive 2010).

Many years after the Great War had ended, governments of different stripes and colours have wrestled with pardoning those executed, refusing, whether sympathetic to their plight or not, to grant a posthumous pardon for technical legal reasons. In the 1980s, campaign pressure

mounted as John Hipkin, a retired teacher, formed 'the shot at dawn campaign' supported by relatives of those executed. Finally in 2006 the Labour Defence Secretary of State, Des Browne, offered a blanket pardon for 306 shot at dawn (excluding 40 of 346 who had been shot for murder and mutiny).

Retributive Justice: Some Individual Case Studies

Harry Farr: Shot for Cowardice

The Harry Farr case is summarised from two secondary sources: Corns and Hughes-Wilson (2002, pp. 202–205) and Putowski and Sykes (2014, p. 121).

On 7 May 1915 Farr's battalion received information of a possible attack. All men were to be issued gas masks. On 8 May the battalion took up positions in the assembly trenches and preparatory bombardment took place at dawn on 9 May before the planned assault on Auber's Ridge. Farr's regiment, the 2nd Yorkshires, became pinned down by continual shellfire in the assembly trenches. This also happened the following day, and on 10 May the assault was cancelled. Harry Farr was evacuated to Boulogne on 11 May where his nerves were reportedly so badly affected that he could not hold a pen. After convalescence he was sent to the 1st battalion of the 1st West Yorkshires. Farr's battalion was not involved in the initial phases of the battle of the Somme in July 1916. However, in August they moved to advanced positions, and on 16 September took over the front line near the Quadrilateral. On 18 Sept they attacked the Quadrilateral and took 151 casualties. Just before the attack Harry Farr's nerves failed.

Harry Farr had no 'prisoner's friend' (defence representative) at his trial on 2 October. The evidence presented against him was largely uncontested by Farr, although he did add some authentic colour to one of the key witnesses against him at the FGCM, Regimental Sargent Major (RSM) Haking.

Haking first saw Farr at the transport lines at 9 a.m. on 17 September 1916 after falling out the previous night due to reported sickness. Farr refused treatment because he was not wounded. Haking then ordered Farr to the front. Farr did not go and by 11 p.m. that evening when he still hadn't gone Haking tried to compel Farr. Haking told Farr he

would be shot if he did go to the front. Farr in reply said, amongst other things, 'I cannot stand it' and 'I am not fit to go to the trenches' and when compelled to see the MO under escort said: 'I will not go any further that way'. According to Farr his refusal to go to the front incensed the RSM so much he said 'You are a fucking coward and you will go to the trenches—I give fuck all for my life and I give fuck all for yours and I'll get you fucking well shot' (cited in Corns and Hughes-Wilson, p. 203). Farr added that he would have co-operated if his escort had not pushed him.

The court asked Farr whether he had taken the opportunity of reporting sick between 16 September and 2 October. He replied that whilst he had had the opportunity he had not reported sick, because 'being away from the shell fire I felt better'. In his defence Acting Sergeant Andrews said Farr had reported sick with his nerves on April 1916 when the MO had kept him at the dressing station for two weeks. This happened again on 22 July, when he had been discharged the following day. Crucially, the doctor who had treated Farr then was unable to give evidence as he had been wounded.

The court found Private (Pte) Harry Farr guilty as charged. He was sentenced by the FGCM to be shot. Before the sentence was carried out commutation was possible—the case for mitigation going up the line of command. His company commander wrote 'I cannot say what destroyed the man's nerves but he has proved on many occasions incapable of keeping his head in action and likely to cause panic. Apart from his behaviour under fire his conduct and character are very good' (cited in Corns and Hughes-Wilson, p. 204).

Brigade, division and corps commanders all recommended that sentence be carried out; Lieutenant General (Lt Gen.) Lord Cavan, commanding XIV Corps, fatefully added 'The General Officer Commanding 6 Division informs me that the men know that the man is no good' (cited in Corns and Hughes-Wilson, p. 204). In some post-trial correspondence, Dr Capt. Williams of the Royal Medical Army Corps (RMAC) wrote to the adjutant of the battalion saying that Farr's 'mental and physical conditions were satisfactory'.

Harry Farr was shot for cowardice and executed at Carnoy on 18 October 1916. He refused to be blindfolded and looked the firing squad in the eye. The signature of Capt. A. Anderson (RMAC) who witnessed the execution was shaky, suggesting perhaps that that the doctor was shocked by what he witnessed.

What should we make of the Harry Farr case?

Farr's refusal to fight could have warranted a judgment of cowardice for a number of historical reasons. It was much easier to judge someone to be a coward than it was to prove otherwise. The fact that shell-shock was not properly distinguished from cowardice in the Farr case, rested on the fact that there was no compelling medical evidence that Farr was shell-shocked *when* his nerves gave way on the fateful night of 17 September 1916. One of the tragedies of the Farr case is that he wasn't seen by an MO directly after he had reported sick after his nerves failed on 17/18 September. His later diagnosis by an MO, two weeks after he had originally reported 'sick', failed to pick up on his condition.

Without corroborating medical evidence pertinent to his particular offence, Farr's self-assessment that he was 'unfit to fight' was insufficient to save him from execution. Historical anecdotal evidence of shell-shock as mitigation did not prove he was not shell-shocked on 17/18 September.

Harry Farr, in the post-sentencing procedure, was unlucky. Lt Gen. Lord Cavan comment that he had heard the man was 'no good' would have counted as influential and a potentially damning remark.

Given the standards of military justice meted out at the time, the case is legally sound and unremarkable. Even though Lord Cavan's remark post-sentencing is harsh, and could easily be misinterpreted, it was accurate; Farr probably was 'no good' as in not fit as a fighting soldier.

The disturbing thing about the Farr case was that there was no benefit of doubt given to the ample evidence that he was affected by shell-shock, at least historically. Farr and those who spoke up in his defence provided sufficient circumstantial evidence that Farr was likely to have had shell-shock and that the MO's testimony, taken two weeks after his nerves failed at the front, was therefore not wholly reliable. However, given all the aforementioned circumstances that played against him, it is not altogether surprising that the FGCM ruled against him and that post-sentencing delivered no commutation in the sentence.

From a more ideal perspective, where our sense of natural justice is less encumbered by historical context, the case is worrying for a number of reasons.

Farr's historic medical record should have given the court ample reason to doubt the perfunctory assessment of an MO who saw Farr two weeks after his nerves gave way.

Farr was one of the 10% who did not have a prisoner's friend to help defend him. He was subject, like others before and after him, to a highly dubious post-sentencing procedure that circumvents the proper appeal process that one expects from civilian law.

Lord Cavan's comment about Farr is no more than military gossip.

Finally, Farr's case needs to be understood in a strategic military context: that is, Farr's case occurred during the long Somme offensive where army commanders would have been less inclined to show mercy and more likely to recommend execution in order to set an example. This argaubly taints justice and succumbs decision-making to military fortune and expediency.

Ingham and Longshaw: 'Pals' Shot for Desertion

The Ingham and Longshaw case is also summarised from two secondary sources: Corns and Hughes-Wilson (2002, pp. 257–259) and Putowski and Sykes (2014, pp. 138–140).

Pte Albert Ingham and Pte Alfred Longshaw worked together before the war for the Lancashire and Yorkshire Railways. After enlisting as serving privates in No.11 platoon, 'C' Company, the 18 Manchester's, they travelled via Egypt to the Western Front on 18 November 1915. After experiencing active service on the Somme, the two 'pals' were posted to a brigade machine gun company. In the second week of October the two men, after hearing that they were being prepared for a move to the trenches, decided to abscond. Avoiding the authorities they managed to stow away on a Swedish ship at Dieppe. The two pals were caught when Longshaw unsuccessfully tried to pretend that he was an American travelling to Spain.

Both Ingham and Longshaw were convicted and sentenced to death. In his defence Ingham said:

> I was worried at the time about the loss of my chums also about my mother, being upset, through hearing bad news of two of my comrades. I plead for leniency on the account of my service in France for 12 months and my previous good conduct. I beg for the chance to make atonement. I left with my chum firstly to see those at home and then to try and get into the Navy along with his other brother, who is serving there. (cited in Corns and Hughes-Wilson 2002, pp. 257–258)

The evidence against them was overwhelming and Ingham's plea for atonement was ignored. During the post-sentencing procedure the commanders up the chain of command all supported the death sentence, Brigadier general Lloyd, commenting: 'A well-thought out plan of escape from service is disclosed and a man who commits such a crime deserves the extreme penalty' (cited in Corns and Hughes-Wilson, p. 258). Ingham and Longshaw were shot on 1 December 1917.

What should we make of the Ingham and Longshaw case?

To begin it is worth contrasting a difficult case of cowardice from a more straightforward case of desertion. Whether a man is a coward or not involves making some kind of subjective judgment about their internal mental state. This is difficult and risks error. On the other hand, making a judgment about whether a soldier is deserter or not is, by comparison, fairly simple because it relies on a series of objective and straightforward observations. Namely, is the suspected deserter at the front with his company where he is supposed to be? Is the said deserter disguised in civilian clothes?

Given these simple criteria, Ingham and Longshaw were obviously guilty as charged; they were on a boat heading out of Dieppe and they were well disguised in civilian clothes. Moreover, their elaborate disguise and mode of transport all pointed to what Brigadier Lloyd described as a 'well-thought out plan' of escape.

What is the case for mitigation?

From the perspective of military justice at the time, the case for mitigation is weak. Unlike the Farr case, where there was a significant doubt as to whether he was indeed a coward, Ingham and Longshaw were definitely deserters with a plan of escape. According to historical standards, justice was served.

However, again with benefit of hindsight, and armed with the zeal of natural justice and retrospective fairness, a case for mitigation is possible. Like Harry Farr, Ingham and Longshaw were not adequately represented with a prisoner's friend at trial. Ingham's plea for mercy and atonement, whilst not successful, seemed plaintively honest and reasonable. He was a first-time deserter with a good record who had temporarily lost his fighting spirit because he was grieving for his 'pals'. Furthermore, when compared to serial deserters who were often given lesser (physical) field punishments, court martialling and executing him and his pal seems

logically inconsistent and unfair given that they were first-time offenders with decent military records.

Rogues and Murderers

The most difficult cases are rogues who had no intention of following the rules and those who committed either murderous or treasonable acts. Again this historical material is summarised from Putowski and Sykes (2014) and Corns and Hughes-Wilson (2002).

Take the example of 'the rogue' Corporal (Cpl) George Latham. Cpl Latham arrived in France on 22 August 1914, and in the confusion of the retreat of Mons deserted. He deserted after three days on active service.

From the very start of his arrival in France, Cpl Latham showed little spirit to fight. He covered his tracks and quite happily lived behind the front line in Nieppe with two women who lived on the same street, rue d'Armentières. His previous paramour, Mme Chilbrae, probably out of jealousy for transferring his affection to Mme Cambiers, notified the MPs of his secretive life by showing them his mail sent to her address. Latham presented a convoluted and incredible defence that was not believed at his court martial. On 22 January 1915 he became the first Non-Commissioned Officer (NCO) to be executed for long-term desertion from the BEF (Corns and Hughes-Wilson 2002, p. 121).

What should we make of the Cpl Latham case?

Latham was clearly a long-term deserter, who unlike Ingham and Longshaw had no intention whatsoever to fight for King and Country. He had no fighting record in the First World War and lived a salacious lifestyle, while his comrades at arms risked their lives in the trenches. From a military point of view Latham was a 'rogue', and a bad example to others, showing no desire to return to fight. There was a clear case for him to be made an example of.

With the benefit of hindsight it is understandable that someone might run and hide rather than risk a very good chance of getting killed in battle. However, this is not a strong case for mitigation, given the historical context of what was expected of soldiers at the front, and how such behaviour is likely to have been viewed as its likely impact on others.

The case for mitigation is even more difficult for murderers who were shot at dawn. Clearly murder is not only a risk to military order and discipline, it was also a capital punishment offence in the civilian courts at the time. It is hard, therefore, to argue that justice—from a historical perspective at least—was not served in these cases.

With the benefit of hindsight some of these individuals appear to have been mentally damaged by the brutal war in which they fought. Therefore they should not have been subject to the same treatment as 'sane' persons who committed murder (see also Putowski and Sykes 2014).

Critical Reflection on Posthumously Pardoning Those Shot at Dawn

The Historical Case for a Posthumous Pardon: The Putowski and Sykes Thesis

Putowski and Sykes (2014) in *Shot at Dawn: executions in world war one by authority of the British Army Act* believe that the execution of soldiers during the Great War was wrong. In the foreword to this work they state:

> After very careful consideration, a decision was reached (just prior to publication) to press for the complete exoneration of these men. Convictions should be quashed and the men pardoned. (Putowski and Sykes 2014 p. 9)

In the all-too-brief introduction, Putowski and Sykes provide a deeply critical account of justice served. Much of Putowski and Sykes's criticism of the justice these men received is based on the 'unforgiving military judicial system'.

One of their main complaints concerns the class bias in which justice was apportioned. They imply that the system was deeply unfair: officers overwhelmingly drawn from the upper classes dispensing capital punishment on privates and NCOs, predominantly drawn from the working class (Putowski and Sykes 2014, p. 16). This is certainly borne out in the statistics—the vast majority executed were ordinary soldiers and NCOs: 3 officers were shot at dawn out of a total of 306 ordinary soldiers and NCOs that were eventually pardoned in 2006.

The other major criticisms that Putowski and Sykes dwell on is the unfairness of the military justice system. In their own words:

> Records relating to the number of these cases highlight just how arbitrary the decision to confirm the death sentence could be. The inference drawn from these records is that after the opening of the Somme in July 1916, the judgment of Sir Douglas Haig was defective when he decided to have certain men executed… (Putowski and Sykes 2014, p. 12)

This apparent unfairness, they argue, was exacerbated by the lack of proper representation for those accused of a capital crime during the First World War. They are among the first to point out that 10% of those accused of a capital offence did not have representation (a prisoner's friend). Lack of representation was a serious obstacle in conducting an adequate defence. This was aggravated by defendants' representatives not cross-examining the prosecution witness, which according to Putowski and Sykes was usually the case.

Furthermore, Putowski and Sykes point out the probable unfairness of pitting ill-educated soldiers against their superiors in their respective roles as prosecutor and judge. As Putowski and Sykes (2014) put it 'speaking up to hostile authority for a soldier conditioned to obey its judgment must have been an awesome ordeal, whilst remaining silent could easily be mistaken for an admission of guilt' (Putowski and Sykes 2014, p. 15).

Putowski and Sykes are also very critical of the post-sentencing procedure (Putowski and Sykes 2014, pp. 11–23). Post-sentencing is dependent on extra-judicial decisions made by senior officers that are not necessarily pertinent to the circumstances in which justice should be served. This makes sentencing into something of a lottery as already argued, in which 'bad' soldiers in military terms are condemned when an example is needed for the sake of regimental discipline. The problem was further exacerbated by the so called 'château generals', who had little knowledge of the particulars of the case and had little empathy for the plight of ordinary soldier on the front line.

The Historical Case Against a Posthumous Pardon: The Corns and Hughes-Wilson Thesis

The case against posthumous pardoning is articulated by Corns and Hughes-Wilson in *Blindfold and Alone*. On more conceptual grounds they hold the opinion:

> With our more modern and enlightened views it is hard not to feel compassion for those who died as a result of such laws. The fact that many

> today feel *now* that it is wrong, however, does not make it wrong by the standards of its day, any more than we can deplore the inability of doctors in the Great War to carry out blood transfusions or their attempts made in good faith, to solve psychiatric trauma by applying electric shocks which amounted to sheer torture. We cannot undo the deeds of the past. (Corns and Hughes-Wilson 2002, p. 457)

Cathryn Corn's co-author Colonel John Hughes-Wilson goes further, explicitly warning against the dangers of re-writing history:

> If these men were alive today, we would not kill them. But we must be very wary about applying our modern sentiments and values to the 1914-18 war. We cannot re-invent the past to suit ourselves today. And even now we expect our servicemen, and women, to do what they presumably signed up to – risk their lives and fight. (Corns cited in Peter Taylor-Whiffen, 2011)

The more specific empirically orientated arguments against posthumous pardoning revolve around the paucity of material available on which historic judgments are made, and the sheer variety of offences where one-size-fits-all justice is totally inappropriate.

On insufficiency of evidence Corns and Hughes-Wilson argue:

> In the first place, by definition any pardon or quashing of sentences demanded by the pardons campaigners must be a selective judgment. Given political will, there would be no insuperable obstacle were there to be sufficient evidence on which to make a judgment. However, the files today are not merely incomplete: only those relating to the men who were actually executed survive … we have no way to compare the records of those confirmed for execution and those reprieved… As successive governments have discovered, selective judgments would risk being mere arbitrary opinions. (Corns and Hughes-Wilson 2002, pp. 457–458)

What Is a Posthumous Pardon for?

The key problem in deciding on a position for or against posthumous pardoning is conceptual as well as empirical.

The historians discussed tend to draw upon strong views without fully scrutinising their assumptions about what a posthumous pardon is for. This has left the discussion somewhat polarised.

In order to rectify this lacuna in the debate it is helpful to explore some conceptual assumptions on which posthumous pardoning rests, as well as mobilising empirical arguments for why posthumous pardons may or may not be justified.

A strong opinion against the granting of a blanket pardon – by the then Defence Secretary Des Browne—is articulated by the military historian Correlli Barnett. In his words:

> "These decisions were taken in the heat of war when the commanders' primary duty was to keep the Army together and to keep it fighting. They were therefore decisions taken from a different moral perspective… For the people of this generation to come along and second-guess decisions taken is wrong. It was done in a particular historical setting and in a particular moral and social climate. It's pointless to give these pardons. What's the use of a posthumous pardon?" (Cited in Fenton 2006)

While Barnett is right to suggest that decisions to execute those shot at dawn need to be understood in historical context, from within 'a very particular moral and social climate', he is mistaken to argue that this necessarily leads to 'second guessing' historic decisions. This would be true if posthumous pardoning necessarily involved re-writing history. However, it is also possible to re-evaluate historical decisions in the present through the mechanism of a posthumous pardon—a view that Barnett does not consider.

Those of us who support posthumous pardoning are not necessarily re-writing history to suit the moral standards of the present. Understanding historic justice does not preclude re-evaluating its moral force now. The normative force of the past is not hermetically sealed; its effect has an influence on present generations who have to live with decisions that condemned their ancestors. This is particularly difficult when normative historic decisions no longer stand the test of time. Whilst it is, of course, important not to rewrite the past to suit the present, it is perfectly acceptable to re-evaluate its normative influence, especially when such influence shames contemporaries still affected by it.

Corelli's comment that a 'posthumous pardon is pointless' is superficially true only. It is pointless, presumably, because it has already happened? His more serious criticism concerns re-writing the past. Again, this is true if this is the only way of conceiving of what a posthumous pardon is for. If so, this begs the question: is there really anyone who

might actually think rewriting history is a good idea? This feels very much like a 'straw man' argument (setting up and refuting an opponent's argument that is not actually advanced by that opponent).

This author believes that posthumous pardoning is both conceptually intelligible and plausible in certain specific circumstances. They matter for at least four reasons.

1. *A posthumous pardon restores the symbolic narrative fidelity of a life remembered. This is particularly important in the rehabilitation of the narrative identity of persons who once existed.*

Why is this important? Take the example of Harry Farr again. Farr's execution for being a coward is likely to have been a mistaken judgment. Again, we do not have to rewrite history in order to appreciate this.

We know today that shell-shock should under no circumstances be conflated with cowardice. Shell-shock is a failure to cope under fire and manifests as post-traumatic stress disorder (PSTD) and battle fatigue. It is a collapse of the will and an inability to cope in the stress of battle. This is quite different from cowardice, which is about fearfulness and faintheartedness, where one is unwilling to fight.

Rewriting the past in the present is problematic because it destroys it. Re-writing the past in this sense is about over-writing what we think should have happened given the values and understanding we have today. This is not appropriate if one is to understand Farr's case historically. Historically speaking Farr's trail, sentence and execution was just, if somewhat harsh, given the historical context of judicial decision making and medical knowledge available at the time. However, while as a historian one might accept this view, it should not preclude the fact that it is perfectly legitimate to revaluate certain 'facts' about the effects of shell-shock, that historical actors *could* not have fully grasped then.

Re-evaluating the past in the present is not the same as rewriting history. The truth of Harry's shell-shock is subject to forensic re-evaluation as our understanding of certain conditions like shell-shock has evolved over time. It would be perverse and unfair to the relatives of Harry Farr not to acknowledge the re-evaluation of Harry's reputation, as our understanding of his likely condition then has grown now. Simply put, we can understand and respect historic decisions made then, without the burden of being morally bound by them today when deliberately re-evaluating them.

Note re-evaluation does not involve condemning those who judged, convicted and executed Farr, given a deep appreciation of historical

context and its interpretive limits. However, *re*-membering the past is not some scholarly 'God trick' (Harraway 1988 cited in Harding, 2004) by which the past is forever preserved in contextual aspic, where no one can re-evaluate past decisions that seem blatantly flawed today. History as a 'dialogue between past and present' (Carr 1990) is not only scholarly insight—where there is a desire to provide fine reinterpretations in order to understand historical contexts in their own right—but also a moral one—where there is sometimes a need to normatively re-evaluate decisions made at that time that we can no longer hold or justify today.

So, what is the point of morally re-evaluating the past in the present? It is useful to gain a comparative perspective, where the rehabilitation of Farr's reputation, for example, is a gesture to those still living today who have to live with past decisions that do not stand the test of time and are now considered unjust.

We need to distinguish *historic justice*—in which social actors did their best to reach procedurally correct judgments based on a limited understanding of facts within definite historical constraints—from *natural justice*—where we do have the benefit of hindsight to re-evaluate the inherent fairness of historic cases.

2. *Posthumous pardoning is a form of symbolic redemption from the unintended consequences of posthumous punishment.*

From the perspective of historic justice the military executions were intelligible and generally consistent with historic values and military justice and procedures at the time. For this reason it is not clear that Putowski and Sykes have a strong case to quash these convictions.

However, the unintended consequences of the army's 'shot at dawn policy' went well beyond its intended effect. What was not intended was that soldiers rightly convicted by the court, and who had their death sentence upheld by the C-in-C as an example to other fighting soldiers, would be dishonoured for years to come. This was further compounded by their living relatives that carried the historic shame of the original dishonour.

Posthumous pardoning is a form of symbolic redemption; a way of redeeming a dishonour that is carried over from one generation to another.

3. *Posthumous pardoning has an important role in forgiveness and reconciliation. It forgives historical actors, as well as those emotionally affected by its decisions.*

Today, the shot at dawn campaign has been re-evaluated as a symbolic harm to the memory of the dead. This is complicated, not least because we should not conflate what was considered rightly just then, with what might no longer be considered just today.

The most compelling reason to re-evaluate the past in the present is when it causes unnecessary and unjust suffering today. The symbolic and narrative redemption of reflexive biography has a way of conserving the fidelity of memory as well as having the redemptive effect of removing the human stain of inherited shame.

For example, Harry Farr's widow, Gertrude, struggled to cope after his death with a young daughter and no army pension. Gertrude and his daughter (also called Gertrude) unsuccessfully tried to clear Harry Farr's reputation through the courts. The psychological burden of this failure was an intrinsic harm—albeit of a secondary order—to the relatives of the dead. Des Browne's blanket pardon—which included Harry Farr—could not have come any sooner for Harry Farr's daughter Gertrude, who at the age of 93 lived to see her father forgiven. In her own words: 'I am so relieved that this ordeal is over and that *I can be content* knowing that my father's memory is intact' (cited in Norton-Taylor 2006 [Author's Italics]).

4. *It is a way of society understanding itself in relation to its past. By re-evaluating the past in the present we are acknowledging that what was considered wrong then is not something that we can view with the same disdain today. It signals to the world that while we understand why certain individuals were treated in the way they were, we can no longer view these people in the same way given what we know today.*

To really appreciate this perspective we need to think beyond the rather crude dichotomous reasoning which many historical commentators around this subject fall prey to when articulating a case for and against posthumous pardoning.

On the one hand there are those who deplore its injustice and want to rewrite past justice with the benefit of hindsight (Putowski and Sykes 2014) and those who want to preserve, understand and legitimise historic judgments (Corns and Hughes-Wilson 2002).

Putowski and Sykes's revisionist stance appeals to our sense of natural justice, according to which decisions made then seem deeply unfair according to the standards of justice that we might expect today. To reiterate, the authors call for these verdicts to be quashed and overturned. This forces them into making the case that there were miscarriages of historic justice. Unfortunately, while one can have much sympathy for their clarion call for natural justice, their historical case for a miscarriage of justice is perfunctory and inadequate. In the end, Putowski and Sykes neither provide the new evidence for over turning historic cases, nor provide a forceful enough argument from natural justice.

Corn's and Hughes-Wilson's post-revisionist thesis appeals to the more diligent historian who seeks to understand decisions from within the historical context that conditioned them. However, their argument that posthumous pardoning per se is a form of re-writing history is only true if that exhausts all the options of what we think a posthumous pardon may be for. As argued earlier, there is another way of thinking about posthumous pardoning that Corn's and Hughes-Wilson do not properly consider; re-evaluating memory is a deeply normative process, one that needs to be distinguished from the scholarly pursuit of understanding historical context for its own sake. Where as the former involves re-evaluating how we now stand in relation to our past, the latter involves remembering the historical context and limitations to decision-making. Re-evaluation is not the same as re-writing history because one wishes it were different.

The better argument against posthumous pardoning that Corns and Hughes-Wilson put forward is a practical one. One problem they identify is the sheer complexity and variety of different offences for which court-martialling operated, so that just one kind of retrospective re-evaluation of justice does not fit all cases (Corns and Hughes-Wilson 2002, pp. 446–447). This definitely provides a significant hurdle for the design of an appropriate mechanism.

Des Browne's solution was to design a blanket statutory pardon for the 306 shot at dawn with certain important caveats that had inbuilt checks and balances.

In Des Browne's own words:

> In each case, the effect of the pardon will be to recognise that execution was not a fate that the individual deserved but resulted from the particular discipline and penalties considered necessary at the time for the successful prosecution of the war. We intend that the amendment should as far as possible remove the particular dishonour that execution brought to the individuals and their families. However, the pardon should not be seen as casting doubt on either the procedures or processes of the time or judgment of those who took these very difficult decisions. (Hansard, Sept. 2006, HC, co. 135WS)

Des Browne tried to find a reasonable common ground that recognised why most of those shot at dawn could be pardoned, without granting *all* of those shot at dawn a pardon. Browne's statutory pardon deliberately excluded the most difficult cases, such as murderers and mutineers. Moreover, he included a caveat that recognised the importance of historic justice, which deliberately did not bring into doubt the standards, procedures and judgments that condemned these men in the first place. In other words, it could be argued that Browne's blanket pardon cleverly sidesteps the difficult legal ground, focussing more on the moral case that re-evaluates 'just deserts' in terms of how we understand the stresses of the First World War today. In doing so, Browne emphasised the importance of posthumous pardoning in the lives of the families who continue to suffer because of what happened to their relatives. Again, in Browne's own words:

> Although this is a historical matter, I am conscious of how the families of these men feel today. They had to endure the stigma for decades. This makes this a *moral* issue to, and having reviewed it, I believe it is appropriate to seek a statutory pardon. (Cited in Fenton 2006)

The most disappointing aspect of Corns and Hughes-Wilson's thesis is that they seem to be completely blind to the moral case for posthumous pardoning and the vital role this plays in lives of the surviving relatives who have carried the burdensome pain of their ancestors' dishonour.

There are two more general arguments against posthumous pardoning. While both arguments do not invoke this particular case study, they are, nonetheless, conceptually relevant to understanding it.

The first argument against posthumous pardoning is put forward by Matthew Parris in *The Spectator* (2014). Parris is of the opinion that posthumous pardoning is subject to what is called a 'slippery slope argument'. That is, allowing one seemingly harmless pardon, might lead to an avalanche of currently unthinkable cases becoming accepted today. While Parris is right to point out the danger in the case of Alan Turing, it is easily countered by putting some robust conditional criteria, distinguishing historically specious claims from morally 'live' cases that still matter to those living today. Not all historical cases for posthumous pardoning are morally relevant today, which cuts down on the potential avalanche of cases. As Browne makes perfectly clear, the case for pardoning the 306 shot at dawn during the First World War is a moral one that makes reparations to persons still living today.

The second is an argument put forward by Ally Fogg in *The Guardian* (2013) who, like Parris, was against giving Alan Turing a posthumous pardon in 2013. Her argument invokes the problem of exceptionalism. While she illustrates her argument using the Turing case, it is also relevant to prominent cases brought by relatives of those shot for cowardice (e.g. Harry Farr). Let us first look at Fogg's argument against posthumously pardoning Turing on the grounds of exceptionalism, before extending it to the Farr case.

Alan Turing's work at Bletchley Park probably hastened the end of the Second World War by decoding German naval messages encrypted by the Enigma machine. After the war Turing was punished for being a homosexual and was forced to undergo chemical castration. The stress and shame of this could have led to his premature death in 1954, where it is suspected that he may have committed suicide (although some contest this, and believe his death was accidental). Years later many people felt that Turing was unjustly treated, and because of his heroic work as a code breaker, deserved to be singled out for a posthumous Royal pardon. Ally Fogg (2013) questions the grounds of such a pardon. In her own words: to 'single out Turing is to say all other gay persecuted men are not so deserving of justice because they were less exceptional' (Fogg 2013).

A similar kind of argument could be made in the Farr case. So, if the courts *had* decided to pardon Farr on the grounds that he was not a coward but genuinely shell-shocked, then why in particular single him

out? What about the other 17 men who might also have been shell-shocked rather than cowards? Does that mean that all other shell-shocked men persecuted for cowardice were somehow less deserving and exceptional than Harry Farr? Why stop at the offence of cowardice? Were deserters also not deserving of posthumous pardoning? How about other cases?

The corollary of a Royal pardon that identifies exceptional people only is a statutory blanket pardon that draws in a variety of different cases on moral grounds. This leads full circle to the potential problem of a possible 'slippery slope' argument identified by Parris (2014), which again can be headed off by providing a strong moral case for re-evaluating the past in the present.

In sum, the most difficult problem with posthumous pardoning is not its principled conceptual defence but finding an appropriate mechanism for delivering it.

A Historical Long-View of Posthumous Punishment and Redemption

Having illuminated capital punishment, posthumous punishment and posthumous pardoning in the context of the First World War, it is helpful to look at these concepts in an altogether different historical context of understanding. Since this is a complex historical project in its own right, it is unrealistic to attempt to provide a detailed historical interpretation of capital punishment, posthumous punishment and redemption in the eighteenth century.

What is of interest here is to pick out conceptual repetition and difference over time in the ideas of capital punishment, posthumous punishment and redemption in two otherwise unrelated historical contexts.

A Bloody Code?

The capital code, or Bloody Code as it is known, saw a significant increase in the range of crimes that ended in capital punishment, with an especially wide range of property crimes being included. During the eighteenth century there was more than a quadrupling of crimes subject to the capital code (Wilf 2010). While it is true to say the capital code was bloody in the centre, especially in London, there is now strong

evidence to show that it might not have been so in the periphery of the British Sate.

King and Ward, in exploring the geography and spatial dimensions of capital punishment in eighteenth-century Britain, show a widespread reluctance in areas of the periphery to implement the Bloody Code. They argue, that while it was used at the centre of the British state, it was often ignored on the periphery: in the far west, the north and the north-west of England, as well as in all of Scotland and Wales (King and Ward 2015).

Capital punishment in the British army in the context of the First World War has also been wrongly perceived as particularly blood thirsty.

Compared to the German army (which had far fewer CMs and executions) the British army's policy was more of a departure from civil law with more latitude towards summary execution. Understood from *within* the shot at dawn policy of the British army, capital punishment was used much more as a last resort for the sake of example to others. This is born out in the statistics which show that the C-in-C, Douglas Haig commuted 90% of all executions. Again, capital punishment in the form of the shot at dawn policy in the First World War was no 'Bloody Code.'

Retributive Justice, Deterrent and Posthumous Punishment

The idea of capital punishment is strongly associated with retributive justice and deterrence. Retributive justice is historically associated with posthumous punishment which has a different character depending on the particular historical context under scrutiny.

The Murder Act (1751) included the provision 'for better preventing the horrid crime of murder'. In doing so, it advocated 'that some further terror and peculiar mark of infamy be added to the punishment' (Murder Act 1751, 25 Geo. 2 c37). This involved posthumous punishment through the dissection or gibbetting of the criminal corpse. The further punishment of dissection or gibbetting was an act of symbolic power: marking the dead as infamous, while at the same time having an anonymous disciplinary effect on those that happened to witness such an event. Gibbeting, for example, involved 'the criminal body being hung raised in chains to rot and stink for any squeamish passer-by travelling along a major public thoroughfare, like the Tyburn road, to see' (Gatrell 2010). Gibbets were deliberately sited for maximum public exposure

(Dyndor 2015)—a device that expressed the will of the state and acted as a symbolic form of disciplinary power at a distance (see Foucault 1991).

The shot at dawn policy during the First World War was also a form of retributive justice that was designed as both a punishment to those that contravened military law and as an example to others who likewise might transgress regimental discipline. Being shot at dawn was also an expression of symbolic power, a deliberate way for the army to mark out deviant behaviour from the values and norms expected from a fighting soldier. The symbolic violence of execution was a form of power at a distance, one that was deliberately foisted on comrades at arms who were, either press-ganged into participating, or made deliberately aware of such killing.

Dismemberment, Disremememberment and the Execution Scene

The character of posthumous punishment changes over time and can be separated into two broad forms.

The first is a classical form of posthumous punishment which entangles disremembering the dead with posthumous dismemberment. This goes back to the time of Henry VIII in the sixteenth century, where dissection was reserved for the worst, most notorious kinds of murderers. A small number of bodies were made available through grants for the tuition of anatomy. As time passed there was pressure on the government to increase supply and, by the mid-eighteenth century, the Murder Act was passed. Here dissection was made part of the death sentence in all cases of murder, where the 'criminal' corpse supplied a growing demand of dead bodies to be used as cadavers for dissection by anatomy schools (Richardson 2001).

Posthumous punishment in the form of dissection mattered in at least three respects:

- It was feared by those with spiritual beliefs, who on sentencing would know that their dismembered body would stymie any sort of salvation of the soul in the afterlife (It was, however, certainly not feared by all). The form that this fear took depended exactly on what a belief in the afterlife entailed. For example, those with folkloric beliefs sometimes wished revenge on their tormentors, by haunting them as spirits (Linebaugh 1975; Gatrell 2010).

- Dismembering the corpse was sometimes seen as disrespectful to the memory of the dead, often angering interested spectators. It was not uncommon for family and friends to try and wrest the body from the scaffold after execution, to prevent the body being transported for dissection. (Linebaugh 1975) Dismembering the corpse often provoked anger, and ignited mob violence, especially in cases where the punishment was considered undeserved.
- Ritual dismemberment (posthumous punishment) was a form of symbolic state power—a message to others would-be criminals that certain crimes would not be tolerated. In other words 'the mark of infamy' acted as a deterrent.

The classical form of posthumous punishment officially came to an end with the Anatomy Act of 1832. The Anatomy Act ended the practice of posthumous punishment for murderers, as well as undermining the lucrative trade in the illicit supply of corpses to anatomy schools (a trade that thrived once it became clear that official supply of bodies could not keep pace with rising demand).

However, dissection of the very poor continued after the Anatomy Act since it left an avenue open for the supply of 'unclaimed' dead bodies of the very poor in society. While legislation no longer deliberately endorsed 'the mark of infamy' through dissection, it certainly didn't stamp out a much-needed supply of dead bodies for the anatomy schools. Indeed, the Anatomy Act, alongside later legislation like the Poor Law Amendment Act (1834), actively supported a supply of unclaimed paupers body's from workhouses—a fate that caused much fear and angst amongst the poor and destitute in society (Hurren 2012). It could be argued that the nineteenth century state was still actively involved in posthumously harming the very poor, through an act of collusion with institutions that supplied much needed corpses and their parts, rather than as an overt state agent that prevailed over retributive justice and posthumous punishment of criminals.

The idea of posthumous punishment post capital punishment is reinvented in the twentieth century through capital punishment and deliberately dishonouring a good soldiery reputation. The big difference between posthumous punishment in its classical form following the Murder Act (1751), and posthumous punishment in the twentieth century—by way of being dishonourably shot at dawn in the First World

War for example—is that there is no intentional desire to disremember the dead long-term, and certainly no dismemberment of the body and denial of funerary custom. Those 'shot at dawn' were not intentionally vilified by the army beyond being set up as 'bad' fighting men for the sake of example and regimental discipline. Otherwise their relatives were treated with some compassion by the army and their corpse left intact to be buried in the normal way. Long after the war had ended, the different national commemoration cultures honoring the fallen in the war rarely mark out those executed by their own comrades from those fallen in battle.

The weak comparison between eighteenth-century hangings and executions witnessed in the First World War is that they both provoked mixed reactions in those who observed them, largely depending on how witnesses felt about justice served. This said, the character of the execution scenes in these two historical contexts could not have been more different in character. Hangings at Tyburn and Newgate during the eighteenth century attracted large voluntary voyeuristic and ambivalent crowds with executions sometimes resembling a carnival-like atmosphere (Gatrell 2010). By contrast executions during the First World War were sombre disciplined affairs, comrades in arms being forced to witness and/ or participate in a dawn execution (Johnson 2015).

Redemption and Posthumous Pardoning

If the idea of capital and posthumous punishment has long historical rhizome-like roots that repeat with a difference over time then so does the notion of posthumous pardoning.

In the UK, the power to grant pardons and reprieves is known as the Royal prerogative of mercy—a Royal prerogative is where a King or Queen can grant a pardon to a convicted person. This is also called a Royal pardon. Historically, the Royal prerogative of mercy (or Royal pardon) was an absolute power wielded by the monarch alone to pardon an individual for a crime, but the power for the monarch to use this was significantly curtailed by the end of the seventeenth century (Loveland 2009). In more recent, times this power has been delegated to the judiciary and sovereign ministers (Leyland and Anthony 2007).

Reprieve and pardon from capital punishment after the Murder Act (1751) was possible at any time, at the last moment, just before hanging, and even after hanging (if a criminal miraculously survived the

hangman's noose). In the case of the latter, criminals that survived might have had their sentence commuted to transportation to the colonies. This was an early form of pardoning; where divine mercy was respected by a 'posthumous redemption' of sorts. Criminals that survived the noose were offered commuted sentences so long as the attempted execution was legal. In such cases they had undergone a socially symbolic or legal death. Of course, legally killing a condemned man does not always end in their physical death, which on occasion led to the curious situation of a criminal being 'legally dead' whilst remaining physically alive (Hurren 2016).

The purpose and function of a pardon has changed over time. Alongside the few Royal pardons since the Second World War that have been mobilised to save and free people, there is the rise of the posthumous pardon. Whereas before this time a pardon was most commonly executed as an act of clemency, to physically save individuals from the full force of the law, it has, in contemporary times, increasingly been used as a way of rehabilitating individual identity and reputation after death.

Summary

This empirical chapter has examined capital punishment, posthumous punishment and pardon.

This has been illustrated through a multiplicity of perspectives, largely through notions of capital punishment during the First World War and the debate around posthumously pardoning soldiers executed by being 'shot at dawn'. In order to move the debate on, the author has concentrated on reframing posthumous punishment and pardoning on more conceptual grounds, by considering what punishment and pardoning was for.

Posthumous punishment and pardoning has also been briefly understood from a long historical view, such ideas repeating with a difference over time.

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