Policing and Punishment in London, 1660–1750

Urban Crime and the Limits of Terror

J. M. BEATTIE

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For

ROGER, ALLISON, *and* KATHERINE

Preface

In a previous book, *Crime and the Courts in England, 1660–1800* (1986), I set out to investigate two principal subjects: the character of prosecuted crime in two English counties, Surrey and Sussex, in the late-seventeenth and early-eighteenth centuries; and the way in which men and women accused of committing offences against property and serious violence against the person were dealt with by the courts. The first part of that book was devoted to an analysis of the criminal law, the changing levels of prosecutions over time at the courts of quarter sessions and assizes, and, as far as the evidence allowed, the relationship between prosecutions for property offences and the factors that determined the well-being of the working population. The second, and more extensive, section of the book examined the process by which prosecutions were undertaken—from the preliminary hearings held by justices of the peace, to the nature of trial, the character of juries, the influences shaping their verdicts, and the punishments imposed by the courts. What emerged was an argument about the relationship between the experience of crime and changes in the criminal law and the institutions and procedures by which it was put into effect.

The most general conclusion of that earlier book was that the criminal law and its administration not only changed in significant ways over this period but that many of the most important changes had taken place in the first half of the eighteenth century—well before, that is, the so-called 'age of reform' that was thought to have emerged only after 1760. Although there was little evidence of public debate having taken place and no sense that there had been organized campaigning of the kind that was to mark the late eighteenth-century reform endeavours, a number of fundamental changes had none the less been introduced into the law and criminal procedure in the early years of the century by a variety of statutes and *ad hoc* experiments and innovations designed to increase the deterrent capacities of the law and the courts. These included, perhaps most importantly, the establishment of the first non-capital punishments that the courts could impose on convicted felons, in the form of imprisonment at hard labour and transportation to the American colonies. They included, too, measures designed to encourage victims of robbery and other crimes to go to the trouble and expense of bringing prosecutions, a matter of the greatest significance in a system of justice that put the burden of prosecution entirely on the victim of the crime. It was also in this period that a fundamental alteration emerged in trials for felony, for it was only in the 1720s and 1730s that lawyers

began to appear in the criminal courts, authorized for the first time to act as counsel for the defendant as well as the prosecutor. In these and other ways, I suggested, the foundations of a more recognizably 'modern' system of criminal administration were being laid in the late-seventeenth and eighteenth centuries.

In explaining these developments, I pointed to what appeared to be considerable differences in the century after 1660 in the experience of crime in the rural parishes of Surrey and the county of Sussex compared to the more urban areas in the north-eastern corner of Surrey—the Borough of Southwark and several neighbouring parishes that were being drawn increasingly in this period within the ambit of metropolitan London. The higher levels and more strongly fluctuating patterns of prosecution in the more densely populated area provided clues, I argued, to the serious problem of crime in the urban world, and helped to explain why the pressures to make the criminal law more effective seemed to be coming from the metropolis. That could remain little more than a suggestion, however, within the context of a book based very largely on the court records of Surrey and Sussex.

This present book is, in part, an exploration of the issues that that suggestion raised. It is principally an effort to understand the ways in which the influence of London shaped the changing foundations of criminal procedure in what I will argue was a century of significant alteration in the criminal law and its institutions. Given what appeared from time to time to contemporaries to be serious problems of crime and an evident concern to confront them, I want to ask how one might explain the forms that those responses took—the options that appeared to be available and why some were chosen and not others. This is one reason why my concentration is very largely on the ancient City of London, the area governed by the lord mayor and aldermen, rather than on the variety of other jurisdictions that were part of the larger metropolis—the City of Westminster, the urban parishes surrounding the City within the county in Middlesex, and the Borough of Southwark and other Surrey parishes south of the River Thames. In the late-seventeenth century and well into the eighteenth, the City remained not only the best governed but also the most influential part of the metropolis. My sense is that some of the more important changes in the criminal law and in the ways it was administered in this period are to be explained by the influence of the City, and in turn by the nature of its government and social structure.

In examining the perceived problems of crime in the capital, I will be concerned mainly with offences against property. This is not because I think other matters were unimportant to contemporaries. But property crime dominated the calendar at the Old Bailey, the principal criminal court in the metropolis, and as a result such offences were commonly reported. I should stress that I intend not so much a study of robbery and burglary and the wide variety of other offences against property along the lines I followed in *Crime and the Courts*—of their forms, prosecution levels, and perpetrators—but rather a study of the ways in which such crimes were regarded, and changes in the means by which they

were confronted. To that end, I set out to establish in the first, introductory, chapter what evidence of the levels and character of property offences was available to the political leaders and other opinion makers in the City and what they took the 'problem' of such crime to be in this period—what interests it threatened and what it meant to them.

Thereafter I pursue the multiple ways in which the City of London could be said to have responded to crime by examining three main subjects: the policing institutions in the City; the forms of prosecution; and penal ideas and practices. The nature of the City's policing—carried out very largely by constables and night watchmen—forms the first part of the book. The subject invites extended treatment because the institutions involved in policing the City, as indeed in the metropolis as a whole (with the exception of Elaine Reynolds's work on the night watch of Westminster[1]), have not been much studied before the Fieldings began their work at Bow Street in the middle of the eighteenth century. More significantly, changes in policing ideas and practices help to reveal the complex nature of responses to crime in this period. There can be no doubt that demands were being made for more effective policing in the City—that expectations were rising about what constables and watchmen and other officials with responsibility for the maintenance of order could be expected to achieve. Some of the changes in policing institutions were reponses to those demands and were planned and intended. But others—changes in the nature of the constabulary, for example, and the ways in which the night watch and the related matter of street lighting came to be financed—were perhaps as much the consequences of changes in the society of the City and of shifts in the economy and culture of the metropolis more broadly.

A pattern of conscious efforts to achieve improvements in the institutions of criminal justice intersecting with larger social and cultural changes that shaped the options and alternatives available to those who sought to make improvements in the way the City dealt with crime can also be seen in the two other main issues I deal with: the processes of prosecution; and the punishments available to the courts in the sentencing of convicted property offenders. It is clear that changes in both areas were supported, urged, even initiated by City interests. But the forms of those changes depended fundamentally on developments in the political environment—in the City itself to some extent, much more in Westminster, in the central administration, and in parliament. Many of the most significant changes in the procedures by which felonies were prosecuted and the introduction of punishments that were to change the way convicted property offenders were dealt with at the Old Bailey resulted from interventions by the City authorities. Their success depended on their ability to influence the central government and to obtain supportive legislation from parliament. This

[1] Elaine A. Reynolds, *Before the Bobbies. The Night Watch and Police Reform in Metropolitan London, 1720–1830* (1998).

explains why in the second part of the book, in which these matters are of central importance, the chapters fall naturally into the chronological divisions created by the two most important political events in the century following the Restoration of the monarchy: the Revolution of 1689; and the Hanoverian succession of 1714.

For reasons I shall explain, most of the data I analyse are drawn from the records of the Old Bailey and relate to offences against property from the City of London. I have used these records broadly in two ways. For the purpose of discovering the pattern of fluctuating annual cases, I have simply counted the number of defendants before the court as they are listed in the Minute Book in the ninety years with which I am concerned. For more detailed analyses, I have taken a one-third sample of the cases that came to trial from the City, drawn by recording the cases tried in every third session of the court. Since the Old Bailey sat eight times a year, the data contain a complete cycle of the sessions every three years. I have labelled this body of data the 'Sample'. It provides the evidence on which the calculations in the book of the changing levels of jury verdicts and the changing structure of punishment are based.[2]

Finally, I should add a word about the subtitle. In suggesting that limits appear to have been drawn around the role of terror in the administration of the criminal law, I do not mean to imply that there had been a move by the first half of the eighteenth century to abandon hanging and other public punishments whose purpose was at least in part to deter crime through fear. As we shall see, there are occasional hints that some men may have favoured restricting capital punishment, but there were no serious efforts to do so and no public discussion of possible alternatives. Indeed, hanging was extended in the century after 1660 to offences for which convicted men and women had earlier escaped with the relatively minor consequences of benefit of clergy. And the manipulation of the number of executions at Tyburn by the royal power of pardon as a means of adjusting levels of terror to the needs of deterrence continued to be an important aspect of criminal administration. Capital punishment, as Linebaugh and Gatrell have shown, retained its central place in the English penal system well into the nineteenth century.[3]

On the other hand, it is clear that a penal regime that—with respect to felonies—depended on catching a few serious offenders and subjecting them to terrifying public punishments had come to seem inadequate by the late seventeenth century. This was particularly the case in an urban setting in which large numbers of petty crimes for which the courts had no effective sanctions at their disposal were reported to the magistrates. In addition, the way in which capital

[2] The Old Bailey records of City cases are incomplete in the 1660s. They are sufficiently full to enable data from 1663–5 and 1667–9 to be added to the Sample, but the count of indictments begins in 1670, after which the records are complete.

[3] Peter Linebaugh, *The London Hanged. Crime and Civil Society in the Eighteenth Century* (1991); V. A. C. Gatrell, *The Hanging Tree. Execution and the English People 1770–1868* (Oxford, 1994).

punishment was administered was coming in for criticism in the first half of the eighteenth century, particularly what appeared to some men to be the carnival atmosphere that was liable to surround the procession of the condemned across London from Newgate gaol to the hanging place at Tyburn, and the behaviour of the crowds that gathered there to witness executions. One can see in the practice of the courts and the efforts made to fashion new, non-capital punishments criticism of the narrow basis of the system of criminal justice. The search for secondary punishments, and the striking effect on the sentencing pattern of the court when such a sanction was made available to the courts in the second decade of the eighteenth century, suggest that the established system had come to seem narrow and inflexible. The penal regime that was to emerge in the first half of the eighteenth century reflected what seems clearly to have been a sense that in a commercial society, increasingly prizing politeness and urban civility, too frequent public punishments were inappropriate when they interrupted work, encouraged drunken behaviour, and disrupted traffic in some of the major streets of the City. Such concerns were to be raised in the first half of the eighteenth century about the procession of convicts through London to Tyburn. The practice of the courts suggests that they were also being raised about public whippings carried out in the streets of London—punishments that encouraged crowds to gather and that disrupted traffic.

This is what I mean by suggesting that the limits of terror came to be recognized. In the century after the Restoration, in a period in which the society and culture of the metropolis were undergoing considerable changes, the elements of an alternative means of dealing with crime in urban society were emerging in policing, in the practices and procedures of prosecution, and in the establishment of new forms of punishment. That is the subject of this book.

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John Beattie
Toronto, November 2000

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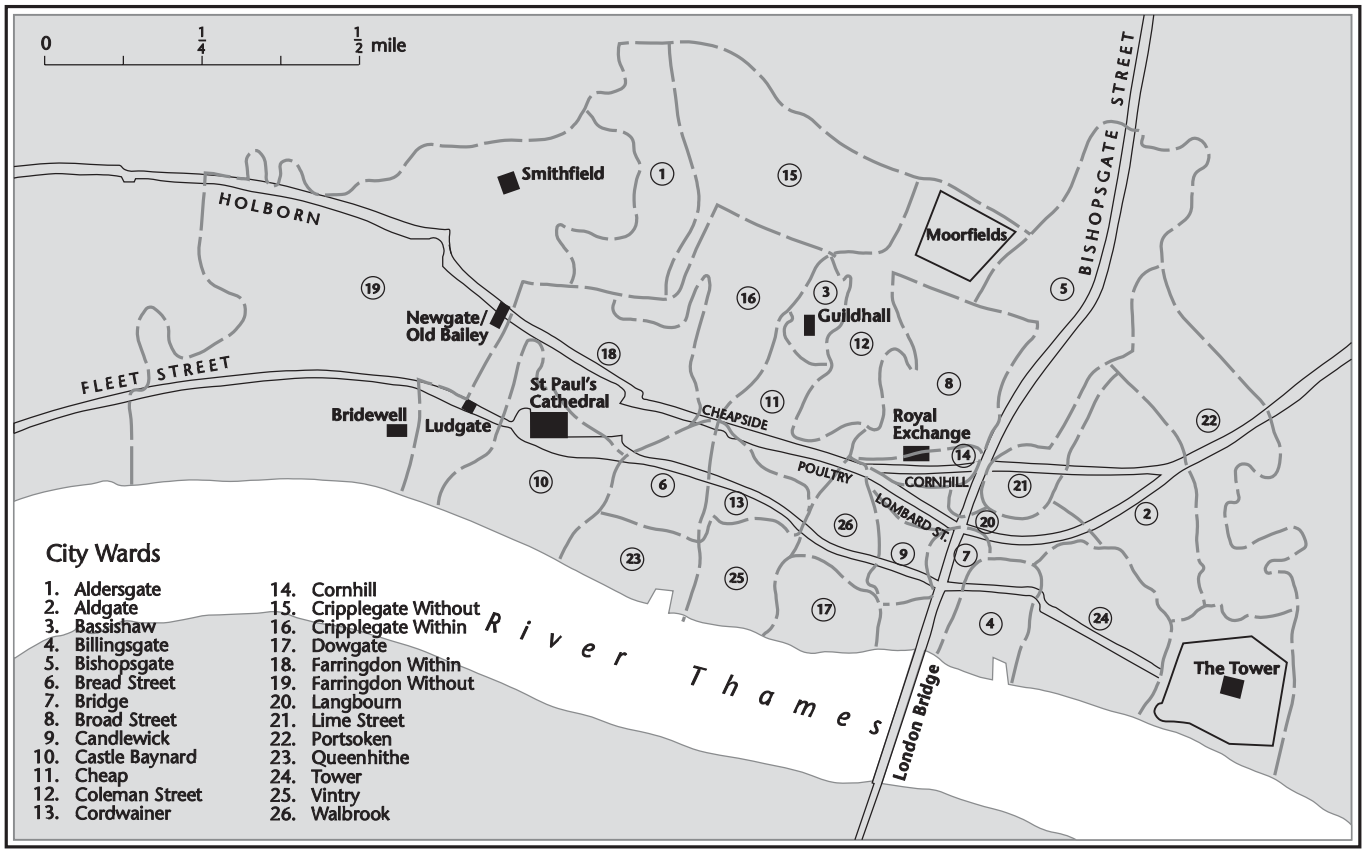
9. 'The manner of Whipping at the Carts Tayle for petty Larceny and other Offences.' From the same collection as no. 8. [Guildhall Library Print Room]
10. 'Mode of punishment for Branding, or burning on the Hand, at the New Sessions House.' An illustration in *The Malefactor's Register; or New Newgate and Tyburn Calendar* (5 vols, 1778) V, at p. 322. [Guildhall Library Print Room]
11. Sir William Thomson, Recorder of London, 1714–39, by Enoch Seaman. [Guildhall Art Gallery]

List of Abbreviations

Works frequently cited in the notes have been identified by the following abbreviations. Others have been fully cited at the first occurrence in each chapter. The place of publication is London unless otherwise noted.

Beattie, *Crime and the Courts*	J. M. Beattie, *Crime and the Courts in England, 1660–1800* (Princeton, Oxford, 1986)
BL	British Library
Bridewell Court Book	Minute Book of the Governors of Bridewell
C(H)Mss	Cambridge University Library, Cholmondeley (Houghton) MSS: Correspondence
CLRO	Corporation of London Records Office
CLRO: Charge Book	Lord Mayor's Charge Book
CLRO: Misc. MSS	Miscellaneous Manuscripts
CLRO: P.A.R.	Papers, Acts, and Reports
CLRO: P.D.	Printed Documents
CLRO: SF	Sessions Files
CLRO: SM	Sessions Minutes
CLRO: London Sess. Papers	Sessions Papers
CSPC: America and the West Indies	*Calendar of State Papers Colonial: America and the West Indies*
CSPD	*Calendar of State Papers Domestic*
CTP	*Calendar of Treasury Papers*
GLMD	Guildhall Library Manuscript Department
Hay and Snyder (eds.), *Policing and Prosecution*	Douglas Hay and Francis Snyder (eds.), *Policing and Prosecution in Britain 1750–1850* (Oxford, 1989)
HMC	*Historical Manuscripts Commission*
JHC	Journals of the House of Commons
JHL	Journals of the House of Lords
Jor	Corporation of London Records Office, Journals of the Court of Common Council
Langbein, 'The Criminal Trial Before the Lawyers'	John H. Langbein, 'The Criminal Trial Before the Lawyers', *University of Chicago Law Review*, 45 (1978), 263–316.
Langbein, 'Shaping the Eighteenth-Century Criminal Trial'	John H. Langbein, 'Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources', *University of Chicago Law Review*, 50 (1983), 1–136.

LMA	London Metropolitan Archives
LMA: DL/C	Diocese of London, Consistory Court
LMA: MJ/GBB	Gaol Delivery Book
LMA: MJ/SR	Sessions Rolls
OBSP	Old Bailey Sessions Papers (see ch. 1, n. 2)
Ordinary's *Account*	*The Ordinary of Newgate, his Account of the Behaviour, Confessions, and Dying Speeches, of the Condemned Criminals that were Executed at Tyburn* (see chap. 1, note 7)
PRO	Public Record Office
Radzinowicz, *History*	Sir Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (5 vols., 1948–86; 5th vol. co-authored with Roger Hood)
Rep	Corporation of London Records Office, Repertories of the Court of Aldermen
Sample	Property offences from the City of London tried at the Old Bailey in every third session, 1663–1750, see p. ix
SP	Public Record Office, Secretary of State Papers
T	Treasury



Map 1. The City of London

CHAPTER ONE

Introduction: The Crime Problem

THEMES

There was a common perception in London in the late seventeenth and early eighteenth centuries that crime was a serious problem. The offences that caused the sharpest anxieties and triggered the strongest responses were those that threatened individual victims in their person or property, offences the law defined as felonies. They were the visible centre of the crime problem, and provoked a continuing undercurrent of anxiety. Such offences were widely viewed as transgressions of the moral order, the results of choices made by individual men and women, and to be but one aspect of a broader constellation of illegal and immoral behaviour. But for some time by the late seventeenth century crime had also been coming to be seen not only as a collection of individual actions, but as a social pathology, or at least a social problem. That was particularly the case with respect to the metropolis, where the experience of crime was more alarming than in the rest of the country. Critics were certain that temptations abounded for those drawn into the corrupting environment of London, and that men and women, and especially young men and women, could easily be led astray there by bad companions and by older, more hardened, associates. Certain parts of the capital were coming to be regarded as nurseries of vice and crime—settings in which immorality and the attitudes that supported it were endemic.

Perceptions about the nature and extent of crime in London lie at the centre of this book. My concerns focus very largely on offences that involved the taking of property, offences prosecuted by way of indictment in the most important criminal court in the metropolis, the Old Bailey.[1] Robbery, burglary, housebreaking, and the myriad forms of theft were at the heart of the crime problem in the capital in part because they formed the staple of the increasingly common reporting of crime news. From the late seventeenth century two publications reported the trials held at the Old Bailey to an audience interested enough to

[1] For the wide range of misdemeanours, the more minor offences that accounted for by far the largest number of prosecutions in the metropolis, see Robert B. Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex*, c. *1660–1725* (Cambridge, 1991); and for the way the sessions of the peace compelled the attendance of those bound over to appear on such charges, an account that emphasizes the effectiveness of the clerical machinery, Norma Landau, 'Appearance at the Quarter Sessions of Eighteenth-Century Middlesex', *London Journal*, 23/2 (1998), 30–52.

support their regular production. Beginning in the 1670s the business of the Old Bailey became the subject of a continuing series that appeared at first under a variety of titles, but that adopted within a few years the title by which, with slight variations, it was known through the eighteenth century: *The Proceedings of the King's Commission of the Peace and Oyer and Terminer, and Gaol Delivery of Newgate, held for the City of London and County of Middlesex, at Justice-Hall in the Old Bailey. . . .*[2]

Like the older popular literature that since the sixteenth century had recounted the exploits of the better known criminals in chap-books, broadsides, and ballads, the early Sessions Papers in the 1670s concentrated on the trials that would be likely to attract an audience, and, as Michael Harris has said, continued to have about them 'the flavour of the traditional forms'.[3] But the favourable reception they enjoyed made it clear that there was a market for something more substantial and more regular—evidence in itself, perhaps, of the concerns that crime gave rise to in the city. There were publishers in the 1670s willing to take advantage of the opportunities. As early as 1678 the court of aldermen stepped in to control and regulate the publication of reports on the Old Bailey sessions.[4] Although one early reporter–publisher thought that '[i]t would be too tedious, and to little purpose, to publish every particular Tryal' rather than only 'the most considerable', that was a momentary phase.[5] Within a few years the Sessions Papers had taken on an altogether different form and a new function—the publication of an account, brief though it might be, not just of the more sensational cases but of most of the trials that took place in the Old Bailey. By the 1680s the single sheet, four-page, pamphlets published after each session of the court included a substantially complete record of all the cases that

[2] The first report on the Old Bailey trials listed in the British Library catalogue was published in 1674 under the title *A more fuller and exact Account of the tryals . . . in the Old Bayly. . . .* For the first decade or so titles varied, but in 1684, following a ruling by the aldermen that forbade reports not authorized by the lord mayor, they settled into the form they were to retain thereafter, beginning *The Proceedings on the King's [or Queen's] Commission of the Peace, Oyer and Terminer, and Gaol Delivery of Newgate*, with appropriate dates, and generally with the sitting lord mayor identified. No complete sets of the *Proceedings* have apparently survived for the early years of its publication, but there is a useful guide to locations and titles of surviving copies from the last two decades of the seventeenth century in Carolyn Nelson and Matthew Seccombe, *British Newspapers and Periodicals 1641–1700* (Modern Language Association of America, New York, 1987), 4ff. The *Proceedings* were commonly referred to in the eighteenth century as the *Sessions Papers*. I have adopted that usage here and have followed Langbein in referring to the pamphlets as the Old Bailey Sessions Papers (abbreviated as OBSP), except for the earliest years in which case I provide the full title. For trials after 1714 I have relied on the Harvester Press microform edition. For the origins, character, and printing history of the *Sessions Papers* see Langbein, 'The Criminal Trial Before the Lawyers', 267–72; Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 3–26; Andrea K. McKenzie, 'Lives of the Most Notorious Criminals: Popular Literature of Crime in England, 1675–1775', Ph.D. thesis (University of Toronto, 1999), 234–50; Michael Harris, 'Trials and Criminal Biographies: A Case Study in Distribution', in Robin Myers and Michael Harris (eds.), *Sale and Distribution of Books from 1700* (Oxford, 1982), 1–36, 267–72; Simon Devereaux, 'The City and the Sessions Paper: "Public Justice" in London, 1770–1800', *Journal of British Studies*, 35 (1996), 466–503; *idem*, 'The Fall of the Sessions Paper: Criminal Trial and the Popular Press in Late Eighteenth-Century London', *Criminal Justice History* (forthcoming).

[3] Harris, 'Trials and Criminal Biographies', 7.

[4] Rep 84, fo. 46; Harris, 'Trials and Criminal Biographies', 7.

[5] *The True Narrative of the Proceedings at . . . the Old Baily. . . .* (April, 1680).

had been tried, revealing for the first time in a systematic way the numbers of men and women convicted and acquitted, and the range of punishments imposed on the guilty. Over time, the Sessions Papers became fuller and more complete, even quasi-official.[6]

The Sessions Papers had a more sober purpose and developed a harder edge than anything previously published on the trial of criminal offences at the Old Bailey. The same might be said about the brief narrative that the ordinary of Newgate began to publish, at about the same time, of the lives and the 'last dying speeches' of the men and women condemned to death at the Old Bailey. As the reports of trials began to find an audience in the mid-1670s the ordinary—the chaplain of the gaol—began to publish his accounts of the lives of the condemned to coincide with the day of their hanging. In these brief pamphlets, he aimed to tell the story of how they went wrong, the offences they had committed, their behaviour in gaol, and the 'last words' they spoke before they were turned off at the place of execution. It also invariably included a self-serving account of his own good work on their behalf and a justification of the law under which they were to die.[7]

Brief as they were, the accounts of the Old Bailey trials and of the lives of the condemned marked a shift in crime publishing from heavily fictionalized tales of the daring pranks of highwaymen intended as entertainment to something more approaching a source of public information. Readers who sought prurience and titillation did not disappear; the more sensational cases would still be given disproportionate space in the interest of selling copies. But the audience that supported the regular publication of trial accounts and the lives of the

[6] The lord mayor and aldermen continued to control its publication, successfully disputing that right with the Chief Justice of the Court of King's Bench (Rep 100, fo. 103). For assertions of the City's right to authorize publication, see Rep 84, fo. 46, and Rep 89, fo. 114. The January 1685 OBSP included the notice in the name of the lord mayor that he had appointed 'George Croom to print and Publish the Proceedings at the Sessions held at Justice-Hall in the Old Bayly: And that no other Person or Persons whatsoever, presume to Print the same'. In the eighteenth century the account of the trials at the Old Bailey was published only under the lord mayor's licence.

[7] The ordinaries of Newgate published their 'Accounts' of the lives, dying speeches, and behaviour at the gallows of the men and women executed at Tyburn under a variety of titles until 1701 when they adopted a common title, used thereafter, with the addition of appropriate dates: *The Ordinary of Newgate, his Account of the Behaviour, Confessions, and Dying Speeches, of the Condemned Criminals that were Executed at Tyburn*. Those published in 1701 and after will be cited as Ordinary's *Account*, with the date of publication. 'Accounts' published before 1701 are given their full title. For the character and publishing history of the *Account*, see Harris, 'Trials and Criminal Biographies: A Case Study in Distribution', 17–19; Peter Linebaugh, 'The Ordinary of Newgate and His *Account*', in J. S. Cockburn (ed.), *Crime in England 1550–1800* (1977), 246–69; McKenzie, 'Lives of the Most Notorious Criminals', ch. 4; *idem*, 'Making Crime Pay: Motives, Marketing Strategies, and the Printed Literature of Crime in England, 1670–1770', in Greg T. Smith, Allyson N. May, and Simon Devereaux (eds.), *Criminal Justice in the Old World and the New* (Toronto, 1998), 235–69; Philip Rawlings, *Drunks, Whores and Idle Apprentices: Criminal Biographies of the Eighteenth Century* (1992). For their sixteenth- and seventeenth-century predecessors, J. A. Sharpe, '"Last Dying Speeches": Religion, Ideology and Public Execution in Seventeenth-Century England', *Past and Present*, 107 (May, 1985): 144–67; Peter Lake and Michael Questier, 'Agency, Appropriation and Rhetoric under the Gallows: Puritans, Romanists and the State in Early Modern England', *Past and Present*, 153 (Nov. 1996), 64–107. For the location and titles of accounts published in the last two decades of the seventeenth century, see Nelson and Seccombe, *British Newspapers and Periodicals*, 540 ff.

condemned—an audience that seems certain to have consisted very largely of those in the middling ranks of metropolitan society: artisans and shopkeepers and professionals and the like[8]—clearly wanted something more than entertainment. As William Speck has said, they were not seeking 'diversions from the real world . . . but explorations of it'.[9]

A developing popular literature of crime was supplemented by accounts of individual trials and biographies of offenders and in the first half of the eighteenth century by multi-volume collections of criminal lives and Old Bailey trials that went into successive editions and encouraged rival versions. The editors of these commercial enterprises sought a wide audience and tended to emphasize what they thought were the more intriguing and entertaining aspects of cases. But later collections of trials, like the Sessions Papers and the Ordinary's *Accounts* from which they drew their material, provided a steady diet of crime news that mainly concerned ordinary crimes against property and the mundane doings of highwaymen, street robbers, burglars, and thieves of various kinds.[10] Offences of this kind and the immorality that was so commonly thought to be their progenitor were at the heart of the crime problem. And it was against such crimes that a variety of measures was taken, measures that aimed to diminish them by discovering, prosecuting, and more effectively punishing the perpetrators.

The offences prosecuted in London were not unique to the capital. But in their level, intensity, and range—encompassing as they did frequent reports of violent robberies on the one hand and irritatingly high levels of petty thefts on the other—they presented problems that exposed more clearly than elsewhere the inadequacies of the law and the system of criminal administration. The initiatives undertaken to combat these problems in the metropolis introduced changes that over the long term made for a substantial alteration in the way crime was regarded and the way the law was administered. In pursuing that argument, we need to resist taking the view that the responses inspired by the problems of urban crime were in any sense inevitable, that they were part of some larger progressive plan gradually unfolding. Rather, it is more useful to ask why some options were chosen among those that might have been available and not others—and to place them in as wide a social, cultural, economic, and political context as possible.

In seeking to do that, I will concentrate on the experience of crime in the City of London, that is the ancient incorporated City governed by the mayor and aldermen, that had once been entirely confined within the walls but that by the

[8] McKenzie, 'Lives of the Most Notorious Criminals', 7–23; Rawlings, *Drunks, Whores and Idle Apprentices*, 3–4.

[9] W. A. Speck, *Literature and Society in Eighteenth-Century England, 1680–1820* (1998), 100.

[10] McKenzie, 'Lives of the Most Notorious Criminals', chs 4–5; and see Lennard J. Davis, *Factual Fictions: The Origins of the English Novel* (New York, 1983; repr. edn., Philadelphia, 1996), 123–37; Lincoln B. Faller, *Turned to Account: The Forms and Functions of Criminal Biography in Late Seventeenth- and Early Eighteenth-Century England* (Cambridge, 1987); and *idem*, *Crime and Defoe: A New Kind of Writing* (Cambridge, 1993), 4–5.

seventeenth century had spilled far outside into suburban parishes and wards. The City had been largely destroyed in the Great Fire of 1666 and then rebuilt. By the eighteenth century it formed only one part, though an immensely important part, of the larger metropolis of London. I chose to concentrate on the City of London because a large part of the evidence in the work that follows derives from the offences charged at the Old Bailey over the eighty years I am studying and the way the juries and judges dealt with the defendants brought before the court. The Old Bailey tried cases from two jurisdictions: from the City itself, and from Middlesex, the county that surrounded the ancient City. Since the court dealt with several hundred felony cases a year, it was necessary as a practical matter to work with a sample in analysing jury verdicts and the patterns of punishment over time. The cases that arose from the City—easily distinguished from those that originated in Middlesex because the City and the county were separate jurisdictions with their own clerical staffs and records—provide a reasonable sample.[11]

There were other compelling reasons for studying the City. The changes that one can see taking place in several aspects of the law and criminal administration in this period were accompanied by very little public discussion. Few printed sources disclose the arguments and motives or the identity of those who pressed for changes. It seems likely that the political importance of the City of London in national affairs enabled it to play some part in encouraging legislative and other changes in the criminal law and its administration. And further, that if the City authorities engaged in a discussion of the issue of crime, some traces of such a discussion going on, as it were, below the level of printed discourse, might be found in the papers of the hierarchy of governing institutions in the City—in the court of aldermen, common council, wardmotes, and other bodies. The City was also likely to be at the centre of discussion about crime and related issues because Newgate and the Old Bailey, which served respectively as the gaol and trial court for both Middlesex and the City itself, were located within the City boundaries and were under the jurisdiction of the lord mayor and aldermen.[12] There was the further point that City officials played crucial

[11] The records of the City of London sessions of the peace (held at the Guildhall) and of cases from the City dealt with at the sessions of gaol delivery and oyer and terminer (at the Old Bailey) are held at the Corporation of London Record Office (CLRO). They consist of two main series. The Sessions Files (SF) contain the original documents pertaining to individual sessions (the records from both courts being bound together) and include the gaol calendar, the commissions under which the court sat, recognizances, jury lists, and indictments. The Sessions Minute Books (SM) are a record of the work of the courts: they include copies of the commissions, the names of the jurors selected to serve, a calendar of the recognizances entered into and of the indictments tried at both the sessions of the peace and the sessions of gaol delivery and oyer and terminer at the Old Bailey, noting the juries' verdicts and the sentences imposed on convicted defendants.

[12] On the role and character of Newgate in the eighteenth century, see W. J. Sheehan, 'Finding Solace in Eighteenth-Century Newgate', in Cockburn (ed.), *Crime in England*, 229–45; *idem*, 'The London Prison System, 1666–1795', Ph.D. thesis (University of Maryland, 1975); Peter Linebaugh, *The London Hanged. Crime and Civil Society in the Eighteenth Century* (1991), 28–9.

roles in the administration of the criminal law. The lord mayor and other City magistrates, for example, were named to the gaol delivery commission and had the right to sit on the Old Bailey bench if they chose; and, as we shall see, the City recorder became centrally involved in the pardon process in this period, and some occupants of the office acted effectively as advisers to the central government on crime issues, through the secretaries and under-secretaries of state.

This book, then, is an exploration of the institutions of policing in the City, of prosecution practices, and the workings of the Old Bailey in the last decades of the seventeenth century and the first half of the eighteenth. I begin this introductory chapter with a section on the City itself and go on to a discussion of how crime was perceived in the metropolis—what the nature of the crime problem was thought to have been. The main body of the book then follows in two sections. The first, consisting of four chapters, examines the several elements that together provided the policing arrangements of the City: the magistrates and the process of prosecution; the body of constables who were crucial to the administration of the criminal law; the changing nature of the institutions that were supposed to provide policing and protection over the City's streets at night, including the watch and the system of street lighting, both of which underwent remarkable transformations in this period; and, finally, the emergence of a shadowy group of private policemen of a sort—thief-takers, as they were called—who were active in significant numbers in this period as a result of the efforts of the central government to stimulate the prosecution and conviction of serious offenders.

The second section of the book, also in four chapters, is an examination of the important role played by the City authorities from the Restoration into the middle of the eighteenth century in the search for ways of encouraging the prosecution of property offences and in the emergence of forms of punishment that did not rely entirely on the terror of the gallows or the pain and humiliation of public whipping. In the course of that exploration, we will examine significant changes in legislation over this period, much of it inspired by the City, and the increasing engagement of the central government in the administration of the law. Our aim will be to uncover the extent to which alterations in modes of policing, prosecution, and punishment had transformed the criminal administration of the metropolis by the middle of the eighteenth century and the way in which the institutions of criminal justice were being adapted to the changing character of the City in a period in which new forms of urban culture were eroding established attitudes and practices.

THE CITY OF LONDON AND CRIMINAL ADMINISTRATION

At the end of the seventeenth century, the City of London was at the centre of a metropolis that had been growing strongly over the previous one hundred and fifty years. Indeed, as a result of a striking expansion in population and geographical reach, London was one of the largest cities in Europe by 1700. From a

population of about 120,000 in 1550, the metropolis had grown to close to half a million by the end of the seventeenth century and the built-up area had by then spilled far beyond the ancient walled City on the north bank of the River Thames. To its north and east of the area governed by the Corporation, as well as across the river in the Borough of Southwark and neighbouring parishes, burgeoning centres of manufacturing developed strongly in the seventeenth century and parishes along the river spawned a host of trades connected with shipping and ship-building.[13] The growth of the built-up area and of population was marked in the suburbs to the east of the City but hardly less so to the west, where a great spurt of building along and to the north of the Strand joined the City with what had been the separate administrative and political world of Westminster. As the site of the court, parliament, and of the national government, Westminster was itself to expand massively in the eighteenth century, becoming the fashionable residential area for officials, politicians, and courtiers who wanted to live near the centre of power, as well as for the landed élite whose habit of spending the winter in the capital for the social season was well established by the early decades of the eighteenth century. Such a concentration of wealth in turn encouraged a vigorous expansion of luxury trades in Westminster and surrounding parishes, and of cultural institutions and places of leisure and entertainment. The linking of the two poles of the large metropolis that came increasingly to define its character and explain its uniqueness and its success as a city—the worlds of commerce and finance in the City, and of politics, fashion, and high life in the West End—was far advanced by the early years of the eighteenth century.[14]

By then, the population of the City that a century and a half before had dominated neighbouring settlements now amounted to barely a quarter of the

[13] The bibliography of work on the economy and society of London in the century after the Restoration is extensive. I have found the following particularly useful: M. Dorothy George, *London Life in the XVIIIth Century* (1925); E. A. Wrigley, 'A Simple Model of London's Importance in Changing English Society and Economy, 1650–1750', *Past and Present*, 37 (1967), 44–70; George Rudé, *Hanoverian London, 1714–1808* (1971); P. J. Corfield, *The Impact of English Towns, 1700–1800* (Oxford, 1982); A. L. Beier and Roger Finlay (eds.), *London, 1500–1700: The Making of the Metropolis* (1986); Peter Earle, *The Making of the English Middle Class. Business, Society and Family Life in London, 1660–1730* (1989); *idem*, *A City Full of People: Men and Women of London, 1650–1750* (1994); Gary De Krey, *A Fractured Society: The Politics of London in the First Age of Party, 1688–1715* (Oxford, 1985); Nicholas Rogers, *Whigs and Cities: Popular Politics in the Age of Walpole and Pitt* (Oxford, 1989), pts I–II, esp. ch. 4; *idem*, 'Money, Land and Lineage: The Big Bourgeoisie of Hanoverian London,' *Social History*, 4 (1979), 437–54; F. J. Fisher, *London and the English Economy, 1500–1700*, ed. by P. J. Corfield and N. B. Harte (1990); L. D. Schwarz, *London in the Age of Industrialisation: Entrepreneurs, Labour Force and Living Conditions, 1700–1850* (Cambridge, 1992); Roy Porter, *London: A Social History* (1994); David Hancock, *Citizens of the World: London Merchants and the Integration of the British Atlantic Community, 1735–1785* (New York, 1995), esp. 86–90; Margaret R. Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680–1780* (Berkeley, Calif., 1996); Elizabeth McKeller, *The Birth of Modern London. The Development and Design of the City, 1660–1720* (Manchester, 1999).

[14] Norman G. Brett-James, *The Growth of Stuart London* (1935); John Summerson, *Georgian London*, 4th edn. (1988), 73–86; Lawrence Stone, 'The Residential Development of the West End of London in the Seventeenth Century', in Barbara C. Malament (ed.), *After the Reformation: Essays in Honor of J. H. Hexter* (Manchester, 1980), 167–212; Roger Finlay and Beatrice Shearer, 'Population Growth and Suburban Expansion', in Beier and Finlay (eds.), *London, 1500–1700*, 37–59; Porter, *London*, chs 5–6.

inhabitants of the larger metropolis.[15] In the eighteenth century, while the population of the larger metropolis continued to grow, if at a slower pace, that of the City stabilized. The balance within the expanding conurbation that London was becoming swung over time ever more decisively away from the area governed by the mayor and aldermen towards Westminster and the rapidly developing suburbs. The City none the less remained in the eighteenth century an immensely important community. It was wealthy, powerful, politically important, and deeply jealous of the rights and privileges of self-government and autonomy granted by its ancient charter. It had important representation in parliament, and close links with the central government—links that grew all the stronger as the state became increasingly dependent on the credit and the expertise that the financial and mercantile community of the City could provide. It also remained a leading centre of ideas and opinion in national politics, in part because it had a finely articulated system of government that spread down from the lord mayor and aldermen of the Corporation to a large, elected common council, an electorate of liverymen, and to ward, parish, precinct, and guild institutions that allowed a measure of civic participation at least to the householders who could claim to be freemen and citizens.[16]

The City had also long been one of the main manufacturing centres of the country, and continued to be so in this period, though work was shifting to the suburban parishes outside the walls of the old city, parishes that were freer of guild controls and growing rapidly in size and importance by the second half of the seventeenth century.[17] It retained a large and diversified workforce in the building trades, in clothing and textiles, and a range of other enterprises. Along

[15] I adopt here the estimates of P. E. Jones and A. V. Judges, based on the assessments made for the tax on marriages, births, and burials in 1695 'London Population in the Late Seventeenth Century', *Economic History Review*, 6 (1935–6), 45–63. They calculated the population within the walls at just under 69,500 and in the parishes without the walls at about 53,500, for a total of about 123,000 (pp. 61–2). For a recent recalculation, following a different method and arriving at a lower total, see Finlay and Shearer, 'Population Growth and Suburban Expansion', 40–8.

[16] The City was divided into twenty-six wards, twenty-one of which were within the walls, three were without, and two (Bishopsgate and Aldersgate) were both within and without. Each ward elected an alderman; and one of the body of twenty-six members of the court of aldermen was elected to serve for a year as lord mayor. The wards, and the parishes and precincts into which they were divided, had institutions that, as we shall see, played a role in the government of the City. On the constitution, political structure, and political participation in the City, see [P. E. Jones], *The Corporation of London: Its Origins, Constitution, Powers and Duties* (1950); Sidney and Beatrice Webb, *English Local Government: The Manor and the Borough* (1908), ch. 10; Valerie Pearl, *London and the Outbreak of the Puritan Revolution: City Government and National Politics, 1625–1643* (Oxford, 1961); *idem*, 'Change and Stability in Seventeenth-Century London', *London Journal*, 5 (1979), 3–34; De Krey, *A Fractured Society*; Tim Harris, *London Crowds in the Reign of Charles II: Propaganda and Politics from the Restoration until the Exclusion Crisis* (Cambridge, 1987); Alfred James Henderson, *London and the National Government, 1721–1742* (Durham, NC, 1945); Rogers, *Whigs and Cities*, pts I–II; and the masterly summary account by Henry Horwitz in 'Party in a Civic Context: London from the Exclusion Crisis to the Fall of Walpole', in *Britain in the First Age of Party, 1680–1750: Essays Presented to Geoffrey Holmes* (1987), 173–94.

[17] George, *London Life*, ch. 4; Schwarz, *London in the Age of Industrialisation*, pt I; A. L. Beier, 'Engine of Manufacture: The Trades of London', in Beier and Finlay (eds.), *London, 1500–1700*, 115–40.

with the rest of the metropolis, it was also a centre of increasingly conspicuous consumption, a massive consumer of food and stimulant of a national market in foodstuffs and other products.[18] But it was on overseas trade, and particularly the exploitation of the new colonies in the West Indies and North America, and the range of financial activities that it supported, that the wealth and influence of the City of London was increasingly to be built. By 1700 it was entering a new era at the centre of the British financial world. This was a result of both the rapid growth of trade in the second half of the seventeenth century and of the political and military consequences of the Revolution of 1689, which had pitched England into what was to be a series of long and expensive wars in Europe. The demands of warfare in the quarter century after 1689 generated a revolution in public finance by establishing a National Debt, creating through parliament a system of taxes to service that debt, and spawning a network of private interests to make the system work. That network was centred on the wealthy financiers of the City of London, particularly on the Bank of England, an institution created in 1694 to act as the agent for the funnelling of money to the central government.[19]

The City's expansion as a mercantile and financial centre served over time to diminish it as a desirable residential area. Those who could afford to do so abandoned its bustle and cramped conditions for the fashionable elegance of the West End, or, if not that, for a villa in the suburbs or the villages beyond. The City did not cease to be a significant residential area until the second half of the nineteenth century, but the tendency for those who made their money there to live elsewhere was well underway by the early eighteenth and clearly contributed to the stabilizing of the population. Even more, as we shall see, it had a direct effect on the way the area under the jurisdiction of the Corporation was governed.

By the late seventeenth century and increasingly in the eighteenth the City contained a plutocracy of vast wealth. Its social, economic, and political character was also shaped by an extensive and broadening middle class of merchants and shopkeepers, and larger numbers of more modestly prosperous masters and journeymen in skilled trades, in manufacturing, and in retail trades. A considerable proportion of the adult male householders (some 80 per cent[20]) were freemen of the City—not all prosperous by any means, but men none the less with an established place in their local communities who could play some role in the governance of their precincts and wards.[21] Families of middling fortune

[18] Wrigley, 'A Simple Model of London's Importance', 55–63; and for an earlier period, see F. J. Fisher, 'The Development of the London Food Market, 1540–1640' and 'The Development of London as a Centre of Conspicuous Consumption in the Sixteenth and Seventeenth Centuries', in his *London and the English Economy*, 61–79, 105–18.

[19] P. G. M. Dickson, *The Financial Revolution in England* (1967); John Brewer, *The Sinews of Power: War, Money and the English State, 1688–1788* (1988).

[20] De Krey, *A Fractured Society*, 40–1 and n. 60.

[21] De Krey, *A Fractured Society*, 39–44, 171–6, 186–90; Rogers, *Whigs and Cities*, 145–50.

were particularly numerous in the older, more stable parts of the City. The parishes outside the walls, larger in area and increasingly in the seventeenth century in population, were both more crowded and poorer than those at the centre. Their social problems, including crime, were more difficult to manage, in part because they did not command the resources of their wealthier neighbours. Several such parishes, including St Botolph in Bishopsgate Without, St Giles in Cripplegate Without, St Andrew, Holborn, and St Sepulchre and several other parishes, or part parishes, in Farringdon Without, regularly petitioned and received help with their Poor Law obligations from their richer neighbours, a process co-ordinated by the court of aldermen.[22] But none of the twenty-six wards into which the City was divided was without a central group of established residents who brought some stability to its governing institutions. The urban world was no doubt more anonymous than the small towns and villages in which the vast majority of the population of England lived. Indeed, some measure of the freedom that anonymity brings may have been one of its strongest attractions to the young who were coming to London in such numbers by the end of the seventeenth century. But the City of London was not a mass society in any modern sense of the term. The local community still mattered a great deal—in social and political and cultural ways—and even the largest and most crowded of the City's wards were not without a core of men prepared to take their turns in local offices that engaged them in the government of their small world. Throughout the City there were still many men like Nathaniel Redhead of the parish of St Andrews Holborn, a baker, described by his neighbours in 1750 as 'an Honest and Substantial man and of good Credit and Character', who had lived twenty-five years in the parish 'and hath served all the offices therein'.[23] Men like Redhead, who helped to govern at the level of the parish and the precinct, and who served in ward offices, on juries, and on the common council, gave a particular character to the administration of the City, including its judicial administration.

The City included a large working population, many of whom lived in the greatest insecurity because they depended on work that was by its nature uncertain and irregular. Even in the wealthiest districts there were pockets of poverty. But in the suburban wards on the outskirts of the City a larger proportion of their less-rooted and less-skilful populations were more vulnerable to changes in the availability of work. Along with other parts of the metropolis, the City attracted large numbers of young immigrants, women and men, looking for work in service and in the textile, building, and other trades, who tended to congregate in the suburban parishes. Their fortunes depended entirely on the shifting availability of work and the costs of basic foodstuffs, and very large

[22] See, for example, CLRO: London Sess. Papers, May 1694.

[23] He was petitioning the king on behalf of his son, who had been condemned to death for horse-theft. Twenty-three men supported his petition (SP 36/113/20).

numbers of young men and women could easily find themselves in serious difficulty if work dried up and they were adrift in parishes in which they could make no claim on local resources, without friends and supporting kin.[24]

The City's social and economic landscape helped to shape the offences prosecuted at the Old Bailey, and we will have reason to explore it more fully when we examine the work of that court. We will also have reason to return to the political and cultural makeup of the City when we consider the responses of its more prosperous citizens to what they considered the great threat of crime and disorder. Social structure and political organization also shaped the working of the judicial system in the City.

The administration of the criminal law was divided among several jurisdictions in the larger metropolis of London and was unique in the country in terms of the work of the courts involved, the relationships among them, and the pattern of their meetings.[25] It was certainly very different indeed from the system of quarter sessions and assizes familiar elsewhere. In the City the institutions of policing and prosecution were governed by the royal charter which established the wards, each of which was led by an alderman elected for life and one of whom served an annual term as mayor. The City's magistrates were chosen from among the twenty-six aldermen. At the Restoration their numbers were governed by the 1638 charter which named the serving lord mayor, the recorder of the City (the principal legal officer and adviser to the aldermen), the aldermen who had 'passed the chair'—that is, who had already served as mayor—and the next three most senior aldermen as magistrates. The increasing reluctance of aldermen to act in the office, along with the press of business over the late seventeenth century and first half of the eighteenth, resulted in additional aldermen being named as magistrates until, in 1741, all were included as soon as they were elected.[26]

The City magistrates held sessions of the peace eight times a year at Guildhall. The rest of the metropolis north of the river Thames came under the jurisdiction of the magistrates of Middlesex, who also held their sessions of the peace eight times a year, at Hicks' Hall in Clerkenwell, at the same time as the City sessions met.[27] In both jurisdictions, the sessions calendars included the kinds of

[24] George, *London Life*, chs 3–4; A. L. Beier and Roger Finlay, 'Introduction: The Significance of the Metropolis', in Beier and Finlay (eds.), *London, 1500–1700*, 17–20.

[25] For the relationship in criminal matters among the courts in the metropolis in the seventeenth century, see John Cordy Jeaffreson (ed.), *Middlesex County Records*, 4 vols. (1886–92), i. xvii–lx; Hugh Bowler (ed.), *London Sessions Records, 1605–1685*, Catholic Record Society, 34 (1934), vii–lx; J. S. Cockburn, *A History of English Assizes, 1558–1714* (Cambridge, 1972), 29–31.

[26] [Jones], *The Corporation of London*, 59–60.

[27] The City of Westminster had its own commission of the peace and also held its own sessions. The Borough of Southwark, on the south of the river and connected to the City by the only bridge in the metropolis in the late seventeenth century, was in some respects part of the City, and the mayor and aldermen held sessions of the peace there once a year. But this court dealt with few cases; criminal matters arising in Southwark, and in its neighbouring populous parishes, came within the jurisdiction of the county of Surrey. See Beattie, *Crime and the Courts*, 16–17.

misdemeanours common to county and borough quarter sessions elsewhere: assault, disturbances of the peace, fraud, and various forms of cheating.[28] They differed from those courts in one important respect, however: the London sessions of the peace did not deal with many charges of theft. Even petty larceny, the theft of goods under a shilling in value, and a misdemeanour rather than a felony—and thus a non-capital offence unlike most other offences against property—was only rarely prosecuted at the City sessions, or at those held for the county of Middlesex or Westminster. In the rest of the country, the magistrates were likely to deal with at least some of the straightforward and minor cases of theft, while leaving the more serious offences to the assize courts, the sessions of which were held twice a year (once on the Northern Circuit) and presided over by two judges from the high courts in London. The Middlesex and London magistrates left virtually all charges involving the taking of property (as well as violent offences that could result in a sentence of death, and occasional matters involving particular interest or difficulties) to the courts presided over by the judges of the high courts, which in the metropolis meant the sessions of the peace, oyer and terminer, and gaol delivery held in the sessions house in the Old Bailey.[29] This rule had considerable implications for the administration of the criminal law in London.

The county of Middlesex and the City of London were separate jurisdictions. Each had its own clerical staff.[30] But in dealing with serious offences their jurisdictions overlapped because they shared the gaol in which their accused offenders were held for trial. The main work of the judges at the Old Bailey was to deliver that gaol—that is, to hold the trials of men and women who were being held in Newgate when the court sat. It was this that brought cases from both Middlesex and the City of London before the same bench at the Old Bailey, for Newgate gaol, though located in the City, had historically served both jurisdictions. Accused felons were transferred there from the Middlesex prisons on the eve of the sessions; City prisoners were also sent to Newgate if they had been held in the sheriffs' prisons, the compters. All were brought to trial in the 'sessions house' attached to the prison and known as the Old Bailey from the street in which it was situated. For the most part, the court tried offences that had been committed in either Middlesex or the City, though they could also

[28] For the business at the sessions of the peace, see Norma Landau, *The Justices of the Peace, 1679–1760* (Berkeley, Calif., 1984), ch. 8; *idem*, 'Appearance at the Quarter Sessions of Eighteenth-Century Middlesex'; *idem*, 'Indictment for Fun and Profit: A Prosecutor's Reward at Eighteenth-Century Quarter Sessions', *Law and History Review*, 17/3 (1999), 507–36; Shoemaker, *Prosecution and Punishment*, chs 5–6.

[29] The Old Bailey judges were not issued a commission of assize, unlike the judges who went on circuit. Such a power was unnecessary in the metropolis because the court of King's Bench sat in Westminster Hall and at the Guildhall and took civil pleas along with criminal business. See Cockburn, *History of English Assizes*, 59–62, 134–50; and J. H. Baker, 'Criminal Courts and Procedure at Common Law, 1550–1800', in Cockburn (ed.), *Crime in England*, 30–1.

[30] In the City, the post of clerk of the peace was held by the town clerk, but the business of the office was performed by one of his clerks, acting as his deputy; see Betty R. Masters, 'City Officers, III: The Town Clerk', *Guildhall Miscellany*, 3 (1969–71), 55–74.

deal with thefts, robberies, and burglaries committed elsewhere when stolen goods had been brought to London for disposal.

The commissions that empowered the court to try any and all criminal charges were addressed to the lord mayor of London (who presided, at least formally), the magistrates of the City, the recorder, the common sergeant (the elected legal adviser to the common council), three judges of the high courts, and other officers of state. Although cases from Middlesex, including Westminster, constituted over time an increasingly large proportion of the Old Bailey calendar, the county's magistrates were not included in the gaol delivery commission. This was clearly a source of resentment, and from time to time the magistrates of Middlesex made efforts to correct an obvious irritant. The City authorities had long taken the view that since Newgate and the Old Bailey were in the City and were maintained at the City's expense, the Middlesex magistrates had no right of attendance. They had successfully excluded them, at least in the seventeenth century, and the fact that the Middlesex magistrates were included in the commissions of gaol delivery for a few years in the 1680s while the City's charter was suspended, provided precedents that, in the eyes of the aldermen of London, more condemned than supported the county magistrates' later efforts to get some of their number onto the Old Bailey bench.[31] The Middlesex magistrates had been once again excluded after the Revolution of 1689—with perhaps some exceptional appearances[32]—and their further efforts to establish their right of attendance were again successfully resisted by the City. The Middlesex magistrates petitioned the lord chancellor in 1717 to have some of their number included in the next gaol delivery commission, but an answer drawn up by William Thomson, the recorder of the City and George I's solicitor general, kept them at bay. The case for including the magistrates who had taken the Middlesex depositions and examinations was overwhelming. But much more important and decisive than narrow legal and procedural arguments were the social realities and assumptions at work. The aldermen of London were all drawn from the financial and mercantile plutocracy.[33] They were not likely to mix readily with magistrates they regarded as their social inferiors and who, rightly or wrongly, were reputed to be corrupt and money-grubbing. Nor, it seems certain, would their ladies. Among other things, the sessions of gaol delivery at the Old Bailey were social occasions in the City, as were the assizes and quarter sessions in the counties. And, as at all social occasions, where one sat and with whom one associated were matters of crucial importance. The wives and guests of the mayor, the aldermen, sheriffs, and recorder sat in reserved galleries if they chose to attend, and rooms on either side of the bench were

[31] Bowler (ed.), *London Sessions Records*, x.

[32] As in April 1716, or so the printed *Proceedings* of that date suggests.

[33] For the wealth, occupations, and social standing of the City aldermen in the middle decades of the eighteenth century, see Rogers, 'Money, Land and Lineage'.

appointed for them.[34] It was a matter of the simplest social snobbery that induced the aldermen of the City to fight so hard (and successfully) to exclude the Middlesex magistrates from attending on equal terms the sessions at the Old Bailey. As Thomson pointed out, the Middlesex justices had been assigned places at the Old Bailey, but they could not be accommodated on the bench. This weakened most of the points the county magistrates made about the importance of their presence in court, and the nub of their argument came down to their not being treated with the dignity they ought to command.[35]

In practice, the sessions were very largely in the hands of the professional judges and the City recorder, who took turns hearing the more serious cases, spelled occasionally by the lord mayor and the other City magistrates in attendance who might take some of the more straightforward trials. In his account of his public activities during his mayoral year in 1756–7, Marshe Dickinson included the occasions on which he attended the Old Bailey, distinguishing between going 'in private', without ceremony, and 'in State'—that is, wearing his robes of office and attended by members of his household, which he did on the first days of sessions for the 9 a.m. opening of the court, and occasionally on other days. Generally, he stayed all day, and from time to time took his turn as the trial judge. At the July sessions in 1757, for example, the judges all left after the dinner recess, and, as he records in his account of his mayoral year:

> at the desire of Mr. Justice Clive [he] tryed the Prisoners all this afternoon—haveing ye favour of Sir John Barnards attendance on ye Bench [an experienced City alderman and magistrate]—whose assistance I asked yt he wd set me right If he found me in any wise to Err in my Conduct at this time, being myself not und[er] a Little Concern for fear I might do amis.[36]

A number of other City magistrates were required to be in attendance at the Old Bailey as part of the quorum, at least at the opening formalities and the

[34] In 1679 the court of aldermen confirmed that the two rooms on each side of the bench at the sessions house would be so reserved: one for 'the lady mayoress, Mr. Recorder's and the aldermen's ladies above the chair', and the other for the ladies of the aldermen below the chair and of the sheriffs (Rep 84, fo. 136). In 1696 the 'boxes' in the galleries at the sessions house were ordered to be enlarged 'for the better reception of the aldermen's ladies and other ladies of quality' (Rep 100, fo. 82). The galleries on either side of the bench at the Old Bailey continued in the eighteenth century to be reserved for the ladies and friends of the lord mayor and the aldermen above the chair on one side and the sheriffs and aldermen below the chair on the other. Their servants considered it one of their perks to sell seats in those galleries (Rep 121, p. 75; Rep 122, p. 59).

[35] One might add that the government of George I was not likely in 1717 to choose to upset the Corporation of London, nor to resist the opposition of its own solicitor-general, whose argument was essentially that the precedents were against the inclusion of the Middlesex magistrates in the gaol delivery commission, that the City, not the county of Middlesex, maintained the Old Bailey and Newgate, and that their presence on the bench was unnecessary so long as they were given places in court. For Thomson's answer to the petition, see CLRO: London Sess. Papers, December 1718; and Rep 122, fos. 3, 263.

[36] GLMD, MS 100, 'Office of the Mayor: Mansion House Arrangements, 1756–1757'. Dickinson attended the sessions again the next day, until they ended at 4 p.m., and 'afterw[ards] dined at the Queens Arms in St Pauls Church Yard', presumably with the judges and other magistrates.

reading of the commissions.[37] And they, too, occasionally tried cases. The recorder of the City was even more likely, as a lawyer, to take trials. And he played another crucial role during and after the sessions: it was his duty to pronounce the sentences at the conclusion of the last case, and after 1689, as we shall see, to report in person to the sovereign and the cabinet on the cases of prisoners convicted of capital offences.

The judicial system of the metropolis thus depended on courts of quarter and general sessions of the peace meeting eight times a year in the City and in Middlesex (the latter supplemented by the quarter sessions held in Westminster) and the sessions of oyer and terminer and gaol delivery at the Old Bailey at which prisoners from both London and Middlesex were tried. The Old Bailey sessions were held a varying number of times a year until 1669; thereafter, they settled into a pattern that was to be observed through the eighteenth century of meeting eight times a year between the four law terms and the two assize circuits, generally in January, February, April, May, June, August, October, and December.[38] The sessions of the peace met at the same time in the City and in Middlesex. This was no accident, for the two levels of courts were intimately related in ways that were fundamentally different from the relationship of the quarter sessions and assize courts in the rest of the country.

Outside London, the county courts of quarter sessions and the assizes were independent of one another and were held at different times. Each had its own sphere of jurisdiction well marked out. Cases might occasionally be sent from one to the other: in particular, the magistrates in quarter sessions might leave a difficult matter to be dealt with by the professional judges at their next assizes. But, in the main, accused offenders were committed for trial by examining magistrates either to the assizes or quarter sessions, and each court proceeded independently of the other. Each employed a clerk and clerical staff and kept its own records. In the metropolis there was no such separation between the sessions of the peace, on the one hand, and the sessions of oyer and terminer and gaol delivery, on the other. The sessions of the peace, held in the Guildhall, began two days before the Old Bailey opened. The magistrates swore in a trial jury and a grand jury (though apparently without delivering a charge) and began the trials of those accused of minor offences. The recorder generally presided. The court often completed its work of trying misdemeanours in two days, but if not, the sessions were adjourned on the third day to the Old Bailey, whence the lord mayor, recorder, and other City officials moved to join the three high court judges for the delivery of Newgate gaol and the sessions of oyer and terminer. The grand jury that had assembled at Guildhall for the sessions of the peace also moved to the Old Bailey where it was sworn in again under the new

[37] For a rota in 1699 that obliged every alderman who was a magistrate to attend in turn, see Rep 104, pp. 60, 67–70.

[38] Bowler (ed.), *London Sessions Records*, vii. And see Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 12 n. 29, for a useful explanation of the timing of the Old Bailey sessions.

commissions of oyer and terminer and gaol delivery and continued its work on the bills exhibited against the prisoners in Newgate. A new trial jury was sworn for the Old Bailey sessions and the trials began. When they were completed some days later, the City magistrates moved back to Guildhall, if necessary, to resume their adjourned sessions of the peace. According to the Minute Books, roughly half the City sessions in the 1690s had to be resumed after an adjournment for the Old Bailey sitting.

The fact that the magistrates of Middlesex did not sit on the Old Bailey bench made for a slightly different arrangement in the county, but the relationship between the Middlesex (and Westminster) sessions of the peace and the trials at the Old Bailey was fundamentally the same as in the City. By the end of the seventeenth century, the county sessions were being held at Hicks' Hall in Clerkenwell. On the day appointed for the opening of the sessions, a grand jury and trial jury began trying the misdemeanour cases which constituted the court's main business. The opening of the Old Bailey two days later did not disturb their work as it did the City sessions because the Middlesex magistrates were not summoned to attend. None the less the two sessions were intimately related, particularly in that—as in the City—there was only one Middlesex grand jury, which had been charged at the beginning of the sessions of the peace in Hicks' Hall. Unlike the City grand jury that had to move to the Old Bailey when the Guildhall sessions were adjourned, the Middlesex jurors were able to continue their work at Hicks' Hall and send the relevant 'true bills' they found the few hundred yards to the Old Bailey where the county's prisoners waited to be tried.[39]

There was thus a seamlessness between the sessions of the peace and the gaol delivery sessions at the Old Bailey that was unique to Middlesex and the City. The clerks of the peace in both jurisdictions provided clerical support for both courts and conceived their proceedings to be two aspects of one session. They kept the records of both courts together. Whereas the county quarter sessions and assizes produced entirely separate and self-contained records, in London the indictments, recognizance, jury lists, and other essential evidence from the sessions of the peace in the Guildhall and from the City cases at the Old Bailey were brought together in one composite file and the record of their proceedings was kept in a single Minute Book.[40] Similarly in Middlesex. The close interrelationship of the two courts explains why the magistrates in the City and in Middlesex were able to maintain such a clear separation between the

[39] In noting in his memoirs of 1686 details of a case in which he had a personal interest, Sir John Reresby, a Middlesex magistrate, said that 'The Sessions began at Hicks Hall [on 18 May], wher [*sic*] the bill was found against one Spencer that rob'd me of my plate, and the 19 [i. e. the next day] he was found guilty at the Old Bailiff [*sic*] and burnt in the hand'. An earlier reference similarly makes it clear that the sessions at Hicks' Hall and the Old Bailey were going on concurrently (Andrew Browning (ed.), *Memoirs of Sir John Reresby*, 2nd edn., Mary K. Geiter and W. A. Speck (1991), 328, 426).

[40] For the records of the City courts in the Corporation of London Record Office, see above, n. 11. The Middlesex records are held in the London Metropolitan Archives (LMA) as MJ/SR (Sessions Rolls) and MJ/GB (Gaol Delivery Books).

kinds of cases tried at each—to make it possible for them to leave all property offences to the Old Bailey and to reserve for their own sessions of the peace the large majority of misdemeanours. Such a distinction was unknown in the rest of the country, where there was always considerably more overlap between the work of the quarter sessions and assize courts. The consequence of this pattern of trial in the metropolis is that all the data concerning the prosecution and trial of property crime in the City can be derived from the records of the Old Bailey.

PATTERNS OF PROSECUTION

The patterns of prosecution for crimes against property in the late seventeenth century were in several respects very different in London from those common in the rest of the country. At the most obvious level, it is hardly surprising, given the population disparities, that more felony cases were brought to trial at the Old Bailey than elsewhere. On average, about 140 men and women accused of offences against property were sent for trial each year from the City of London between 1670 and 1750 (Table 1.1). But that was only one element in the total

TABLE 1.1. *Prosecutions at the Old Bailey for offences against property in the City of London, 1670–1750*

Accused	Clergyable offences	Non-clergyable offences	Total	% Clergyable offences	% Non-clergyable offences
Male	4,185	2,634	6,819	61.4	38.6
Female	2,810	1,616	4,426	63.5	36.5
Total	6,995	4,250	11,245	62.2	37.8
% Male	59.8%	62.0%	60.6%		
% Female	40.2%	38.0%	39.4%		

Source: CLRO: Sessions Minute Books (SM)

picture of Old Bailey prosecutions, for the City accounted for only about a third on average of the total number of defendants put to their trial in that court over this period. The majority of the felons tried in the metropolis—and a growing majority—came from the larger populations in Middlesex: from Westminster to the west, from the densely populated parishes on the City's borders, and from other parts of the county further afield. In the late seventeenth century something on the order of 40 per cent of the defendants in property cases at the Old Bailey were from the City of London, about 60 per cent from Middlesex. Early in the eighteenth century that proportion changed in favour of the county so that in the years following the end of the War of Spanish Succession in 1713 roughly seven out of ten defendants in property cases at the Old Bailey were

TABLE 1.2. *Defendants from the City of London and Middlesex in trials for offences against property at the Old Bailey*

Years	City	Middlesex	Total	City%	Middlesex%
1675–6	363	479	842	43.1	56.9
1684–5	278	439	717	38.8	61.2
1714–15	287	764	1,051	27.3	72.7
1731–2	323	826	1,149	28.1	71.9
1740–1	324	892	1,216	26.6	73.4
1749–50	367	914	1,281	28.7	71.3

Source: CLRO: Sessions Minute Books (SM); LMA: Gaol Delivery Books (MJ/GBB)

from Middlesex (Table 1.2).[41] By the second quarter of the eighteenth century the Old Bailey judges could expect to deal with 500 to 600 accused charged with property offences every year. In the county of Sussex, in contrast, just over thirty indictments on average were tried every year at the two sessions of the assizes and the four quarter sessions; and even in a populous county like Surrey, the average was no more than a hundred cases a year, less than a fifth of the number of offenders appearing at the Old Bailey.[42] In addition, compared to other parts of the country in which the levels of prosecuted property crime were at relatively low levels in the late seventeenth and early eighteenth centuries (compared, that is, to the levels they had reached in the half century before 1620 and to which they were to climb after 1780), London prosecutions showed little sign of overall decline in that period.[43]

The Old Bailey also met eight times a year, compared to the twice annual meeting of the county assizes at which serious crimes were tried outside London (once a year on the Northern Circuit). A court that met roughly every six weeks to deal with as many as seventy-five or more felons over the course of a few days kept the issue of crime before the public more insistently in the capital than the assize courts in the English counties, especially when the Old Bailey trials came to be regularly reported in a pamphlet account of the session. And the fact that several sessions every year would be followed by a hanging day at Tyburn—a day on which the condemned offenders would be carted across the city to be executed before a large crowd near what is now Marble Arch—could only have further sustained the impression of crime as a serious social problem in the metropolis.

[41] A gap in the Middlesex Gaol Book makes it difficult to collect similar data for William's reign and the early years of Anne, but an examination of the numbers of accused offenders listed in the gaol calendars for both Middlesex and the City in twenty-two sessions between 1696 and 1699, for which such data are available for both jurisdictions, reveals that of the total of 2,327 defendants held in Newgate on the eve of the sessions, 42.0% were from the City (CLRO, SF 418–46; LMA, MJ/SR 1872–1931).

[42] Beattie, *Crime and the Courts*, 201, and ch. 5 generally.

[43] For this comparison, see J. A. Sharpe, *Crime in Early Modern England, 1550–1750* (London, 1984), 53–63; for the reduction in indicted property offences in the second half of the seventeenth century in Cheshire, see ibid., Fig. 2, p. 60.

Apart from the numbers of offenders, the pattern of prosecutions shown in Table 1.1 suggests two other characteristics of urban crime. One is that a large proportion of accused faced capital charges. Close to 60 per cent of the defendants from the City in the late seventeenth and first half of the eighteenth centuries were tried for offences that were 'within clergy', that is to say, for felonies in which a convicted offender could plead benefit of clergy and thus escape the common law penalty of death by hanging.[44] But the remainder—well over four thousand men and women between 1670 and 1750 from the City alone—were on trial for their lives, accused of committing an offence from which clergy had been removed by statute. Most of what were considered to be the serious crimes against property had been removed from clergy in the sixteenth century. These included robbery, burglary, and housebreaking—offences that were feared because they threatened the victim's safety as well as goods. But they also included a number of larcenies that were much less obviously threatening, for which capital punishment came to be imposed after the Revolution of 1689. As a consequence, an even larger proportion of defendants at the Old Bailey in the decades that followed faced charges that threatened them with a gruesome death at Tyburn.[45]

The initiative to make the criminal law tougher by removing the right to benefit of clergy from a number of property offences and so threaten more offenders with capital punishment came largely from the City. It emerged in this period in part because of another characteristic of property crime in London that is not fully revealed by the pattern of prosecutions in Table 1.1. That is, the pervasiveness of petty theft. Despite the fact that almost 60 per cent of property crime prosecutions in the City were for offences that remained within benefit of clergy—for the most part, offences that involved the taking of goods without the threat of violence—the incidence of such crimes was hugely under-represented in the cases brought to court. There was a decided reluctance to bring minor thefts to trial in this period, even when victims reported them to the authorities. The inability of the courts to deal with petty offences was one impulse behind several initiatives to make the law more effective. What made the problem of minor crime so much

[44] All felonies were capital offences at common law. From the twelfth century, however, there had developed a privilege, known as benefit of clergy, that saved those who could claim it from the capital consequences of a conviction for felony. There were some important changes in the application of clergy in the late seventeenth and early eighteenth centuries, but very largely one can say that by 1700 benefit of clergy was available to all defendants convicted of simple theft. The privilege of clergy had been removed (by statute) from a range of other property offences. On the other hand, though restricted in that way, clergy had been gradually extended to virtually every convicted offender. The situation at the beginning of the eighteenth century was that felonies were either clergyable or they were not. The latter were capital offences; those that were clergyable remained nominally capital, but that penalty was by then only rarely imposed and the defendant was subjected to branding on the thumb and immediate discharge or to some other punishment. We shall have reason to return frequently to changes in benefit of clergy over this period and the way it was administered. For a fuller account of the history of clergy, see Beattie, *Crime and the Courts*, 141–6; and Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 37–41.

[45] For changes in the criminal law in the seventeenth and eighteenth centuries, see chs 6–8.

more visible and so much more alarming was another characteristic of prosecuted offences in the metropolis revealed by the pattern of prosecutions in Table 1.1: the unusually large proportion of women among the offenders charged with clergyable offences. That 40 per cent of the defendants over the period 1670–1750 were women is remarkable enough. But, as we will see, in several years in the 1690s and the first decade of the eighteenth century they actually outnumbered men before the Old Bailey. Women did not figure as prominently as that in prosecutions at the county level, and, as far as I am aware, there is no other period in which women made up such a large proportion of defendants on trial for felonies in London.[46] The courts could rarely have had to cope with such numbers of women—defendants who, the established practices of the courts strongly suggest, could not easily be subjected to the terror of the gallows, the only punishment available to the judges in felony cases. The numbers of women on trial gave this period a particular character, and the problems they raised go a long way towards explaining why the late seventeenth and early eighteenth centuries saw so many efforts to make the law and its administration more effective.

It will come as no surprise to the modern reader to learn that violent offences, especially robbery, caused the greatest concern in late seventeenth century London. They were feared for the obvious reason that street mugging and highway robbery threatened serious physical harm, even death, to a defenceless and unsuspecting traveller. Burglary and housebreaking carried a similar threat of a confrontation between intruders who might be tempted or panicked into using force, if only to escape, and a victim caught by surprise and at a disadvantage. Contemporaries were certain that such offences were very common in the late seventeenth and early eighteenth centuries, and, more often than not, that they were increasing. The anonymous author of *Hanging, Not Punishment Enough* (1701), who, as his title suggests, argued for the imposition on such offenders of savage punishments more terrifying than death, claimed to have been driven to such an extreme position by the state of violent crime. He had, he said,

> with great Concern for some years last past observed the Lamentable Increase of Highway Men, and House-breakers among us; and this tho' the Government has vigorously set it self against them, by pardoning but very Few, and that divers Laws have been Enacted to suppress them.[47]

[46] For the high levels of female prosecution at the Old Bailey in the eighteenth century and their decline in the nineteenth, based on the OBSP, see also Malcolm M. Feeley and Deborah L. Little, 'The Vanishing Female: The Decline of Women in the Criminal Process, 1687–1912', *Law and Society Review*, 25/4 (1991), 719–58. Morgan and Rushton have found that more than half the defendants in property cases at the quarter sessions in Newcastle between 1718 and the end of the century were women. They suggest that '[h]igher rates of prosecution in urban centres than in the countryside were not unusual in the eighteenth century. . . .' Glenda Morgan and Peter Rushton, *Rogues, Thieves and the Rule of Law, The Problem of Law Enforcement in North-east England, 1718–1800* (1998) 68, 104. For a fuller discussion of women defendants at the Old Bailey, see below, section 'The problem of women'.

[47] *Hanging, Not Punishment Enough, for Murtherers, High-way Men, and House-Breakers. Offered to the Consideration of the Two Houses of Parliament* (1701), A2.

What was particularly alarming, he went on to argue, was the violence that such men threatened against their victims, the terror and fear they caused.

The author of this tract (to whose arguments and prescriptions we will return) had come to his conclusion about the dangers posed by crime in London because of the evidence of 'our Sessions-Papers Monthly, and the Publick News daily'.[48] Certainly, the regularly published accounts of the sessions at the Old Bailey provided numerous examples of highway and street robbery, particularly in the 1690s, and while not as common as they were to become later in the eighteenth century, accounts of robberies and other crimes also began to appear in the newspapers in Anne's reign.[49] The regular reports of violent offences tried at the Old Bailey at the very least sustained the sense of alarm in the capital. This is suggested, for example, by the correspondence of Richard Lapthorne in the decade after 1687. Lapthorne was the London agent of Richard Coffin, a Devon country gentleman, employed by Coffin to buy books and keep him informed of doings in the capital—including (perhaps because Coffin was a JP) news about crime. Lapthorne sent copies of at least some of the Sessions Papers to his patron, but he also drew on them regularly in his newsletters, especially reports of the numbers condemned to death. In April 1688 he informed Coffin that he had heard that the recent sessions had been very busy, and that he would know more about the trials in a few days, when 'the narrative will come out'.[50]

Lapthorne did not depend entirely on the Sessions Papers for the information about violent crime that fills his correspondence. He collected news and gossip from the coffee shops and taverns. By way of illustrating his frequently expressed lament about how 'vitious and debouched' London was becoming, he often included reports about robberies recently committed. He reported on one occasion in the 1690s, for example, that

> last night at 5 a clock a Wiltshire Farmer having under his arme a bag of £80 carrying it to Sir Francis Child's house within Temple Bar was in the backside of St. Clements by New Inn gate struck down and the mony taken from him.[51]

In later years he reported frequent examples of 'robbery . . . in and about the town by Highwaymen and footpadders' and other serious violence—including a murder committed by robbers, and an account of an assault on forty-two people who had been 'stript by robbers on the highway' near Tyburn and 'turned into a common feild'.[52]

[48] Ibid., 1.

[49] See, for example, *The Post Boy*, 8–10 December 1702, where it is reported that 'Several Robberies have of late been Committed on the Roads leading to this City, there being a great Gang of Highwaymen abroad.'

[50] Russell J. Kerr and Ida Coffin Duncan (eds.), *The Portledge Papers, being Extracts from the Letters of Richard Lapthorne, Gent, of Hatton Garden, London, to Richard Coffin, Esq. of Portledge, Bideford, Devon, from December 10th 1687–August 7th 1697* (1928), 31.

[51] Ibid., 95. [52] Ibid., 187–8; and see pp. 128, 158, 164, 217.

Violent robbery was thought to be particularly common in the streets of the capital, where targets were plentiful and escape relatively easy, as well as on the major roads in and around the metropolis. In the winters of 1691 and 1692 street robberies and reports of people being seriously wounded were sufficiently alarming that the City aldermen agreed to arrange for men with halberds to walk the streets in their wards from dusk until the watch was set at 9 o'clock and then (most unusually, as we will see) to ensure that a full watch was kept through the night.[53]

Robbery was one source of danger. So too were burglary and housebreaking, both of which caused anxiety not only because they represented an invasion of the private realm that put everyone there at risk, including women and children, but because—like street robbery—they were often carried out by small gangs of men, indeed often the same men who robbed in the streets. The public read about such dangerous individuals in the biographies of notorious offenders and in accounts of gangs of robbers and pickpockets that became increasingly common in the late seventeenth century and the early decades of the eighteenth, as well as in the Sessions Papers. The magistrates of the City learned about them in more detail when they examined robbers or burglars who were induced by the promise of a pardon and a reward to impeach their accomplices. In 1700, for example, a man admitted having taken part in a series of burglaries, housebreaking, and thefts from ships with five other men; some years later another man admitted committing thirty-six burglaries in a sixteen-month period with a group of eight men acting in various combinations; two others told of another set of eight men who, again in variously formed smaller groups, robbed on the highways, burgaled houses and shops, and stole horses; and many others recited similar stories.[54]

Such accounts must have shaped the magistrates' views of crime and—as similar reports appeared in the Sessions Papers, in the ordinary's account of the careers of the condemned, in pamphlet accounts of the trials of famous or infamous offenders, and eventually in the collections of criminal lives that these sources made possible—they also shaped the public's sense of crime as a growing social problem. Crime reporting and criminal biographies fed the panic and alarm that are so evident in a pamphlet like *Hanging, Not Punishment Enough*, a document that expressed not simply anger at the loss of property (though that was not absent), but the fear of violence in a society largely without protection. At the heart of this pamphlet is a deep anxiety induced by the experiences of a violent decade.

The several non-violent offences that had been removed from clergy in the past and made subject to capital punishment were much less likely to create a

[53] Jor 51, fos. 109, 119; and see below ch. 4.

[54] CLRO: London Sess. Papers, October 1700, April 1706, February and September 1708, October 1711, April 1713, July 1713, February 1715.

sense of panic than were robbery, burglary, and housebreaking. Picking pockets was regarded as more of a petty offence by the late seventeenth century and was almost certainly more common than the few accused who appeared in court charged with such an offence might suggest. Magistrates were in many cases reluctant to send those accused of this offence to the Old Bailey to face trial for their lives, since so often those caught were women or young boys. One commentator, indeed, thought that young people were drawn into crime very largely by picking pockets of silk handkerchiefs, which were easy to steal and sell, and relatively valuable.[55] There were no doubt skilled pickpockets at work in the London crowds: it was always said that they did particularly well at hangings, and the dangers of pickpockets was one reason the authorities gave for discouraging crowds. But those most frequently accused of picking pockets—'privately stealing' as the law termed it—or at least those most likely to appear in court, were prostitutes charged with stealing from their often drunken clients. For a man angry enough and willing to appear a fool or worse in court, it was relatively easy to bring the charge, since the woman could generally be found and easily identified, and her guilt sworn to on oath. But the plight of James Steed who, in what was a typical case, spent a night with three women in a tavern and went to sleep leaving his breeches on a chair with four guineas in the pocket, only to find the women gone and his money missing in the morning was not likely to rouse pity in court, let alone cause alarm.[56] On the whole, despite the fact that it was a capital offence, pocket picking was treated as though it were a very minor offence. Timothy Nourse included pickpockets among the 'lesser Criminals' whose offences 'deserve not Death'[57]; the lord mayor and other London magistrates tended to take the same view.

Roughly four out of ten men and women accused at the Old Bailey of committing offences against property in the City of London in the late seventeenth century faced the possibility of being sentenced to die on the gallows at Tyburn. The remainder were accused of simple larceny—feloniously taking and carrying away the goods of someone—or with a form of fraud or obtaining goods by false pretences. Virtually all of those accused of theft faced charges of grand larceny, that is, stealing property of a shilling or more in value. Very few were prosecuted for petty larceny, theft under a shilling. The distinction was crucial. Grand larceny was a felony, and thus a capital offence at common law. It rarely resulted in execution in this period because it was also subject to benefit of clergy, a fiction that had the effect by the seventeenth century of saving those

[55] [J. D., Gent.,] *An Humble Proposal to prevent the Beginnings of Theft, viz. the Picking Pockets of Handkerchiefs* (n.d., *c.*1720). Paul Griffiths informs me that men and women accused of picking pockets were being committed to Bridewell in significant numbers by the 1620s. I am grateful to Dr Griffiths for showing me some of the data that he will present in his forthcoming book—*The First Bridewell: Petty Crime, Policing, and Prison in London, 1550–1660.*

[56] CLRO: London Sess. Papers, February 1715; for other cases involving alleged prostitutes, see London Sess. Papers, December 1695 (depositions of Richard Roberts and Thomas Wheatley).

[57] Timothy Nourse, *Campania Felix, or, a Discourse of the Benefits and Improvements of Husbandry* (1700), 229.

convicted from the consequences of a felony conviction. Most men and women granted clergy were immediately discharged from the court, though not before suffering the undoubted pain of a branding with a hot iron on the brawn of the thumb.

Petty larceny, on the other hand, was not a felony, and thus not a capital offence at common law. It was, Blackstone was to say, an 'inferior species of theft'.[58] It was, however, subject to public whipping, and conviction for this apparently minor offence could bring a more painful and perhaps more humiliating consequence than the usual punishment for the more serious charge of grand larceny. But in fact, that was rarely a consideration at the prosecution stage in London, for virtually no defendant in either the City of London or the County of Middlesex, either at the quarter sessions or at the Old Bailey, was charged with petty larceny in this period.[59] This was one of the most striking characteristics of the administration of the criminal law in the metropolis. It is also the clearest possible evidence of the flexible nature of the system of criminal justice in early modern England.

Unless we are to believe that such minor thefts just did not happen in London—when they accounted for as many as half the prosecutions for property crime in other jurisdictions[60]—it is clear that charges of petty larceny were not sent to trial because the London magistrates chose to send virtually all of those accused of petty thefts to the Bridewell, the City's house of correction. By the late seventeenth century that was a well-established practice: petty larceny cases had not apparently been sent to trial in London for at least a century.[61] It had developed and was continued presumably because the magistrates of London had early concluded that offences for which the established punishment was whipping did not need to be tried before the royal judges, and to avoid overloading the calendar at Old Bailey with minor matters they chose not to send such cases there.

What is more of a puzzle is why they did not send these cases to their own sessions of the peace, as magistrates would have done in the counties. The answer to that seems likely to have been that their sessions were already fully taken up with the trial of other misdemeanours—with assault, trespass, fraud, cheating, and similar charges. Further, and crucially, it was difficult to expand the City

[58] William Blackstone, *Commentaries on the Laws of England* (Oxford, 1765–9; facsimile of first edn., University of Chicago Press, 1979), iv. 238.

[59] For Middlesex, see Shoemaker, *Prosecution and Punishment*, 130, table 6.2. Norman Landau informs me that by the second quarter of the eighteenth century Middlesex magistrates were sending a number of petty larceny cases to trial at quarter sessions.

[60] Petty larceny made up about one-fifth of the simple larceny cases that came before the Surrey courts in this period, and fully half in Sussex (Beattie, *Crime and the Courts*, 284, table 6.1).

[61] Petty larceny cases do not appear to have been tried at the Old Bailey in Elizabeth's reign. I infer that from a table summarizing the treatment of a sample of London property offenders between 1560 and 1599 in Ian W. Archer, *The Pursuit of Stability: Social Relations in Elizabethan London* (Cambridge, 1991), table 6.4, 246–7. The table includes 1,340 men and women charged with grand larceny, but not a single defendant indicted for petty larceny.

sessions of the peace because of the structural peculiarities of the court system in the metropolis, under which the sessions of the peace in the City and in Middlesex were held in conjunction with the gaol delivery session at the Old Bailey. In the rest of the country, the county quarter sessions of the peace were held four times a year and lasted as many days as the magistrates required to get through the pending criminal and administrative business; sessions of assizes and gaol delivery and sessions of the peace were entirely separate and independent. In the metropolis, however, the sessions of the peace in the Guildhall (in the City) or in Hicks' Hall (in Middlesex) and the sessions of gaol delivery and oyer and terminer at the Old Bailey were in effect one continuous session. Unlike the county jurisdictions in which four quarter sessions and the two assize sessions were spread throughout the year and were typically held in different places in the county in a way that would allow a sharing of the work, the same group of magistrates in the City were called on eight times a year, roughly every six weeks, to attend at sessions of the peace and gaol delivery for what could easily take a week or more. There was clearly a limit to the time that the lord mayor and the aldermen-magistrates would be willing to devote to criminal administration in the City, given that they were not country gentlemen but virtually all of them merchants and financiers. There were also limits to the physical resources of the City—limits, for example, to the number of prisoners who could be housed in Newgate and the two City compters as they awaited trial.[62]

The settled habit of dealing informally with petty thefts, which came to be a distinguishing characteristic of criminal justice administration in the capital, may well have begun as the population of the City and the number of such property offences were both beginning to increase strongly in the mid-sixteenth century. It may also have been facilitated by the creation in 1553 of an institution that was itself a response to the visible signs of social disorder—the house of correction known as the Bridewell hospital. Bridewell was established as a place where vagrants, disobedient servants, prostitutes, bastard-bearers, and others whose behaviour threatened social order in the City could be disciplined by being made to work and subjected to corporal punishment in the form of whipping. Whether or not the Bridewell was established with petty property offenders in mind, men and women labelled as pilferers were being committed there from its early days.[63] That pattern may have been ever more firmly established

[62] See below, text at nn. 138–42. The policy with respect to simple larceny cases (that is clergyable larcenies) changed in the last decades of the eighteenth century when the City sessions of the peace began to try such cases. None the less, the Old Bailey continued to be dominated by non-capital larceny. Such offences accounted for about 64% of the property cases tried at the Old Bailey between the 1780s and the 1820s, compared to levels of about 40% in the five counties on the Home Circuit in which the quarter sessions had long dealt with a large number of simple larcenies. See Peter King, 'Gender, Crime and Justice in Late Eighteenth- and Early Nineteenth-century England', in Margaret L. Arnot and Cornelie Usborne (eds.), *Gender and Crime in Modern Europe* (London, 1999), 45.

[63] Bridewell got its name from its establishment on the site of an ancient religious foundation, the Bridewell convent. For the changing character of the English bridewells over their long history, as well

as the number of property offences increased sharply through Elizabeth's reign and well into the seventeenth century. It may also have been confirmed by the heavy weight placed on capital punishment in that period—a period in which the English criminal law was almost as bloody a code in practice as it was on paper.[64] The Old Bailey was so sharply concentrated in the late sixteenth century on dealing with felonies for which the outcome was often death, and the belief in the efficacy of capital punishment as a deterrent was so evidently well established, that convicting and punishing minor property offenders may have seemed less important than it was to be a hundred years later as reliance on the death penalty as the sole punishment available to the courts for the punishment of felonies was beginning to wane.

In any event, it is clear that in the sixteenth century the London magistrates took the view that petty larceny was not covered by the bail and commitment statutes of the 1550s since it was not a capital offence at common law and thus not a felony. It was this that enabled them to use discretion in treating charges of petty theft. The legislation passed in Mary's reign required that everyone accused of committing a felony be sent to trial. Magistrates were prohibited from dismissing such cases, even if they thought the evidence weak.[65] They were under no such obligation when the crime alleged amounted to a misdemeanour, but were free to settle the dispute or to deal with the allegation without necessarily sending it to trial. This quite clearly was the view that magistrates in London were taking with respect to petty theft at the end of the seventeenth century. And in taking that view of minor theft, they did not confine themselves strictly to the offence of petty larceny, the theft of goods of a shilling or less in value. Faced with an allegation that something of a few shillings in value had been stolen, they had practised a form of summary jurisdiction without clear legal

as the way they were being used in marginal criminal cases in the late seventeenth and early eighteenth centuries, see A. L. Beier, *Masterless Men: The Vagrancy Problem in England, 1560–1640* (1985), 164–9; and Joanna Innes, 'Prisons for the Poor: English Bridewells, 1555–1800', in Francis Snyder and Douglas Hay (eds.), *Labour, Law, and Crime: An Historical Perspective* (1987), 42–122. For the committal of minor property offenders to the Bridewell in Elizabeth's reign, see Archer, *Pursuit of Stability*, 239, table 6.1. A statute of 1609 (7 James I, c. 4) required magistrates to establish houses of correction in every county and specified the kinds of people who might be sent there for correction and reform. The language of this and similar statutes was vague enough to cover almost any minor offender. The statute did not confer explicit powers on magistrates to deal summarily with allegations of theft, but writers of magistrates' handbooks cited its authority when justifying the incarceration and punishment of minor property offenders without trial. There is no doubt, however, that the magistrates had long taken a very broad view of the powers it and similar statutes governing their management of the poor conferred (see Innes, 'Prisons for the Poor', 70–1; and Shoemaker, *Prosecution and Punishment*, 168–70). For the parallel history of penal workhouses in England and Europe, see Innes, 'Prisons for the Poor', 49–92 *passim*; John H. Langbein, *Torture and the Law of Proof. Europe and England in the Ancien Regime* (Chicago, 1976), 35–7 and accompanying notes; and see Thorsten Sellin, *Pioneering in Penology: The Amsterdam Houses of Correction in the Sixteenth and Seventeenth Centuries* (Philadelphia, 1944); Pieter Spierenburg, *The Prison Experience: Disciplinary Institutions and their Inmates in Early Modern Europe* (New Brunswick, 1991), chs 2–3.

[64] Archer, *Pursuit of Stability*, 237, 245–8; and see below, ch. 6.

[65] For the Marian legislation, see John H. Langbein, *Prosecuting Crime in the Renaissance: England, Germany, France* (Cambridge, Mass., 1974), pt I.

warrant under which they committed many of those charged with minor property offences to the Bridewell (in the City) and to the county house of correction (in Middlesex) instead of sending them to Newgate to await trial before a jury.

They continued to do so in the decades after the Restoration and it had a striking effect on the formal criminal calendar at the London courts in the period with which we are dealing. The principal consequence was that very few petty larceny charges came before the judges at the Old Bailey, or before the justices at their sessions of the peace, either in the City or in Westminster or Middlesex. Instead, in the late decades of the seventeenth century, numbers of men and women were being sent to Bridewell for property-related offences, variously labelled as pilferers or as idle and disorderly persons.[66] The magistrates committed them; the precise form of the punishment they would endure was determined by the Bridewell Court—the governors of the institution, who included the lord mayor and several aldermen—who assigned punishments for those who were present on the day they met, generally at two or three week intervals in the late seventeenth century.[67]

Two sources make it clear that minor property cases were being diverted in this way from the Old Bailey in the late seventeenth century: the records of the lord mayor's sittings as a magistrate, which are preserved in quite complete runs in the late seventeenth century and which record the cases he sent on to the house of correction as well as those sent for trial at the Old Bailey and the sessions; and the accounts of the meetings of the Bridewell court, in which the

[66] Pilfering and pilferer were terms without settled meanings in the late seventeenth century. The label 'pilferer' was a character assessment, indicating untrustworthiness, someone who stole habitually, though usually goods of little value. When John Green was tried for housebreaking in 1687, it was reported that he was 'looked upon as a pilfering fellow' (OBSP, October 1687, p. 2); and a woman at the same session charged with burglary was said to be a 'Notorious Pilferer' (OBSP, October 1687, p. 3 (Tally)). Another woman had been acquitted in the previous year when her prosecutor was accused of being 'little better than a pilferer' (OBSP, May 1686, p. 3 (Short)). It was this meaning of the word that the London magistrates were invoking when they committed men and women to the house of correction as 'idle, disorderly, and pilfering persons'. In some contexts pilfering had a slightly more specific meaning—something close to petty larceny. That seems to be the implication of its use in the case of Giles Hancock, who was charged with shoplifting in 1685. When, at his trial, the prosecutor was willing to swear only to goods of 9*d.* in value, the Sessions Paper reported that 'the prisoner [was] found to be a pilferer' and was convicted of petty larceny (OBSP, December 1685, p. 2). The easy connection between pilfering and petty larceny in the metropolis helps to explain, and perhaps in contemporary minds to justify, why so few cases of petty larceny were prosecuted at the Old Bailey or the sessions of the peace.

[67] The Bridewell had been established by royal charter under an independent board of governors, unlike subsequent houses of correction, which were under the authority and direction of magistrates. In the City, the magistrates committed the accused to the care of the governors. They could also authorize their subsequent discharge if they chose to do so. But any punishment imposed on each new inmate (as opposed to their mere incarceration) was decided by the Bridewell court. The governors heard the evidence brought against them by the victim who claimed to have been harmed, and either imposed a term of work under the direction of the 'artsmasters' (generally, beating hemp), ordered them to be 'punished' by being whipped, or simply discharged them, their few days or weeks of incarceration being judged to have been sufficient punishment in itself (see work cited in n. 63 above).

sentences imposed on new inmates committed not only by the Lord Mayor but all the London magistrates are recorded.[68]

We will deal more fully with the lord mayor's work as a magistrate in the next chapter. Here we might just note that his 'Charge Book' reveals him dealing in the late seventeenth century with criminal charges, along with the range of other matters that came to him each day—allegations of prostitution or 'night-walking', 'disobedience' of servants, charges of being 'idle and disorderly', and the like. He managed the allegations of theft and other property crime in two ways. For the most part in the late seventeenth century a serious charge of felony made on oath—of robbery or burglary, say, or a significant theft—would result in the commitment of the accused to Newgate or to one of the City compters to await trial. That is what the law required. The charge book also reveals, however, that lords mayor exercised a great deal of discretion in the case of more minor property offences and that they sent a significant number of men and women accused of some form of theft to Bridewell to be punished, rather than to Newgate to be held for trial. Over the first eight months of 1694, for example, the Bridewell Court Book reveals that nine magistrates besides the lord mayor committed offenders to the house of correction, including 123 men and women present on the days the court met who had been sent there on charges that included some form of property offence. This had often amounted to the merest suspicion, occasionally not even that: in some cases a man or women was committed for 'pilfering' some unspecified object, or for being a 'pilfering person', an allegation that would not have sustained a charge of larceny at the sessions or the Old Bailey and that was simply an addition to the charge of being 'idle and disorderly' laid under the 1609 statute.

But a large number of those committed to the City's house of correction were charged with more specific offences that appear to have been serious enough to have been taken to court—indeed, according to the strict letter of the Tudor bail and commitment statutes that still governed magistrates' practice in these matters, should have been taken to court.[69] Mary Cooper, for example, had been charged by Patience Kemp before the lord mayor with pilfering clothes and cloth worth six shillings: however flimsy the evidence, that charge should have been sent to the Guildhall sessions or to the gaol delivery sessions at the Old Bailey for adjudication. Instead, she was committed to Bridewell and remained there a few days until she was discharged by the governors at their next meeting.

[68] The Lord Mayor's Charge Books survive for the years 1664–89, 1692–1705, and 1728–33. For those records and the Bridewell Court Books, in which the sentences imposed on inmates committed by the City magistrates are recorded, see the bibliography of manuscript sources.

[69] Langbein, *Prosecuting Crime in the Renaissance*, ch. 1; Beattie, *Crime and the Courts*, 270–3. One of the leading justices' manuals of the early eighteenth century continued to instruct magistrates that an accused felon was not to be discharged without a trial, even if brought simply 'upon suspicion' and though it 'appears he is not guilty'. Nor does this handbook include 'pilferers' among those who could be sent to the house of correction, or the offence of pilfering itself (William Nelson, *The Office and Authority of a Justice of Peace*, 2nd edn. (1707), 261, 337–8).

So too were: Suella Bellington, who confessed before Sir Edward Clarke, a City magistrate, to stealing pewter pots belonging to Philip Weston; the two men accused of pilfering three cheeses worth eight shillings found in their possession; a women accused of stealing a gold ring and six shillings in money; another of stealing a fowl from a stall in Newgate Street; and a man who confessed to stealing a brass candlestick from an ironmonger's shop. And so on.[70] None of these accused appeared at the Guildhall Sessions or the Old Bailey to face their accusers and to have their guilt or innocence determined by a jury.

If anything, the magistrates were widening the scope of such commitments by the early decades of the eighteenth century. Among those committed to the Bridewell in 1713, for example, Ann Jones had confessed to stealing a pewter pot from a house, an allegation that on the face of it might have been prosecuted as grand larceny, possibly even as a capital offence, if she had been committed for trial at the Old Bailey.[71] Other offences that resulted in brief spells in the Bridewell rather than a jury trial included a charge brought by a constable against a man 'busy in picking pockets', and another, charged before a City magistrate by Mary Hunter, who claimed that a man came into her shop, took up a pair of worsted hose and walked off with them before he was pursued and taken.[72] By the early decades of the eighteenth century, numbers of men and women were also being committed to Bridewell after being accused of stealing from ships in the Thames, or from goods piled up on the quays.[73]

In addition, a new institution was brought into play to extend this work. The London workhouse was established in Bishopsgate Street in 1699 under the auspices of the recently formed Corporation of the Poor.[74] Its principal purpose was to be a place in which vagrants and children found living in the streets could be housed, taught to read, given work that might inure them to industry, perhaps be set up in an apprenticeship—in general be given help to allow them to support themselves. But, since idleness and disorderly conduct included pilfering and petty theft that was not otherwise punished, the workhouse was also pressed into service, just as the house of correction had been, to receive offenders who might have been charged with property offences if prosecutors and the authorities had chosen to do so. The workhouse was brought into service particularly for the punishment and training of young offenders found living on the streets—the 'black guard' as they were sometimes called. Among the hundreds of

[70] Bridewell Court Book, November 1693–September 1694. At least two of the accused committed to Bridewell were even accused of having stolen 'feloniously'.

[71] Bridewell Court Book, 20 November 1713 (Ann Jones).

[72] Bridewell Court Book, 4 December 1713 (John Jones), 15 January 1714 (Thomas Hall).

[73] Bridewell Court Book, 26 February 1714 (John Bossom, Adam Thompson, Jane Short).

[74] Stephen M. Macfarlane, 'Studies in Poverty and Poor Relief in London at the end of the Seventeenth Century', D.Phil. thesis (Oxford, 1982), ch. 7; and *idem*, 'Social Policy and the Poor in the Later Seventeenth Century', 263–5. On the workhouse movement in this period, see Timothy V. Hitchcock, 'The English Workhouse: A Study in Institutional Poor Relief in Selected Counties, 1696–1750', D.Phil. thesis (Oxford, 1985).

vagrants and beggars received into the workhouse in its early years were dozens of people like Ann Gainsford, aged 10 years, John Shaw, aged 12, and James Price, aged 14.[75] Some were committed on suspicion of picking pockets, others simply with pilfering, but more and more with theft from warehouses and quays along the river when the London aldermen who were the governors of the workhouse court specifically ordered in 1704 that 'the Vagrant Children commonly called the Black Guard [who] begin to come upon the Keys be taken up and sent into the Workhouse . . .'.[76] Ann Gainsford and the two boys had been taken for stealing sugar and tobacco and other goods on the quays. They were brought in by constables and beadles and by men paid by the governors of the workhouse to clear the streets of vagrants, and they joined large numbers of other youngsters who had been living rough.[77]

How many accused offenders were dealt with by this form of summary justice over the late seventeenth and early eighteenth centuries it is impossible to say. The Bridewell book is a record of court decisions taken on the days the court met; it does not include the names of those who had been committed and discharged between court sittings. If the evidence of the lord mayor's Charge Book is any guide, that could have amounted to a significant number. Among the 123 apparent property offenders named in the Bridewell Court Book in 1694, seven had been sent by the lord mayor. But, according to his own record, the mayor had committed a total of twenty-seven men and women on property-related charges over the same period, twenty of whom had already been discharged when the court sat, no doubt on the lord mayor's further orders.[78] The lord mayor was usually one of the busiest magistrates during his year in office, but he was not invariably the most active, and in 1694 he seems to have been outdone in frequency of commitments both to the Bridewell and to the Old Bailey by one or two others. Nine other magistrates besides the lord mayor made commitments to the Bridewell in that year, and clearly if others had also discharged many of those they committed before the court met, as seems likely, the cases recorded in the court book seriously understate the numbers who had been in the Bridewell for a brief stay.[79]

This propensity on the part of London magistrates to send petty offenders to the house of correction rather than to trial produced a remarkable prosecution pattern in the metropolis. Compared to other jurisdictions, in which relatively

[75] CLRO, Court of the President and Governors for the Poor of London, 1702–5, fos. 250, 252.

[76] CLRO, Court of the President and Governors for the Poor of London, 1702–5, fo. 158. The court also appointed an officer specifically to help take up 'the Black Guard Children at the Keys . . .' (fo. 175).

[77] Something in the order of two dozen of those committed to the workhouse over the two years 1703–5 were charged with a form of theft in addition to being vagrants and living on the streets.

[78] CLRO, Charge Book, 1692–5, January–September 1694.

[79] This is confirmed by the evidence of the Middlesex and Westminster houses of correction. The latter kept a reception calendar, noting the names of everyone committed. In the late seventeenth century, Joanna Innes has calculated, that amounted to something on the order of forty to fifty a month ('Prisons for the Poor', 85). For property offenders sent to the Middlesex house of correction, see Shoemaker, *Prosecution and Punishment*, 176, table 7.2.

minor thefts made up a considerable proportion of the cases to be dealt with at both the quarter sessions and the assizes, the judges in the London courts in the late seventeenth century had few such offences on their calendars. Whereas in Surrey courts about half the larceny cases involved goods of under five shillings in value, at the Old Bailey the equivalent level of City cases between 1663 and 1713 was about 5 per cent, and even thefts of up to ten shillings in value amounted in that period to no more than 13 per cent (Table 1.3). Over the

TABLE 1.3. *Values of goods stolen in City of London property offences tried at the Old Bailey in 1663–1713*

	Number	%
Less than 5*s.*	82	4.6
5.1*d.*–10*s.*	148	8.3
10.1*d.*–40*s.*	483	27.2
40.1*d.*–100*s.*	345	19.4
More than £5	719	40.5
Total	1,777	100.0

Source: Sample

seventeenth century and into the eighteenth, the London magistrates severely limited the number of minor property offences taken before the juries at the Old Bailey. The effect was not only the virtual elimination of petty larceny as a charge in the London courts but also a considerable raising of the threshold level of simple larceny cases brought to trial.

Apart from the influence of the value of the theft, there is evidence that some of those sent to the Bridewell in the late seventeenth century had returned the goods they had stolen—a circumstance that perhaps persuaded the magistrate that the charge could be less than larceny. Such a consideration seemed to be at work often enough, at any event, for a group of London shopkeepers, complaining about the weakness of the law in 1699, to say that magistrates too often imposed such sentences 'if the Facts be not notorious, and the Goods secured'—that is, when the theft was minor and the shopkeeper got his goods back.[80] These men were perhaps complaining as much about their fellow shopkeepers as the magistrates, since it is likely that prosecutors had some hand in the decision to send an accused to the house of correction. There is certainly evidence of that. Some victims of thefts may have urged such a course on the magistrate out of concern for the expense and bother of a full-blown trial at the Old Bailey.[81] Others may have thought it the right form of punishment for the crime

[80] *The Great Grievance of Traders and Shopkeepers, by the Notorious Practice of Stealing their Goods out of their Shops and Warehouses, by Persons commonly called Shoplifters; Humbly represented to the Consideration of the Honourable House of Commons* (n.d.) For the dating of this 'case', see ch. 7, n. 34.

[81] Shoemaker points out that a prosecution that resulted in a commitment to the house of correction

involved. In a significant number of cases in the lord mayor's Charge Book, the accused appears to have been the servant or apprentice of the prosecutor, and employers might have welcomed an opportunity to punish servants who persisted in stealing in a way that would make it possible to take them back. Conviction at the Old Bailey, with the thumb branded with the mark of a felon that would follow as a minimum consequence, would have so diminished the character of a servant that his or her future employment would have been very much in doubt—at any event a more permanently tainting experience than a few days in the Bridewell, even if under the lash.[82] Some apprentices and servants may have been brought to the magistrate with the intention of having them subjected to such a short, sharp, shock, but not to the debilitating experience of the common ward of Newgate. Anne Blunt seemed to explain her prosecution of a servant in these terms when she claimed that her maid persisted in pilfering small sums of money and 'will not be reclaimed by good admonition'.[83] That servants and apprentices were prominent among those dealt with by a Bridewell term also suggests that many of the accused were young. There is little direct evidence of the ages of those brought before magistrates. But much of the language used about them strongly suggests a youthful population being kept out of the courts. The discretionary diversion of minor offenders away from the courts points to the underlying limitations of a criminal justice system that could call upon only the narrowest range of penal options. And it is clear that by the second half of the seventeenth century this was emerging as a serious issue in London.

If significant numbers of offenders were being shunted away from the courts, who was being sent to Newgate to face trial for non-capital thefts? As we have seen, about 40 per cent of defendants facing property charges in London in the late seventeenth century were indicted for an offence that could lead to execution at Tyburn. The remainder were accused of a clergyable theft for which in the late seventeenth century they were likely to suffer a serious penalty only if the judges went out of their way to make an example of them. These clergyable offences could obviously vary hugely in character, both in the value of the property involved and in the seriousness with which they were regarded. They certainly must have represented only a fraction of the offences committed. Large numbers of thefts or alleged thefts went unreported because the offence was compounded, or the identity of the offender was unknown and could not be discovered, or because victims decided that the costs in time and money that a prosecution would entail made it not worth the bother.[84] And, as we have seen,

would have been much cheaper for the victim than a trial at the sessions or Old Bailey (*Prosecution and Punishment*, 167). In the City, however, there was the additional complication that the complainant would have had to appear before the Bridewell court if the accused had not been discharged before it met, a complication that would cost him or her time if not money.

[82] For servants in the Middlesex house of correction, see Shoemaker, *Prosecution and Punishment*, 184–5.

[83] Bridewell Court Book, 1689–95, 348 (Anne Lomer).

[84] For the costs involved in mounting a prosecution, see Beattie, *Crime and the Courts*, 41–8.

other offenders prosecuted in London were simply sent to Bridewell rather than to trial. It has been suggested, too, that during wars young men accused of criminal offences were liable to be sent by magistrates to serve in the forces rather than to trial.[85] That is possible, and it certainly would not be surprising, given the discretionary powers the magistrates assumed in the capital in dealing with minor charges. There is not a great deal of evidence, however, of its happening in London.

The offenders who came before the courts, then, represented a tiny sample of those who might have been charged. But even this sample is not easy to analyse. The central record of the trial, the indictment, which was the document retained most carefully by the court bureaucracy, and which survives in complete runs for the Old Bailey in this period, reveals little about what actually had occurred to give rise to the charge. The goods stolen were named and valued, but other information that might help to distinguish one theft from another—where and how the goods were taken, the occupation of the victim, the relationship, if any, between the victim and accused, for example—was excluded from the indictment because it was unimportant to the issues involved in the trial.

We can, however, fill out the formal record a little, and learn something about the nature of cases coming to court from documents that were generated in the procedure leading up to trial: from the depositions that victims of alleged crimes and their witnesses gave to the examining magistrate when they laid their complaints; from the examinations of the accused in which the magistrate noted any explanation or defence he or she offered; and from recognizances which victim-prosecutors entered into to guarantee their appearance in court to present their evidence. Depositions vary greatly in the level of detail they report, and in any case survive only haphazardly among the City of London sessions records for the late seventeenth and early eighteenth centuries. But there are at least a few for virtually every session of the Old Bailey, and there is a strong run of surviving depositions and examinations for several years in the mid 1690s—indeed more than 300 for the three years 1694–6. I have taken as a sample of this evidence the eight sessions of the court in 1694, for which the largest number of depositions and examinations survive in this period.

Of the roughly 150 City of London defendants tried at the Old Bailey in 1694, 112 were charged with simple larceny. Depositions and recognizances enable us to identify the place where the alleged offence was committed and the occupation of the victim in about three-quarters of these cases. A picture emerges from this one shaft of evidence of the kinds of offences that went to trial in

[85] Joanna Innes and John Styles, 'The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century England', in Adrian Wilson (ed.), *Rethinking Social History: English Society, 1570–1920 and its Interpretation* (Manchester, 1993), 213–14; Peter King, 'Newspaper Reporting, Prosecution Practice and Perceptions of Urban Crime: The Colchester Crime Wave of 1765', *Continuity and Change*, 2/3 (1987), 423–54; *idem*, *Crime, Justice and Discretion in England 1740–1820* (Oxford, 2000), pp. 28, 91–2, 157.

London—a picture not, of course, of the crime committed, but of the crime prosecuted, of the offences that helped to shape the public understanding of the nature of the 'crime problem'. What the supplementary court evidence reveals is that significant numbers of these charges were brought by shopkeepers or merchants. Forty of the eighty-two identified victim/prosecutors were shopkeepers or men in wholesale trades, including eight linendrapers, seven mercers, two haberdashers, and a grocer, bookseller, poulterer, a hosier, and fourteen other men in trade. Not all such men were wealthy, since not all seem to have paid the poll tax, which fell only on households above a certain level of wealth.[86] Nor is it absolutely certain in each case that the alleged offence had taken place in the shop or other business premises of the prosecutor. But a high proportion of alleged offences had done so, and in shops owned by men and women who were at least reasonably well established. Closely related to those offences were the twenty that had taken place in inns or alehouses, or other public houses, in thirteen of which the charge was stealing a silver tankard of considerable value, though the theft of pewter plates, clothes, and money was also alleged. In addition, nine charges were laid by a variety of craftsmen, including a weaver, a tailor, and a swordmaker. Two other types of offence were among those prosecuted in 1694, though, as in these other cases, one would not be able to tell this from the indictment: seven of the accused were servants who had allegedly stolen from their masters or mistresses; and two were lodgers who had left suddenly with goods taken from the house or their rented room.

The crucial consideration that this sample suggests in explaining the pattern of cases brought to the Old Bailey (apart from the value of the theft) was the vulnerability of the offender to detection, arrest, and prosecution. Most of the cases of simple theft that came to court were relatively straightforward in that the victims or their witnesses claimed to be able to identify the defendants, or even to have observed them committing the offence. Some accused thieves were reported by a pawnbroker or someone who had been offered the stolen goods for sale. Other prosecutions resulted from the successful advertising of the theft—often in this period by the distribution of handbills in the immediate neighbourhood. In some cases, thief-takers had played some part in recovering the goods and apprehending the suspect.[87] But for the most part the 1694 depositions suggest that most of the accused were charged because they could be placed by the victim or a witness at the scene of the crime.

That impression is largely confirmed by other evidence. The trial reports in the late seventeenth century Sessions Papers are for the most part too brief to be illuminating about minor cases. But the account of one session is much more helpful. In December 1678 the publisher of the Old Bailey proceedings departed radically from the four-page format of the early Sessions Papers. It

[86] For the poll taxes of the 1690s, see below, Ch. 2, n. 32.
[87] For thief-takers, see below, Ch. 5.

seems reasonable to speculate, given that this was George Jeffreys's first session as recorder of London after his election on the recommendation of Charles II, that someone at court, or Jeffreys himself, thought a full account of the trials at the Old Bailey, including the new recorder's speeches to the condemned prisoners, would provide an opportunity for him to speak out against violence and disorder in the City in the wake of the revelations of the so-called Popish Plot.[88] Whatever the motivation, the outcome was a pamphlet of thirty-eight pages that provided readers with a fuller account of the ordinary run of trials in London than had ever been published. This pamphlet (along with the few depositions that remain for that session of the court) also helps us to get behind the formal record, to see what kinds of non-capital larcenies were being brought to trial, and to put some flesh on the structure provided by indictments.[89]

This account of the December 1678 Old Bailey session largely confirms the pattern of the 1694 cases: of the twenty-seven defendants tried for larceny (in this case from both the City and the County of Middlesex), five were indicted for shoplifting, four were servants accused of stealing from their employers, three were lodgers, and six were accused of thefts from taverns. Thus, in two-thirds of the cases the defendant was known to some degree to the prosecutor, or could be placed at the scene of the offence. The fact that only four of the thefts involved goods under a pound in value also conforms to a pattern of prosecution that saw petty offenders either not charged at all or sent to the house of correction rather than being indicted at the Old Bailey.

In 1678, as in 1694, shoplifting and theft by servants made up a significant proportion of the court calendar. The former were especially numerous in the 1690s, and their prominence suggests that the preponderance of shopkeepers among the prosecutors in 1694 was no aberration. Shopkeepers and their employees gave dozens of depositions in the last decade of the century alleging offences being committed largely, though not entirely, by women. Typical of these was the complaint lodged in 1693 by Francis Johnson, a widow, who charged that Mary Ellis had come into her mistress's shop and pretended to buy a parcel of lace. She had seen several, but they could not agree on the price. Suspecting her of theft, Johnson charged her with it, and after some time Mary Ellis took a parcel of lace of about six and a half yards, valued at forty shillings, from her 'pocket' and confessed she had stolen it.[90] Similarly, in 1696, John Prudom told a magistrate that Elizabeth Askew and Elizabeth Grimes came to his shop and looked at some silks. Believing that Askew had stolen some, he followed them

[88] For Jeffreys's appointment as recorder and the king's intervention on his behalf, see G. W. Keeton, *Lord Chancellor Jeffreys and the Stuart Cause* (1965), 122.

[89] *An Exact Account of the Trials of the several Persons Arraigned at the Sessions-house in the Old-Bailey for London and Middlesex, beginning on Wednesday, Decemb. 11, 1678, and ending the 12th of the same month* (1678). This pamphlet has been effectively analysed by Langbein in 'Criminal Trial Before the Lawyers', particularly for what it reveals about trial procedure and the relationship of judges and juries in the period before lawyers prosecuted or could act for defendants in the English criminal courts. And see below, Ch. 6, text at notes 8–9.

[90] CLRO: London Sess. Papers, January 1693.

into the street and stopped them, took them into a neighbour's shop and 'searching her did find about her under her [petticoat?]' a piece of his silk. Philip Jackson, Prudom's servant who was working in the shop, added that the women had looked at a lot of silk and offered about half of what was being asked. Grimes held up pieces in such a way that he was not always able to see what Askew was doing. But he saw her put a piece of silk under her petticoat and carry it out of the shop. Elizabeth Askew confessed; Elizabeth Grimes did not.[91] In another case, typical of many, Mary Rowse, wife of Thomas Rowse, of Lawrence Lane, mercer, and her servant Honor Burget, deposed in 1695 that Jane Browne and Elizabeth Hutton came to their shop and looked at a great deal of 'Grazet stuff', none of which they liked. When they had gone, a piece of silk 'lying upon the Compter neere them whilst they were in the Shop there was missing'.[92]

Shoplifting was hardly a new phenomenon in the 1690s in London. It was given a prominent place in a description of common offences published as a warning to housekeepers and other potential victims in 1676, which makes it clear that the women shoplifters complained about above conformed to what was by then a well-established pattern. This pamphlet described 'a lifter' as

> one who goes from shop to shop, pretending to buy, but it is to steal, they will cheapen [i.e. haggle over the price of] several sorts of Goods as you sell till they have opportunity to convey away some of them into their Coats, which are turn'd up a purpose for their design. . . . They are most women that go upon this design, and commonly they go two together, and when the Shop-keeper turns his back, one of them conveys what she can get, and so goes away, so the other pretends there's nothing that pleases her. . . .[93]

The prominence of shoplifting charges among the larcenies that were tried in the most important court in London must have helped to form and confirm the public's sense of one aspect of the crime problem in the capital. Most immediately, the problem of shop theft also shaped the views of some of the most important decision-makers in London. Successive lords mayor and the aldermen who served as magistrates heard shoplifting stories over and over again in the 1690s as complainants made their depositions before them. And grand jurors and trial jurors, many of whom were shopkeepers themselves or otherwise men of modest property,[94] regularly had confirmation in the courtroom of what they must often have heard and perhaps observed in their daily lives: that shoplifting was an ever-growing scourge that threatened the livelihood of men and women like themselves, and more generally the commerce and prosperity of the City. They almost certainly would have agreed with the author of *The Great Grievance of Traders and Shopkeepers* that 'the notorious increase' of shoplifting in the last decades of the seventeenth century required serious attention by parliament. As we will see,

[91] CLRO: London Sess. Papers, February 1696.
[92] CLRO: London Sess. Papers, August 1695.
[93] *A Warning for House-Keepers, or, a Discovery of all sorts of Thieves and Robbers* . . . (1676), 6–7.
[94] For juries, see below, Ch. 6.

there was such anxiety about crime in London in general and about shoplifting in particular by the last years of the century that pressure from London merchants induced parliament to make shoplifting a capital offence in 1699.[95]

Another concern reflected in the cases dealt with in 1678 and 1694, and strongly confirmed in the depositions taken by London magistrates in this period, was theft by servants. Many complaints about servants' pilfering were almost certainly disposed of by magistrates summarily by sending minor offenders to the house of correction where they would be held briefly and punished. None the less, sufficient charges of a more serious kind were made to ensure that a significant proportion of the indictments tried at the Old Bailey involved servants. And to judge by the surviving depositions, it was a problem that from the point of view of the London authorities only worsened over the period. By 1711 and 1712 a quarter of the surviving depositions in the City of London sessions papers are concerned with an alleged theft by a servant.

Two circumstances surrounding servants' theft aroused particular anxiety. The first was the danger posed by a servant who might be willing or be induced to allow strangers into the house to steal, especially at night; the second, the possible relationship between servants and receivers. Behind both was the familiar concern about the untrustworthiness of servants and the difficulty at the point of hiring of learning about their character and previous employment. Even more than the reported trials, depositions reveal why servants' theft raised such concerns. In 1692, for example, Judith Rose, a widow, confessed to a London magistrate to having engaged herself as a servant to a victualler under a false name (and with a phony reference) and to have stolen 160 pounds from him and leaving four days after going to work for him; and four years later Mary Dipley confessed to a magistrate that Mary Butterfield had let her and another woman into the house where she worked as a laundry maid and they took away a large quantity of linen.[96] Such complaints were common, but they were particularly numerous in the middle and late years of Anne's reign. Grace Trippe was condemned at the Old Bailey in 1710, for example, for allowing 'her sweetheart', James Peters, into the Earl of Torrington's house at night three days after being engaged as a servant; Peters killed the housekeeper and they escaped with a large quantity of plate.[97] Jane Roberts, similarly, allowed John Dayley ('who pretended love to her') into her mistress's house at night, where he and another man broke into a cabinet and took plate and clothing.[98] And in another case, of many that came forward in these years, a man confessed in April 1712 that he had gone early in the morning to the house of a cheesemonger where Elizabeth Stiles, 'an acquaintance', had been recently hired as a servant, and carried away a number of silver plates, spoons, candlesticks and other objects, and some

[95] 10 & 11 Wm III, c. 23 (1699). For the circumstances surrounding this and other legislation in this period, see below, Ch. 7.

[96] CLRO: London Sess. Papers, August 1692 (Judith Rose); April 1696 (Mary Dipley).

[97] Ordinary's *Account*, 17 March 1710.

[98] CLRO: London Sess. Papers, February 1713.

clothes.[99] Complaints were common about servants who gave false references, stayed only a few days, and then left with valuables—in one case with silver worth more than fifty pounds.[100]

In John Dayley's own account of his involvement in the theft in the house in which Jane Roberts was a servant, she emerged as a much more active participant in the planning and execution of the offence than she let on in her own examination. But it was the imagined weakness and vulnerability of a young woman in the face of the blandishments of a lover or pretended lover that raised the greatest fears. The abiding anxiety was that a young female servant would have a lover who was a member of a gang, and that he and his accomplices would pour into a house at night and threaten its inhabitants with violence.[101] Such concerns about servants led to efforts in parliament in this period to create a statutory system of regulation that would assure employers that a prospective servant could be trusted not to open their houses to nightly invasion. The aldermen were responsible for at least one such bill, the preamble of which declared that controls were necessary because 'unwary housekeepers' hire servants 'having no knowledge or good Account of them and who oftentimes prove persons of evill dispositions and shift from place to place 'till they have opportunity to put into practice their wicked designes' to plunder the household.[102]

Apart from their anxiety about accomplices, London magistrates seem to have been particularly concerned to discover how servants disposed of the goods they took. In examination after examination accused servants named their receivers, almost certainly because they had been pressed to do so, perhaps with more than a hint that it would be to their advantage when they came to be sentenced. And, of course, magistrates showed special interest in receivers who (according to accused servants) had actually encouraged the thefts—as in the case of Elizabeth Hudlestone, who confessed that she had taken 'a peece of Stuffe out of the Shopp of her Master' at the instigation of Katherine Douxell, and that she prompted her 'to take a better peece' and to throw it out of the window, which she did; or of George Knight, who confessed 'that by the persuasion and instigation of one John Howell', he had taken out of his master's shop two or three pairs of men's and women's shoes every week for two years, occasionally as many as seven or eight pairs, and delivered them to Howell.[103]

[99] CLRO: London Sess. Papers, April 1712. [100] CLRO: London Sess. Papers, May 1711.

[101] *The True Confession of Margaret Clark* (1680). I owe this reference to Trish Crawford.

[102] CLRO, Papers of the Court of Aldermen, 1704. For these efforts to create public offices at which servants would be registered, see M. Dorothy George, 'The Early History of Registry Offices', *Economic Journal (Supplement)*, 1 (1926–9), 570–6; and J. Jean Hecht, *The Domestic Servant Class in Eighteenth-Century England* (1956), 29–32. There was an employment office for servants in London in 1692. In Judith Rose's examination before alderman Turner in 1692 (above, text at n. 96), she described how she had been counselled by a woman to engage as a servant and to use a false name. She had sent her 'to the Intelligence Office', where she learned that Edward Fleming, the victualler, was in need of a servant, to whom she 'preferred her service' (CLRO: London Sess. Papers, August 1692).

[103] CLRO: London Sess. Papers, July 1711, September 1711.

Receivers had long been blamed for the levels of property crime in London: it was an old saying that without receivers there would be no thieves. But there was perhaps an intensified concern about receivers in the late seventeenth and early eighteenth centuries, as not only violent offences but more minor yet pervasive property crimes seemed to become increasingly prevalent. The ease with which small items could be sold in the city was blamed by one man for the initiation of children into crime, for they could easily dispose of such things as handkerchiefs to 'brokers of old Goods (of whom there are many in all the Out-Parts of the Town)'.[104] That was a common view, and there was a considerable effort in this period to encourage the successful prosecution of receivers and to bring pawnbrokers under control. The massive powers given to the courts in the Shoplifting Act were at least in part aimed at uncovering and prosecuting receivers, and at limiting theft in shops by deterring those suspected of encouraging it. And it may have been in part the battle against receivers that led to the passage of an extraordinary statute in 1713 that made 'theft from a house' a capital offence (12 Anne, c. 7). The preamble of the statute made it clear that it was aimed at servants' theft, and its terms made it equally clear that its target was something more than minor pilfering since the capital provisions of the act were to apply to thefts of forty shillings or more. It was as savage a piece of legislation as the Shoplifting Act and, of course, it could easily have applied to a lone servant who stole money or a little silver. But by setting the non-clergyable level at forty shillings—as opposed to five shillings in the case of shoplifting—the sponsors of this legislation seem to have been targeting large-scale thefts and perhaps servants who were in league with receivers. The act also held out the promise of a pardon to accused servants who confessed, an inducement to encourage them to name their perhaps more culpable accomplices.[105]

Apart from shoplifting and servants' theft, other forms of larceny were regularly tried at the Old Bailey though in smaller numbers. Some bore a resemblance to thefts from shops or by servants in that the accused offender had been a customer, as in thefts from taverns, or had had access to goods in a house, as in thefts from rented lodgings, or was otherwise known to the victim, as in the charges brought against prostitutes for robbing their clients. In addition, a wide range of other thefts came to court—thefts from warehouses, wagons and coaches in the streets, from ships and lighters in the river, a medley of snatches and grabs of all kinds. Such offenders were occasionally caught red-handed; some were apprehended by the watch or through receivers or thief-takers. But they were difficult to find and to identify, and thefts of this kind were clearly much more common than the handful of indictments and the scattered depositions and magistrates' examinations suggest.

[104] [J. D.,] *Humble Proposal to Prevent the beginnings of Theft*.
[105] For the statute relating to servants' theft, see below, Ch. 7.

The defendants brought to trial at the Old Bailey for theft were likely to have stolen goods with a reasonably large value; they were also the most easily identified and prosecuted, those most vulnerable to detection and arrest. The calendar at the Old Bailey was thus neither an accurate cross-section of the offences actually committed nor an accurate guide to their frequency. Whether certain offences were prosecuted in large numbers because they were particularly numerous in fact, or because they were committed against people of middling status who felt vulnerable or annoyed and who could bear the costs of prosecution more easily than other victims, is difficult to know. What is important is that, along with robbery and burglary, offences like shoplifting and servants' theft gave a distinctive character to urban crime and formed its public face. The fact that so many such offences were committed by women made them not only difficult to deal with but also deepened the persuasion that high levels of crime revealed serious weaknesses in the moral bases of society.

THE MEANING OF CRIME

The crime problem of the capital was made visible by the decisions of victims and magistrates who together selected the offences that would come to public attention from a much larger pool of offending behaviour. The result was a pattern of prosecutions at the Old Bailey that made London crime seem more serious, at least more prevalent, than elsewhere in the country, even accounting for differences in population. The fact that prosecutions in the metropolis also fluctuated from time to time, and sometimes quite sharply, made the crime problem seem especially serious in some periods. Some years saw many more accused offenders in court than others, and several unusually busy years together could put a strain on the institutional and human resources available to deal with them. In other periods prosecutions fell to modest numbers. As Fig. 1.1 reveals, the last decades of the seventeenth century and the first of the eighteenth saw particularly sharp fluctuations in prosecutions. The 1670s and 1690s were decades of higher than average levels, with the last years of the century sustaining a notably strong increase in prosecutions; the 1680s and the first decade of the eighteenth century were almost their mirror image.

Given the immense discretion we have seen being exercised by prosecutors and magistrates with respect to petty theft, there was clearly no simple relationship between the number of events that might have sustained plausible criminal charges and the number of cases that actually came to court. Indeed, it is not unreasonable to think that changing levels of indictments are more likely to be explained by the changing propensity of victims to complain and magistrates to charge suspects than by the activities of those who broke the law. But crime also had its own determinants, its own history, and it is worth considering the extent to which changes in the number of offences—or of events that might have been

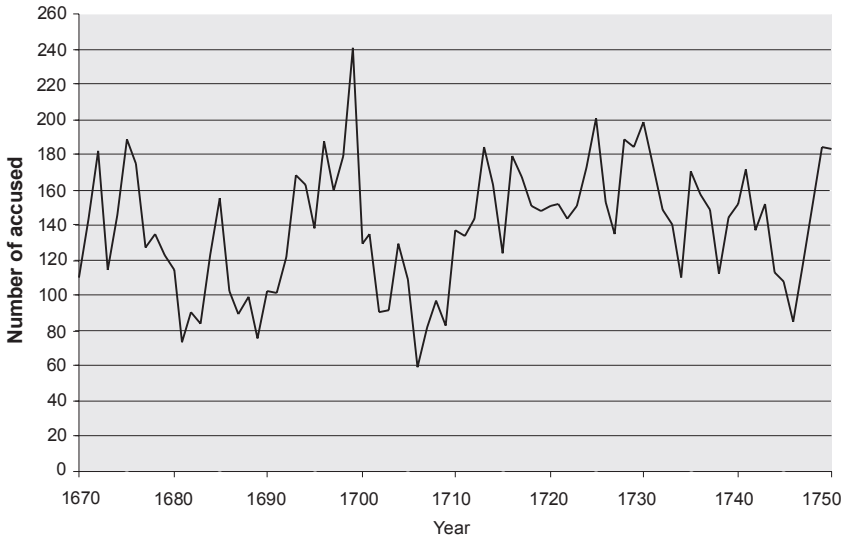


FIG. 1.1. Number of accused offenders: property offences in the City of London

charged as offences—were also reflected in the pattern of prosecutions, if only via their influence on the decisions made by victims and the authorities.[106]

One reason for anticipating fluctuating levels of offences against property derives from the circumstances in which a large proportion of the labouring population of the metropolis lived and worked. Many men and women depended on unskilled or semi-skilled work that was seasonal and casual by its nature. Work in the important textile and clothing trades was closely tied to the fashions and the activities of the social Season; work on the river was also irregular, dependent as it was on seasonal flows of trade; and jobs in the market gardens that ringed the city, in carrying and selling fresh vegetables and fish and the hawking of other products that provided employment for so many, especially women, as well as work in the building trades and similar sources of employment, were inevitably irregular.[107] At the best of times such casual employment inevitably supported those who had to depend on it at a precarious level. Many trades were overstocked. But there was competition for all work because of the steady immigration to the city of large numbers of young men and women from all over the British Isles. It has been estimated that some 8,000 immigrants arrived in

[106] For discussion of the relationship between prosecutions and offences, see Douglas Hay, 'War, Dearth, and Theft: The Record of the English Courts', *Past and Present*, 95 (May 1982), 117–60; Peter Lawson, 'Property Crime and Hard Times in England, 1559–1624', *Law and History Review*, 4 (1986), 95–127; Beattie, *Crime and the Courts*, ch. 5; *idem*, 'Crime and Inequality in Eighteenth-Century London', in John Hagan and Ruth D. Peterson (eds.), *Crime and Inequality* (Stanford, Calif., 1995), 116–39; Innes and Styles, 'The Crime Wave', 208–15; King, 'Newspaper Reporting, Prosecution Practice and Perceptions of Urban Crime', King, *Crime, Justice and Discretion*, ch. 5.

[107] For the seasonality of work in London, see Schwarz, *London in the Age of Industrialisation*, 103–16.

London every year in the early eighteenth century, many of them young men in their teenage and young adult years coming to serve apprenticeships and women seeking work as domestic servants.[108] Not all succeeded in finding settled places. Unemployment and under-employment were normal features of the lives of many of the working poor in the metropolis, and the circumstances that gave rise to those conditions fluctuated from season to season and from year to year.[109]

Two main considerations determined the relative ease with which the working population of London could sustain themselves: food prices and the availability of employment. The price of basic foodstuffs was largely determined by the state of the harvests, and in a number of years over this period bad weather led to some significant shortages and very high prices. The strong increase in prices in the second half of the 1690s, for example, helped to make that decade a very difficult period for the working population of London, particularly the poor harvest years of 1697 and 1698. There followed a number of years in which harvests were good and food plentiful. Over most of the first decade of the eighteenth century prices fell relatively sharply, until further bad harvests in 1709 and 1710 drove prices up again before they moderated once more. Changes in food prices would be felt acutely by the very poorest, those whose wages were so low that even if they could continue to work, they would soon feel the effects of a sudden increase in the price of necessities.

Those conditions were influenced even more directly by another factor: the market for labour. It is impossible to get a measure of the changing availability of work for that large segment of the London population that depended on wages. But some indication of the importance of shifting work opportunities for the level of prosecution is suggested by differences in the numbers of indictments for property crimes in alternating periods of war and peace across the eighteenth century. War had a direct effect on the labour market and the competition for work in London.[110] As wars began and the forces were recruited, large numbers of young men were carried off to the army and navy, willingly or not. Their removal from the capital must have created better chances to find work for those left behind, especially since war also stimulated some aspects of the economy. On the other hand, the coming of peace created a problem for all of those seeking work in London. The forces were always demobilized rapidly, and in London this increased competition in the labour market just as war-stimulated work was coming to an end. The invariable experience in the eighteenth century was that prosecutions for property offences fell away as wars began and increased sharply as they came to an end: peace abroad was commonly

[108] Wrigley, 'A Simple Model of London's Importance', 46; A. L. Beier and Roger Finlay, 'Introduction: The Significance of the Metropolis', in Beier and Finlay (eds.), *London, 1500–1700*, 9–10; M. J. Kitch, 'Capital and Kingdom: Migration to Later Stuart London', ibid., 226.

[109] George, *London Life*, 156–9, 168–70, 211–13, 269–70.

[110] Schwarz, *London in the Age of Industrialisation*, 95–101.

accompanied by violence at home, as the number of reported robberies and other property crimes rose alarmingly. The level of prosecutions generally moderated slightly as the immediate peacetime crisis passed, but peacetime levels were virtually always higher than those experienced during wars. War thus provided some relief from the conditions that normally ruled in the London labour market—under-employment and shortages of work—and some relief too from the relatively high levels of prosecutions for offences against property that were also the norm in the capital.[111]

The quarter century after 1689 was largely a period of warfare as Britain was engaged in two long and bloody conflicts in a European coalition against Louis XIV: the so-called War of the League of Augsburg (1689–97); and the War of Spanish Succession (1702–13). In the first of these wars, prosecutions for property crime did not, however, follow the pattern of all succeeding conflicts between 1702 and 1815. As Figure 1.1 reveals, prosecutions continued to rise during the war. They conformed to later experience by increasing even more sharply with the coming of the peace, but the movement of indictments was none the less strikingly different in the war of the 1690s from the patterns that would follow in the wars of the eighteenth century. It is impossible to be certain why this was the case. One reason may have been that, unlike the eighteenth-century experience, the war that William III took England into when he and Mary assumed the throne in 1689 began in the midst of a disbandment, or disintegration of James II's army.[112] But a more fundamental reason was almost certainly that the 1690s were an extremely difficult decade for the working population. Any advantage gained by the removal of young men from the labour market was more than offset during the war by harvest failures that kept food prices at a high level, and by trade disruptions due to blockades and naval action before a convoy system could be worked out to keep the trade routes open.[113]

The economy was also seriously disrupted by a crisis in the coinage that had been building for some years but that came to a head in the 1690s under the pressure of the war.[114] The underlying problem was the growing gap between the value of silver as bullion and the face value of silver coins—a premium in favour of bullion which tempted large numbers of people to clip or file the coins in circulation. The old coins were vulnerable to such treatment because they

[111] For the effects of war and peace on prosecution levels, see Hay, 'War, Dearth and Theft', 135–46; and Beattie, *Crime and the Courts*, 213–35. And for sceptical views, see Innes and Styles, 'The Crime Wave', 208–15; King, *Crime, Justice and Discretion*, 153–61; John Childs, 'War, Crime Waves and the English Army in the Late Seventeenth Century', *War and Society*, 15/2 (1997), 1–17.

[112] See below, text at n. 125.

[113] D. W. Jones, 'London Merchants and the Crisis of the 1690s', in Peter Clark and Paul Slack (eds.), *Crisis and Order in English Towns, 1500–1700* (Toronto, 1972), 319–20, 324–6.

[114] On the crisis in the coinage in the 1690s, see Joyce Oldham Appleby, *Economic Thought and Ideology in Seventeenth-Century England* (Princeton, 1978), ch. 8; Malcolm Gladwell, *Crime and Mentalities in Early Modern England* (2000), chs 4–5; D. W. Jones, *War and Economy in the Age of William III and Marlborough* (Oxford, 1988), 228–39; C. E. Challis, *A New History of the Royal Mint* (Cambridge, 1992), 335–97; Linebaugh, *The London Hanged*, 51–2, 54–8.

were hammer struck, rather than milled, and were unequal in weight, roundness, and thickness.[115] The clippings thus easily obtained could be melted down as bullion or mixed with base metal and cast into counterfeit coins. These activities were illegal. Indeed, counterfeiting and clipping were high treason and could be punished by the dreadful penalties reserved for that most serious form of crime. But the temptations were very strong and what had long been an endemic problem became particularly serious in the 1680s, when treasury and mint officials were complaining that the country was 'infested' with coiners, and was suffering from 'the current going about of so much clipt money'.[116]

The attack on the coinage only became worse when England was drawn into the war in 1689 and especially when the government—after considerable and contentious debate—came to the decision to recall the old silver coins at face value and carry out a general recoinage.[117] Speculation that such a plan was in the offing only encouraged an even greater assault in 1694 and 1695 that brought the coinage to a crisis point since it was clear that new coins with milled edges would be much more difficult to clip. The inflation and the disruptions in the economy that accompanied the Great Recoinage that began in the following year bore particularly hard on the working population.

Along with serious harvest failures and interruptions in trade caused by French raiding, the crisis in the coinage made the 1690s what has been called 'a decade of distress for the poor of the metropolis'.[118] That unemployment remained high in the 1690s, despite the war, is suggested by a frequently expressed concern about vagrancy and the numbers of beggars in the streets of the capital, and by a renewed interest in this period in the use of houses of correction as a means of disciplining the labouring population, and the establishment of the London workhouse to put men and women to work who would otherwise press for outdoor relief under the Poor Laws.[119] The difficulties that so many people obviously found themselves in at least help to explain why prosecutions for theft and other property offences did not diminish during the war in the 1690s, as they were to do during every subsequent war in the eighteenth century. And the peace of 1697 only made things worse by adding demobilized troops to the London labour market. In the last years of the century prosecutions rose to heights that were unmatched in the ninety-year period we have studied.

Better harvests and a fall in prices in 1700, on the other hand, relieved some of the difficulties experienced by the working population; and perhaps even more the war that began two years later, a war in which exceptionally large forces were raised for the army and navy, and in which a more effective convoy

[115] Challis, *New History of the Mint*, 380. [116] CTB, 1681–5, p. 1,584; CTB, 1685–9, p. 590.

[117] The government also attempted to prevent the assault on the coinage by statutes that added penalties for the possession of tools for clipping and counterfeiting and rewards for the conviction of offenders: 6 & 7 Wm III, c. 17 (1695); 8 & 9 Wm III, c. 26 (1697).

[118] Stephen Macfarlane, 'Social Policy and the Poor in the Late Seventeenth Century', in Beier and Finlay (eds.), *London, 1500–1700*, 259.

[119] Ibid., 254–8; Innes, 'Prisons for the Poor', 79–84.

system did something to protect English trade. Lower prices and the greater availability of work than in the 1690s seem likely to explain why the number of indictments for property offences fell sharply in the War of Spanish Succession, at least until, once again, the advantages of a wartime economy were offset by a sharp upturn in food prices in 1709–11 following two disastrous harvests and the fall in prosecutions that had been taking place since the early years of the century was arrested and reversed. In 1713 prosecutions for property crime rose even more sharply as the war ended and the troops were demobilized, even though food prices had moderated by then. The following quarter century of peace was characterized by considerable anxiety in the metropolis about crime and violence, and by efforts promoted by the central government and the City government to improve policing, to encourage prosecution, and to make punishment more effective.[120]

Whether or not trends in prosecutions can be thought to reveal broad changes in the levels of offending has been a contentious issue. There are good reasons for scepticism, given the very small proportion of offences that actually came to court, and the discretion we have seen being exercised by London magistrates, particularly with respect to the prosecution of minor offences.[121] On the other hand, it seems implausible that theft and other offences against property would not have increased and decreased from time to time in a large urban environment in which so many people lived precariously because they depended on work that was poorly paid and irregular; nor does it seem likely that the economic effects of war and the recruitment and demobilization of large bodies of soldiers and sailors would have had no influence at all on the numbers of offences being committed. We will return to this subject in a later discussion of the nature of women's theft in London. For the moment it is worth emphasizing that in a book concerned principally with the way crime was regarded by decision-makers in the City, in parliament, and in the national government, the important question is not so much how we should interpret the movement of indictments, but what contemporaries *thought* changes in the levels of indicted crime meant and what conclusions they drew from them. That is a much easier question, for contemporaries had no doubt at all that when the number of accused on trial increased, crime had increased. Decreases in prosecutions were less commonly commented on, but when reported levels of prosecution moved upward, concerns tended to be expressed about the problem of crime and its meaning for the state of society. That was especially the case when the offences involved were inherently violent or were in other ways difficult to deal with, as so often they were in years following the conclusion of wars, when prosecutions invariably rose and problems of crime and disorder seemed to proceed from the disbanding of the forces.

[120] See below, Chs 8–9.

[121] Innes and Styles, 'The Crime Wave', 208–15; King, *Crime, Justice, and Discretion*, 22–35.

Disbandment had been recognized as a socially disruptive and dangerous process at least since the mid-sixteenth century, particularly if the forces were not paid their arrears in full.[122] Fears that such a demobilization would lead to an increase in crime were expressed in 1649, for example.[123] And the consequences of the demobilization of the armies after 1660 may well have contributed to the perception that crime and violence were at serious levels that would help to explain attempts in parliament in the following decade to find more effective punishments for felonies.[124] When James II's army melted away at the end of 1688—shrinking from something over 30,000 troops to less than a third that number in a few weeks, partly by desertion, partly by a clumsy disbandment—the aldermen of London moved quickly to try to arrange passes so the discharged men could leave the City, where they were much in evidence in the streets, and return to their 'own countrys'.[125] Although many of these soldiers would in time be enlisted in the new English army that William III created, the anxiety about street robbery in London in the early years of the 1690s may well have been a consequence of the number of demobilized troops in the capital, and the fear that they retained their loyalty to the king in exile.[126] Certainly, concern about the disbandment of the forces was to be commonplace at the end of every war in the eighteenth century because it came to be expected there would be a great increase in crime, and particularly in violent crime, for the reason that the author of *Hanging, Not Punishment Enough* noticed after the great demobilization following the peace in 1697:

> We need not go far for Reasons of the great numbers and increase of these Vermin [highwaymen]: for tho' no times have been without them, yet we may now reasonably believe, that after so many Thousands of Soldiers disbanded, and Mariners discharged, many of them are driven upon necessity, and having been used to an idle way of living, care not to work, and many (I fear) cannot, if they would.[127]

There had indeed been a major disbandment in 1697 and after. The navy discharged some 15,000 sailors of its wartime complement of 35,000 within a few months of the peace, and many more in the next few years, many of them with wages owed and 'with only tickets of credit . . . between them and starvation'.

[122] J. R. Hale, *War and Society in Renaissance Europe, 1450–1620* (1985), 87–8.

[123] *The Unanimous Declaration of Colonel Scroope's and Commissary General Ireton's Regiments* (Salisbury?, 1649), 3–4; *The Souldiers' Demand. Shewing their Present Misery; and Prescribing a Perfect Remedy* (Bristol, 1649), 3. I am grateful to Jim Alsop for these references.

[124] See below, Ch. 6. As late as 1664 Secretary Bennett was issuing warrants to authorize the apprehension of disbanded soldiers in and about London and Westminster (*CSPD 1663–4*, p. 548).

[125] Rep 97, p. 76; Narcissus Luttrell, *A Brief Historical Relation of State Affairs from September 1678 to April 1714*, 6 vols. (Oxford, 1857), i. 494–5, 505; John Childs, *The Army, James II, and the Glorious Revolution* (Manchester, 1980), 194–8; *idem, The British Army of William III, 1689–1702* (Manchester, 1987), 4–6. The anxiety that the threat of violence gave rise to then would help to explain the major effort mounted by proclamation and then by statute to combat highway robbery in the early 1690s (see below, Ch. 7).

[126] Childs, 'War, Crime Waves and the English Army', 8–9; Paul Kleber Monod, *Jacobitism and the English People 1688–1788* (Cambridge, 1989), 111–12.

[127] *Hanging, Not Punishment Enough*, 21.

Their credit note could be sold, but only at 40 per cent discount. Many workers also lost their jobs in the dockyards near London.[128] At parliament's insistence, in the wake of the 'No Standing Army' debate, the army was reduced even more drastically, and with perhaps more serious consequences.[129] Some of the sailors would almost certainly have signed on to merchant ships eventually. Soldiers had no such prospects, though parliament at least recognized their need for work as a basic problem—eventually—by passing a statute in May 1699 that allowed ex-soldiers to set up in their trades whether they had finished their apprenticeships or not.[130] Some regiments were discharged near where they had been raised. And all demobilized soldiers were given two weeks' subsistence money to help them return home; significantly, they were ordered to travel in groups of no more than three to prevent gangs from forming. But large numbers of troops were discharged in 1697 and 1698 near London, and drifted to the capital in search of work since their discharge money (and the three shillings they got for turning in their swords) could not long sustain them. The demobilization included the English army in Flanders of close to 30,000 troops, which was brought home and paid off largely in the south-east. As a consequence, it has been said, 'London and the home counties were inundated' with demobilized soldiers, though relief came with the rapid recruitment of the army that began in the summer of 1701, in anticipation of the war that began in Europe in the following year.[131]

An even larger army was discharged in 1713 and after, following the War of Spanish Succession in which Marlborough had led a huge English army in Europe.[132] Already at the end of 1712 there were complaints about the 'great number of soldiers lately disbanded and lying about the streets'. An army of 75,000 in 1711 was reduced to a force of 8,000 in England four years later.[133] The troops were given their arrears of pay more expeditiously at this demobilization

[128] John Ehrman, *The Navy in the War of William III, 1688–1697: Its State and Direction* (Cambridge, 1953), 617–18 (quote at 617).

[129] Lois G. Schwoerer, *'No Standing Armies!': The Antiarmy Ideology in Seventeenth-Century England* (Baltimore, Md., 1974), ch. 8.

[130] Childs, *British Army of William III*, 204.

[131] Ibid., 185–205 (quote at 203). Elsewhere, Childs argues that disbandments before 1697—that is, those between 1660 and 1688—had been 'relatively orderly' and were not accompanied by crime waves. He shows how different those disbandments had been from that of 1697–9, with which he is principally concerned in this article. He makes the valid point that, with respect to levels of prosecutions for property crime, the experience of the Nine Years' War was different from those that followed in the eighteenth century. Prosecutions ran at a high level throughout the 1690s (as we have seen) and thus while the disbandment after 1697 could be thought to have made a bad situation worse, it cannot have been the only cause of the crime wave that accompanied the peace ('War, Crime Waves and the English Army', 12–14; quote at 13).

[132] According to a retrospective calculation of troops voted by parliament and demobilized at the conclusion of wars between 1689 and 1869 (made for parliament in 1868–9), just over 100,000 soldiers and sailors had been discharged by 1700 following the conclusion of the Nine Years' War, and more than 150,000 at the end of the War of Spanish Succession fourteen years later (House of Commons Parliamentary Papers, 1868–9, xxxv, 693–704).

[133] H. C. B. Rogers, *The British Army of the Eighteenth Century* (1977), 19–20.

than at the end of William's war. But that generally amounted to very little, and they found themselves discharged with the same two weeks' subsistence and the clothes they wore, with the injunction that they were to return to their homes and trades (again the way was smoothed for those few who might have had trades), and with very little else. They were left essentially to fend for themselves, large numbers of them near the capital.[134] The anxieties this gave rise to can be judged by the order passed down from the mayor and aldermen in the summer of 1713 to the beadles and constables of the wards of the City to search for 'disbanded soldiers and other unsettled persons'.[135] The re-enlistments in 1715, as regiments were raised to meet the Jacobite rebellion, provided only temporary relief.[136]

It would hardly be surprising if some of the soldiers and sailors discharged so ungratefully fended for themselves by using the skills they had been practising on behalf of their country in recent years—wresting by force what they were not given by policy. The fact that cavalrymen were allowed to keep their horses at their discharge because they had paid for them with their allowances gave them the means to rob on the highway if they chose. Their familiarity with weapons, their acquaintance with accomplices in a similar position with whom they could join forces, above all the courage they had learned by hard service on the Continent, must have made certain forms of crime seem a possible way to supply at least their short-term needs. There is certainly a good deal of evidence that the upsurge in burglary and of violent crime on the highways and the streets of London for a few years after 1697 (as indeed after every war through the eighteenth century) was the work of demobilized soldiers and sailors. So many soldiers took to the roads that a string of guardhouses had to be built between London and Kennington to protect the public; at least one gang of highwaymen operating near Henley, along the Thames, consisted largely of ex-cavalrymen and dragoons.[137] If there had been an increase in violent offences in the last years of the seventeenth century and in the years following the Peace of Utrecht in 1713, the involvement of ex-soldiers would not be surprising.

There is a further point to be made about the way in which increases in prosecutions were perceived by contemporaries—especially if we are tempted to think that, from a modern perspective, the numbers involved are not particularly massive. The institutions that dealt with crime and criminals—the gaols, for example—were small by later standards, easily overcrowded, and always in danger of being incubators of diseases that threatened more people than the inmates. When prosecutions increased persistently over several months or years the state of the gaols in the City—Newgate and the two sheriffs' prisons, the

[134] R. E. Scouller, *The Armies of Queen Anne* (Oxford, 1966), 321–8.

[135] CLRO, Papers of the Court of Aldermen, 23 June 1713.

[136] J. W. Fortescue, *A History of the British Army*, 13 vols. (1899–1930), ii. 5–6.

[137] Childs, *British Army of William III*, 204; and see *idem*, 'War, Crime Waves and the English Army', 10–11.

compters in Wood Street and The Poultry—raised issues about both security and the threat to the health of the City. Such overcrowding came to be anticipated as wars came to an end. The deputy master (and head turnkey) of Newgate reportedly claimed, while trying to sell his post in 1712, that although it was worth only £80 at that time, 'if there came to be a Peace, it would bee a glorious place'.[138] The problem of overcrowding was compounded by the fact that most of the men and women accused of property crimes were sent to gaol to await trial, though in London, presumably because of the overcrowding in Newgate, bail was more readily granted in minor felony cases than the law strictly allowed.[139] It was also the case that many of those who were convicted would be returned to gaol until their assigned punishments were carried out—a problem that was to cause difficulties in the 1690s. In addition, it is also worth noting that the figures in Figure 1.1 represent only one part of a much larger number of offenders brought to trial at the Old Bailey. Besides those accused of property offences in the City of London, even larger numbers were charged in Middlesex—perhaps double the total committed by the magistrates of the City. But even that accounts for only part of a much larger prison population than the figure would suggest. Apart from property offenders, others were committed to Newgate to face trial—and again, from Middlesex as well as the City—for a range of other offences, some very serious, like high treason, murder, infanticide, rape, or arson; others for one of a multitude of less serious matters that occasionally led to someone being held for trial rather than being bound over. The population of Newgate was made up of a larger and more heterogeneous population than the group of men and women charged with property offences.

The best analysis of the problem of overcrowding in Newgate has been made by Wayne Sheehan. From a calculation of the number and size of wards and rooms in Newgate as it was rebuilt after the Great Fire and as it existed through this period, and from the size of cells provided for individual prisoners in the model penitentiary at Millbank in the early nineteenth century, Sheehan believes that Newgate would have been full with a total population of about 150 prisoners.[140] In the last years of the seventeenth century, when prosecutions

[138] LMA, DL/C/255, fo. 367 (evidence given in the libel suit Thomasine Rewse *v.* Bodenham Rewse, 1715); for Rewse, an old thief-taker and deputy master of Newgate, see below, Ch. 5.

[139] Bail was not supposed to be granted in felony cases (Beattie, *Crime and the Courts*, 281–3). But London magistrates appear to have allowed bail in felony cases more generously than magistrates elsewhere, mainly it would seem when the accused had been charged merely on suspicion of having committed the offence, rather than on the oath of the victim. Gaol calendars in the late seventeenth century regularly list accused who had been on bail and had surrendered themselves for trial (see CLRO: SF 199–200 (February and April 1670), for example). In February 1697, to sample a slightly later period, four women charged with shoplifting were bailed and released from Newgate a few days after being charged; and as many as twelve men and women charged with felonies were allowed bail before the following session in April (CLRO: SF 424–5). In the 1690s the City grand jury criticized the slackness of the rules respecting the granting of bail (see, for example, CLRO: London Sess. Papers, December 1699). A liberal granting of bail in minor cases would have been one way of reducing overcrowding in Newgate.

[140] Sheehan, 'Finding Solace in Eighteenth-Century Newgate', 231–2.

for property offences rose steadily and when large numbers of convicted offenders were confined in Newgate for longer periods because of the problems in the penal system, the population of the gaol far exceeeded those numbers. The gaol was most often seriously overcrowded in the days just before the sessions were to begin at the Old Bailey, since the defendants who had been committed to await their trials were joined by others who had been held in other prisons, particularly the Middlesex gaols and the sheriffs' compters. Between May 1696 and the end of 1699—to take a period in which prosecutions were running at a high level—the number of prisoners in Newgate on the eve of the gaol delivery session at the Old Bailey ranged between a low of 161 to a high (in December 1696) of 347. The median number of accused or convicted felons over that period was 213, and the average 228.[141] No doubt there were lower points between sessions, but at the least one can say that, by Sheehan's measure, Newgate was frequently crowded in those months, and occasionally very crowded indeed. Such conditions were known only too well to the City magistrates, who, as aldermen, were responsible for the administration of Newgate and who were made all too aware of conditions in the gaol when it became overcrowded and gaol fever increased mortality among the prisoners. The magistrates also kept in touch with changes in the population of Newgate when it reached dangerous levels by calling for regular accounts of the bread delivered to the inmates.[142]

Sharp upturns in the number of prosecutions, as in the last decades of the seventeenth century and early years of the eighteenth, invariably aroused public disquiet and drew complaints about the weakness of the law, the failures of the magistrates, the constables and the courts, and the corruption of gaolers. A widespread sense of increasing criminality in the late seventeenth and early eighteenth centuries was almost certainly responsible for a number of the initiatives taken in the City and in parliament in this period to make the law and its administration more effective. Many were aimed against particular offences—robbery, housebreaking, shoplifting, and coining, among others. Others introduced measures to encourage the prosecution of the most violent and dangerous offenders, which, in turn, helped to transform policing and aspects of trial. But much of the comment about crime in the City and prescriptions for addressing it were more general in that they tended to emphasize the moral weakness and failings that led to crime in the first place. The reigns of William and Anne were a period in which there was intense concern in some quarters with the moral health of the society, and much of the analysis and discussion of crime in the quarter century and more after the Revolution of 1689 was shaped

[141] These totals are for the City of London and the Middlesex gaol calendars for three categories of felons: those committed to Newgate for trial since the previous session of the court; those brought for trial from other gaols or surrendering on bail; prisoners 'on orders'—that is, for the most part, convicted offenders awaiting punishment. The gaol calendars survive for both jurisdictions at twenty-one sessions over those years (LMA: MJ/SR 1872–1931; CLRO: SF 418–46).

[142] See, for example, Rep 95, ff. 26, 69, 127, 317; Rep 123, ff. 430, 489.

by those concerns, a circumstance that was to have considerable consequences for the identification of problems that demanded attention and the formulation of solutions to deal with them.

The broader framework within which responses to property crime took place was formed by attitudes towards poverty and the poor, and in particular the hostility of the propertied and employing class towards vagrancy and begging, and what appeared to be the unwillingness of some men to support themselves and their dependants, and to contribute through labour to the strength of the nation.[143] Concern about poverty and employment merged with concern about crime: vagrancy and prostitution formed one end of a spectrum that included crimes against property and serious violence at the other. All were linked in a great chain of immorality and illegality—a linking commonly conceptualized as a slippery slope that began with apparently minor acts of wilfulness and disobedience that were to be taken seriously because they gave rein to the passions and, if not checked, would lead to the erosion of moral sense and of the principles of right behaviour that derived from religious beliefs and practice. It was this sense of the inevitability of falling into the worst possible forms of behaviour unless one struggled hard against the temptations of the world and the devil, of losing one's way, that linked blasphemy, idleness, vice, vagrancy, and crime. The danger of embarking on this slippery slope to damnation was a persistent theme of moralists and social commentators in the late seventeenth century and first half of the eighteenth. Ned Ward wrote in the early years of Anne's reign about the 'City Black-Guard'—children living on the streets and sleeping where they could—that 'from beggary they proceed to theft, and from theft to the gallows'.[144] Much of the comment focused on young men and on young women in domestic service, who were thought to be most susceptible to temptations. A writer in a monthly religious paper in 1704, commenting on five offenders recently hanged at Tyburn, saw in their offences evidence of

> how the Devil baits his Hook according to the different Inclinations of Men, and how he leads 'em from one Sin to another, 'till at last their Consciences are so hardned, that they can *whore, murder, steal*, and commit those horrid Impieties that send Men to the Gallows, and from thence (except with these Criminals, they loath their Sins) to Hell.[145]

We can get a sense of the meaning that contemporaries attached to changing levels of prosecutions and to crime more broadly in the late seventeenth and the early eighteenth centuries by examining the pronouncements of men who were very close indeed to the heart of criminal administration: the grand jury of the City. This body of seventeen men was chosen from the twenty-six City wards in

[143] Joyce Oldham Appleby, *Economic Thought and Ideology in Seventeenth-Century England* (Princeton, NJ, 1978), 135–57; Stephen Macfarlane, 'Social Policy and the Poor in the Late Seventeenth Century', in Beier and Finlay (eds.), *London, 1500–1700*, ch. 9; Paul Slack, *Poverty and Policy in Tudor and Stuart England* (1988).

[144] Ned Ward, *The London Spy* (ed. Paul Hyland, from the 4th edn. 1709; East Lansing, 1993), 37.

[145] *The Post-Angel*, January 1702, 33.

what was by the late seventeenth century a well-established pattern. For the most part they were drawn from the upper ranks of the London rate-paying population. Eighty per cent of grand jurors in the 1690s were men in the prosperous wholesale or retail trades—including linen drapers, mercers, haberdashers, and merchants of all kinds. They were also widely experienced in other aspects of the government of the City: some as common councilmen; others in ward or parish offices as churchwardens or overseers of the poor; some as members of civil juries in the City. Many of them served with some regularity on the grand jury itself. Their primary task as jurors was to listen to a statement of the prosecution evidence in each case and to decide whether the accused should go forward to trial before the petty jury. But when that work was completed, they also had the task of 'presenting' problems to the court that had been brought to their attention or that in their own view required redress. It seems likely that men who were as active as many of the grand jurors were in the affairs of their wards and parishes and of the City itself, regarded this aspect of their grand jury service as an important part of their wider participation in the governance of the City.[146]

Grand jury presentments were clearly shaped by the jurors' local experience, and by the opinions of the men they associated with in the management of their communities. They varied considerably from one jury to the next. Some were printed, presumably because they were thought important enough to be addressed to a wider audience than had been present in court; some were perfunctory; others were devoted entirely to naming individuals whose misdeeds required corrective action; some were narrowly partisan, aimed against political enemies; from time to time presentments took the form of an address to the Crown or parliament on a matter of national importance. Most often, however, the City grand jurors felt moved to comment on the state of the community, drawing the attention of the City magistrates to problems that needed solution. Prominent among these were the problems of crime, and the circumstances and conditions that made it possible. Not many presentments of the City grand jury have survived, but the thirty or so examples among the Sessions Papers between 1689 and 1706 provide us with a reasonable sample of the way these influential men in the City of London regarded some aspects of the crime problem and what they thought might be done about it.[147]

Grand jury presentments ranged over a variety of subjects relating to crime. Several made specific recommendations about how crime might be contained. On at least three occasions early in William's reign they repeated an obvious point made by several of their predecessors that alehouses that served beer in silver

[146] J. M. Beattie, 'London Juries in the 1690s', in Cockburn and Green (eds.), *Twelve Good Men and True*, 237–44.

[147] About fifty grand jury presentments survive from the half century after 1680, mainly in the reign of William III and the early years of Queen Anne. They are among the Sessions Papers in CLRO, filed by the month and year of the appropriate session.

tankards provided too great a temptation to customers, and that this temptation should be removed.[148] Presentments in 1695 urged the court of aldermen to seek new laws to deal with the clippers who were diminishing the coinage and threatening trade.[149] Grand juries presented taverns and alehouses that they thought were sheltering highwaymen and clippers, and others that acted as conduits for stolen goods.[150] They made recommendations with respect to the watch, and chastised constables for neglect of their duty when burglary seemed to increase strongly in the winter of 1699.[151] And they spoke from time to time about the City's gaols, especially as they became crowded in the last years of the 1690s.[152]

Occasionally, the grand jury reflected more broadly on crime and the system of criminal prosecution, and pointed to problems that were eventually taken up in legislation. In December 1704, for example, the City grand jury, following the lead of their fellow jurors in Westminster, complained about the ineffectiveness of the punishments available to the courts, in particular about the problems of benefit of clergy, and the way sentences of transportation to the colonies were being evaded. These complaints were taken up by the Court of Aldermen, and their petitions to parliament led directly to a statute in 1706 that, as we will see, significantly broadened the range of punishments available (Chapter 7).

The problems of property crime and violence were never far from the minds of the City's grand jurors in this period when they formulated their brief presentments at the eight annual sessions of the Old Bailey. They linked such offences to other social problems and commonly explained them as the inevitable consequence of forms of behaviour they sought to prohibit. In the difficult years of the 1690s, when the disruptions of trade during the war and high food prices following several harvest failures combined to make this a decade of serious deprivation for many in London,[153] grand juries frequently commented on the visible effects of poverty on the streets of the metropolis in complaining about the growing problems of vagrancy in the capital and the increase of begging. As a grievance to be addressed, they presented 'the neglect of the poor, and their being suffered to begg in great numbers up and down the streets' in July 1693; and, two years later, in a presentment dealing with a variety of social problems, a grand jury urged the aldermen/magistrates to seek further powers from parliament to enable them to conduct 'Frequent Examination of loose and unsettled persons that have noe habitation nor business but live on Pillfering or begging'; and also, to obtain powers to send the men to the army, and the large numbers of 'loose vitiouse women and Black Gard boys' to the colonies.[154] As

[148] CLRO: London Sess. Papers, January 1689, July 1689, December 1692.
[149] CLRO: London Sess. Papers, February 1695.
[150] CLRO: London Sess. Papers, February 1695.
[151] CLRO: London Sess. Papers, December 1699.
[152] CLRO: London Sess. Papers, February 1698.
[153] Macfarlane, 'Social Policy and the Poor', 259.
[154] CLRO: London Sess. Papers, July 1693, February 1695.

another grand jury said in 1694, the problem (though they did not quite put it this way) was that there was a steady migration of young men and women seeking work in London, and in difficult times like the 1690s many found themselves in such serious trouble that they turned to crime. They complained that

> greate numbers of loose, idle and ill disposed persons from all partes of this Kingdom doe resorte unto this City and partes adjacent; And doe here shelter themselves not following any lawful callings or employments. And haveing noe visible estates or honest way to mainteyne themelves doe turne Robbers on the highway, Burglarers, pickpockets and Gamesters that follow other unlawful wayes to support themselves.

They went on to recommend that the magistrates order 'effectuall and diligent' searches to arrest such people, and so prevent 'Robberies, Fellonies, Burglaries and other Crimes and misdemeanors which doe daily abound in and neere this City . . . and bring many young and able persons to untimely ends by the hands of Justice'.[155]

There was some recognition here that the lack of 'honest work' might have something to do with the levels of robbery and theft that contemporaries complained about so frequently in the 1690s and that are reflected in the calendars at the Old Bailey. More often, however, grand juries were likely to blame the moral corruption of those who succumbed to the temptation to steal, and to seek solutions that would arm them against that temptation. The need for such a 'reformation of manners' had long been urged, but the campaign to engage the magistrates and the state in the cause of reformation came to a crescendo soon after the Revolution of 1689.[156] The arguments and the intentions of the societies that led that campaign find persistent echoes in the presentments of the City grand juries—in their urging the magistrates and constables of the City to put the laws against vice and blasphemy into effect, or, as on one occasion, pressing for the abolition of garnish in gaols, and the employment of gaolers who would seek to reform prisoners rather than exploit and terrorize them. This jury also urged the aldermen to ensure that gaolers be persons who

[155] CLRO: London Sess. Papers, January 1694.

[156] For the Societies for the Reformation of Manners and their campaign for moral reform, see Dudley W. R. Bahlman, *The Moral Revolution of 1688* (New Haven, 1957); Tina Beth Isaacs, 'Moral Crime, Moral Reform, and the State in Early Eighteenth Century England: A Study of Piety and Politics', Ph.D. thesis (University of Rochester, 1979); *idem*, 'The Anglican Hierarchy and the Reformation of Manners, 1688–1738', *Journal of Ecclesiastical History*, 38 (1982): 391–411; A. G. Craig, 'The Movement for the Reformation of Manners, 1688–1715', Ph.D. thesis (University of Edinburgh, 1980); Faramerz Dabhoiwala, 'Prostitution and Police in London, *c.*1660–*c.*1760', D.Phil. thesis (University of Oxford, 1995), ch. 5; Shoemaker, *Prosecution and Punishment*, ch. 9; *idem*, 'Reforming the City: The Reformation of Manners Campaign in London, 1690–1738', in L. Davison, T. Hitchcock, T. Keirn, and R. B. Shoemaker (eds.), *Stilling the Grumbling Hive: The Response to Social and Economic Problems in England, 1689–1750* (Stroud, 1992), 99–120; Hunt, *The Middling Sort*, ch. 4; David Hayton, 'Moral Reform and Country Politics in the Late Seventeenth-Century House of Commons', *Past and Present*, 128 (August 1990), 48–91; and for an important long-term perspective on moral reform efforts, Martin Ingram, 'Reformation of Manners in Early-Modern England', in Paul Griffiths, Adam Fox, and Steve Hindle (eds.), *The Experience of Authority in Early Modern England* (1996), ch. 2.

set good examples, and that prisoners be provided with good books for their reformation and instruction.[157]

More than half the presentments that have survived from William's reign and the first half of Anne's include some reflection on the problem of crime that rests on the assumption that property offences arose from the failings of the offender: from the weakening of their moral senses, from laziness, insubordination, and other forms of anti-social behaviour. Jurors reiterated the view that the leading causes of such corruption, especially of the young, were the loss of religious principles in the face of the temptations and immorality of the city. They identified particularly the corrosive effect of the profanation of the Lord's day by those who insisted on drinking in coffee-houses, taverns, and tippling houses during the time of divine service. In 1689 they were inclined to blame the regime of the Catholic James II for this laxness, and for what they saw as a scandal on the Protestant religion and the good government of the City. The Revolution unleashed a powerful anxiety to prevent vice and immorality in the future, to mark the great deliverance from the Catholic danger and to prove England's worthiness to continue to receive further marks of God's blessing.[158] The Protestant nation, in this reading, was still in danger at home and abroad, and would be preserved only by proving itself worthy of God's continuing favour. Over the following decade grand juries continued to repeat the need for moral cleansing, urging support for the proclamations endorsing the reform campaigns issued by William and again by Anne at the beginning of her reign, and for the reformers who were going about the work of rooting out blasphemy and vice wherever they could find it.[159]

The most persistent recommendations of these juries of shopkeepers, employers, and housekeepers, however, urged the suppression of temptations that drew the young into crime, especially apprentices and servants. Brothels, taverns, lotteries, and gaming houses were condemned because they were attractive to youth, who, in order to support immoral habits were 'induced to defraud their masters, to neglect their business, and to become acquainted with idle and loose persons to their ruin'.[160] Other sources of youthful corruption were denounced for similar reasons: St Bartholomew's Fair, for example, for encouraging late-night revelling, and for its music houses and gaming, all of which encouraged lewdness and debauchery, and led 'to the great corruption of

[157] CLRO: London Sess. Papers, February 1698.

[158] See Henry Care, *English Liberties; or, the Free-Born Subject's Inheritance* (1700 edn., enlarged by Benjamin Harris; 1st edn., 1682): in the dedication (to the House of Commons), William III was praised for having restored liberty and property and 'Put a Stop, in a great Measure, to that Current of Vice, which often brings Judgments down from Heaven upon a Nation, by Good and Wholesome Laws against Prophaneness and Immorality'.

[159] CLRO: London Sess. Papers, January 1689, July 1689, December 1692, January 1693, July 1693, October 1694, January 1695, February 1695, May 1697, February 1698, July 1699, October 1701, January 1703.

[160] CLRO: London Sess. Papers, October 1694 (and see January 1689, February 1695).

youth'.[161] Similarly, in several presentments, the lord mayor and Court of Aldermen were urged to prohibit 'public stage plays', because they corrupt 'the minds and manners of the youth of this City', and deflect them from their work and the duty they owed their masters. 'Apprentices do frequently resort to the Play Houses', one jury assured the magistrates, 'whereby they are corrupted and entic'd to wickedness, not only by hearing and seeing diverse lewd representations, but especially by meeting and conversing with many Lewd persons . . .'.[162] And whereby they also waste their time and money. Again and again this refrain is repeated, not only in grand jurors' complaints about the popular culture of the City, but by numerous commentators on the problems of poverty, vagrancy, and labour, as well as crime. And so often these anxieties about time-wasting and frivolous expenditure focused on crowds that gathered around entertainers, street sellers, and con-men—in general, on the street life of the City. All drew workers away from their duty, and the aldermen were frequently called upon to provide regulation. In 1694, for example, the aldermen appointed a constable to prevent crowds forming on London Bridge when they were

> informed that diverse Idle Vagrant persons, Ballad singers Pickpockets and others frequenting London Bridge and parts thereabouts who under shew and pretence of Selling Ginger bread Apples Oranges Ballads and other Knacks doe use certain Tricks and devices to drawe crowdes of People togeather to the end to pick pocketts and commit other cheats and Disorders to the great Injury and damage not only of the Inhabitants there but of diverse honest People passing that way and Citizens servants who loose their money and misspend their time.[163]

The problems of crime were high on grand juries' agendas in the 1690s. It comes as no surprise that these respectable citizens shared a widespread conviction—not for the first time nor the last—that crime was beginning to erode the foundations of social order. They also subscribed to the common view that the enlarging temptations of the City were to blame, especially in corrupting servants and apprentices. As the calendars of indictments at the Old Bailey swelled during the 1690s, grand jurors were increasingly likely to blame the corrosive effects of the popular entertainments of the City, the taverns, gaming houses, the theatre, and perhaps above all the blandishments of 'lewd women'—all of which deflected the young from their work, and instilled in them tastes and desires that could only be satisfied first by pilfering and then by increasingly serious forms of theft.

Crime, for these grand jurors, was a product of moral weakness; it increased because society was becoming more sinful, and individuals more corrupt. It would be diminished, the grand jury presentments suggested, when men and women were reformed and their 'manners' corrected—when vice was

[161] CLRO: London Sess. Papers, September, 1697 (and see January 1703, July 1703).
[162] CLRO: London Sess. Papers, May 1699 (and see October 1698, July 1703).
[163] Rep 98, p. 213.

eradicated, and prostitution, vagrancy, and begging were no longer tolerated in the streets of the capital. Nothing makes this point clearer than the responses of grand juries to the sharp falling away of indictments in the early years of Anne's reign. In May 1703 the grand jury wrote an unusually general and congratulatory presentment which linked English successes in the War of Spanish Succession to 'the perfect peace we live in at home', a peace visible, they went on to say, in 'the inconsiderable number of Criminals in the list of this and diverse former Sessions'.[164] Both were 'signal instances of the special favour of almighty God to our Sovereign and her Kingdomes'. And both were due, in their view, to Queen Anne's example 'of piety and virtue' and her support for the work of suppressing profanity and vice, as well as to the City magistrates' own efforts in that regard. The jury of the following session also found cause in the reduced calendar of offences to celebrate 'the visible decrease of vice and prophaneness amongst us', a theme returned to even more warmly in 1706, when indictments were at their lowest point for at least thirty years. This jury found the reason not so much in a general improvement in behaviour as in the removal of problems from the streets, and especially the work of the London Corporation of the Poor, and the workhouse they had established in Bishopsgate Street. It was due to the workhouse, they thought, that they had found 'none of those young Criminals which were formerly used to be brought before Us, and our Attendance here hath been so very short'. The workhouse had taken in more than 500 children over twelve months in 1703–4, and had taught some of them to read and others to spin, and had put out some to apprenticeships.[165] The fact that the workhouse took children and other vagrants off the streets was sufficient explanation for the grand jurors for the shrinking Old Bailey calendars. The workhouse, they said, had

> received therein, All those poor, and Vagrant Children, which lay up and down in the Streets of this City (Commonly called by the Name of the Black Guard) and hath educated, Imployed, and fitted them for Trades and other Imployments, These being formerly trained up to Wickedness and Vice, and after haveing been frequently before this Court and often pardoned upon Account of their Tender Years, have at Last (takeing no Warning) made their Exit at the Gallows.

The success of the governors of the workhouse in clearing the streets of 'Beggars, and other Idle and Disorderly persons', the jurors thought, had led to the happy results to be seen in the very few felons whose cases they had dealt with in the brief session of the court. They went on to urge the mayor and aldermen to seek the co-operation of the magistrates of Middlesex and Westminster to join with the governors of the poor in London in a wider metropolitan campaign.

[164] CLRO: London Sess. Papers, May 1703.

[165] *London Workhouse Bishopsgate Street, Account for the year ending March 27, 1704* (Broadside).

Thus beggary and Vice will decay [they predicted], and Industry and Virtue florish . . . and all the useless and Idle hands being wholy Imployed, Honest Men may sit down Safe and Contented with the Happy Injoyment of what They possess without any fear of Rapin, and Theft, and other Molestation. And this Good Work being now happyly begun and finished in this City, Wee cannot doubt, but the Whole Nation will soon follow Your Glorious Example.[166]

There is no suggestion here, amidst the self-congratulation, that the opportunities for work and the low costs of provisions might have contributed to the falling away of prosecutions for property offences in these early years of the war. Nor, we might note in passing, is there any sense, among men who would not have been embarrassed to acknowledge such a ploy, that the reduction in indictments had been mainly the result of decisions by victims and magistrates to force young men into the army rather than prosecuting them for such offences. As far as the grand jurymen of the City were concerned—these shopkeepers and craftsmen and other men of property whose knowledge of the realities of crime did not wholly depend on the fluctuating calendars of the Old Bailey—there had been some significant reductions in the level of offences in the years since the war began in Europe.

Grand jurors' presentments were shaped by the circumstances of the moment, as they and their neighbours read them. The jurors themselves changed from session to session, though individuals might well have served on previous juries and would return to others. Juries were always liable to be divided by political differences in this period of sharp conflict between whigs and tories in the City, and the make-up of juries must certainly have reflected those differences over time. It is hardly surprising, then, that the presentments of the London grand juries ranged over a variety of subjects, and took up a number of causes. But even if a complete record of presentments could be recovered, the available evidence suggests that it would be difficult to detect sharp differences on the question of property crime and what to do about it. It is possible that grand jurors from particular wards or with differing political views favoured one explanation over others, or one solution over others: certainly, the campaigns for the reformation of manners proved in the end to be politically divisive, and these divisions may have been reflected in London grand jury presentments. But if there were divisions, they are likely to have been more of emphasis than substance. The jurors shared some fundamental assumptions about crime. They spoke as men of property—albeit of modest property in the case of some of them. Above all, perhaps, they spoke as householders and employers with a settled place in the community, reflecting on what they took to be the foundations of crime and the threats to social peace and stability it posed.

It was a commonplace that those foundations lay in the flouting of religious principles and practice, and that the greatest sins grew from small shoots of

[166] CLRO: London Sess. Papers, May 1706.

immorality. Such widely shared notions were rehearsed most commonly in this period in the accounts of the lives of those offenders condemned to death at the Old Bailey and executed at Tyburn that the ordinary of Newgate, the prison chaplain, published regularly from the 1670s.[167] These brief biographies carried several messages. In the first place, they reinforced the principal lesson that the gallows was meant to impart: that the most serious offences invariably brought their perpetrators to a terrifying and horrible end. These so-called Ordinary's *Accounts* could also be seen to have carried the inadvertent message (and this we will have reason to explore later) that the courts and the penal law were ineffective in the face of petty crime. The biographies revealed that many of the men and women executed at Tyburn had committed a series of previous offences for which they had been convicted and punished—though punished so ineffectually that they had not been deterred from committing further offences. The ordinaries' intentions in cataloguing earlier convictions were not, however, to establish the weakness of the law, but to underline what was clearly the central message of these brief biographies of the condemned: that offenders who were hanged had been deaf to warnings and had gone on to commit more serious offences because their moral sense had been corrupted.[168]

The Ordinary's *Account* reinforced the widely shared understanding of crime by providing case-studies in which men and women revealed the course of their downfall in what was presented as their own words. Occasionally, the ordinary allowed the condemned to say that poverty and desperate circumstances had led to their robbing and stealing. But more commonly, the convicts were led to speak in the clergyman's own language and through his categories. It was, after all, his account.

The readers of these accounts of the lives and crimes and confessions of the offenders put to death at Tyburn could have drawn only one conclusion about why these men and women had got themselves into such difficulties. The common explanation of why they came to be hanged is a story of moral decay, beginning most often with sabbath-breaking—that sure signal of the loss of religious commitment—and moving on through a downward spiral of gratification and pleasure. The condemned men and women so frequently accepted such explanations of their downfall in their 'last dying speeches' that, if they had any part in actually constructing this element of the *Account*, they had clearly been offered a menu of moral failings from which they might choose a version of how they had gone wrong, how they had been tempted, and why they succumbed. Sometimes this was explicit. One man, about to be hanged for murdering the woman he had promised to marry in order to marry another, was

[167] See above, text at n. 7.

[168] For that theme in the 'dying speeches' of the condemned in pamphlet accounts of executions in the seventeenth century, see Sharpe, '"Last Dying Speeches"', 150–1; and Rawlings, *Drunks, Whores and Idle Apprentices*, 19–22.

asked by the ordinary 'if he was not guilty of Sabbath-breaking'. He acknowledged that he was; and that 'it was his Original sin'. He went on to give advice to masters 'not to be negligent of their Servants, for that was the great part of his Ruin, and this untimely end'.[169] Others elaborated more fully on the consequences of profaning the Lord's day, or blamed other bad influences for their downfall. George Delacore, hanged in 1689, confessed that though he had been born a gentleman in Ireland and had been well educated and apprenticed to a merchant, he had thrown away all those advantages by breaking the sabbath, developing a 'habit of Drunkenness and other Debaucheries, insomuch that I denied my self nothing of sensual Pleasure', and then fallen in with a man who had led him to robbing.[170] William Gillet too had served an apprenticeship, but became 'addicted to a vicious life, for he played on the sabbath in the streets, and was guilty of swearing and lying, and was ignorant in matters of religion and little sensible of his sins'.[171] It was a familiar story, largely because it was the ordinary's story.

Another familiar theme was the story of honest men or women coming to the City from the more innocent countryside who fell into evil company and became addicted to the 'reigning Vices of the Age'.[172] One condemned man conveniently listed these as 'Swearing, Cursing, Drunkenness, Lasciviousness, Sabbath-breaking, Gaming, Neglect of God's Service, and the like.'[173] By common consent—even the consent of the hanged, in the ordinary's version of their lives—these all led to crime because they eroded religious principles, encouraged idleness, and in the end required thievery to sustain them.

Most of those whose biographies and 'dying speeches' were cobbled together by the ordinary agreed that their downfall began in seemingly small ways, that one fatal step had been followed by others, and so inexorably on. One burglar with a long list of petty crimes to his name before his conviction and execution in 1710 claimed, according to the ordinary, to have found by his 'own woeful experience, that one sin, wilfully committed, easily draws on another, and that more; and a Man cannot tell when or where to stop, till it end at last in a sad and shameful Death'.[174] And what drove them forward to this end, many confessed, was a taste for luxury and an abandonment to their passions; they delighted 'more to satisfy their Sinful and unjust Appetites and prevailing Lusts', one Ordinary's gloss ran, 'than what Vertue or Morallity prescribed unto them, thinking it no Crime to Rob another so they might serve the Cravings of their own Necessities, which they were only guilty of bringing themselves into'.[175]

[169] *The Last Speech, Confession and Execution of the two Prisoners at Tyburn* . . . 23 May 1684.

[170] *A True Account of the Behaviour, Confession and Last Dying Speeches of the Prisoners that were Executed at Tyburn* . . . 23 October 1689.

[171] *A True Account of the Behaviour, Confession and Last Dying Speeches of the Criminals that were Executed at Tyburn* . . . 28 February 1694.

[172] Ordinary's *Account*, 15 December 1710.

[173] Ordinary's *Account*, 22 September 1704.

[174] Ordinary's *Account*, 15 December 1710.

[175] *The Behaviour of the Condemned Criminals in Newgate, who were Executed on Friday the 19th of this Instant December* [1684].

The ordinary sold his account of the condemned to an audience that almost certainly made as natural a connection as he did between crime and immorality. The author of *Hanging, Not Punishment Enough* reflected the views of more than just the active supporters of the societies for the reformation of manners when, speaking of violent crime, he argued that 'a General Reformation . . . is most likely to put a stop to this spreading evil, since *that* would set Men right in their Principles, to the corruption of which their ill practices are without doubt owing'.[176] In his reports on crime in the capital to Richard Coffin, Richard Lapthorne made a similar connection between crime and immoral behaviour. He saw in the violence around him ominous manifestations of the dangers that threatened a Protestant nation. 'The world with us is very unruly debauched and profane', he wrote in 1690, 'aboundance of Robberies comitted and vice very litle checked by those in Authority which makes mee feare God is yet providing greater scourges for the Nation which God grant our humilliation and sincere repentance may divert.'[177]

The *Accounts* of the ordinaries of Newgate carried this message of crime as moral failure into the mid-eighteenth century and beyond.[178] It was also developed in graphic form and in an even wider variety of admonitory literature than ever before—particularly in work aimed at servants and apprentices and their masters, a sign perhaps of a growing concern in the second quarter of the century about the weakening of the institution of apprenticeship and the diminishing of control in general over the conduct of the young. The argument that the erosion of moral sense would lead to greater and greater sins and offences was encapsulated in dramatic form, for example, in George Lillo's *The London Merchant, or, the History of George Barnwell* (1731). The play had a great success in the metropolis, perhaps because it was one of the first to place the world of the commercial middle class of London at the centre of the drama. But it was also successful because of the powerful moral message it offered in retelling a story familiar from a seventeenth-century ballad of the sad fate of a naïve apprentice who was seduced by 'a lady of pleasure', and persuaded to steal from his employer, a merchant, and then to murder his uncle. He fell to his ruin in the way the audience was well-schooled to expect: 'step by step . . . from crime to crime, to this last horrid act' of murder (IV.xvi). Both Barnwell, the apprentice, and Millwood, the courtesan, were convicted and executed: she far from contrite; he submissive and repentant, content that 'justice, in compassion to mankind, cuts off a wretch like me, by one such example to secure thousands from future ruin' (V.v). The play was such a huge success with the London public, certainly the employers among them, that it was frequently revived during holidays and commonly on the lord mayor's day as a suitable entertainment for apprentices.[179]

[176] *Hanging, Not Punishment Enough*, 22. [177] Kerr and Coffin (eds.), *Portledge Papers*, 90.

[178] For the *Account* in the 1740s and its decline thereafter, see McKenzie, 'Lives of the Most Notorious Criminals', ch. 4.

[179] George Lillo, *The London Merchant*, ed. William H. McBurney (Lincoln, Neb., 1965), xii–xiii.

The same moral was even more directly pointed in Hogarth's graphic tale of the contrasting fates of two apprentices in *Industry and Idleness* (1747). This was a set of twelve prints, deliberately engraved in a style that kept the price down, so that—at twelve shillings for the set—masters would be able to afford to hang the sequence around their workshops for the instruction of their apprentices. Some scholars have found irony and coded messages, or at least ambiguity, in Hogarth's depiction of the story of the industrious apprentice, Francis Goodchild, who rises to become lord mayor of London, and of his fellow apprentice, Jack Idle, who wastes his time, gambles, profanes the sabbath, consorts with prostitutes, and, having taken to the highway, ends up on the gallows.[180] But to those for whom the series was intended—by Hogarth's own account, employers and their apprentices[181]—it was surely a straightforward story of the consequences of an idle and immoral life, a warning of the fate that awaited those who failed to inure themselves to industry and who indulged their passions and selfish interests. It may have been fanciful to believe that every apprentice had an opportunity to become lord mayor by working hard and obeying his master. But Jack Idle's story was too common, too endlessly repeated in Ordinary's *Accounts* and in the 'last dying speeches' of men executed at Tyburn, to be principally intended as anything other than what it seemed to be on the surface—a warning to apprentices that laziness, vice, and a taste for pleasure would bring them to a disastrous end.[182]

This had also been the message that Samuel Richardson had put succinctly in the conduct book he addressed to apprentices in the previous decade, following in the long tradition of such literature. In explaining why any deviation from modest and upright conduct could lead the unwary youth into bad company and so inexorably down the slippery slope to crime and the gallows, he reminded his readers of the lessons to be drawn from the printed reports of trials at the Old Bailey and the biographies of those who were executed at Tyburn. There is, he asserted, 'but a Cobweb Partition that divides profane Speech from wicked Actions'. And he went on:

> One would not indeed expect that Persons who could allow themselves in the vile Practice of Swearing and talking profanely, should be deterr'd from other Vices: Drinking is generally the next, and is almost a necessary Consequence of the low abandon'd Company such a one chuses to keep. And to a Habit of Drinking, every other Ill succeeds; for what Guard has the Drunkard while in his Cups? Let the *Sessions-Paper* and the *Dying-Speeches* of unhappy Criminals tell the rest: Let them inform the inconsiderate Youth, by the Confessions of the dying Malefactors, how naturally, as it were Step by Step, Swearing, Cursing, Profaneness, Drunkenness, Whoredom, Theft, Robbery, Murder, and the Gallows, succeed one another![183]

[180] Ronald Paulson, *Hogarth*, 3 vols. (New Brunswick, NJ, 1991–3), ii. 289–322; Ian A. Bell, *Literature and Crime in Augustan England* (1991), 28–46.

[181] Paulson, *Hogarth*, ii. 290.

[182] For that view of *Industry and Idleness*, see Jenny Uglow, *Hogarth: A Life and a World* (1997), 438–52.

[183] [Samuel Richardson,] *The Apprentice's Vade Mecum: or, Young Man's Pocket-Companion* (1734), 32–3.

THE PROBLEM OF WOMEN

The ordinary's account of the immoral lives and shameful deaths of the Tyburn hanged, the grand jurors' presentments to the magistrates, the pronouncements of those who urged the importance of a reformation of manners, and the variety of admonitions to apprentices to shun temptations agreed on the catalogue of vices that led to crime. High on the list were the indulgences that drew the young from work, wasted their money and time, and encouraged tastes that could only be satisfied by their turning to crime. Drunkenness, gaming, street entertainments, and the theatre were favourite targets. But no target was more commonly or more vigorously denounced in the late seventeenth century and the early decades of the eighteenth than London prostitutes. Long before George Lillo blamed Millwood for drawing poor innocent Barnwell into committing the worst of offences, the London grand jury regularly issued condemnations of those they variously labelled 'lewd women', 'vitious women', or 'nightwalkers'. Some of this reflected the commonplace belief that prostitutes were also invariably thieves.[184] But more often the grand jurors were concerned with the influence of these 'lewd women' over young men, especially apprentices and servants, who, it was widely agreed, were not only being led in very large numbers into immoral habits but also, inevitably, into the commission of serious offences. They had in mind such women as Hester and Sarah Bennett, labelled by the sessions of the peace in 1693 as 'common incontinent livers' who 'draw and seduce their Majesties Subjects to waste . . . great sums of money in Taverns and other lewd and disorderly houses'.[185] Or Philadelphia Pyke, the wife of Benjamin Pyke, who was charged before the lord mayor in 1694 with being a disorderly, lewd, woman, and 'to have seduced and drawn aside Thomas Prichett, ye Apprentice of Mr Garrett in Ivy Mary Lane, scrivenor'.[186] Such women were commonly identified as the reason for many a young man's downfall. Even worse was Elizabeth Nicholls, charged some years later with picking up a young man in the street and advising him to rob his master and bring her his linens and other goods which she would dispose of through a third party.[187]

The ordinary added his quota of examples to the grand juries' general complaint. One condemned man whose last dying speech was reported by the ordinary in 1694 warned the spectators to 'Take heed how you keep Company with lewd women, and become unclean with them. This sin now much wounds my

[184] Jane Bowman, executed at Tyburn in 1692, aged 26, told the ordinary—as he reported, at least—that she had come to London seven years earlier from Scotland, and had got immediately into bad company and began 'stealing and whoring; two things that generally go together, so far at least as this; that though not every Thief may be a Whore or Whoremaster; yet every Whore or Whoremaster is a thief' (Ordinary's *Account*, 2 March 1692).

[185] CLRO: SM 64, September 1693.

[186] CLRO, Charge Book, 1692–5 (under date 8 April 1694).

[187] CLRO: SF 424, February 1697 (gaol calendar).

conscience. It puts [men] upon stealing to satisfy their lusts.'[188] And George Delacore, who had given the ordinary an account of his sinful life, also claimed to have been 'led away' in the first place 'by a lewd woman'.[189] Young men invariably appear in these accounts as unwitting victims of women 'who pick up and corrupt the youth' and lead some to 'utter ruin'.[190] Like Jane Wells, executed in 1713 for theft from a house, women were blamed for 'doing much Mischief in the World by . . . debauching young Men'.[191] They were blamed for exercising a power of temptation difficult to resist, a point that condemned men clearly found it convenient to confirm. 'Lewd Women abound, to the great Scandal of good people', the author of *Hanging, Not Punishment Enough* concluded, 'and I fear, They are very often the chief Causes, that . . . Men Murther, Plunder, Rob and Steal.'[192]

These denunciations of so-called 'vitious women' had wider implications and consequences than we have considered so far, for they derive from a much broader set of attitudes towards women. They drew on a deeply rooted patriarchal anxiety about the irresistible sexual power and danger of women, particularly of unmarried women who could be seen as living independently of fathers or husbands or masters—women who were 'loose' in more than one sense of the word. Large numbers of such women were visible in the capital in the difficult years at the end of the seventeenth century, when there were insistent complaints about the number of beggars and vagrants on the streets of London. Their independence was as much an issue—though not articulated as such—as the related matter of their prostitution and the deleterious effect their sexual commerce would have on the morals and behaviour of young men. They behaved in a way that outraged men, and that was linked to the growing insubordination of the poor. They were the women whom recorder Jeffreys had in mind when, in ordering public whippings for a group of women convicted of petty larceny at the Old Bailey, he chastised them as having 'the impudence to smoke Tobacco, and gustle in Ale-houses'.[193] The condemnation of 'loose women' by grand jurors and demands that they be brought under control as the number of prosecutions for property offences mounted steadily in the last decade of the century are testimony to the anxiety that the independence of women could create in the city.

Women were thus implicated in the thefts and robberies committed by men. But another aspect of female criminality even more directly increased the

[188] *The Behaviour, Confession and Last Dying Speech of the Criminals that were Executed at Tyburn on Wednesday 28 February 1694.*

[189] *The Behaviour, Confession, and Last Dying Speeches of the Criminals that were Executed at Tyburn 23 October 1689.*

[190] CLRO: London Sess. Papers, October 1694. [191] Ordinary's *Account*, September 1713.

[192] *Hanging, Not Punishment Enough*, 24. It was for this reason that a man—who did not give his name—advised a secretary of state after the Restoration to obtain a law that would make castration the penalty for theft and robbery. A man so emasculated, in his view, would neither have the courage nor the need to steal (SP 29/51/44).

[193] *An Exact Account of the Trials . . . at the Old-Bailey . . . Decemb. 11*, 1678, 35.

anxiety about the behaviour of women in London and dissatisfaction with the way the authorities and the courts dealt with crime in the capital: that is, the very large number of women who were themselves brought before the courts in the last decade of the seventeenth century and the early years of the eighteenth charged with an offence against property. At other times in the century we are examining—in the years after the Restoration and after 1714—women accounted for about a third of such defendants from the City of London (Table 1.4).

TABLE 1.4. *Male and female defendants in property offences: City of London cases at the Old Bailey*

Year	Male	Female	Total	% Male	% Female
1670–1689	1,645	806	2,451	67.1	32.9
1690–1713	1,548	1,622	3,170	48.8	51.2
1714–50	3,626	1,998	5,624	64.5	35.5
Total	6,819	4,426	11,245	60.6	39.4

Source: CLRO: Sessions Minute Books (SM)

That was itself an unusually high level: studies from across several centuries have found that women were rarely as prominent as that among offenders accused of serious crimes.[194] But that level was to be significantly exceeded in the quarter century following the Revolution of 1689, when women property defendants outnumbered men before the Old Bailey.

No doubt some of the increasing proportion of women among the accused in the generation after 1689 is explained by this being largely a period of war and by the recruitment of large numbers of young men into the forces. But that cannot explain why the absolute number of women rose strikingly, not merely their proportion among the prisoners on trial, and why even in the five years of peace between 1697 and 1702 close to half the accused at the Old Bailey were women.

[194] For work on women and crime, see Barbara A. Hanawalt, *Crime and Conflict in English Communities, 1300–1348* (Cambridge, Mass., 1979), 115–25; Carol Z. Wiener, 'Sex Roles and Crime in Late Elizabethan Hertfordshire', *Journal of Social History*, 8/4 (1975), 38–60; Peter Lawson, 'Patriarchy, Crime, and the Courts: The Criminality of Women in Late Tudor and Early Stuart England', in Greg T. Smith, Allyson N. May, and Simon Devereaux (eds.), *Criminal Justice in the Old World and the New* (Centre of Criminology, Toronto, 1998) 16–57; J. A. Sharpe, *Crime in Seventeenth-Century England: A County Study* (Cambridge, 1983), 95, table 4; Morgan and Rushton, *Rogues, Thieves and the Rule of Law*, ch. 5; Feeley and Little, 'The Vanishing Female: The Decline of Women in the Criminal Process, 1687–1912'; King, *Crime, Justice, and Discretion*, 196–207, *idem*, 'Gender, Crime and Justice in Late Eighteenth- and Early Nineteenth-century England'; David Philips, *Crime and Authority in Victorian England: The Black Country, 1835–1860* (1977), 147–51; Lucia Zedner, *Women, Crime, and Custody in Victorian England* (Oxford, 1991). In the rural parishes of Surrey over the period we are dealing with, about 14% of the accused were women; and in Sussex, 13%: see J. M. Beattie, 'The Criminality of Women in Eighteenth-Century England', *Journal of Social History*, 8/4 (1975), 80–116. For an analysis of women's involvement in property crime that goes beyond previous work by taking account of their social roles and relationships, see Garthine Walker, 'Women, Theft and the World of Stolen Goods', in Jenny Kermode and Garthine Walker (eds.), *Women, Crime and the Courts in Early Modern England* (1994), 81–105.

If one could add the defendants who were every year diverted to the house of correction and away from jury trial in the reigns of William and Anne that figure would likely be even higher.[195] The availability of magistrates and courts in London might help to explain the generally high levels of prosecution of women in the century after the Restoration since ease of reporting might be expected to increase the number of victims of minor offences who would take the trouble to complain and prosecute.[196] But that would not explain the particularly high level in this period. A more likely encouragement was provided by a significant change in the law governing the eligibility of women to plead benefit of clergy in simple larceny cases. Until this was changed by statute in 1691, women, unlike men, were not allowed clergy if they were convicted of theft of more than ten shillings. A woman convicted of such an offence was in danger of being hanged. No doubt, the extension of clergy to women on the same basis as men encouraged prosecutions—as it was no doubt intended to do.[197] The attitudes towards women that were expressed by the grand juries of London and the ordinary of Newgate in this period, and indeed, the campaigns against vice and immorality by the Societies for the Reformation of Manners, could only have encouraged a view that women, particularly single women, needed to be brought under control, and, if only indirectly, encouraged the prosecution of women caught stealing.

Such attitudes help to explain the passage of two statutes in this period that increased the severity of punishments that many women would suffer by removing benefit of clergy from shoplifting and servants' theft (in 1699 and 1713, respectively), the effect of which was to threaten those convicted of these

[195] In 1694 women accounted for 72% of those appearing before the City Bridewell court charged with some form of property crime, and in 1703–5, 70% (Bridewell Court Book, 1694–5, 1703–5). These were years of war and it is possible that the preponderance of women in Bridewell was exaggerated by young men having been forced into the army or navy rather than being prosecuted. None the less, Shoemaker found that more than half of those committed to the Middlesex house of correction between 1670 and 1721 for offences against property were women (*Prosecution and Punishment*, 185, table 7.3). In his forthcoming book on Bridewell, Paul Griffiths shows that women were increasingly prominent among those committed there on property-related charges in the first half of the seventeenth century, and that they were in the majority in the early 1650s (*The First Bridewell: Petty Crime, Policing, and Prison in London, 1550–1660*).

[196] Peter King has shown that in towns with their own quarter sessions in Essex, women were prosecuted at a much higher rate than in urban centres without their own local courts—in which prosecutors would have to take cases to the county courts (King, *Crime, Justice, and Discretion*, 198–9). Morgan and Rushton's data from the north-east between 1718 and 1800 show a similar pattern. Women accounted for roughly a quarter of the defendants at the assizes held for Newcastle and Durham, and about a fifth in Northumberland; at the quarter sessions of the two counties they made up just under 40%. But at the Newcastle sessions, 55% of the defendants accused of theft were women (*Rogues, thieves and the rule of law*, 68). The explanation, in their view, is not simply the availability of the sessions court, and thus the convenience for prosecutors, but the poverty of the town (p. 104). Evidence for a high level of prosecutions against women in urban settings in this period has also been provided by a study of Leiden, in which women accounted for 47% of property charges in the period 1678–1794 (Els Kloek, 'Criminality and Gender in Leiden's *Confessieboeken*, 1678–1794', *Criminal Justice History*, 11 (1990), 1–29).

[197] See Ch. 7.

offences with capital punishment. We will return in a later chapter to parliamentary responses to what were thought to be the problems of crime in these years. But it is worth noting the passage of those two statutes because they surely suggest the concern with which women's offences were regarded. Certainly the shoplifting statute was aimed at women, who were always more frequently charged with that offence than men; and female servants were clearly a central target of the second of these statutes. The deployment of the heavy weapon of the gallows suggests that the propertied classes of London and members of parliament thought not only that women were implicated in property crime generally but that offences committed by women themselves had extended beyond all expectation and needed to be reined in.[198]

The public anxieties about women that led to the passage of this legislation might well at the same time have encouraged victims to prosecute and magistrates to send women to trial rather than to the Bridewell. It is also true that an accused could be more readily identified and apprehended in some of the offences that women typically committed—shoplifting, pilfering by employees, the robbery of a client by a prostitute—than in many of the more violent offences that men often engaged in. If there were widespread determination to prosecute these offences in order to discourage others, a number of accused would almost certainly be readily at hand. Women suspected of such thefts were particularly vulnerable to prosecution.

Such considerations must have shaped the number of charges brought to trial. But can they in themselves explain the patterns of Old Bailey cases over these years—not simply the generally high proportion of women among the accused, which they might, but the fluctuating numbers of women prosecuted over the period and the fact that those fluctuations almost exactly mirrored those of men? As Figure 1.2 reveals, in the quarter century after the Revolution of 1689—through two wars (1689–97, 1702–13) separated by a brief period of peace—the number of men and women brought to trial moved in broadly similar ways, rising in the difficult years of the 1690s, declining after 1700.[199] It seems to me as likely that the concern about women in the City and the pattern of their prosecution for property offences at the Old Bailey, particularly in the 1690s, both reflect the difficulties that women faced in the capital in the last years of the seventeenth century. Perceptions of women's behaviour were surely important, but they could hardly fail to be influenced by the consequences of the difficulties that women faced in a decade in which they were unusually hard-pressed to make ends meet in London. Theft was only one option for such women: the

[198] For the shoplifting and servants' theft statutes, see below, Ch. 7.

[199] The only other jurisdictions with similar gender patterns of prosecution in the eighteenth century of which I am aware were in the north-east, where Morgan and Rushton found that women accounted for half the defendants on property charges in Newcastle at the assizes and quarter sessions together, and a third in the neighbouring counties of Northumberland and Durham (Morgan and Rushton, *Rogues, Thieves and the Rule of Law*, 68: table 3.3).

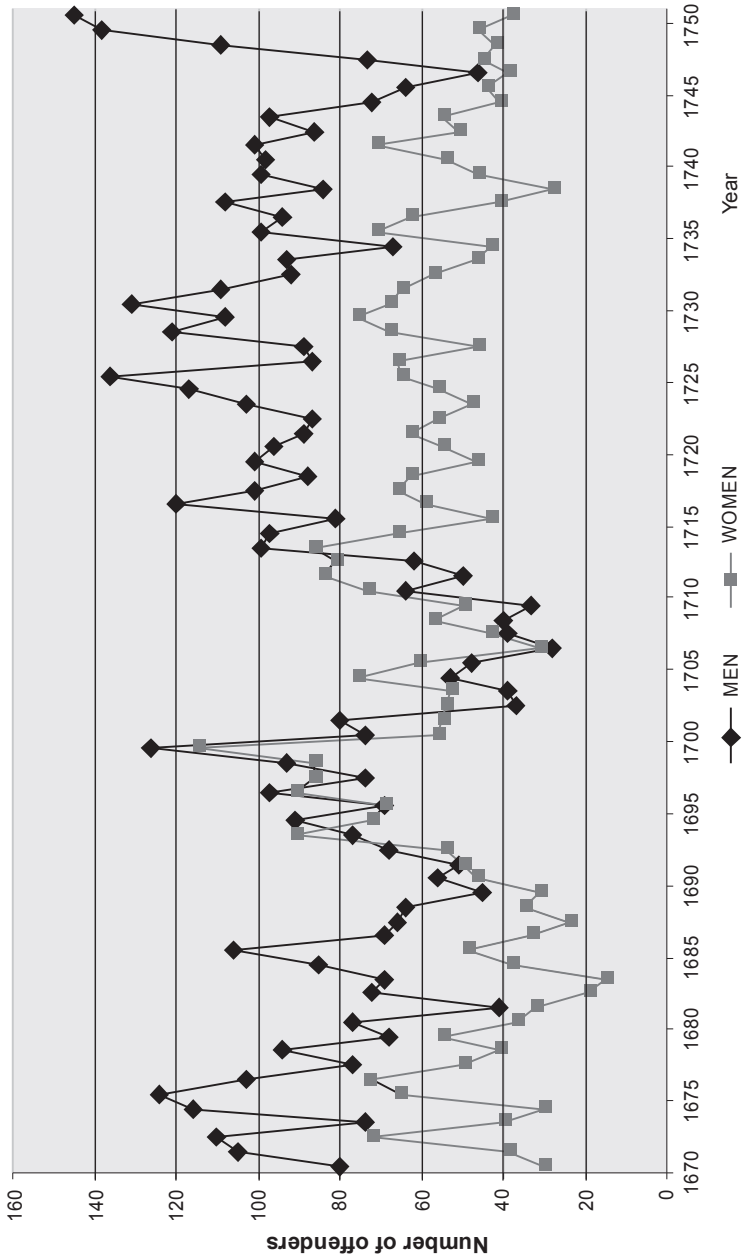


FIG. 1.2. Number of male and female offenders: property offences in the City of London

Poor Law, charity, the support of friends and relatives, begging, and prostitution were others when starvation threatened. But many of those responses would have made women more visibly a problem in the City.

A large proportion of the women in London had come to the capital—typically in their early twenties—in search of work.[200] Indeed, so many women had migrated to London (as well as to other towns) over the late seventeenth century that a significant gender imbalance seems to have developed in urban areas.[201] The problems that such women faced arose from their position of fundamental inequality: they were very largely confined to a limited range of occupations and their wages were significantly lower than men's. Most of the work they could seek was unskilled or semi-skilled, badly paid, and sensitive to seasonal fluctuations. That was especially true of work in the textile and clothing trades, but it was also true of large numbers of other jobs in a variety of trades in London and in street-selling and work in the market gardens, in taverns and shops, and so on.[202] Domestic service, which attracted large numbers of young women, carried no guarantee of continuous work.[203]

Women received low wages because they were expected merely to supplement the earnings of a male. The reality was that such wages (and the irregularity of work) left many women destitute, or at least close to the edge and easily tipped into serious circumstances. The wives of the large number of poor unskilled men had to work to supply simple necessities to their families or to support themselves, like the wife of the condemned man who confessed to the ordinary of Newgate before he was hanged that he had no excuse for stealing: for some time, he said, 'he got his Livelihood by mending old shoes . . . [he] needed not have gone a thieving to get a Maintenance for himself'. As for his wife, she got 'her own by begging about the streets'.[204] Wives commonly had to work hardest during their child-raising years because extra mouths could not be fed without their labour.[205] But single women, or widows with children (and

[200] Peter Earle, 'The Female Labour Market in London in the Late Seventeenth and Early Eighteenth Centuries', *Economic History Review*, 2nd ser., 17 (1989), 331.

[201] Peter Clark and David Souden, 'Introduction', in Clark and Souden (eds.), *Migration and Society in Early Modern Britain* (1987), 23, 35; Souden, 'Migrants and the Population Structure of Later Seventeenth-Century Provincial Cities and Market Towns', in Peter Clark (ed.), *The Transformation of English Provincial Towns, 1600–1800* (1984), 152–61.

[202] For the range of women's work in this period, see Earle, 'Female Labour Market', 338–42; Schwarz, *London in the Age of Industrialisation*, 14–22; Anthony Fletcher, *Gender, Sex and Subordination in England, 1500–1800* (1995), ch. 12.

[203] The median stay of domestic servants in one post in Earle's sample was one year; many stayed less than six months ('Female Labour Market', 339). See also Timothy Meldrum, 'Domestic Service in London, 1660–1750: Gender, Life Cycle, Work and Household Relations', Ph.D. thesis (London, 1996); Paula Humfrey, 'Female Servants and Women's Criminality in Early Eighteenth-Century London', in Greg T. Smith, Allyson N. May, and Simon Devereaux (eds.), *Criminal Justice in the Old World and the New* (Toronto, 1998), 58–84; and for servants later in the century, see D. A. Kent, 'Ubiquitous but Invisible: Female Domestic Servants in Mid-Eighteenth Century London', *History Workshop*, 20 (Autumn 1989), 111–28.

[204] Ordinary's *Account*, 15 December 1710.

[205] Earle, 'Female Labour Market', 338.

demographic realities and warfare ensured that there were many widows with families to support), or wives who had been deserted by their husbands, a situation that was all too common among the very poor, were likely to feel soonest the threat of starvation from loss of work or a sudden increase in prices.[206] A 'very high proportion of London women', Peter Earle has concluded, 'were wholly or partly dependent on their own earnings for their living'.[207] And for many it was a precarious living indeed. Two pamphlet-sellers described to the under-secretary of state (who was intent on putting them into the house of correction for hawking seditious material on the streets) how they went frequently to printers' shops to see what new material was available and sold whatever they could get. They did so, 'purely for want of bread', as one said; 'to get a little money to support herself', the other added.[208] Very large numbers of women patched together a meagre living from casual or seasonal work, and from a variety or a succession of jobs. Many of the women whose lives were briefly examined by the ordinary of Newgate before they were executed at Tyburn revealed what must have been the all too typical pattern of scratching for a living that must have faced women in London, particularly women on their own. Alice Gray, aged 32, said that she

> had all along worked very hard for her livelihood . . . as both a wife and a widow . . . and had since her husband's death (as in his lifetime) maintained herself by her honest and constant Labour; she making up Cloaths for Soldiers, and sometimes going to Washing and Scowring, and at other times Watching with Sick Folks, and being a Nurse to them.[209]

Mary Day, executed for burglary, aged 33, had 'worked hard for her own and her Children's Livelihood; and that of late, her Employment was to buy and sell old broken Glass-Bottles, etc.'[210] Elizabeth Price, 37, 'had follow'd sometimes the Business of picking up Rags and Cinders, and at other times of selling Fruit and Oysters, crying Hot-Pudding and Gray-Peas in the Streets, and the like'.[211] There were many others like them, making a case of a sort for themselves, no doubt, to balance what was for many a list of earlier convictions, but describing a pattern of occasional work and of deprivation and difficulty that rings all too true, and that some claimed led to their offences.[212]

At the best of times, London provided an uncertain livelihood for large numbers of the working population, men as well as women. The pattern of prosecutions for crimes against property seems to me to reflect, though perhaps only indirectly, changes in the ability of women to support themselves. The

[206] Rogers, 'Policing the Poor', 127–47. [207] Earle, 'Female Labour Market', 337.
[208] SP 35/8/14 (1–4). [209] Ordinary's *Account*, 2 May 1717.
[210] Ordinary's *Account*, 16 September 1709. [211] Ordinary's *Account*, 31 October 1712.
[212] Deborah Hardcastle, 24, condemned for burglary, told the ordinary that her husband, a seaman, had died recently, leaving her in 'great Poverty and Want' and with her elderly mother and two small children to look after (Ordinary's *Account*, 31 January 1713). For women's poverty and theft in eighteenth-century London, see Linebaugh, *The London Hanged*, 143–9, 338–41.

frequency with which women were brought before the courts suggests too that women found themselves in difficulties in London much more often than in small towns and rural parishes. For single women especially, the capital offered a greater degree of independence and privacy—a certain freedom from the surveillance and controls of patriarchal and paternalistic social relationships. At the same time, however, and as an inevitable consequence, the urban world forced on them a greater need for self-reliance.[213] That must have been true of single women and widows in particular, and it is hardly surprising that not only were larger numbers of women drawn into theft in London, but that fully 80 per cent of the women before the Old Bailey on property charges in this period were unmarried.[214]

The unusually high level of prosecution of women in this period may thus derive from a combination of factors: from a pattern of immigration that resulted in a large number of women enjoying relative freedom in the city from the constraints that hedged in the lives of most women, married and single, in the villages and small towns in which most of the population lived; from the severe difficulties that many such women experienced in London from time to time, given the irregularity of work and the low wages they could command; and from the responses of the propertied classes of London to the efforts of women in trouble to make ends meet—responses made all the more severe by the apparent weakness of the courts and of the criminal justice system in the capital. Anxiety no doubt contributed to the sense of panic that was so often expressed about the threat of crime, and that perhaps encouraged victims to complain, and the authorities to take more vigorous action than they might otherwise have done. But the charges brought to the Old Bailey against women as well as men arose too from the reality of offences being committed. The patterns of prosecution suggest that property offences in London in this period arose very largely as a response to the changing conditions under which a large part of the labouring poor lived and worked, and to the inequalities under which they laboured.

CONCLUSION

London crime was not unique: every major court in England and Wales dealt with violent offences and more petty, but still aggravating and troublesome,

[213] For the particular difficulties of single women in London, see George, *London Life*, 159, 165, 172, 207.

[214] This is based on the Old Bailey records for the two years 1694 and 1704 in which a total of 188 women were indicted for property offences from the City of London. Of these, roughly 75% were indicted as spinsters, 5% as widows, and the remaining 20% as married. These figures can be regarded as only approximate, since the identification of a woman's married status in the indictment is not entirely trustworthy. It is also possible that many of the women identified as spinsters were in common law relationships. Clearly, too much credence should not be given to the precise proportions reported above. Peter King has found that at the Essex assizes in the last quarter of the eighteenth century roughly 62% of the women brought to trial were single, 9% were widowed, and 30% were married (King, *Crime, Justice, and Discretion*, 203, table 6.6).

offences. But the level of cases that came before the eight annual sessions of the Old Bailey made London very different from every other jurisdiction in the country. And when the level of prosecutions increased sharply and produced overcrowding in the gaols, full calendars at the Old Bailey, and gruesome displays at Tyburn of the terror of the gallows anxieties also increased about the ability of the courts and the criminal law to cope with the problem. Concerns were raised about the straightforward loss of their goods by respectable citizens of middling wealth and about the threat of violence inherent in some forms of property crime. But they arose also for more complex reasons relating to the way crime was read, and the meaning that was attached to it.

This reading amounted to a considerable anxiety in some quarters about the health of a society in which there was a large and concentrated floating population which exercised considerable independence, and engaged in activities that gave rise to alarm on the part of the respectable and settled members of society. Of particular concern were youth and women, two groups who should have been in dependent relationships to parents, employers, or husbands, but many of whom, for a variety of reasons to do with the nature of the metropolis itself, lived apparently independently of such controls. To the propertied householders of the City, the problem of crime was a problem wilfully produced by the attitudes and behaviour of the poorer members of the working population because of their attachment to the developing pleasures and opportunities for consumption offered by the metropolis. Part of the answer was a moral answer: bad people had to be made good by a determined effort of magistrates and engaged citizens to reform their manners; or by a charity school to teach the children of the poor obedience; or by a workhouse or house of correction to teach the lazy to labour. As important as such ideas continued to be, it was also becoming clear in the late seventeenth century that other efforts were needed.

What those efforts were is the subject of the following chapters. They were not part of a single notion of how urban crime might be combatted—far from it. They tackled a number of discrete problems. But together they led to several departures that began to shape what was recognizably a different approach to dealing with criminal offences in a new and rapidly changing urban culture which produced new problems, but at the same time created increasingly high expectations about order and civility and the necessary resources and the determination to see them fulfilled. The experimentation and innovation that followed involved the City, parliament, and the central government, and resulted in new forms of surveillance, new forms of policing, new encouragements to prosecution, new forms of punishment. Broadly speaking, efforts to stimulate more prosecution and to develop better forms of urban surveillance were directed against street crime and the threat of violence. Less serious forms of theft—aggravating and harmful to the moral health of society if not posing an immediate physical menace—were met by punishments aimed at

reforming those convicted of such offences and at deterring others. These general concerns—prosecution and policing, on the one hand; the working of the Old Bailey and the new penal measures, on the other—form the principal subjects of the book. Together, they initiated a significant transformation of the criminal justice system that had been in place at the Restoration.

Part I

Policing and Prosecution

CHAPTER TWO

The City Magistrates and the Process of Prosecution

POLICE AND POLICING BEFORE THE FIELDINGS

Unlike France, which by the early eighteenth century had a system of police, both national and local, and a particularly well-organized force in Paris under central control and with a finely graded hierarchy of authority, policing in England was entirely local and fragmented.[1] In the City of London, many of the activities we would summarize as 'policing' were carried out by a variety of officials and by private citizens. These forms of policing were, however, to be extended and increasingly co-ordinated in the eighteenth century, impelled by a search for more effective surveillance of the streets, and more effective prevention and prosecution of criminal offences. Largely as a result of these changing practices, the word 'police' came into more common use and took on a variety of shifting meanings over the century. That very instability of meaning provides a clue to the subject that is at the core of the following four chapters: the way in which the elements that were to coalesce in the eighteenth and nineteenth centuries to form the modern notion of police as a force of crime-fighters took shape after the Revolution of 1689.

'Police' was first used in England in the early eighteenth century as a synonym for what might be called social administration, especially the management of what seemed to men in power to be troublesome groups in society, and the development of solutions to social problems that would make for a more orderly and a safer environment. The issues addressed in this broad context were not exclusive to urban areas. Indeed, the first use of the word 'police' seems to have been in connection with the government of Scotland after the accession of George I in 1714, when a 'Commission of Police' was created to oversee its internal administration, including the management of the poor, the provision of necessities, and the maintenance of highways.[2] But the problems that pressed

[1] For France, see Alan Williams, *The Police of Paris, 1718–1789* (Baton Rouge, 1979); Iain A. Cameron, *Crime and its Repression in the Auvergne and the Guyenne, 1720–1790* (Cambridge, 1981). For a comparison between English and Continental police more generally, see Clive Emsley, *Policing and its Context, 1750–1870* (1983), ch. 2; Stanley H. Palmer, *Police and Protest in England and Ireland, 1780–1850* (Cambridge, 1988), 11–18.

[2] SP 36/4/150–1.

forward for solution arose most insistently in urban environments, and the notion of 'police' as civil administration came to be focused largely on towns and cities.[3] The word was used to describe a range of measures that would support a more salubrious urban environment—the creation of safer, cleaner, and better-lit streets, the provision of drinking water and the management of sewage, as well as the control of vagrancy and the regulation of vice and other visible social problems. At its most general, the idea of a well-managed 'police' expressed belief in policies and institutions that lay behind what has been called the 'urban renaissance' of the eighteenth century.[4]

This broad meaning of 'police' did not disappear in the second half of the eighteenth century, but by then a narrower, more modern notion of police was also gaining currency, sharpened by a discourse of policing that emerged from arguments put forward from the middle of the century by the Fieldings and others about the need for more effective prevention and detection of crime.[5] Ideas about policing were brought into sharper focus in the 1780s in the metropolis by the Gordon Riots and by the huge increases in criminal prosecutions after the American war, and the subsequent effort to reorganize the London magistracy and encourage criminal prosecutions—first in the unsuccessful London and Westminster Police Bill in 1785, then in the Westminster Justices Act of 1792, which established seven 'police offices' or 'public offices' at which criminal business would be concentrated.[6] The public discussion after 1750 of the problem of crime and criminal administration as well as institutional changes on the ground gave substance and currency to the narrower meaning of 'police'.

Patrick Colquhoun employed both senses of the word in his analysis of the police of London in 1796. He admitted its broader meaning in his *Treatise on the Police of the Metropolis* when he argued for the importance of 'civil police' and 'municipal' regulation. He thought his work would be useful, he said, because every member of the community had an interest 'in the correct administration of whatever is related to the morals of the people'. But he also went on to say that

[3] For the shifting uses of the word in England over the eighteenth century, see Radzinowicz, *History*, iii. 1–8; Palmer, *Police and Protest in England and Ireland*, 69–71; Donna T. Andrew, *Philanthropy and Police: London Charity in the Eighteenth Century* (Princeton, NJ, 1989), 6–7; Elaine A. Reynolds, *Before the Bobbies: The Night Watch and Police Reform in Metropolitan London, 1720–1830* (1998), 1; Mark Jenner, 'Early Modern English Conceptions of "Cleanliness" and "Dirt" as Reflected in the Environmental Regulation of London, *c.*1530–*c.*1700', D.Phil. thesis (Oxford, 1991), 141–2; Hay and Snyder, *Policing and Prosecution*, 5.

[4] Peter Borsay, *The English Urban Renaissance: Culture and Society in the Provincial Town, 1660–1770* (Oxford, 1989).

[5] Radzinowicz, *History*, iii. 2–5; see in particular iii. 4 n. 19, for a list of pamphlets published in the 1770s and 1780s in which the word 'police' appears in the title with something like the narrower, more modern, meaning.

[6] Radzinowicz, *History*, ii. 188–94, iii. chs 4–5; David Philips, '"A New Engine of Power and Authority": The Institutionalization of Law Enforcement in England, 1780–1830', in V. A. C. Gatrell, Bruce Lenman, and Geoffrey Parker (eds.), *Crime and the Law: The Social History of Crime in Western Europe Since 1500* (1980), 163–71; Ruth Paley, 'The Middlesex Justices Act of 1792: Its Origins and Effects', Ph.D. thesis (Reading, 1983); Palmer, *Police and Protest*, 84–92, 117–18.

that interest also extended 'to the protection of the public against depredation and fraud—and to the prevention of crimes'.[7] And it was on those tasks that he placed his emphasis—on the police as a means of combatting crime, most especially as a force that would prevent robbery, burglary, and other forms of property crime in the capital. That meaning of police as primarily a body of crime-fighters (whatever else they might be called upon to do) was even more firmly established by the act of 1829 that created the metropolitan police as a force of paid and uniformed officers, hierarchically organized and centrally controlled, who would patrol and keep 'incessant watch' on the whole metropolis outside the ancient City of London.

The emergence of what appeared to be the modern idea of policing in the second half of the eighteenth century and its embodiment in Peel's New Police has very largely structured the way the history of policing has been written. In the debates in parliament and the press about the need for a more effective police, as in the parliamentary investigations into the established system conducted in the early decades of the nineteenth century, proponents of reform focused insistently on the deficiencies of the institutions inherited from the past. The history of policing was until very recently heavily influenced by such arguments, and as a result took the form very largely of a story of progress achieved against the stubborn resistance of self-interested and entrenched local élites.

Much of the evidence deployed by contemporary advocates of reform was particularly critical of constables and watchmen who were virtually to a man condemned as old and infirm, cowardly, and ineffectual. Saunders Welch, the experienced high constable of Holborn and associate of the Fieldings at Bow Street, had complained in the middle of the century about such general criticisms—about the way the office of constable was held in contempt 'by inconsiderate men', and made fun of in court and on the stage.[8] Such portrayals were to become more insistent as reform schemes were pressed forward in the late eighteenth and early nineteenth centuries.[9] They tell us something about contemporary attitudes and anxieties, about changing expectations of the police, and perhaps about social perceptions, since there is evidence that as a group the constables of the City were being drawn from a distinctly lower stratum of society by the middle of the eighteenth century than they had been in the last decades of the seventeenth.[10] But they disclose very little about the day-to-day work of constables, and the varieties of engagement and effectiveness that almost certainly characterized that work.

Until very recently the perspective of the reformers provided much of the evidence as well as the framework of explanation for police historians who saw in Peel's 1829 act the decisive breakthrough that swept away old and long-decayed

[7] [Patrick Colquhoun,] *A Treatise on the Police of the Metropolis*, 2nd edn. (1796), v.
[8] Saunders Welch, *Observations on the Office of Constable* (1754), 1–2.
[9] Radzinowicz, *History*, ii. chs 7, 10, iii. ch. 13.
[10] See below, Ch. 3.

machinery, and marked a new beginning in policing practice.[11] T. A. Critchley, for example, acknowledged that there had been changes, even improvements, in the policing of London in the eighteenth century, but none the less formed from printed sources an entirely negative view of the constables. He came to the conclusion that the office of constable had originally been a position of importance in the community, but that its status had been undermined in the late medieval and early modern periods as the ideal of personal service was eroded. By the eighteenth century, he was certain, it had so fallen from its once proud place of honour, that it was thought fit only for the 'old, idiotic, or infirm'. Until Peel put things right, he concluded, London constables 'were at best illiterate fools, and at worst [as] corrupt as the criminal classes from which not a few sprang'.[12] Needless to say, he provided no evidence to support such sweeping judgements. Even in more thoughtful and more thoroughly researched work than Critchley's, as for example the pioneering, studies of eighteenth- and early nineteenth-century policing carried out by Radzinowicz,[13] the emphasis remains on the problems from which the old system suffered and on the ideas of the reformers whose views would in the end culminate in the establishment of Peel's New Police.

This account of policing in the metropolis in the eighteenth century as a story of struggle by proponents of rational administration against entrenched self-interest has been challenged in recent decades by historians who have cast doubt on virtually every aspect of that orthodoxy. Recent work on policing practices in the eighteenth century has uncovered a range of alterations that help to place the undoubtedly important developments of the first half of the nineteenth century into context. The great watershed of 1829—as with some other well-established watersheds in this period—has been considerably diminished. The notion of a new world suddenly unfolding has come to seem too dramatic, to claim too much for the changes that took place in 1829 (as important as they were), and to ignore changes that had been underway in attitudes towards policing and in the forces undertaking it in the eighteenth century metropolis. Work on the night watch and other aspects of London policing in the second half of the eighteenth century has revealed that a great deal of what was done in 1829 had long been anticipated, and that changing problems of order and changing public expectations had encouraged significant transformations in the policing of the capital.[14]

[11] See, for example, Charles Reith, *A New Study of Police History* (1956); T. A. Critchley, *A History of Police in England and Wales*, revised edn. (1978). Sir Leon Radzinowicz conceived the history of the police in broadly similar terms, but his richly researched studies of policing after 1750 laid an important foundation for all subsequent work; see his *History*, vols. ii and iii. For a useful analysis of the literature on policing history, see Robert Reiner, *The Politics of the Police*, 2nd edn. (Hemel Hempstead, 1992), ch. 1.

[12] Critchley, *History of Police*, 10, 18. [13] Radzinowicz, *History*, vols. ii and iii.

[14] For recent work on the history of the police in the eighteenth and early nineteenth centuries, see Philips, 'A New Engine of Power and Authority', 155–89; Douglas Hay and Francis Snyder, 'Using the Criminal Law, 1750–1850: Policing, Private Prosecution, and the State', in Hay and Snyder (eds.),

With some important exceptions,[15] however, much of that work of revision has tended to accept a chronology that dates the onset of serious changes in the policing forces from the middle decades of the eighteenth century with the arrival of Henry and John Fielding as magistrates in Bow Street. The reason for this is clear. The Fieldings were not only active and engaged magistrates who sought new ways of uncovering and prosecuting serious offenders in London and beyond: they were also effective publicists of their own work. They used the press extensively in the encouragement of prosecutions and Sir John published several pamphlets that set out and defended the measures they took to enlarge and improve the policing of the capital.[16] They articulated the notion of police as crime-fighters and set out the framework of a discourse that others adopted.

There is no doubt that the Fieldings put the idea of policing—or at least some aspects of policing—on the public agenda. But, it is important to recognize that, as inventive and important as they were, Henry and John Fielding inherited practices that had been changing significantly for more than half a century when they came to Bow Street. What those practices were and how they emerged over the late seventeenth century and the first half of the eighteenth—at least as they are revealed by the policing of the City of London—form the subject of this and the following three chapters. My aim in examining the prosecution and policing practices of this period is not, however, simply to push back the dating of changing ideas about policing to the late seventeenth century. Rather, my intention in studying what I think were significant developments in the detection and prosecution of crime, in the nature of the constabulary and the night watch, and in the effectiveness of street lighting is to understand their importance in their own time and context.

The policing of the City of London in the century after the Restoration had at least four broad, overlapping, objectives and consisted of several elements that were at best loosely co-ordinated. In the first place, policing was peace-keeping—the maintenance of order in society, particularly public order in the

Policing and Prosecution, 3–52; Paley, 'Middlesex Justices Act of 1792'; *idem*, 'Thief-takers in London in the Age of the McDaniel Gang, *c.*1745–1754', in Hay and Snyder (eds.), *Policing and Prosecution*, 301–41; *idem*, '"An Imperfect, Inadequate and Wretched System"? Policing London before Peel', *Criminal Justice History*, 10 (1989), 95–130; John Styles, 'The Emergence of the Police—Explaining Police Reform in Eighteenth and Nineteenth Century England', *British Journal of Criminology*, 27 (1987–8), 15–22; Palmer, *Police and Protest*; Clive Emsley, *The English Police: A Political and Social History*, 2nd edn. (1996); Andrew T. Harris, 'Policing the City, 1785–1838: Local Knowledge and Central Authority in the City of London', Ph.D. thesis (Stanford, 1997); Reynolds, *Before the Bobbies*.

[15] Especially Reynolds, *Before the Bobbies*; J. J. Tobias, *Crime and Police in England, 1700–1900* (1979), 33–43, also pointed to the importance of the reform of the watch in Westminster in the second quarter of the century.

[16] See, for example, Henry Fielding's account of his work in *The Covent-Garden Journal* (1752), in *The Covent-Garden Journal and A Plan of the Universal Register-Office*, ed. by Bertrand A. Goldgar (Oxford, 1988); and John Fielding, *A Plan for Preventing Robberies within Twenty Miles of London, with an Account of the Rise and Establishment of the real Thieftakers* (1755). And for this subject, see John Styles, 'Sir John Fielding and the Problem of Criminal Investigation in Eighteenth-Century England', *Transactions of the Royal Historical Society*, 5th ser., 33 (1983), 127–50.

streets. This included a large number of issues: the control of crowds, not only those demonstrating against the government or in favour of some cause or other, but crowds of all kinds, especially those that might turn violent—crowds gathered, for example, at moments of celebration, or at sites of public punishments, particularly executions and the pillory. There was a potential public order issue on all occasions and at all places where crowds might gather, for not only was there a danger that such crowds might get out of control; they always provided pickpockets with opportunities to steal. Crowds required watching, a requirement that seems to have grown in the course of the eighteenth century, perhaps merely because the population of the capital increased strongly, more likely because with that increase came an even greater anxiety among the propertied that order be maintained in public places.[17] Public order also required other forms of control in the streets, most especially over traffic.

In the second place, policing was required to maintain moral order—to prevent vice and encourage right behaviour, including but not limited to the observance of the sabbath as a day of rest, the prevention of vice and immorality (prostitution, gambling, drunkenness), the prevention of vagrancy and begging, the control of dangerous and unlawful games, and the policing of places at which immoral behaviour was likely to be encouraged, including (in London) the annual St Bartholomew's Fair.

In the third place, policing was meant to prevent crime, most directly by surveillance—mounting a guard, or setting a watch, to intercept those who might otherwise steal or rob or do something else unlawful. Surveillance, particularly at night when the inhabitants of the city were at their most vulnerable, was widely understood as the first defence against crime. Such measures having failed, however, it became increasingly clear in this period—and well before Beccaria wrote—that crime could only be prevented if those who committed offences were caught and convicted and properly punished. Discovering the identity of an offender was not in 1660 thought to be within the purview of peace-keeping forces. The ancient institution of the hue and cry was still appealed to from time to time as a possible mechanism for the pursuit and arrest of robbers. But in the case of most ordinary offences, this did not apply, even if it had remained a vital institution, which it manifestly had not. Nor was there an alternative within the official structure. Neither the central state nor the local authorities accepted a duty to find and arrest offenders. Detection as an aspect of crime control did, however, develop in the course of this period. As we will see, it formed on the margins of the official world, blending private and public interests, and developing as a fourth element in policing in the eighteenth century that shaped the way police and policing came to be regarded.

[17] Allan Silver, 'The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police, and Riot', in David J. Bordua (ed.), *The Police: Six Sociological Essays* (New York, 1967), 1–24.

We will begin our examination of the City's policing forces in this chapter with the magistrates, the officials who were in charge of the machinery of public order and who were the indispensable agents of criminal prosecution. In the following two chapters we will go on to examine the institutions and the various bodies of men with responsibility for the surveillance of the City streets and for supporting the prosecution of accused offenders—the constables, night watch, beadles, and the marshals.

To make sense of the policing arrangements of the City, it will be necessary for us to examine the numbers of constables and others attached to the official forces—who they were, how they were appointed and for how long, what their duties were supposed to be, and, to the extent that this is possible, how well or indifferently they carried them out. Very little is known about these matters with respect to the police of London, particularly with respect to the men who served as constables and watchmen. That has not, however, prevented confident pronouncements being made about them, and at the very least it seems worth probing the judgement of contemporary critics (and of the historians who have echoed them) that the constables and watchmen of the eighteenth century were invariably old, infirm, timid, and frequently absent from their posts.[18]

Such an enquiry into the duties of the constables and night watchmen and an examination of the men who served in these and other posts in the City reveals the efforts made by the aldermen and other officials in the late seventeenth and early eighteenth centuries to establish some control over the officers who were supposed to police the streets. Those efforts were a response, at least in part, to the changing demands and enlarging expectations of the propertied population in a city in which commercial and cultural activities expanded greatly, and in which policing problems were changing in consequence. The urban day grew longer as shops proliferated and shopping became possible well into the evening, and as theatres, the opera, and other entertainments ensured that increasing numbers of people would be on the City streets well past the time when the City might once have closed down in response to a curfew that was now too difficult to enforce. Policing problems expanded with the growing commercial and cultural life of the metropolis. The response to this changing world can be

[18] For such criticism, see below, Chs 3 and 4. For the City policing forces see Donald Rumbelow, *I Spy Blue: The Police and Crime in the City of London from Elizabeth I to Victoria* (1971) and Andrew Harris's dissertation, noted above. To my knowledge, no detailed work has been done on the institutions that were charged with maintaining order in the City—indeed, with respect to constables, anywhere in the metropolis—in the century after the Restoration. Rural constables in the early modern period have been better served: see Joan Kent, *The English Village Constable, 1580–1642: A Social and Administrative Study* (Oxford, 1986); J. A. Sharpe, 'Crime and Delinquency in an Essex Parish, 1600–1640', in J. S. Cockburn (ed.), *Crime in England, 1500–1700* (1977), 94–6; *idem*, *Crime in Early Modern England, 1550–1750*, 2nd edn. (1999), 49–50; Keith Wrightson, 'Two Concepts of Order: Justices, Constables, and Jurymen in Seventeenth-century England', in John Brewer and John Styles (eds.), *An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries* (1980), 28–33. For a later period, see David Philips and Robert Storch, *Policing Provincial England, 1829–1855: The Politics of Reform* (1999); and Peter King, *Crime, Justice, and Discretion, 1740–1820* (Oxford, 2000), 65–75.

seen in the attempts by the City authorities to strengthen surveillance, particularly at night, by improving the watch and by a transformation of street lighting so extensive as to require a considerable expansion of the notion of public space and the public interest.

Improvements in the night watch and in street lighting were made possible by a fundamental change in the way such services were provided—a change from the customary obligation of householders to play a role in civic life, by, for example, taking a turn in a variety of local offices, or by hanging out a light at their doors, or cleaning a portion of the street in front of their houses, to a new obligation, authorized by acts of parliament, to contribute taxes that would support those services. The power acquired by the City authorities to collect a rate in support of the watch and street lighting gave such local amenities the appearance of being aspects of some general plan of civil administration, and explains, it seems to me, why for a brief period, the elements of police came to be equated with the broader tasks of civic government. The short-lived idea of policing as civil administration was no doubt borrowed, as others have suggested, from the French. But it also emerged in England in the early eighteenth century as a matter of practice, as the by-product of a change from a system under which local services depended on the direct engagement of householders to a rates-based provision of services. Each service affected—cleaning, lighting, watching, sewerage—could have been supported by a separate rate, but that would have threatened administrative anarchy. It was as much perhaps the convenience of tax collection as the conviction that all these matters needed to be co-ordinated that explains their concentration in the hands of one body of local officials.

In the second half of the century the responsibility for the raising of rates and the management of the services they supported thus tended to be put into the hands of 'improvement commissioners', set up by authority of parliament.[19] The City acquired such a body in 1763. But, as we will see, long before that, the personal obligation to serve on the night watch and to provide street lighting had been eliminated in favour of a local rate in the City. Along with some of the larger parishes in Westminster, the City of London led the way in the acquisition of these new policing powers and mobilized them long before they were generally made available to commissions of improvement. In the City, these powers were administered by the political leaders of the wards—in particular, the deputy alderman and some of the other common councillors. These so-called 'common councils of the wards', emerged in the seventeenth and early eighteenth centuries as the effective managers of ward government, largely replacing the alderman, the nominal leader of the ward, and the wardmote, the annual meeting of the inhabitants. This concentration of authority brought some of the

[19] The work and importance of the improvement commissioners have been outlined by Sidney and Beatrice Webb, *English Local Government from the Revolution to the Municipal Corporations Act: The Manor and the Borough* (1908), ch. 10; and *Statutory Authorities for Special Purposes* (1922), ch. 4. The Webbs date the first of these statutory bodies to 1748.

peace-keeping officials in the City under stricter control and management and helped to make some aspects of policing more effective well before the middle of the eighteenth century—an important element, I shall argue, in the changing character of urban policing.

The institutions particularly targeted in efforts to improve the policing of the City were the night watch and (associated with that) the system of street lighting. Both were crucial to efforts to increase surveillance over the City streets at night. Surveillance was the principal defence against crime that the institutions of local government were capable of mounting. That was also the duty—though it was to be more broadly based, more highly organized, and carried out by more full-time officers—with which the New Police were charged after 1829. The method and the means were to be more effective, but the mandate of the new metropolitan force—to defeat crime by intensive and perpetual surveillance—was in fact the ancient duty of the old watch.

Another, and more modern, element of policing had also, however, developed in practice in the eighteenth century, and although it formed at first no part of the mandate of the new policing forces, that was soon to change: that is, the duty and the capacity to discover, arrest, and prosecute offenders.[20] In this area, the institutions of the criminal justice system were entirely undeveloped in the late seventeenth century. Uncovering crime and identifying suspects were left to the public, to the efforts of victims. An officer who saw an offence in progress had a duty to act, but there was little expectation that magistrates, constables, or watchmen would turn detective and investigate offences on their own initiative. They responded to public complaints and acted only when an accused offender had been identified. Little was to change in this regard within the established system until well into the nineteenth century.[21] But the need for the vigorous detection and prosecution of offenders if crime was to be effectively controlled was well understood in the seventeenth century and led to the introduction of encouragements, in the form of statutory and supplementary royal rewards, to persuade victims to prosecute offenders, and to encourage the enterprise of private citizens in the detection of crime. Rewards gave rise to significant developments in the culture of policing. The large sums offered for the conviction of certain classes of offenders, and the even larger sums that were to be made available in the second quarter of the eighteenth century, helped to encourage the thief-taking business and introduced a new, often sinister, element into the administration of the criminal law, and to episodes of serious corruption.[22]

Most thief-taking remained private and unofficial. But it was inevitable that rewards for the prosecution of offenders would have some influence on constables and others appointed to combat crime on behalf of the crown. Over the eighteenth century rewards and fees for service helped to encourage a more

[20] On this important theme, see Emsley, *The English Police*, ch. 2.
[21] Hay and Snyder, 'Using the Criminal Law', 16–35.
[22] Paley, 'Thief-takers in London', 301–42.

stable and even a quasi-professional element within the official policing forces of the City. This was to be considerably enlarged across the metropolis in the second half of the century. But it was very clearly in process of formation well before 1750, and to some extent in association with the private activities of thief-takers. Thief-taking was regarded at the very least with ambivalence, and from time to time with outright hostility; by the last decades of the century the activities of thief-taking detectives were raising fundamental constitutional questions about the threatening power of the executive—attitudes that were to have an influence on the way policing and the police idea were to take shape in the nineteenth century.[23]

The story of policing in the City in the late seventeenth and early eighteenth centuries can be told only in strands. There was no police force, no 'system' of policing, and in any case some of the most important developments were taking place outside the official structure. It is my hope that in studying in turn the magistrates of the City, the constables, the night watch and street policing, and, finally, thief-taking, I will be able to sketch the nature of each of those institutions and at the same time to glimpse the way in which they were all experiencing changes in the late seventeenth century and the first half of the eighteenth. No grand plan guided these changes, nor did they follow ideas set out as a consequence of public debate. They were more immediate and reactive than that—reactive to some extent to anxieties about the perceived nature of crime on the City streets, but also, more broadly, to changing expectations in the middling ranks of the London population of what policing could achieve. Beyond that there were other large shifts in the City that were eroding the ways policing had been organized, changes in particular in the kinds of unpaid work that men were willing to undertake as part of their civic duty. Such changes had been underway in the seventeenth century, but they came to something of a head in the first half of the eighteenth.

There was thus no single, massive, alteration in the institutions of policing over the century with which we are concerned. But when Henry Fielding established his policing project for Middlesex at Bow Street in the middle years of the century, the accumulation of changes over the previous decades had produced a policing establishment in the City of London attuned to the changing character of metropolitan society and very different from that in place at the Restoration of the Stuart monarchy a hundred years earlier.

POLICING THE CITY

The policing of the early modern City of London depended on three principal institutions: the Court of Aldermen; the Court of Common Council; and the Courts of Wardmote. The main administrative divisions of the City, crucial to

[23] Radzinowicz, *History*, ii. 326–46; Philips, 'A New Engine of Power and Authority', 155–89; Palmer, *Police and Protest*, 60–2, 69–73.

the structure of its policing networks, were the twenty-six wards. Each elected an alderman who was its nominal administrative leader and who sat on the Court of Aldermen, the City's executive council and the centre of its administrative and political authority.[24] The aldermen met weekly to deal with every aspect of the City's governance—setting out policy on major subjects, issuing regulations, appointing some of the City's most influential officers, and controlling the property and finances of the Corporation. The court was led by the lord mayor, one of the alderman being elected to that post every year to serve for the coming twelve months.[25] The Court of Aldermen also provided one of the two sheriffs who served an annual term for the City and for the county of Middlesex.

The Court of Aldermen, whose members were elected for life, was a tight oligarchy drawn from a narrow band of the richest and most powerful men in the City, an outcome guaranteed by the weight of decision being in the hands of the aldermen themselves and the requirement that a candidate be in possession of a considerable estate.[26] In the late seventeenth and eighteenth centuries the vast majority were merchants or financiers.[27] Inevitably, not all of the richest men in the City and those most influential in its business life took part in civic affairs. There may indeed have been some increasing reluctance to do so on the part of the greatest plutocrats as the eighteenth century advanced.[28] But the aldermen who served were all none the less drawn from the social and economic élite of the City, and many of them were among the richest and most successful men in the mercantile and financial world. In William III's and Anne's reigns, they included, for example, Sir Gilbert Heathcote, a West Indies and Baltic merchant, who has been described as 'the greatest City magnate of the early eighteenth century'; Sir Robert Clayton, 'the City's pre-eminent private banker'; and those

[24] For the constitution and government of the City, see Webb and Webb, *Manor and Borough*, ch. 10; [Philip E. Jones,] *The Corporation of London: Its Origins, Constitution, Powers and Duties* (1950); Valerie Pearl, 'Change and Stability in Seventeenth-Century London', *London Journal*, 5 (1979), 3–34.

[25] Two candidates were nominated for the post by the 8,000 or more liverymen of the City, but the Court of Aldermen made the final choice. The liverymen were the freemen members of the most important City guilds who met in the institution known as Common Hall. They also exercised the parliamentary franchise and elected the City's four members.

[26] De Krey, *A Fractured Society*, 10; Nicholas Rogers, 'Money, Land and Lineage: The Big Bourgeoisie of Hanoverian London', *Social History*, 4 (1979), 437–54; Donna Andrew, 'Aldermen and Big Bourgeoisie of London Reconsidered', *Social History*, 6 (1981), 359–64; Henry Horwitz, '"The Mess of the Middle Class" Revisited: The Case of the "Big Bourgeoisie" of Augustan London', *Continuity and Change*, 2 (1987), 263–96. No specific property qualification had been established, but without significant resources an alderman would not have been able to sustain the style of life the post required, and would certainly not have been able to accept the offices of sheriff and lord mayor which most aldermen would have expected to occupy at some point in their careers. The level of wealth required is suggested by the rule established by act of Common Council in 1710 that a nominee could decline the office without penalty upon swearing that he was not worth £15,000 (Webb and Webb, *Manor and Borough*, 656–7, n. 3).

[27] For the identity and social character of aldermen in the late seventeenth and early eighteenth centuries, see in particular De Krey, *A Fractured Society*, 10, 124–5, and chs 3–4; Rogers, 'Money, Land and Lineage', 439–42; Andrew, 'Aldermen and Big Bourgeoisie', 359–64; Horwitz, 'Middle Class Revisited', 263–96; and Rogers, *Whigs and Cities*, 18–22.

[28] Rogers, *Whigs and Cities*, 16–17.

other leading bankers of the early eighteenth century, Sir Francis Child and his son, Sir Robert.[29] A significant proportion of aldermen at any one time were, in addition, members of parliament for constituencies outside the City.

The lord mayor of London occupied an office of prestige, power, and influence. He spoke for the City and acted as the principal contact between the monarch and central government and the City administration. He exercised influence over the affairs of the City during his year in office by presiding at the meetings of the Court of Aldermen, and, by exercising his right to call into session the other major institution of City authority, the Common Council, and to chair its meetings. In addition, the mayor had the right to fill many of the lucrative posts in the City as they became vacant, patronage that (depending on circumstances during his term) might help compensate him for the considerable costs of his year in office. How well the lord mayor fared financially during his year in office depended largely on which of the offices in his gift fell vacant. Sir Francis Child was said to have been out of pocket by 4,000 pounds at the end of his mayoral year (1698–9), for example, because he had not been able to make a major appointment.[30] Most importantly, from the point of view of the policing of the City, the lord mayor was essentially the chief magistrate. He sat daily for magisterial business in Guildhall and, along with a varying number of other aldermen acting in their own houses or perhaps in the halls of their companies, dealt with citizens' complaints, including accusations of criminal offences. He was also chairman of the two principal criminal courts that acted in the City—the sessions of the peace, held at the Guildhall, and the sessions of oyer and terminer and gaol delivery at the Old Bailey.

The mayor and aldermen were members of the Court of Common Council, but that body of more than 250 members consisted mainly of men elected annually by the freemen of the wards. The Common Council was both an administrative and legislative body. It could create committees (typically consisting of both aldermen and commoners) to investigate and report on issues of importance, and it had the power to pass by-laws touching all areas of City life—both of which aspects of their work were to become increasingly significant in the eighteenth century. The Court of Aldermen's long-standing claim to exercise a veto over the acts of the Common Council gave rise to a particularly bitter conflict in this period of sharp political division.[31] But, fully autonomous in that respect or not, the Common Council remained an institution of importance in the construction of the City's administrative policies and practices. As we will

[29] De Krey, *A Fractured Society*, 78, 139, 160, 136–65 *passim*.

[30] David Hayton (ed.), *The History of Parliament: The House of Commons, 1690–1715* (forthcoming).

[31] On the City Elections Act, which temporarily settled in their favour the aldermen's disputed claim to have a veto over common council legislation, see Nicholas Rogers, 'The City Elections Act (1725)', *English Historical Review*, 100 (1985), 604–17, who takes issue with the view expressed by I. G. Doolittle, 'Walpole's City Elections Act (1725)', *English Historical Review*, 97 (1982), 504–29.

see, some of the most important initiatives with respect to street policing were undertaken and carried through by leading non-aldermanic members of this court.

The men who tended to take the lead on issues of this kind developed knowledge of and interest in such matters because of their work in the most important site of policing work and efforts at regulation: the ward. The twenty-six City wards differed hugely in size and wealth. Gary De Krey has studied their social makeup in the late seventeenth century on the basis of tax assessments that required all but the very poor inhabitants of the City to pay a poll tax in 1692 at either a basic level of a shilling per head or, depending on their wealth and status, at one of two surtax levels of eleven shillings or a guinea.[32] On the basis of those returns, De Krey mapped three clusters of wards in the late seventeenth-century City. In the first place he identified a dozen in what he called the 'inner' City, a group of relatively small and wealthy wards, centring on the Bank, the Royal Exchange, and Guildhall, each with much higher concentrations than elsewhere of merchants and wealthy shopkeepers and, overall, with populations in which about six out of ten householders were assessed at the surtax level. De Krey labelled a second group of wards surrounding this inner core as the 'middle' City, that is wards in which perhaps a third of their householders were wealthy enough to pay the surtax, but that clearly included more artisans and tradesmen in the basic tax bracket. Finally, the tax assessments confirm that the 'City without the walls', the large and crowded wards that had spilled beyond the confines of the ancient City while remaining under the jurisdiction of the Corporation, included a much higher proportion of the poor among their populations. While there were pockets of wealth in most of them, the general character of these large extra-mural wards is indicated by the fact that 80 per cent even of their rate-paying populations contributed only at the basic rate of tax. Wards like Farringdon Without and Cripplegate Without and the three other wards outside the walls remaining under the City's jurisdiction were on the whole much larger, more overpopulated, and poorer than the more settled wards in the old City.

The wards and their institutions were crucial to the policing of the City. They had been divided into precincts for administrative purposes since at least the fifteenth century—some 230 well-defined areas that varied in size, but that typically consisted in the older and smaller wards of only a few streets and not many

[32] For De Krey's analysis of the socio-economic structure of the City based on this tax, see his *A Fractured Society*, 171–3. The 1692 assessments actually divided ratepayers into three groups: in the lowest category, everyone except the very poor (those in receipt of alms, for example) was to pay a basic tax of a shilling per head four times a year; in the second category, shopkeepers, tradesmen, and artisans with assessed worth of more than £300 were to pay an extra ten shillings; in the third, merchants, lawyers, gentlemen, and a few others were to pay a surtax of a pound, and another if they kept a coach. Since the distinction between the second and third groups was status not wealth, I have categorized the assessed householders in both surtax categories (here, and in a later discussion in Ch. 6 of the character of juries) as 'substantial' ratepayers.

more than a hundred houses.[33] The ward structure was also overlaid by the ecclesiastical divisions of the parishes—ninety-seven within the walls in the 1690s; thirteen without. As in the country generally, the churchwardens and overseers of the parishes were crucially important in the management of the Poor Law. The boundaries of the precincts and parishes were coterminous in only a few cases; indeed parishes were generally not all to be found within the same ward. On the other hand, because they were often roughly the same size and were each a focal point of local identity, there was a close working relationship between precincts and parishes—between the meetings of the precinct householders and the vestry of the local church.[34]

From the point of view of policing, however, the precincts and the wards were the most basic and the most important units. They formed crucial links in the highly articulated political structure that made the City a unique municipal institution in England, and that made it possible for the discussion of issues important to the community at the local level to have some influence in decision-making at the level of the Common Council and Court of Aldermen. At an annual meeting, all the householders of the precinct had the right to choose their constable for the following year. Those names went forward to be confirmed (or to have substitutes accepted) at the meeting of the ward householders, the so-called wardmote, an assembly held every year on 21 October, St Thomas's day. The wardmote also elected the inquest jury, a body that had the duty to take stock of affairs in the ward and to report irregularities that needed correction in a presentment to the Court of Aldermen. It also had the duty to name the slate of officers for the coming year, from the common councilmen, to jurors, the ward beadle, the bellman, and other, more ceremonial officials, as well as the constables.

By the late seventeenth century, however, the wardmote had lost much of its resilience, and in practice the leadership of the ward was passing to the men who made up what was known as 'the common council of the ward': the alderman, who represented the ward at the highest level of City affairs; his deputy, generally the senior of the ward's common councilmen, to whom fell much of the detailed work; and the rest of the men who represented the ward on that important institution of City government. There is good reason to believe that these men, almost certainly without the alderman being in regular attendance and perhaps only a few of them in practice, were coming to exercise a decisive leadership in the wards' affairs. By the early eighteenth century (at least) they were meeting every few weeks—generally in a public house in the ward—and taking on more

[33] As Valerie Pearl has said, the 'minuscule area' of the precincts of the City and of its parishes 'has not been fully appreciated'. Precincts, she calculated, were on average under 3 acres ('Change and Stability', 15). On the relationship of precincts and parishes, see Alice E. McCambell. 'The London Parish and the London Precinct', *Guildhall Studies in London History*, 11/3 (1976): 107–24.

[34] Webb and Webb, *Manor and Borough*, 587. The precinct meetings in the parish of St Helen's, Bishopsgate, were held in the vestry room of St Helens Church (GLMD, MS 6848/1).

and more of the practical, day-to-day business, including many of the tasks that we would include within policing.[35]

The ward leaders came in time—certainly by the early nineteenth century—to be seen as self-serving oligarchs and the main impediments to the construction of broadly based policing forces and other changes being advocated by the champions of police reform. But a hundred years earlier the institutions of local control had been the only possible engines of change. We need to resist the foreshortening of time that might lead us to accept an early nineteenth-century judgement as valid for the early eighteenth. The 'common councils of the wards'—and the authority and procedures of the Common Council itself that gave them authority—were the means by which the changing policing needs of the City were met as the older institutions of governance, the wardmote, and the personal involvement of the aldermen as the leaders of their wards were being eroded. Such changes were only possible in the early eighteenth century world on a small scale and on the basis of existing institutions. In the City, that meant at the level of the ward.

We will have reason to return to these themes from time to time in this and the following three chapters. But we will begin this discussion of policing and prosecution practices in the City with an account of the aldermen as magistrates. The work of the magistracy changed notably in this period, particularly in the way that pre-trial criminal procedures were conducted. The result was an important innovation: the creation in the City of London in 1737 of the first magistrates' court in the metropolis. This was the unplanned result of the growing reluctance of aldermen to undertake magisterial business, of their withdrawal over several decades from the day-to-day work of the office. We will explore both elements in this transformation—the changing engagement of magistrates in the criminal process; and the making of the courtroom setting for the administration of the preliminary hearing.

LONDON MAGISTRATES AND THE PROSECUTION OF CRIME

The twenty-six aldermen of the City linked its executive and legislative bodies with the wards, and, through them, with the precincts and parishes. Decisions of the Court of Aldermen or enactments of the Common Council were commonly communicated by means of precepts of the lord mayor addressed to each of the aldermen, requiring them to inform their deputies and other officers of the ward of the instructions to be carried out. Aldermen were also frequently called upon to act in quasi-judicial ways, both in their wards and as members of the governing bodies of the City. In addition, a varying number of them were magistrates, and on them fell the burden of the judicial work—the indispensable tasks

[35] For the emergence of the common council of the ward and the diminishing administrative role of the aldermen and the wardmote, see Webb and Webb, *Manor and Borough*, 605–15, 664–5; Pearl, 'Change and Stability', 16, 20–7; and see below, Chs 3–4.

associated with the supervision of Poor Law administration and other aspects of civic governance, as well as the management of the early stages of prosecution of criminal offenders, and the duty to assist at the sessions of the peace and the associated gaol delivery sessions at the Old Bailey. The magistrates were at the centre of the policing and prosecution efforts in the City.

Who among the aldermen could act as magistrates was set out in the City Charter. Before 1638 the recorder, the lord mayor, and the aldermen who had already served as lord mayor—the aldermen who had 'passed the chair', as it was said—were to act as magistrates. In the Charter of that year, perhaps because of a shortage of qualified aldermen, the next three most senior aldermen were also designated as magistrates. That number was further enlarged in 1692 when the next six aldermen by seniority were designated magistrates by royal warrant, and again in 1704, when four more were added.[36] Finally, in 1741 a significant alteration in the work of the magistracy brought this century-long gradual enlargement of the City bench to a conclusion when all the aldermen were named as magistrates.[37] Before that, the system provided a variable number of magistrates, a number that depended on how many men remained on the court after their mayoral year, and a number that must have been adequate for the City's needs at some periods, less so at others.

As the leading magistrate of the City, the lord mayor also presided at the sessions of the peace, and, nominally at least, at the Old Bailey. His was the first name on the gaol delivery commission and in the printed reports of the Old Bailey proceedings, which were dated and organized by mayoral years. His leadership of the community, as its first magistrate, was reflected in the authority his orders commanded.[38] It was also to be seen in the way the lord mayor took on much of the burden of the City's magisterial work by the late seventeenth century by sitting regularly in Guildhall as a single magistrate. Many of the other aldermen who qualified as magistrates also made themselves available to deal with public complaints and the early stages of prosecutions, sitting for this purpose in their own residences.[39] But in the late seventeenth century the lord mayor provided the most reliable and regular location at which the public or the City's officers could find a magistrate and pre-trial procedure could be initiated, for his sittings in the Guildhall acquired a permanence that derived from the office and did not depend entirely on the tastes of the incumbent.

The lord mayor's work as a magistrate was further given an established

[36] SP 44/341/245. [37] Rep 108, p. 211; *Corporation of London*, 60–1; and see below, text at n. 80.

[38] One can see an indication of this in December 1688, for example, when the Court of Aldermen was anxious to make arrangements to get the disbanded soldiers from James II's army out of the City and on their way 'to their own countrys'. The soldiers needed a pass to enable them to do this and it was agreed that 'the Lord Mayor's pass may be of more use to them than that of any other magistrate in the City' (Rep 94, p. 76).

[39] See, for example, a warrant from the City magistrate Sir Robert Geffery to the keeper of Ludgate Compter requiring him to bring a prisoner to his 'dwelling house in Lyme Street' to be examined (CLRO: London Sess. Papers, September 1697).

character by his being attended at his sittings in the Guildhall by a clerk, and by four attorneys who took turns to serve for a week and kept a record of his work in a 'Waiting Book', later known as a 'Charge Book'.[40] This does not provide a complete record of the lord mayor's magisterial work. Unlike a number of other magistrate's notebooks in this period, the lord mayor's Charge Books—which is what I will call both series—do not, for example, normally note warrants issued to constables to arrest suspects or to carry out a search; nor do they include copies of depositions taken from victims of alleged offences or copies of examinations of suspects.[41] In the 1690s the Charge Books may also under-record cases that the lord mayor dismissed or settled by way of arbitration. Volumes are missing; and there are gaps in some of those that have survived when an attorney failed for some reason to record the business. But the Charge Books do enable us to reconstruct much of the work of the lord mayor as a single magistrate—and by implication the work of the aldermen who also sat as magistrates.

We have seen previously that in the late seventeenth century the lords mayor were committing significant numbers of accused thieves to the Bridewell, the City's house of correction, without trial. This was only one aspect of their work, as an examination of the Charge Books in the 1690s makes clear.[42] In 1694, when Sir William Ashhurst served as lord mayor, and in the following year, in Sir Thomas Lane's term, both men sat regularly as magistrates in the Guildhall. In the first six months of 1694 Ashhurst conducted magisterial business on at least 105 days. He was thus present in the Guildhall for several hours on about four days a week on average. During those six months he would also have attended four sittings of the City sessions of the peace and at least some days of the four gaol delivery sessions at the Old Bailey, so that for an additional twenty days or more the lord mayor was likely to have been engaged in other aspects of criminal administration. Nor was this work confined to weekdays. Ashhurst appeared frequently in the Guildhall on Saturdays and Sundays; and from

[40] Two incomplete series of bound volumes in the CLRO record the lord mayors' work as a magistrate between 1664 and 1733. The first, labelled 'Lord Mayor's Waiting Books', covers the years 1664–86 in nine volumes; the second, labelled 'Mansion House Justice Room Charge Books—anachronistically, since the Mansion House was not built until the middle of the eighteenth century—consists of a broken series of volumes that survive only for the years 1686–9, 1692–5, 1695–9, 1699–1705, and 1728–33. For the sake of simplicity and clarity, I have called them all the 'Lord Mayor's Charge Books'. Two other volumes that appear to continue the first series (covering the years 1690–7 and 1700–6) are mainly notes of fees due to the four attorneys who kept the record (see below, n. 73).

[41] See, for example, the notebooks kept by William Brockman of Kent (British Library, Add. MSS 42598–42600); and for examples of magistrates' records in fine modern editions, see Elizabeth Crittall (ed.), *The Justicing Notebook of William Hunt, 1744–1749* (Wiltshire Record Society, 1982); Ruth Paley (ed.), *Justice in Eighteenth-Century Hackney: The Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book* (London Record Society, 1991); and Elizabeth Silverthorne (ed.), *Deposition Book of Richard Wyatt, JP, 1767–1776* (Surrey Record Society, 1978). For other manuscript magistrates' notebooks, see Norma Landau, *The Justices of the Peace, 1679–1760* (Berkeley, Calif., 1984), 175–6, 191–3.

[42] I have examined two periods of six months each for this purpose in 1694 and 1695, taking samples from two years to eliminate some of the personal preferences and quirks that the two lords mayor may have brought to the work: CLRO: Lord Mayor's Charge Book, 1692–5.

mid-February to mid-March he conducted at least some business on twenty-seven consecutive days. Ashhurst was known to be an active magistrate during his year as lord mayor.[43] But the recorded work of Sir Thomas Lane, who followed him, suggests that the regularity of Ashhurst's attendance was not unusual in that period. Thus, in the first six months of 1695 Lane was available as a magistrate in the Guildhall on at least 101 occasions.

In the late seventeenth century at least some lords mayor were thus making themselves available in the Guildhall for magisterial business for several hours a day and on several days a week. It is unclear whether the precise times of these sittings were made known to the public in advance. There is no evidence of that; certainly there are no hints of it in the records of the Court of Aldermen or in the Charge Books themselves. Most likely, it was simply widely understood among those who might occasionally have need of a magistrate's services, including constables and watchmen, that the lord mayor was regularly to be found in the Guildhall, unless he was otherwise engaged. By the 1690s, if not earlier, he was sitting for magisterial business in the so-called Matted Gallery.[44]

It is less certain what form this procedure took, but it seems to have been the case that those with business to conduct before the lord mayor simply gathered in the court and he took up their cases one by one. The setting on a busy day may not have been unlike that later portrayed by Hogarth in print ten of *Industry and Idleness* (1746), in which Tom Idle is being examined by his erstwhile fellow-apprentice, now a City alderman. As we will see, the preliminary hearing had changed in significant ways by the 1740s. But the general scene—the magistrate behind the bar, and a crowd of constables, prosecutors, witnesses, and accused, jockeying for room and attention—may not have been very different from the hearings into criminal and other matters conducted by Ashhurst and Lane in the middle years of the 1690s.[45] The important point is that the City had in place by the late seventeenth century what no other jurisdiction in the metropolis yet had: the germ of an established magistrates' court that did not depend entirely on the whim of a magistrate, but had a permanent life and a public character. The attendance of an attorney and a clerk, and the use of a bar that separated the mayor and these officials from the jostling crowd, gave it something of the character of a courtroom.[46] Other City magistrates also dealt with criminal business, some of them very actively—indeed, often more actively than the sitting lord mayor. But,

[43] He was an activist in part because he agreed with the moral reform campaign. He issued an order in his mayoral year, for example, aimed at achieving 'a thorough Reformation of Manners in all places under his jurisdiction' (Rep 98, pp. 303–10). See his entry in David Hayton (ed.), *History of Parliament 1690–1715* (forthcoming).

[44] In 1697 the aldermen ordered that the end of the Matted Gallery be 'enclosed and a chimney to be built for the reception of persons of quality' (Rep 102, p. 32).

[45] For the changing character of the Guildhall magistrates' court and Hogarth's court scene, see below pp. 108–12.

[46] For a bar mentioned in Ned Ward's satire on magistrates, see *The London Spy*, ed. Paul Hyland (East Lansing, Mich., 1993), 73.

however regularly they may have made themselves available over a period of years, they could not create a permanent and a public court to rival the Guildhall, certainly not a court that would survive their service as a magistrate.

The Charge Books reveal that the lord mayor dealt with a wide range of business in his daily sittings in the Guildhall, by no means all of it criminal in nature. He sat to do the work a single magistrate could be called on to do in any parish in England, including settling disputes between parties that were in effect minor civil suits and dealing with a wide range of administrative problems. He issued orders with respect to Poor Law questions—granting passes to authorize someone's movement from one parish to another and mediating conflicts between parishes over settlement cases. He acted summarily to fine men and women charged with drunkenness or swearing, and dealt with others arrested in the streets by constables, beadles, watchmen, or the City marshals and charged before the mayor as beggars, vagrants, or prostitutes, variously labelled idle, disorderly, and lewd persons, or nightwalkers. For the most part they were sent to the Bridewell, where they would be sentenced when the court met (if they had not been previously released by the mayor's warrant) to a period of work and 'correction', in the form of whipping.

With respect to more serious criminal matters, the lord mayor's most important task was to deal with the complaints of victims of theft or violence, particularly when the offence amounted to felony.[47] The Charge Books reveal Ashhurst conducting the preliminary enquiry into the cases of 62 accused felons in the first half of 1694, most of whom he committed to Newgate (34) or the Poultry Compter (20), or Wood Street Compter (2) to await trial at the next gaol delivery sessions at the Old Bailey (Table 2.1). At the same time, Ashhurst bound over the victims who made the charges, to ensure they would appear at the gaol delivery sessions at the Old Bailey to carry on the prosecution.

According to the Charge Book, the lord mayor sent every sworn felony accusation that came before him to trial at the gaol delivery sessions at the Old Bailey. In doing so, he acted in accordance with the law as established in the Bail and Commitment statutes of the mid-sixteenth century.[48] This legislation had been designed to tighten up prosecution procedures, to ensure that neither favour nor other corrupt practices would save an alleged felon from facing his accuser in the courtroom. It did so by ordering magistrates to take the depositions of the victim of an offence in writing, to examine the accused, to commit him or her to gaol to await trial, and to bind over prosecutors and witnesses to carry on the prosecution in the appropriate court.

[47] For pre-trial procedure, see King, *Crime, Justice, and Discretion*, ch. 4; Beattie, *Crime and the Courts*, 268–81; Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 55–81; *idem*, 'The Prosecutorial Origins of Defence Counsel in the Eighteenth Century: The Appearance of Solicitors', *Cambridge Law Journal*, 58 (1999), 314–65.

[48] John Langbein, *Prosecuting Crime in the Renaissance: England, Germany, France* (Cambridge, Mass., 1974), pt I; Beattie, *Crime and the Courts*, 270–83.

TABLE 2.1. *Magisterial business conducted by Lord Mayor Ashhurst, January–June 1694*

	No.
Accused of felony:	
Committed to Newgate or the Compters to await trial	56
Bailed	6
Accused of assault:	
Committed to compter for want of sureties	14
Committed to Bridewell	2
Bound over	16
Excused	1
Accused of miscellaneous misdemeanors:	
Committed to compter for want of sureties	17
Committed to Bridewell	5
Bound over	34
'Pilferers' or 'known thieves':	
Committed to Bridewell	24
Idle, lewd; nightwalkers; keepers of disorderly or bawdy houses:	
Committed to Bridewell or compter	25
Other 'moral' offences	16
Total	216

Source: Lord Mayor's Charge Book, 1692–5

The statutes afforded magistrates little discretion in applying these rules: there was to be no room for their private judgement about the character of the prosecutor or the strength of the evidence offered in support of the charges being made. All allegations of felony were to be decided in court, and, since strict limits were placed on the availability of bail in such cases, virtually every accused felon had to be committed to gaol to await the trial of that evidence. The severity of these rules had been perhaps tempered slightly in practice by the opinion of a Jacobean judge (Crompton), who had suggested that magistrates could exercise discretion in cases in which the prosecutor had made the charge 'on suspicion' rather than 'on oath'—that is, without swearing to the truth of the charge, but rather expressing his or her belief, or strong belief ('violent suspicion') that the defendant had in fact committed the offence alleged. In such cases, Crompton said, the magistrate might dismiss the charge and free the accused. That opinion was repeated in the literature addressed to magistrates in the seventeenth century. But it was always hedged about with cautions, and the best advice continued to be that justices should be wary about taking chances in the way they dealt with all accusations of felony.[49] Ashhurst seems to have

[49] For Crompton's opinion as it was conveyed in late seventeenth-century texts, see Michael Dalton, *The Countrey Justice* (1666 edn.). For magistrates' manuals cautioning justices against rash dismissals of

adhered to that advice. He committed several offenders to trial who had been charged merely on suspicion; one or two of them awaited their trial in gaol, but Ashhurst treated at least six more leniently by allowing them bail.

If the magistrates in the 1690s were as careful as I have suggested about processing felony cases, it would seem to be something of a paradox that at the same time they treated a significant number of theft charges in an entirely cavalier way. But, as we have seen, they had done so over a long period by declaring some such offences to be merely 'pilfering'. Ashhurst was no exception. His Charge Book records that he sent two dozen men and women accused of taking goods to be punished in the Bridewell, simply on the evidence presented by their accuser and without any form of trial. The important point was that from the beginning they were not presented as felonies. The truth of the charge was not sworn to by the prosecutor, or even declared to be presented as a matter of suspicion. The magistrate did not enter into the procedure for dealing with the more serious offence—taking depositions and examining the accused. Rather, the accused were treated as though they had been charged with being idle and disorderly—and many of them were so labelled in their commitment to the Bridewell as well as being named as pilferers. It would appear that decisions to treat offences as pilfering rather that something more serious was commonly initiated by the prosecutors who brought the charges—in many cases against their own servant or apprentice. The key may have been the prosecutor's assertion at the outset that the items stolen were of 'little value', knowing that the magistrates' long practice had been to distinguish some minor cases from the general run of felonies.

Charges of robbery, burglary, theft in all its forms, and, very occasionally, murder or rape or other serious violence, constituted the principal matters that the lord mayor dealt with at the preliminary hearings in the Guildhall. Ashhurst also heard complaints in 1694, as did all his fellow magistrates, against several dozen men and women accused of some other form of misdemeanour—fraud, cheating in various ways, causing disturbances in the street, breaking windows—most of whom were granted bail, unless they could not provide sufficient sureties for their appearance at the next sessions of the peace, in which case they would be committed to one of the sheriffs' two prisons to await trial. Among the misdemeanours he dealt with, Ashhurst heard thirty-three charges of assault. But these were clearly only a fraction of assault complaints that must have come before the magistrates who were active in the 1690s; indeed, it would appear that he heard only the most serious cases, since fully half of the men and women charged before him were prosecuted by officials going about their duties—constables mainly, but also watchmen and others.

felony cases, see William Nelson, *The Office and Authority of a Justice of Peace*, 4th edn. (1711), 272 ('A Felon brought before a Justice upon Suspition, tho' it appear he is not guilty, yet he is not to be discharged without a Trial'); and John Bond, *A Complete Guide for Justices of Peace*, 2nd edn. (1696).

Men and women with complaints or charges to make were able to find magistrates easily enough in the 1690s, when the business of conducting preliminary hearings was being widely shared among the qualified aldermen. As many as a dozen men carried out some of the tasks associated with this stage of the criminal process, though some, inevitably, were busier than others. But that was to change in a significant way in the early decades of the eighteenth century, when the City magistrates withdrew in such numbers from various aspects of magisterial work that the system of preliminary hearing into criminal charges had to be entirely reorganized and recast.

The withdrawal of the aldermen in general and the magistrates in particular from engagement in the City's day-to-day business can be seen in several areas in the generation after the Revolution of 1689. The magistrates seem to have become increasingly reluctant, for example, to attend court sessions in sufficient numbers to guarantee a quorum. Even in the 1690s, when they were apparently still willing to act as committing magistrates, there were complaints that the business of the sessions was frequently delayed 'for want of a competent number of justices'. If there was reluctance, the reason may have been political—an unwillingness to associate together at the sessions.[50] That would not have been surprising, given the partisan conflict that had developed in the 1670s and 1680s between the tory supporters of the court of Charles II, on the one hand, and the more radical, whig and dissenter, elements in the City, on the other. These conflicts had come to a head in the Exclusion Crisis over the whig attempts to prevent the Catholic heir to the throne, James, Duke of York, from succeeding his brother, Charles. The challenge to the court had devastating consequences for the City when the threat to public order that the whigs seemed to encourage led Charles II to revoke the Charter and to take direct control of the City's affairs—appointing the aldermen, for example, and eliminating Common Council, on which the whigs had had a majority.[51] Even after James II restored the Charter in 1688, recriminations between whigs and tories over the loss of the Charter were hardly dispelled, and indeed partisan divisions were to harden further in the 1690s, in part as a consequence of the aggressive foreign policy that followed the Revolution of 1689 and the succession to the throne of William and Mary.[52]

Political hostility among the magistrates may explain why the aldermen asked William III in 1692 to authorize the next six aldermen in seniority below the chair to act as magistrates,[53] and why they thought it necessary to draw up

[50] For the influence of partisan politics on the composition of rural benches and the behaviour of magistrates, see Landau, *Justices of the Peace*, 147–54, 304–12.

[51] For a summary of political conflicts in the City between 1680 and the Revolution of 1689, see Henry Horwitz, 'Party in a Civic Context: London from the Exclusion Crisis to the Fall of Walpole', in *Britain in the First Age of Party, 1680–1750: Essays Presented to Geoffrey Holmes* (1987), 177–82; and De Krey, *A Fractured Society*, ch. 1; see also Jennifer Levin, *The Charter Controversy in the City of London, 1660–1688, and its Consequences* (1969).

[52] Horwitz, 'Party in a Civic Context', 180–6; De Krey, *A Fractured Society*, chs 5–6.

[53] Rep 96, pp. 283, 286, 317.

rotas that named magistrates to be present at the opening of the court so that the business would not be delayed. Such a list had been constructed in 1691.[54] That proved to be necessary again at the end of the decade, when a committee of three aldermen was struck to work out such a rota that would oblige every alderman who was a magistrate to attend in turn.[55] The system had to be changed again within two years because business was said to be frequently held up at the Old Bailey 'for want of a quorum', and a new rota set out the City magistrates' obligations with respect to the sessions, and new orders required the secondaries, the sheriffs' officers whose duty it was to summon the jurors, to summon the justices on the rota too.[56] Further failures of attendance and delays encouraged the aldermen once again to ask Queen Anne, in 1704, to increase the number of magistrates by adding the next four most senior aldermen to the commission.[57] This too clearly failed to solve the problem, for there were to be further efforts to compel magistrates' attendance at the sessions early in George I's reign.[58]

Apart from the possible complications of political hostility, it is also possible that the crowded court calendars in the 1690s and the early years of the eighteenth century led magistrates to become unwilling to engage as actively as they had earlier in the holding of the preliminary hearings at which victims of offences could bring their complaints to a magistrate, warrants were issued to secure the arrest of those accused, and the machinery was put into motion that would bring both parties before a judge and jury in a courtroom. The apparent unwillingness of City magistrates to take an active part in that work by the second quarter of the eighteenth century was to bring the system into crisis.[59] For purposes of comparison over time, and to take into account the uneven survival of gaol calendars in some years, I have taken as a guide to a magistrate's willingness to act his committing at least 5 per cent of the defendants sent to gaol to await trial in any sample period.[60] By that measure, four or more aldermen, including the lord mayor, were usually active in this aspect of magisterial work. That was broadly the case from the Restoration into the third decade of the eighteenth century (with the exception of a few years around the turn of the century when the increase in the number of magistrates enlarged the number willing to act at the preliminary hearing stage). And then, quite suddenly, habits began to change. By the last years of the 1720s and into the next decade only three magistrates were actively at work. The flight of magistrates from the day-to-day work of the office became a problem and then finally a crisis, when the

[54] Rep 95, p. 215.

[55] Rep 104, p. 60 (and see pp. 67–70 for the rota for the subsequent five sessions).

[56] Rep 105, pp. 277–9. [57] Rep 108, p. 211. [58] Rep 121, fo. 309.

[59] Jessica Warner has pointed out that the Gin Act of 1736 added considerably to the difficulties that metropolitan magistrates faced in the administration of the criminal law, particularly in Westminster and Middlesex ('"Damn you, you informing bitch." *Vox Populi* and the unmaking of the Gin Act of 1736', *Journal of Social History*, 33 (1999), 318.

[60] The data in this paragraph are based on the gaol calendars that serve as the main wrapper of the sessions files (CLRO: SF).

work came to depend on the willingness of two men to take on the whole burden. Sir Richard Brocas, who was lord mayor in 1729–30, and Sir William Billers, who served as mayor 1733–4, were by far the most active magistrates in the early years of the decade. By 1733 they were between them doing most of the committing to the Bridewell as well as to the City gaols. Indeed, they so monopolized the work that their clerks profited immeasurably from the fees they collected for copying warrants, depositions, and the other necessary paper surrounding the criminal process. They were in fact charged by the City grand jury in 1733 with using their monopoly to stir up prosecutions and, in league with others, to encourage malicious prosecutions for the sake of rewards that could be earned by the conviction of serious offenders.[61] Whatever truth there might have been in the charge, the fact that the clerks had drawn such attention to themselves is an indication of the dominance that had fallen to Billers and Brocas because of the withdrawal of other qualified aldermen from the criminal work in the City. Even more strikingly, in the middle years of the decade virtually the entire burden of magisterial work of this kind in the City was left in the hands of one man, Brocas. In 1736 and 1737 (until he died in November of that year) he was *the* City magistrate: in his last full year of work he was responsible for 81 per cent of the recognizances taken; he committed 87 per cent of those sent to the Bridewell; and 91 per cent of those sent to gaol to await trial. In the 1690s, by contrast, even the most active magistrate was responsible for no more than a quarter of commitments to the Bridewell or Newgate or of the recognizances taken.

Brocas's death in November 1737, still in harness, produced a crisis that required a drastic solution. Without someone to carry the burden as he had done—and no one stepped forward—a new system was required, or perhaps rather a restoration of the old system under which the work was shared more broadly. It now had to be mandated since, left to themselves, the aldermen could not be relied on. Brocas's death brought a new order to the magisterial work of the City, and created in an institutional and more bureaucratic form the kind of system in which the magistrates had been willing to share the duty. The death of Brocas in fact saw the emergence of the first consciously created magistrates' court in the metropolis.

Why this shift in the behaviour of the City magistrates occurred in the early eighteenth century is not easily answered. Their declining commitment to the work of the office, it must be said, was part of a general problem, for magistrates were failing to act, or were at least reluctant to take up, the duties expected of an active magistrate, all over the country in the eighteenth century, in rural and urban communities alike. The commissions of the peace were everywhere enlarged while the number of active justices shrank, leaving the burdens of the office to those willing to take them on because they had a taste or temperament for

[61] See below, pp. 398–400.

the work, or a dedication to advancing a vision of moral and social order that deeply engaged them.[62] But there may have been some particular circumstances that discouraged the City aldermen from attending to the daily work of the office—both as leaders of their wards, and, as magistrates, in dealing with complaints of victims of criminal offences and the myriad other issues that were likely to come to their doors.

For one thing the aldermen may have found it increasingly difficult to give as much time as such men once had to the detailed work of the office. Most were merchants or financiers, and it is possible that the increasing complexity of the mercantile world and of finance required more of their attention. I do not know that. It is clearer that being members of parliament would have added to the demands on the time of a significant number of aldermen. Four members of the court generally occupied the City seats in the House of Commons and several other aldermen were also likely to represent other constituencies. A seat in the House of Commons was much more demanding of the time of members than in the past, since after 1689 parliament met regularly every year for the first time in its history. There is a hint soon after the Revolution that the demands of parliamentary service were conflicting with aldermanic duties. In 1694, for example, the Court of Aldermen agreed to meet earlier in the day than they had in the past; they resolved to meet at 8 a.m. and to adjourn an hour later 'so that the Members of this Court that serve in Parliament may dispatch the business of this City and attend their Service in Parliament also'.[63]

The work of the aldermen competed with other demands on their time, but that may not have been the only, or even the most important, reason why fewer of them were apparently willing to devote themselves to the process of criminal prosecution. It is also possible that dealing with the problems that came to magistrates' doors was becoming less compatible with the changing character of the lives of these leading members of the wealthy bourgeoisie of London. One can only speculate about this, but it is possible that the increasing wealth of the large overseas merchants and of the financiers and wholesalers of the City—a change signalled by the increase in the minimum level of wealth required by those who wished to decline election as an alderman from 10,000 pounds to 15,000 pounds in 1737[64]—so widened the social divide that the task of dealing with the petty conflicts of the poor, with misdemeanors and minor thefts, became more distasteful to aldermen as well as time-consuming. Certainly, the social position of the big businessmen of London was changing in the late seventeenth century and the early decades of the eighteenth as the culture of the metropolis changed with the increasing commercialization of leisure, the expanding number of places of entertainment, and the growing availability of consumer goods of all

[62] For the tendency of magisterial work to become carried by a core of justices, see Landau, *Justices of the Peace*, 318–32; Beattie, *Crime and the Courts*, 60–2; Shoemaker, *Prosecution and Punishment*, 70–6; and King, *Crime, Justice, and Discretion*, 110–17.

[63] Rep 100, fo. 5. [64] Rogers, 'Money, Land and Lineage', 439, n. 8.

kinds. Shops, taverns, coffee-houses, pleasure gardens fed an enlarging public life that led over time to a richer and more self-confident urban culture.[65] One element in that cultural transformation was the decision by much larger numbers of wealthy businessmen than ever before to remain rooted in the urban world—not to sell up and invest in land as security and for the status that broad acres had traditionally conferred. The strong tendency was for the large overseas merchants and other wealthy men of business in the City, among whom the aldermen were prominent, increasingly to satisfy their social ambitions not by investing their fortunes in estates, but by buying a villa or a small house and some acres in the suburbs, or perhaps a house in the fashionable West End. The consequence of such men remaining in the City and passing their businesses on to their sons or other relatives—as Nicholas Rogers has shown—was the growth of a City patriciate and an advance in 'mercantile respectability' as the big bourgeoisie of the metropolis took their place in the emerging polite culture.[66]

Even if aldermen moved their residences out of the City they could have continued to attend to their aldermanic and magisterial duties as they had in the past, since one might presume that some of them kept houses in town, and some could have heard cases in the halls of their companies or some other public space in their wards. More important was the larger transformation in the social position of aldermen, and the possibility that their wealth, style of life, and their sense of place in society detached them to some extent from the daily concerns of those who continued to live in the City. As we will see, the aldermen were increasingly inclined to leave the detailed work of ward administration to their deputies and the common councilmen. That seems all of a piece with their apparent reluctance to take on the magisterial side of the office in the early decades of the eighteenth century.

It is possible, too, that the work of the magistrates may have become more complex, perhaps more difficult, or uncomfortable, over time. Certainly, the widespread concern about violent crime being committed by men in gangs had given rise to a variety of efforts to encourage the detection and prosecution of

[65] For aspects of this large subject, see Langford, *A Polite and Commercial People*, 69; Neil McKendrick, John Brewer, and J. H. Plumb, *The Birth of a Consumer Society: The Commercialization of Eighteenth-century England* (1982), pt I; John Brewer and Roy Porter (eds.), *Consumption and the World of Goods* (1993), ch. 1; John Brewer, *The Pleasures of the Imagination: English Culture in the Eighteenth Century* (1997); Roy Porter, *London: A Social History* (1995), ch. 7; Earle, *The Making of the English Middle Class*, ch. 10.

[66] Rogers, 'Money, Land and Lineage', 437–54; Andrew, 'Aldermen and the Big Bourgeoisie', 359–64; Horwitz, 'Middle Class Revisited', 263–96; Peter Earle, *The Making of the Middle Class: Business, Society and Family Life in London, 1660–1730* (1989), 34–51. For an interesting discussion of the acquisition of gentlemanly status by a group of wealthy London merchants in the middle decades of the eighteenth century, see David Hancock, *Citizens of the World: London Merchants and the Integration of the British Atlantic Community, 1735–1785* (Cambridge, 1995), pt III. For the distancing of rural magistrates from the populations they served, see E. P. Thompson, *Customs in Common* (1991), 44. There is more than a hint of such social distancing in the decision made in 1782, when the justice room in the Mansion House was moved to build a new entrance to the courtroom so that 'genteel people' coming to visit the lord mayor could avoid contact with vagrants and other persons of the lower classes (Sally Jeffery, *The Mansion House* (Chichester, 1993), 215).

offenders that helped to make prosecution procedures more complicated. Statutory rewards, created in the 1690s and in Anne's reign, and huge additional sums offered by the government after 1720 for the conviction of robbers in London introduced a new element into the prosecution process; and the government's offer of pardons to offenders who confessed and gave evidence against their former associates, added further complications to the work of magistrates, since it was left to them to select offenders whose lives would be spared in exchange for testimony. Rewards and pardons introduced complexity, and forced magistrates to make more choices and to become more engaged in the details of offences than in the past; the corruption and malicious prosecution that massive rewards gave rise to could only have made the work of the magistrates nastier and messier.[67] Given the complaints voiced by the City grand jury about the corruption that had infected criminal procedure and, in particular, the allegations that the clerks of aldermen Billers and Brocas—the two men carrying the load of the magistracy—were manipulating the system to their own benefit, it is not perhaps a surprise that fewer and fewer magistrates chose to become involved in the early stages of criminal prosececution.[68]

We will return at various points in the book to what seems to have been a changing culture of prosecution in the early decades of the eighteenth century. I introduce it here because it seems likely to be one element, and perhaps an important element, in the City magistrates' withdrawal from the criminal side of their work. Some of the growing complexity at the preliminary hearing can be discerned in the lord mayor's Charge Book by the 1730s. Unfortunately, there is a twenty-three year gap in the Charge Books between 1705 and 1728, over the period in which the magistrate's work appears to have changed in some significant ways. The entries in 1705 show the lord mayor dealing with criminal charges in much the same way as Ashhurst and Lane had done a decade earlier; the next surviving volume, that for 1728–33, reveals some differences, or at least apparent differences, which can be disclosed by examining the work of the man we met earlier as an exceptionally active City magistrate through the 1730s, Sir Richard Brocas.

Brocas's engagement in magisterial business began in earnest during the year he served as lord mayor, 1729–30, as his Charge Book makes clear.[69] Having dealt with 104 complaints of various kinds in his first six months of office, he heard 529 in the second half of his term—close to five on average for each day he sat. Lord Mayor Brocas seems to have developed an interest in and taste for magisterial work; at the very least, one can say he devoted himself to the work, to the extent that in July, August, and September, 1730, he sat for magisterial business almost every day, including Sundays.

[67] For rewards and their consequences, see Chs 5 and 8.

[68] For the grand jury's complaint about the corruption of these magistrates' clerks, see below Ch. 8, pp. 398–400.

[69] CLRO: Charge Book, 1699–1705, 1728–33.

As one would expect, Brocas's Charge Book in 1729–30 shows a good deal of continuity of practice from the 1690s (Table 2.2). In his mayoral year, he heard charges of prostitution, drunkenness, and disorderly conduct in the streets alleged against men and women brought in by constables and watchmen. He also continued to commit men and women to the Bridewell charged with 'pilfering', invariably noting that the goods involved were of small value, and naming the defendants as 'loose, idle and disorderly' persons—thus attaching to their warrant of commitment a reason that would help to relieve any anxiety that might have been felt about the legality of this way of treating minor property offenders. There are other similarities between the Charge Books of the 1690s and that of Brocas's mayoralty. There are also differences.

TABLE 2.2. *Magisterial business conducted by Lord Mayor Brocas, November 1729–October 1730*

	No.
Accused of felony:	
Committed to Newgate or a compter for trial	51
Bailed	1
Discharged for want of prosecution, weak evidence, or other reason	40
Accused of pilfering:	
Committed to Bridewell as loose, idle, and disorderly	25
Discharged	4
Accused of frequent pilfering from master:	
Committed to trial sessions of the peace	1
Accused of assault:	
Committed to trial	32
Charge dismissed	20
Settled	172
Committed to Bridewell	3
On Officer, committed to trial	3
On officer, charge dismissed	1
On officer, settled	3
Fraud/cheating	6
Disorderly conduct/drunk/street disturbance/inmate in bawdy house	46
Prostitution	35
Hawking illegally	8
Neglect of duty, constable or watchman	4
Leaving children in the parish	2

Source: CLRO: Charge Book, 1728–33

One difference may be more apparent than real. In Brocas's year as mayor (or at least in the weeks in which records were kept, about three-quarters of the

whole), he dealt with more than 230 accusations of assault. This is very different indeed from the evidence of Ashhurst's work in 1694 and of other lords mayor in the last decade of the seventeenth century. As we saw above (Table 2.1), Ashhurst dealt with only 33 assault charges in the first six months of 1694; Sir Thomas Lane, who followed him as lord mayor, heard fewer than that in the first half of 1695.[70] This does not, however, necessarily signal a major shift in the kinds of work that magistrates were doing in the City. They had always dealt with the early stages of assault prosecutions, and the fact that Brocas heard so many cases in his year as mayor almost certainly has more to do with his own temperament and the fact that many fewer magistrates were willing to deal with the petty quarrels of their neighbours in 1730 than they had been four decades earlier, than with any major shift in magisterial practice. And the way Brocas disposed of the assault allegations he heard was almost certainly in line with the way magistrates had long dealt with conflicts that for the most part had not involved serious violence. Certainly, magistrates (and constables coming upon squabbles in the streets) had long been advised to do their best to bring the parties to agreement, rather that encourage them to bring charges and take their disputes to court. Brocas's Charge Book in 1729–30 reveals that attitude strongly at work. Of the cases he heard, he managed to settle three-quarters, bringing the parties to an agreement presumably on the payment of a sum satisfactory to the prosecutor or perhaps simply following an apology. In another 10 per cent of the assault cases, Brocas simply dismissed the charges as frivolous or without merit, and in the remaining handful, having failed to arrange an agreement, he committed the accused to trial and took recognizances to ensure that the dispute would be continued before the appropriate court, most often the sessions of the peace.

There is the possibility that some of this work had been stirred up by Brocas's clerk, the man who was to be accused by the City grand jury a few years later of corruptly encouraging quarrels and criminal charges in order to increase the fees he could collect—fees for warrants, recognizances, and the like.[71] But it is difficult to believe that that would explain more than a small proportion of the cases that came to Brocas's court in the Guildhall once he had revealed that he was willing to sit regularly for business of all kinds. Brocas seems quite simply to have developed an interest in the work. The man who succeeded him in the mayoralty, Parsons, heard almost no assault cases—or criminal cases of any kind—and left the work entirely to the two men who were now willing to do it, Brocas and Billers.

One difference in magisterial practice suggested by Brocas's work does signal an important change in the preliminary hearings being conducted in the City over the previous decades: that is, in the way he dealt with the 92 charges of felony brought before him. In more than half of these cases, Brocas deposed the

[70] CLRO: Charge Book, 1692–5. [71] See below, Ch. 8.

victim and the prosecution witnesses, bound them over in recognizances to ensure their appearance in court, examined the accused and committed him or her to gaol to await trial. This is what the law required. But Brocas also discharged almost half of those accused of felony. He did so, most commonly, in cases in which the accused had been charged merely on 'suspicion' of committing the offence (sometimes great or 'violent' suspicion) and on the grounds that the evidence against them was not persuasive.

There were no such cases in the charge books in the 1690s or the early years of the eighteenth century. It is, of course, possible that the attorneys who kept those books thought it unnecessary to note cases that had been dismissed, and that what we are seeing by Brocas's day is simply a decision to include them after all. But that seems unlikely. Such an explanation would have required an agreement among all four attorneys over many years and a consistency of practice that would have been at the least unusual. Nor are there suggestions in other records kept by the attorneys that the lords mayor in the 1690s felt free to discharge men and women accused of felony even if they thought the evidence weak.[72]

I labour this point because a process that resulted in the release of an accused felon marks a significant change in the nature of the preliminary hearing by the second quarter of the eighteenth century. It had become something more than a procedure to gather the evidence that would prove the guilt of the accused at trial. It is important to note that not all charges made on suspicion were thrown out. Brocas and other magistrates in 1730 sent a number of cases to trial in which the prosecutor could only say that he or she suspected the accused of committing the offence.[73] There must, therefore, have been a hearing—a form of enquiry into the nature and strength of the evidence that supported the prosecutor's belief in the defendant's guilt. And it is clear that such an enquiry, such testing of the evidence, allowed defendants to bring testimony of their own to counter the suspicion they were under. It is the holding of an enquiry—an enquiry that might end in defendants under suspicion being discharged or sent to trial—that seems to be new, going as it did far beyond the procedure envisaged by the Marian legislation and beyond the practices followed in the 1690s. That

[72] Apart from the formal Charge Book, the attorneys who sat with the lord mayor recording his business also kept a much rougher set of minutes, the main purpose of which seems to have been to note the work they did that brought them fees. One such book covers the period 1690–7. It consists mainly of notes of work done and the fees owing (or paid), some of which work was not included in the more formal Charge Book: the Fee Book, for example, includes notes of warrants issued by the lord mayor as he sat for magisterial business—warrants to authorize the arrest of a suspect or a search for stolen goods and the like—and it seems likely that they would include any work they did in the course of the magistrate's investigations into a felony case that ended with the discharge of the accused if that earned them a fee (CLRO: Charge Book, vol. 15).

[73] This is confirmed by the Old Bailey gaol calendars of 1730. They list every offender to be tried, the offence, the committing magistrate, and the grounds of the charge: on oath, on suspicion, and 'on oath on suspicion'—meaning presumably that the prosecutor swore merely that he or she suspected the accused of committing the offence.

Brocas and other magistrates enquired into the evidence offered by prosecutors who brought charges on suspicion is abundantly clear from the Charge Book. The discretionary pre-trial dismissal of accused felons was commonly justified by the weakness of the prosecutor's evidence or the strong character evidence offered in response on behalf of the defendant. Edward Viccarys, for example, who had been held overnight in the Wood Street Compter and who was brought before Brocas on suspicion of stealing a silver tankard from a public house, was discharged when he claimed to have left the table at which he had been sitting before the tankard was missed, and when several of his former masters appeared before the justice to give Viccarys 'a good character'.[74] Or John Bransford, brought in by a constable, having been charged by someone with 'a violent suspicion' of stealing a clock valued £4 from a church. The Charge Book records that 'no proof appearing to make out the fact ag[ains]t him and three severall persons appearing of good repute to his Character and giving him a very good one, he was disch[arge]d'.[75] Others were released when prosecutors were unable to prove the facts alleged, or, as in the case of Ann Anderton, when the victim of her alleged pocket-picking 'could neither say she was the person that pickt him up or that Stole his Watch on his examination of Oath'.[76]

Decisions of this kind explain why almost half the felony cases Brocas heard concluded with the accused being released without trial. This does not mean that all weak cases were now likely to be thrown out or that all of those dismissed deserved to be. But it does mark a significant change in the character and purpose of this stage of the criminal process; it was indeed a fundamental step towards what Langbein has called a 'judicialized' prosecution process.[77]

The alteration we have noticed, which expresses some apparent concern for the fair treatment of the accused in certain cases, made for a more complex procedure, and a more uncertain outcome, for those bringing charges. This may help to explain why it is in this period that the first signs appear of the intrusion of lawyers into the criminal process, beginning most significantly with the engagement of solicitors in the preparation of ordinary criminal cases. We will return to this, and to the broader matter of the changing involvement of lawyers in the prosecution and trial of felonies.[78] I point to it here only as part of a larger change in the prosecution process that might explain why the aldermen of the City were increasingly reluctant to take on the full burdens of the magistracy, and why that reluctance was apparently pronounced in the early decades of the eighteenth century. Their changing social pretensions may have contributed to their withdrawal, along with the competing demands on their time. But an equally crucial matter may have been the changing nature of their work.

[74] CLRO: Charge Book, 1728–33 (under date 7–8 December 1729).
[75] Ibid. (23 December 1729). [76] Ibid. (15 March 1730).
[77] Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 63.
[78] See Ch. 8; and Langbein, 'The Prosecutorial Origins of Defence Counsel in the Eighteenth Century', 314–65.

At any event, for whatever reason, so many aldermen had withdrawn from the work of criminal prosecution by the 1730s that the burden had been left almost entirely to one man. And when Sir Richard Brocas died, in November 1737, it was hardly surprising that no alderman stepped forward to take his place. The vacuum that Brocas's death threatened was filled by the aldermen agreeing to share the burden of the work. Within a week, the Court of Aldermen agreed that those among them who were justices of the peace would band together to take his place by each attending at the Guildhall for a day in turn to dispatch judicial business. In so doing, they brought a new regularity to the system of prosecution in the City by creating what was in effect the first magistrates' court in the metropolis.

THE GUILDHALL MAGISTRATES' COURT

Lords mayor had conducted their judicial business in the Matted Gallery in the Guildhall, as apparently had Brocas during the years in which he had acted virtually alone. The aldermen agreed that that was where they would now sit 'in rotation' from 11 a.m. to 2 p.m., Monday to Friday, assisted by a clerk and one of the four attorneys of the mayor's court. The town clerk prepared a rota, and by the middle of December, a month after Brocas's death, the new system was in place.[79] Since the magistrates were now sharing the burden of out-of-sessions judicial work equally, it obviously seemed sensible, and perhaps fair, that all the aldermen in fact be made magistrates. The staged increase in the number of aldermen who served as magistrates that had begun in 1638, and continued in the 1690s and in Anne's reign under the pressure of work, or as a consequence of their increasing reluctance to serve, came to its conclusion in 1740, when the City authorities petitioned the king to constitute all twenty-six aldermen as magistrates. The reason they gave was that the duties of justices of the peace had been so increased in recent decades by many acts of parliament that they had found it necessary to sit daily by turns, for—they added in a significant phrase—'the public administration of justice'.[80] That request was granted in the following year, and thereafter, roughly once every five weeks, each alderman acted as the sitting magistrate in what was known by the early 1740s as the 'justices' room' in the Guildhall.[81]

This was a magistrates' court in formation. It was not perhaps at first very different from the space that lords mayor had used for their magisterial work. But lords mayor had shown varying degrees of engagement in that work and there

[79] Rep 142, pp. 21, 29, 51, 72. The establishment of the rota on 6 December was noted in the *Gentleman's Magazine* 7 (1737), 763. It was celebrated by a resolution in the Common Council thanking the aldermen 'for their great Care and Pains in attending dayly for the Administration of Publick Justice' (CLRO: Misc. MSS 64.6). For the Guildhall magistrates court at mid-century and the institution of the 'sitting alderman', see Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 76–81.

[80] Rep 144, pp. 266, 286–91. [81] Rep 146, fo. 13.

could have been very little sense of continuity from one mayoral regime to another. With the creation of the rotation system in which the aldermen took turns to sit every morning, the court acquired a more permanent and more developed form, a set of practices shaped not by the personal habits of the lord mayor but the requirements of the work. The furniture and fittings and the routine of the office were gradually adapted accordingly. The 'court' was partitioned off in 1741 and, two years later, the aldermen agreed 'to beautify and sash' what was now referred to as 'the Justice Room at the end of the Matted Gallery'.[82] Within a few years, the court's routine was well established. The business conducted before 'the sitting alderman' was recorded by a clerk, and those minute books were kept in 'the closet in the justices' room' to enable magistrates who changed every day to peruse them if necessary.[83]

It is this 'room' that is illustrated in Plate 10 of Hogarth's *Industry and Idleness*, the scene in which Tom Idle is brought before alderman Goodchild, sitting as the rotation magistrate. As Langbein has shown, Hogarth's scene is idealized architecturally.[84] Some of the activity Hogarth depicted may also have been similarly constructed for artistic effect—particularly the strong impression we are given of confusion and disorder in the crowd milling about, some of the attendees perhaps merely curious, others waiting for their cases to be heard by the magistrate, or, as in the case of the several constables who can be identified by their staffs of office, waiting to give evidence. The crowd presses against the bar that separates them from the magistrate, the attorney keeping the record, and the clerk who administers the oath to Tom's accomplice (who is about to impeach him). There appears to be no arrangement to keep those waiting from pushing and crowding around while a case is being heard, or from creating what appears to be a considerable disturbance. We should not perhaps take all of that too literally. The crowd's indifference serves to focus our attention on Tom's plight and the distress of alderman Goodchild at having to commit his erstwhile fellow-apprentice to trial. But Hogarth is unlikely to have created such a scene if the Guildhall magistrates had not conducted their business in public; whether accurately or not, Tom's examination confirms the public character that the preliminary hearing had assumed in the City.

The court pictured by Hogarth was not created 'to relieve the overburdened Lord Mayor', as has been suggested.[85] Indeed, the new rotation system indirectly restored the lord mayor to a leading role among the City magistrates. The

[82] Ibid. That order was modified when the aldermen decided that it would be enough to whitewash and clean the room and the Gallery, but not paint them (Rep 147, fo. 331).

[83] Rep 152, p. 116.

[84] 'Shaping the Eighteenth-Century Criminal Trial', 78, where he cites architectural drawings to reveal that the gallery had only a thirteen-and-a-half foot ceiling 'which could not have accommodated the double gallery' pictured by Hogarth.

[85] [P. E. Jones] 'The City Justices and Justice Rooms', *Transactions of the Guildhall Historical Association*, III (privately printed, 1963), 36 [copy in the CLRO]; cited by Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 77, n. 292.

lords mayor were at first included in the rotation in the Guildhall magistrates' room. But they returned to a more independent and more fully engaged role than this allowed when the Mansion House was opened in the middle of the century. This had been built at public expense as the lord mayor's residence during his year in office—the house in which he would live, work, and entertain, and that was required because many of the aldermen no longer lived in the City. It is of the greatest significance as an indication of the way the preliminary hearing conducted by magistrates was changing by the 1720s that when the Mansion House was opened it included a 'cause room', later known as the 'justice room', which was to look very much like a courtroom.[86] It was agreed soon after the Mansion House opened that the lord mayor would hear cases that arose east of King Street, and the aldermen sitting daily as magistrates in the Guildhall would deal with those from the western half of the City.

Between the first suggestion in 1728 that a Mansion House be built and its opening in 1753 another courtroom for magisterial work had been constructed in the metropolis—built by Thomas De Veil in the house he moved to in Bow Street in 1740 and made famous by the Fieldings who succeeded him in both the house and the role as leading Middlesex magistrates.[87] It is revealing of the changing nature of the preliminary hearing in the second quarter of the eighteenth century that both the justices in the City and the most active, crime-fighting magistrates in the area around Covent Garden to the west of the City thought it necessary to create structures for this work that were in effect courtrooms. It suggests just how much that stage of criminal procedure in the metropolis was becoming more actively a source of investigative and prosecutorial energy. That was developing most clearly in Bow Street. The City would never develop the kind of active, prosecuting magistracy that emerged in Middlesex under the inspiration of De Veil and the Fieldings. Given the system of rotating magistrates manning the Guildhall justice room, and a mayor who changed every year sitting for criminal business at the Mansion House, it was impossible for the kind of focused and professional magisterial corps that developed elsewhere in the metropolis by the end of the century to take root in the City. In any case, the City authorities would have resisted—as they revealed in the debates over the creation of a new form of police—any surrender to an outside authority of their ancient rights to govern themselves. None the less, the City magistrates felt some of the need to make their prosecution procedures more effective, even though the balance of criminal prosecutions swung away from the City in the middle decades of the century.[88]

[86] I owe my knowledge of the history of the justice room in the Mansion House to Sally Jeffery, who has written its complex architectural history (*The Mansion House*, 1, 15, 205, 214–17).

[87] For the system of pre-trial developed by the Fieldings at Bow Street, see especially Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 55–76.

[88] See Ch. 8.

It seems certain that the changing demands on magistrates in the metropolis by the 1720s persuaded those who planned the Mansion House—as it persuaded the prosecution-minded De Veil and the Fieldings—that their work could best be conducted in a court-like setting, a court that separated and provided space for the main actors: for the victim, witnesses, the accused, and the clerical staff. The impulse to conduct such an enquiry was evident before magistrates' courts were built. But the form of the institution—as it is illustrated, for example, in Sir John Fielding's Bow Street court in 1779—did surely make such an enquiry easier to conduct compared to the less-structured process it must have been earlier.[89] Fielding's room may or may not be accurately rendered, but the main features of its uses as a court are likely to be broadly correct. Sir John is shown sitting in an armchair at one end of the room, with four of his fellow magistrates and a clergyman. A clerk sits at a table in front of them. The accused stands at some distance behind a bar, with what appears to be a fashionably dressed audience on either side (though some of them may be prosecutors and witnesses and one appears to be holding a constable's staff). Other members of the public are in a gallery on one side the room.[90]

What is being illustrated in this engraving is a weekly session held every Wednesday at the Bow Street court at which Fielding and other magistrates conducted a second examination of prisoners who had been committed during the previous week. As Fielding explained, the funds provided by the government supported the attendance of at least one magistrate at the Bow Street court every day between 10 a.m. and 2 p.m., and 5 p.m. until 9 p.m. On Wednesdays, however, 'three or more Justices' sat between 10 a.m. and 3 p.m. to hold a petty session and 'to re-examine all such Prisoners as have been committed in the preceding Week . . .'.[91] Such re-examinations could have several results. Bringing the prisoners back to the court, however briefly, must have helped to clear up other offences and at the same time, if other victims of these defendants came forward with further charges, to bolster the prosecution's chance of success when the trials came on at the Old Bailey.[92] A critic who thought this procedure unwarranted and illegitimate, William Augustus Miles, claimed that Fielding valued it simply as an opportunity to demonstrate his skill as an examiner before

[89] *The Malefactor's Register; or, The Newgate and Tyburn Calendar*, 5 vols. (1779), iii. frontispiece (reproduced in Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 74).

[90] On the Fieldings' work in Westminster, see Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 60–76; Radzinowicz, *History*, iii, chs 1–2; Babington, *A House in Bow Street*, 50–1 and figs 9–12; John Styles, 'Sir John Fielding and the Problem of Criminal Investigation in Eighteenth-Century England', *Transactions of the Royal Historical Society*, 33, 5th ser. (1983), 127–50; *idem*, 'Print and Policing: Crime and Advertising in Eighteenth Century Provincial England', in Hay and Snyder (eds.), *Policing and Prosecution*, 55–112.

[91] Sir John Fielding, *Extracts from such of the Penal Laws as Particularly relate to the Peace and Good Order of this Metropolis* (new edn., 1762).

[92] Langbein has pointed out that the public pre-trial proceedings developed by the Fieldings at Bow Street was intended to help in the gathering of evidence, with the 'clearing' of other crimes by the same accused, and with the recovery of stolen goods ('Structuring the Eighteenth-Century Criminal Trial', 60–7).

an audience; and, at the same time, as an opportunity to discover the defences that prisoners would put forward at their trials so as to forewarn their prosecutors and improve the chances of defendants being convicted.[93]

Fielding's own account emphasized the value of the re-examinations to the prisoners, since it gave them time to produce their own witnesses who might persuade the justices that the prosecutor's evidence was flawed or that there were other reasons why they should not be 'unwarrantably precipitated into Trials for Fraud or Felony . . .'.[94] And in light of the increasingly judicialized character of preliminary hearings in the eighteenth century (about which Miles appeared to have no knowledge), Fielding's explanation of the value and purpose of a second hearing is persuasive. Indeed, the process of re-examining the accused as a way of balancing the disadvantages under which those who were charged with felonies had laboured under the terms of the Marian bail and commitment statutes gave institutional form to changes that had occurred in magistrates' practice over the previous forty years. The court settings in which pre-trial hearings were being held by the second half of the century, settings that not merely allow the public to observe the first stage in criminal prosecutions but positively invited an audience by making provision for seats and galleries, encouraged more open forms of justice that helped to change some of the assumptions about the rights of the accused under the law that had hitherto structured the trial. Certainly, the court setting made it possible for the accused to be more easily accompanied by lawyers and to have the benefit of legal counsel as they answered the charges brought against them and sought to have them dismissed. It is in the period in which such courts were taking shape that the first evidence appears in London of solicitors helping their clients to prepare for trial—solicitors for both the prosecution and the defence. At the same time, a number of prosecutors and defendants were acquiring the assistance of barristers at the trial itself.[95]

By mid-century magistrates' courts were well established in London, both in the City and in Bow Street. The number of such institutions was further increased with the establishment of two new 'rotation offices' in the 1760s. The culmination of this expanding network of courts came in the Westminster Justices Act of 1792, which created seven 'police offices' manned by professional—'stipendiary'—magistrates who took all preliminary hearings concerning criminal offences into their own hands.[96]

[93] William Augustus Miles, *A Letter to Sir John Fielding, Knt, occasioned by his extraordinary Request to Mr Garrick for the Suppression of the Beggars Opera* (1773), 19–23.

[94] Ibid., 7.

[95] Beattie, *Crime and the Courts*, 278–9; Langbein, 'Prosecutorial Origins of Defence Counsel', 314–65; and see below, Ch. 8.

[96] Radzinowicz, *History*, iii. chs 2, 4–5; Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 55–76, 81–4; Philips, 'A New Engine of Power and Authority', 168–71; Paley, 'The Middlesex Justices Act of 1792', *passim*.

The City did not adopt the stipendiary system. Its aldermen/magistrates continued in the more traditionally passive role with respect to criminal prosecutions followed by most magistrates outside the metropolis. In part, the City was able to maintain its own practices because its magistrates were not faced by the crushing load of business that increasingly confronted the Westminster and Middlesex justices. More important, however, was the City's sense of its uniqueness. It had pioneered procedures that continued to work well because they demanded only occasional work from its twenty-six aldermen—roughly one day a month. It remained aloof from developments in other parts of the metropolis because it had developed—in part by accident—a form of magisterial practice that worked well enough in the circumstances of the second half of the century. The City's refusal to join with others was not simply a matter of a privileged enclave clinging desperately to an ancient and antiquated institution. Rather, it was the sense that what had emerged in the first half of the century was working satisfactorily enough and fitted the public's needs. It was not a refusal to change but the result of change that led the City authorities to take this view. It was a position they would take on a number of other policing issues.

CHAPTER THREE

Constables and Other Officers

THE CITY CONSTABLES

The forces charged with keeping order in the City of London consisted of constables, the night watch, the beadles, and the City marshals. The beadles—generally speaking one in each ward—and the two marshals, who were helped by a half dozen marshalsmen, were paid and uniformed, and to some extent experienced, in that they tended to continue in office from one year to another. The watchmen, beadles, and marshals were charged with a range of duties, but their principal tasks centred on maintaining order in the streets, controlling vagrancy, prostitution, and begging, and preventing disorderly behaviour in general. The main body of official peace-keepers were the constables. In 1660 they were expected to be neither paid nor experienced, but ordinary citizens, serving for a year in turn, fulfilling the obligations defined in the Statute of Winchester (1285)—or rather the separate statute passed at the same time and to the same effect for the City of London, under which every male housekeeper (except the elderly and very poor, since they might be easily intimidated) was ordered to take a turn to police his community.[1]

Although they had the authority to act anywhere in the City,[2] the constables were ward officers, and most of them almost certainly confined their activities within their wards. Indeed, they were, even more narrowly, precinct officers.[3] By an arrangement of long standing, enshrined in custom, each precinct elected its own constable, or in the case of some of the larger precincts, more than one. In theory, each male householder, except those in receipt of alms, took his turn to perform a year of service.[4] The election took place at a meeting of the inhabitants of the precinct, or of the parish vestry in cases in which parish and precinct were close to being coterminous. The number of constables in each of the City's

[1] 13 Edw. I, stat. 5. [2] Jor 45, fos. 425–7 (act of the Common Council, 1663).

[3] For precincts in the City, see Sidney and Beatrice Webb, *English Local Government from the Revolution to the Municipal Corporations Act: The Manor and the Borough* (1908), 586–93; Valerie Pearl, 'Change and Stability in Seventeenth-Century London', *London Journal*, 5 (1979), 15; Alice E. McCambell, 'The London Parish and the London Precinct', *Guildhall Studies in London History*, 11/3 (1976), 107–24.

[4] In the early seventeenth century constables were supposed to be elected for two years, but the second year could easily be avoided. After 1660 at least three parishes retained the two-year service obligation (GLMD: MS 635/1, fos. 83–4, 111; MS 4056/1; MS 5039/1), though the fine to be excused the second year (£1–£3) was lower than the cost of avoiding the one-year period of service that was common in most wards.

twenty-six wards was thus largely determined by the number of their precincts, and by the late seventeenth century that bore no relationship to the size of the ward or the population to be served. The number of constables varied from the two in Bassishaw to eighteen in Farringdon Without—and varied too in what one might call the 'coverage' they provided, the population or the area they served. Because the wealthier, longer settled, and more stable wards in the 'inner City' tended to contain a large number of small precincts, they were served by (and were required to provide) more constables per head than the more mixed and more populous wards outside the central area. They were better policed, certainly, than the large wards outside the walls which had not developed the finely graded political structure of the more ancient parts of the City as their populations increased rapidly in the late seventeenth century and after.[5]

The wide differences in policing that these arrangements produced are shown in Table 3.1, which lists the established number of constables in the City after 1660, as set out in an act of Common Council, along with an estimate of the number of houses in each ward made much later but accurate enough in broad terms to reveal the great disparity in the distribution of constables. The differences across the City are striking, ranging as they do from the twenty-five houses per constable in Bread Street to the several hundred in the wards outside the walls. Virtually all the wards designated by De Krey as being in the 'inner' core head the list: indeed, the nine wards with the fewest houses per constable were all clustered at the centre of the City, and the remainder of the 'inner' City wards and all those in the 'middle' group had much lower rates of houses per constable than the five outside the walls. If the constables chosen for the year actually did the work they were supposed to do, the inner City would seem to have been very well served. It should have been relatively easy to find a constable in the wards of Bread Street or Bridge, for example, in which precincts averaged just a few dozen houses, somewhere perhaps between a hundred or two hundred people.[6] And having found a constable, it was perhaps easier in a small ward to get him to respond to problems since he would be likely to know the people involved. This is no doubt what a man who was helping a victim of a robbery meant when he said that he 'could get a Constable presently, for [he] was known thereabouts'.[7] In Cripplegate Without, on the other hand, in which four constables were raised in a ward that contained close to 2,000 houses in 1741, or in the other wards outside the walls, the situation was entirely different. Those seeking constables in an emergency in those wards would have faced a more difficult task.

[5] For the inner, middle, and outer divisions of the City (based on De Krey, *A Fractured Society*, 171–6), see above, Ch. 2, text at n. 32.

[6] For an analysis of the social order in a wealthy inner-City parish, see Peter Earle, *The Making of the English Middle Class: Business, Society and Family Life in London, 1660–1730* (London, 1989), 244–8.

[7] OBSP, April 1737, p. 107 (Moreton).

TABLE 3.1. *Distribution of constables by wards in the City of London, 1663*

Ward	Number of precincts[a]	Number of constables[a]	Number of houses[b]	Houses per constable
Aldersgate Within	4	4	426	106.5
Aldersgate Without	4	4	609	152.3
Aldgate	7	6	1,089	181.5
Bassishaw	2	2	142	71.0
Billingsgate	9	11	398	36.2
Bishopsgate[c]	7	7	2,038	291.4
Bread Street	13	13	331	25.5
Bridge	14	14	385	27.5
Broad Street	10	10	785	78.5
Candlewick	7	7	286	40.9
Castle Baynard	10	10	784	78.4
Cheap	9	11	367	40.8
Coleman Street	6	6	611	101.8
Cordwainer	8	8	367	45.9
Cornhill	4	4	180	45.0
Cripplegate Within	9	9	748	83.1
Cripplegate Without	4	4	1,946	486.5
Dowgate	8	8	369	46.1
Farringdon Within[d]	16	18	1,368	76.0
Farringdon Without[d]	18	23	4,278	186.0
Langbourn	12	12	530	44.2
Lime Street	4	4	209	52.3
Portsoken	5	5	1,385	277.0
Queenhithe	9	9	488	54.2
Tower	10	12	782	65.2
Vintry	9	9	418	46.4
Walbrook	7	7	306	43.7
Total	225	237	21,625	91.2 av.

Notes:

[a] Source: Act of common council 1663: CLRO: Alchin MSS, E/57

[b] Source: John Smart, *A Short Account of the Several Wards, Precincts, Parishes, etc. in London* (1741)

[c] Bishopsgate Within and Without together

[d] Including attached Liberties.

The imbalance in numbers of constables among the wards proved difficult to correct so long as the basis of service remained the obligation of eligible householders to hold the post for a year in turn. The obvious problems that this caused in the faster growing wards led the court of aldermen to add a few additional constables at several points in the seventeenth century: in 1642, 1679, and 1688, for example—all, perhaps significantly, years of political crisis and threatened violence in the streets.[8] But it proved difficult to increase the number of

[8] Rep 40, fo. 48; Rep 85, fo. 19; Rep 93, fo. 46.

constables across the board in the eighteenth century, even in the face of an increased burden of work, so long as the basis of service remained the obligation of a fixed number of inhabitants to accept the office for a year. When the aldermen contemplated such a general increase in 1737, following changes in the night watch which had some effect on the constables' duties, the legal advice they received discouraged them from altering the customary arrangements. Thomas Garrard, the common serjeant, was asked whether the Common Council could appoint 'a greater number of Constables to be Elected in any ward than they have been used to elect. Or how and in what manner and by what authority may the present number of Constables in all or any of the wards be Encreased.' Garrard's reply was discouraging. 'The power of appointing Constables by a Corporation', he wrote, 'must arise from Custom or Charter and as the Charter is silent in the present case, I have searched the Books of the Common Council and Court of Aldermen to see whether there be any Custom to this purpose.' He had found the three occasions on which the number of constables had been increased slightly in the seventeenth century, but concluded that these 'precedents are modern and as I conceive not sufficient Evidence to support a Custom'. The issue for Garrard came down to the legal basis upon which service as a constable—or payment in lieu—could be enforced. If the number was increased and a man refused to serve, 'how will he be compelled if not Elected according to Custom, for in an indictment against him it must be alleged that he was duely chosen, which cannot be true in fact . . .'.[9]

Garrard's conclusion was that the authority to increase the number of constables could only be acquired by an act of parliament that could alter the basis upon which the constabulary was raised and supported. For reasons that remained unstated, no such general solution was sought, even though the City obtained statutes in just this period to create new financial structures for the support of the night watch and of the system of street lighting, as we will see in the following chapter. One can only speculate that a force of constables, supported by taxes and thus capable of being enlarged at will, was more likely to produce anxieties about the power of government than a force of paid watchmen, who commanded no power to intrude and harass.[10] And that may have been particularly the case in 1737, considering the way that Walpole's Excise Bill had been received four years earlier. That legislation had been vehemently opposed in part because of the prospect it seemed to threaten of an increased number of excise officers in the country and thus an extension of the power of the executive, and what was conceived as a massive increase in the government's patronage and power to corrupt. The opposition to that threat was supported, indeed led, by 'country' opinion in the City, and it is certain that the same opposition forces inside and outside the metropolis would have pounced on any

[9] CLRO, Misc. MSS 141.8. [10] For watchmen, see below, Ch. 4.

suggestion that the governors of the City were looking for ways to enlarge their own authority and indirectly the authority of the Walpole government.[11]

Without legislation the body of constables could only be increased by less-direct means. As we will see, a number of salaried officers were appointed for specific purposes—particularly traffic control—and given the power of constables to enable them to carry out their duties; and a few so-called 'supernumerary' constables were also appointed.[12] But in the seventeenth and early eighteenth centuries the core of the City's constabulary remained fixed at the 230 men elected in the wards and another seven or so elected in a number of liberties, areas attached to wards but not technically part of them.

For the most part, these constables were amateur and short term. They received no training, no official preparation. But of course they were not modern policemen, who have taken on most of the tasks that were shared among a variety of officials in the seventeenth and eighteenth centuries, and a lot more besides. Nor was it a full-time job. In addition, a householder elected as constable for his precinct would almost certainly have served in other parish and ward offices—as a churchwarden, member of a vestry, juryman, and the like—and thereby have acquired some familiarity with the workings of the criminal justice system and the details of local administration, as well as the nature of his own community. New constables would also have been broadly familiar with the duties of the office—more familiar, certainly, than the average citizen today knows about the real work of the police—because they would have known relatives and neighbours who had served before them.

In addition, since most constables were elected for relatively small areas, an artisan or shopkeeper who had lived all his adult life in one of the central wards of the City and who was taking up the office for his year of service is likely to have acquired a general sense of its obligations—how much needed to be done and how much could be avoided—from seeing other constables at close quarters. To the extent that such local knowledge was insufficient, or for those concerned about their powers and duties, a new constable could buy a handbook that set out those matters, a guide similar to the kind of handbook that justices of the peace were able to acquire, when—as equally unprepared—they came into their office. Indeed, a new constable might well have acquired such a handbook already, for the late seventeenth century guides typically set out the duties of several parish officers—churchwardens, overseers of the poor, and scavengers, as well as constables—in the expectation that a householder of any substance would be likely to have need of such guidance several times in his life.[13]

[11] Paul Langford, *The Excise Crisis: Society and Politics in the Age of Walpole* (Oxford, 1975); Rogers, *Whigs and Cities*, pts I–II.

[12] CLRO, Misc. MSS 64.4 (William Stewart to the town clerk, 23 January 1722/3).

[13] Constables could learn about their duties and authority from handbooks, easily carried in the pocket, several versions of which were published from the late sixteenth century. The earliest was by William Lambarde, *The Duties of Constables, Borsholders, Tythingmen, and such other lowe ministers of the peace* (1583). Several handbooks were published in the late seventeenth century, including that by George

Significant changes in the law or orders from the Court of Aldermen were communicated to the City constables in two ways: copies of important statutes were distributed to them by the beadles; and at the annual meeting of the wardmote, which they chaired, the aldermen occasionally spoke to new constables about developments that had implications for their work.[14]

The citizen's unpaid service remained the basis of policing in the century after the Restoration, and many householders continued then to fulfil their obligation to serve in the office for a year. There were to be some changes, however, in the kinds of men willing to take on the post, as a consequence in part of changes in the policing tasks in the City. These were most directly a product of a growing metropolitan population and an enlarging economy—simply more people, more coaches, more horses and wagons, more goods, more traffic generally. They were also a consequence of the periodic intensification of problems that had a direct bearing on policing concerns: public order issues arising from political divisions and economic conflicts; vagrancy and begging and other visible manifestations of poverty and inequality; and crime and violence, anxiety about which, as we have seen, increased at several points in the late seventeenth and early eighteenth centuries. Such concerns fluctuated over time, but tended to increase in the metropolis as the population grew, particularly in the last decades of the seventeenth century. And although the rate of growth gradually stabilized in the City itself after 1700, the virtual doubling of the larger metropolitan population over the course of the eighteenth century could not but have had an impact on the City too. An increasing need for policing was also a product of changing expectations of what such a service should provide, and the enlarging ambit within which policing forces were expected to work. As a consequence of the growth of the economy, of consumption and leisure activities, the public space expanded over which it was thought necessary to exercise some control; new tasks multiplied for those charged with policing the streets, especially after dark, when the hours of legitimate business were extended beyond the nine or ten o'clock curfews that might have been expected in the early seventeenth century.[15]

Meriton, *A Guide for Constables, Churchwardens, Overseers of the Poor* . . . (1669; reprinted frequently over the next fifteen years, reaching its eighth and final edition in 1685). This was replaced by R[obert] G[ardiner], *The Compleat Constable, Directing Constables, Headboroughs, Tithingmen, Churchwardens, Oveseers of the Poor, Surveyors of the Highways and Scavengers in the duty of their several offices* . . . (1692; 2nd edn., 1700; 6th edn., 1724; 7th edn., 1725). There is another version dated 1692, not said to be by R.G., but identical in every other respect with those that are. A rival guide was published by [J. P. Gent], *A new guide for Constables, Headboroughs, Tything-men, Church-wardens* . . . (1692; with further edns. 1700 and 1705), but not many copies of any of these editions seem to have survived, so it may not have been as popular as *The Compleat Constable*. Later guides include Joseph Shaw, *Parish Law, or, a Guide for Constables* (1733; 9 edns. through 1755), and those by Saunders Welch, John Fielding, and Patrick Colquhoun, noted below.

[14] Rep 106, p. 156; Rep 105, pp. 335–6, 468; Rep 118, fo. 419. For the beadles' distribution of important information in the City, see below, p. 165. At the Bishopsgate wardmote of 21 December 1737 the alderman ordered that a recently enacted Watch Act that added considerably to their duties be read to the new constables (GLMD, MS 2428/1).

[15] See Ch. 4.

How effectively the City constabulary carried out this work is difficult to judge. Contemporary testimony—stray complaints about individuals in the late seventeenth century and early years of the eighteenth, more generalized criticism of the system as a whole after mid-century—was mainly negative, and did much to colour historical work on the policing of London before Peel.[16] In recent years, however, as more extensive research has been undertaken, there has been more emphasis on the ways in which the established system had been adapting over a long period to new circumstances and expectations. I hope to build on this work, and in this and the subsequent chapter to probe innovations in London policing in the seventeenth and eighteenth centuries, their consequences, and the way changes were shaped by the available resources, and by the economic and political circumstances and the broader culture in which policing functioned. To that end, I begin in this chapter with the constables of the City, investigating first their duties and authority, and going on to examine the kinds of men who served in the post. We will conclude with brief considerations of the work of two other officers who shared peace-keeping duties in the City with the constables: the marshals and ward beadles.

AUTHORITY AND WORK

The constable's oath imposed obligations and granted powers which derived both from the common law and a wide range of statutes.[17] His most general obligation was to preserve the peace in his neighbourhood by preventing infractions that might lead to its being breached, and by calming situations in which they had already taken place. As Saunders Welch said in his guide to the duties of his fellow constables (written after he had served as high constable of Holborn for many years) it was their duty 'to secure and protect the innocent from the hands of violence; to preserve the public peace to the utmost of your power, and to bring the disturbers of it to condign punishment'.[18] They were expected to keep their precincts under surveillance, not so much by daytime patrolling—that was more the job of the ward beadle and the City marshals—as by a more general oversight over their neighbourhoods, and by reporting behaviour that it was taken for granted would lead men into crime if it was not checked. It was not just a matter of rhetoric but of profoundest belief that immorality inevitably led men into crime to support their bad habits. It was part of the constable's duty to help to prevent this bad behaviour. A constable would also be expected to respond when called upon by someone who had been the

[16] For work on the police of London in the eighteenth century, see Ch. 2, text at nn. 11–15.

[17] See, Kent, *English Village Constable*, 19–20; and ch. 2, *passim*, for an excellent analysis of the derivation and scope of constables' powers. For eighteenth-century London constables in particular, see the *Treatise on the Office of Constable* by Sir John Fielding in his *Extracts from such of the Penal Laws as particularly relate to the Peace and Good Order of this Metropolis* (new edn., 1762, pp. 321–67; from notes left by Henry Fielding), and Saunders Welch, *Observations on the Office of Constable* (1754).

[18] Welch, *Observations on the Office of Constable*, 3.

victim of a serious offence to take the person accused before a justice. To this end, the constable wielded authority not available to ordinary citizens in ordinary circumstances—powers to arrest and imprison, and to break into houses in carrying out his duties. In addition, he had the authority to interfere in disturbances and assaults, and to command those involved to remove themselves. He could arrest people he suspected of evil living or being a threat to good order—those, for example, who 'walk in the Night and sleep in the Day', as a constables' handbook put it.[19]

In practice, there was a good deal of ambiguity about how such power should be exercised. Constables were advised to act with discretion. Sir John Fielding provided advice about avoiding charges of false imprisonment and unlawful arrest; Saunders Welch added cautions to his account of constables' powers about how and when they should be exercised, leaning towards the view that prudence was the best policy. Welch advised against arresting men involved in an affray once the altercation was over, for example, and against interfering in squabbles in alehouses between persons 'giving verbal abuses very common with people heated by liquor'. It was lawful for a constable to use force to put down a riot, but he cautioned against using force except 'absolutely in your own defence'. In general, his advice to constables was not to 'do all you may do, but always do what you ought to do'.[20] That could hardly have cleared up any confusion constables may have had about the extent of their powers in particular situations. And the assurance of the City's support against law suits which the aldermen issued from time to time in laying new duties on the constables is likely to have reinforced their reluctance to become too enthusiastic about upholding the law.[21]

The constables' obligation to take action when a serious offence occurred derived from their ancient role as leaders and spokesmen of their communities. But by the late seventeenth century their role in the administration of the criminal law had been enlarged and defined by a host of statutes, as they had become officers of the Crown and agents of the magistrates. The constables of the City exercised their powers at the command of the lord mayor and the Court of Aldermen, in effect under the bench of magistrates. But constables could choose to a considerable extent how actively they would engage in many of the tasks that might come their way, and unless they lived in a turbulent neighbourhood, they could almost certainly keep their heads down and avoid too much trouble if they so chose. Like every other official in a system of criminal justice in which

[19] *The Compleat Constable* (London, 1692), 15.

[20] Fielding, *Treatise on the Office of Constable*, in *Extracts from the Penal Laws*, 321–67; Welch, *Observations on the Office of Constable*, 6–10.

[21] An order requiring constables to put the law against vice into effect in 1693 assured them that they would have the 'protection' of the Court of Aldermen in this work (Rep 97, pp. 153–61). For constables being defended against suits for unlawful imprisonment and other charges, see Rep 95, fo. 327; and SP 44/81, p. 344.

oversight and accountability were not exercised effectively at any level, they had a good deal of discretion as to how and when they used their authority. They could be held accountable for something done illegally, and they could be fined for negligence in particular cases,[22] but they were not easily punished for general inactivity.

They also had to live in their precincts when their year of service was over, a consideration that was likely to have made most of them reluctant to take too aggressive a role as a prosecutor of unlicensed alehouses, of prostitution or other immorality, or indeed of any offence that did not have an identifiable victim. Most would have avoided making enemies in their neighbourhoods in the way John Beese did in 1700 by his active support for the campaigns against vice and immorality. As constable of St Sepulchre's (a rich area for such activity), Beese was obviously out on patrol when he found William Knowles drinking at 1 a.m. in a public house. Asked what he was doing, Knowles said he was 'drinking a pot of drink', and he went on to tell Beese that 'he was a blockhead and a rascall for asking him . . . and he would spend five hundred pounds to ruin him and doe his business after his time was out'—that is when he was no longer a constable.[23]

Such resistance did not need to be as aggressive and threatening as this to discourage constables from too much activity since they must have understood that there was a limit to the interference in local life that would be tolerated in a community. Officious busybodies—too much throwing around of weight—would not likely be admired, no matter what or who was the target.[24] As Wrightson observed of an earlier period, there was an inevitable tension between the demands of the office—and the orders handed down by the City government, the central government, or the Old Bailey bench—and the limits on action that the constables' membership in the community imposed.[25] In the circumstances, it is likely that most newly elected constables did not look for trouble—an attitude suggested by the regularity with which the Court of Aldermen repeated the order that constables should place their staffs of office or a painted lathe outside their doors to identify themselves, 'according to ancient custom'.[26]

The mayor and aldermen thus frequently found it necessary to encourage

[22] Joan R. Kent, 'The Centre and the Localities: State Formation and Parish Government in England, 1640–1740', *Historical Journal*, 38 (1995), 373–4.

[23] CLRO: London Sess. Papers, August 1700.

[24] John Disney (who was anxious for constables to put the laws against vice and immorality into effect) observed in the early eighteenth century that constables were 'afraid of being strict upon the Faults of the Neighbourhood lest they should lose the good Will of their Neighbours, and expose themselves to the Revenge of those that are to succeed them' (*A Second Essay upon the Execution of the Laws against Immorality and Prophaneness* (1710), 154–5, quoted in Tim Harris, *London Crowds in the Reign of Charles II: Propaganda and Politics from the Restoration until the Exclusion Crisis* (Cambridge, 1987), 21).

[25] Keith Wrightson, 'Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-Century England', in John Brewer and John Styles (eds.), *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries*, 21–46; and see also Clive Emsley, *The English Police: A Political and Social History* (1996), 11–12.

[26] CLRO: P.D. 10.73 (1661); Rep 97, p. 141; Rep 104, p. 95; Rep 123, fo. 347.

constables to enforce the law more conscientiously—especially when they themselves were under pressure from grand juries or reforming groups in the City or from the central government to do something about a perceived increase in crime or immorality. A proclamation by the lord mayor in 1676, for example, about 'manifold Corruptions, Abuses, and Disorders, which have in and of late times more exceedingly increased upon us', was addressed to 'the Citizens and Inhabitants in general' to urge them to avoid such evils, but particularly to constables and other officers whose duty it was to put the laws into execution. The proclamation was a catalogue of the vices and immoralities prohibited by numerous statutes: cursing and swearing; profanation of the Lord's day by illegal trading or working, or by playing at games, or tippling in taverns, or sitting in coffee-houses during divine service; keeping bawdy houses and gaming houses; prostitution; drunkenness; vagrancy and begging. It pointed to numerous other problems visible in the streets, including the dangers created by inhabitants who failed to clean in front of their houses or to put out a candle at night. Constables were named throughout as the officers most responsible for enforcing the law. The mayor's proclamation reminded them to make themselves known by mounting their staffs at their street doors, and ordered them to remain at home as much as possible 'or leave other fit and able persons to perform their Office in their Absence'.[27] It also reassured constables that if they were 'resisted or affronted or abused' in doing their duty they would be supported by the Court of Aldermen and their attackers prosecuted.[28]

Reminders of the laws in force against vice and immorality and of the central role of the constable in putting them into effect were to be repeated on numerous occasions in the years after the Revolution of 1689, when a powerful movement for the reformation of manners was generated in the metropolis and engaged the support of William and Mary and then Queen Anne. Royal proclamations urging greater activity to counter the menace of blasphemy, immorality, and crime were reinforced by grand jury presentments that returned frequently to themes increasingly familiar through the 1690s and into Anne's reign: that God's favour, manifest in the Revolution, would be sorely tested by continued immorality and irreligion; and, more narrowly, that such immorality would certainly result in a deluge of the most serious criminal offences. In response, the Court of Aldermen published annual proclamations condemning lewdness and debauchery, outlining yet again the laws on the books that made such behaviour subject to fines and other punishments, and requiring yet again the City's officers to do their duty. All of these declarations make it clear that constables were expected to be at the sharp end of the enforcement of these laws. Again and again they were instructed to prevent people drinking or

[27] Men were regularly excused from serving as constables on the grounds that their work took them from home during the day. Edward Cheeseman was allowed by the Court of Aldermen to decline his election because he was a 'Carpenter by Trade and is all day abroade' (Rep 104, pp. 158–9).

[28] CLRO: P.D. 10.64.

trading on Sundays, to search out the immoral, to deal with vagrants and beggars, to report unlicensed drinking places, to send in monthly lists of offenders to be prosecuted, and so on.[29] The message is clear: as a reformation of manners pamphlet said in 1701, the 'Constables have great Power for the suppressing of Prophaneness and Debauchery' if only they would trouble to exercise it.[30] In the middle of the eighteenth century Saunders Welch continued to remind constables that it was their duty to suppress a range of immoral behaviours that could lead the unwary into trouble, waste the time and money of young men in particular, and result in their falling into crime.[31]

Constables were also expected to regulate many other forms of disreputable or dangerous or simply inconvenient behaviour in the streets of the City. Such problems varied from ward to ward and time to time, but difficulties surrounding traffic in the streets was common to many parts of the City, especially where concentrations of pedestrians met heavy concentrations of coaches and wagons. The regulation of street traffic had been of concern to the governors of the City for a very long time; certainly in the sixteenth century efforts were being made to regulate cart and other traffic in the central wards of the City.[32] But the problems on the streets of London had become particularly difficult with the expansion of the metropolis in the seventeenth century, with the growth of commerce and the increasing numbers of wheeled vehicles and horses—hackney cabs and private coaches, large wagons for transporting goods, carts of all kinds and sizes—and, along with all the traffic, the increasing crowds of pedestrians attracted to the principal streets as shops and places of entertainment multiplied. Rudimentary ways of separating foot traffic from horses, carts, and coaches—by bollards, to mark one space off from the other and, in some places, raised sidewalks—helped to make the streets safer for pedestrians by the beginning of the eighteenth century. But, as every visitor testified, London streets remained crowded and often chaotic, even dangerous.

All of this put pressure on those who were primarily responsible for keeping order, particularly the constables. The Common Council issued orders to regulate cart traffic or to limit the number of coaches in 1654, and again after the

[29] Jor 51, fo. 105; Rep 95, fo. 310; CLRO: London Sess. Papers, December 1692 (grand jury presentment); Rep 97, pp. 153–61; CLRO: P.A.R. Book 5, fo. 5 (printed order of the magistrates of the City at the sessions of the peace, 10 January 1700/1). Copies of a precept issued by the lord mayor on this subject were distributed to the houses of all constables in 1687 (Rep 92, p. 165).

[30] *The Oath of a Constable, so far as it relates to his Apprehending Night-Walkers, and Idle Persons, and his Presenting Offenses contrary to the Statutes made against unlawful Gaming, Tipling, and Drunkenness, and for the Suppressing of them* (1701). See Shoemaker, *Prosecution and Punishment*, ch. 9; and Faramerz Dhabiowala, 'Prostitution and Police in London, *c.*1660–*c.*1760', D.Phil. thesis (Oxford, 1996), on the enforcement of the vice laws and the role of constables, some of whom took up the cause of reform seriously, out of conviction and perhaps financial self-interest.

[31] Welch, *Observations on the Office of Constable*, 23, 27.

[32] Ian W. Archer, *The Pursuit of Stability: Social Relations in Elizabethan London* (Cambridge, 1991), 52; Mark Jenner, 'Early Modern English Conceptions of "Cleanliness" and "Dirt" as Reflected in the Environmental Regulation of London, *c.*1530–*c.*1700', D.Phil. thesis (Oxford, 1991), 168–70.

Restoration.[33] In 1682 the council passed an act for the regulation of hackney coaches that again sought to limit their number, insisted that they be licensed, established their tariff of charges, and set out the places they could wait for hire—orders that in general tried to ensure that hundreds of hackney coaches would not block the streets and cause havoc in their competition for customers.[34] Inevitably, the constables were instructed to see that the act was put into effect. But they were not fitted for such work. Hackney coachmen had a reputation for being rough and abusive, well able to defend what they thought were their rights. As a grand jury complained in 1689, the large numbers of coachmen who plied for trade around the Royal Exchange in Cornhill (the hub of the City by the late seventeenth century, and with so many merchants, financiers, and traders around, a good place for cab business), left their horses and coaches in the street just as they pleased and used 'fowle language' to those who complained. They had become 'a very great grievance'.[35]

Householders doing their annual turn as constables were not likely to confront such men on their own. And in any case, it was not part of the constable's duty to be on patrol through the day, or to engage in the kind of traffic control that the Common Council act of 1682 envisaged and that was clearly becoming a necessity in some parts of the City. There was developing by the late seventeenth century a certain tension, even contradiction, between on the one hand the expectation that constables would be at home during the day, engaged in their ordinary work, so they could respond to those who needed their help; and on the other the increasing pressures for them to be out suppressing vice wherever it was found, dealing with traffic, arresting vagrants, and generally maintaining order. The need to regulate the hackney coachmen in Cornhill and Cheapside and around Guildhall exposed that issue because the problem pressed so relentlessly. The task required more full-time attention than most constables could give it, certainly not the shopkeepers and tradesmen and other respectable men who, as we will see, continued to serve as constables in the inner wards of the City at the end of the seventeenth century.

Within a few years of the passage of the 1682 act the aldermen saw the necessity of hiring a special force if the act was going to be put into effect. By 1692 four 'streetmen' and a number of assistants had been appointed 'to prevent the disorders of hackney coachmen', and in particular to control their numbers and prevent the quarrels they provoked 'to the manifest breach of their Majesties peace and scandall to the government of the City'.[36] The streetmen were sworn in as constables, and were thus not only invested with authority, including the power to arrest those who refused to obey the act, but also given the support of the City authorities if they were challenged. Both soon proved to be

[33] Jenner, 'Early Modern English Conceptions of Cleanliness and Dirt', 170–1.
[34] Act of Common Council, 13 March 1682.
[35] CLRO: London Sess. Papers, July 1689.
[36] Rep 92, p. 220; CLRO: London Sess. Papers, January 1693.

necessary. In 1692 and the following few years they brought dozens of indictments against the drivers of hackney coaches (including on at least one occasion three women)[37] for 'obstructing and pestering' the streets, for plying for trade in unauthorized places, and for standing in and feeding their horses in Cornhill and Cheap and several other wards at the centre of the City. Some of the coachmen, in turn, challenged the validity of the act and brought actions of trespass and false imprisonment—actions that the City solicitor was instructed to defend, just as other constables were defended from time to time against charges arising out of the lawful use of their authority.[38]

The aldermen similarly empowered other men as constables for special purposes in the late seventeenth and early eighteenth centuries, and conferred the office on a number of officials to arm them with the authority to carry out a particular task. The porters of the workhouse established in Bishopsgate Street by the Corporation of the Poor after 1698 to centralize the relief and employment of the poor in the City were named as constables, for example, to enable them to arrest vagrants in the streets and commit them to the workhouse, and to enable them to control 'disorderly' inmates who, along with children, were held there.[39] So, too, were the porters of Bethlem and Christ's hospitals, a man employed to keep London Bridge clear of hawkers and street sellers, and the men hired to keep the entries and stairs of the Royal Exchange clear of 'Lewd Women and other idle Persons'. Along with the man employed by the farmer of the markets to keep order in the City markets, they were all sworn as constables, as the aldermen said, for their 'better Enablement to suppresse any Irregularities or disorders'.[40]

These supplementary appointments helped to overcome some of the rigidity inherent in a structure based on the customary obligations of householders to provide a year of service. (They also remind us that, however weak the constabulary of the early modern world might appear to have been, the office itself was potentially powerful in that it conferred powers of compulsion not available to

[37] CLRO: Charge Book, 28 February 1694.

[38] CLRO: London Sess. Papers, January 1693 (case of Richard Landman); London Sess. Papers, September 1693 (papers marked '*B. R. Landman* v. *Tomlinson*'). Several wards appointed officers in the eighteenth century to deal with traffic problems, often called warders or assistant beadles (CLRO, Misc. MS 64.4, 16 February 1713/4, 4 November 1737). An act of parliament of 1715 (1 Geo. I, stat. 2, c.57) aimed to establish general regulations for hackney coaches, carts, drays, and wagons within the Cities of London and Westminster and the Bills of Mortality, and in particular to prevent the maiming and wounding of pedestrians. For evidence from the records of the Court of Aldermen of their ongoing attempts to regulate hackney coaches in the City through the first half of the eighteenth century, see CLRO, Alchin MSS, Box I, no. 1.

[39] Rep 107, p. 563; Rep 112, p. 20; CLRO, Papers of the Court of Aldermen, 1703 (19 October 1703). On the Corporation of the Poor, see Stephen Macfarlane, 'Social Policy and the Poor in the Later Seventeenth Century', in A. L. Beier and Roger Finlay (eds.), *London, 1500–1700: The Making of the Metropolis* (1986), 252–77; and Timothy Hitchcock, 'The English Workhouse: A Study in Institutional Poor Relief in Selected Counties, 1696–1750', D.Phil. thesis (Oxford, 1985).

[40] Rep 95, fo. 266; Rep 97, p. 235; Rep 98, p. 213; Rep 103, fo. 178; Rep 122, fos. 99, 107; Rep 123, fo. 119.

ordinary citizens.) But a handful of special appointments could not diminish the underlying problems created by the pressures for a more active constabulary. Traffic on the streets was only one of a multitude of problems that accompanied the growth of the city in the late seventeenth century and that were more often than not added to the constables' responsibilities.

The problem of vagrancy raised intense concerns from time to time because of the vagrants' detachment from the institutions of work and family that integrated men and women into the society, and what was thought the strong likelihood that they would turn to crime. When the streets appeared to be particularly disorderly, grand juries and the Court of Aldermen commonly blamed the constables for their indifference and pushed them to join the City marshals and the ward beadles to help keep at least the thoroughfares clear. It was a constant theme that, as a lord mayor's precept complained in 1676, 'the streets are pestered with vagrants and beggars' because the constables were failing to apprehend them as their oaths required; and as a grand jury said in 1695, in the middle of a very difficult decade for the poor of London, the neglect of the constables explained why 'the streets have not been cleared of nightwalkers and vagrant persons which are so destructive to this City and the happiness of it'.[41]

From time to time the constables were also turned out to control crowds in the streets, most commonly on days of celebration or on other days in the festival calendar, from time to time to deal with more violent crowds. A well-established calendar of celebration and holidays brought large numbers of people into the City streets at certain times during the year and provided the authorities with a variety of policing challenges.[42] Some were relatively benign. The traditional games of throwing at cocks on Shrove Tuesday and the bonfires of Guy Fawkes' day regularly drew orders from above that required the constables to turn out the watch during the day and commonly to set a double watch at night to control the danger that occasionally arose. The concern may have been mainly to ensure that squibs did not start fires and that bonfires did not get out of control; but there were also times when the very assembling of crowds was thought to be undesirable by the City authorities, particularly at times of political conflict, or

[41] CLRO: P.D. 10.64; London Sess. Papers, January 1695. Constables might indeed neglect to take up vagrants, but it was difficult for them to ignore men and women against whom warrants were issued by magistrates, requiring the constables to pass them out of the City and into the next county. Some wards found this a particular burden. The authorites in Bridge ward, for example, where vagrants with passes entered the City from Surrey, complained about the costs of passing vagrants in 1700 (CLRO, Ward Presentments: Summaries, I, 56). A constable in Bridge ward submitted a bill with his charges for passing vagrants in a three-month period in 1704 which included six women with children, a man and woman with a child, a pregnant women 'brought to bed' and kept a month, five 'sick' men and women, some of whom he lodged overnight. His charges of more than £5 were for conveying them across the City to Temple Bar, Bishopsgate, or Aldersgate, several of them by coach (CLRO: London Sess. Papers, April–May 1703).

[42] David Cressy, *Bonfires and Bells: National Memory and the Protestant Calendar in Elizabethan and Stuart England* (1989); Ronald Hutton, *The Rise and Fall of Merry England: The Ritual Year, 1400–1700* (Oxford, 1994); *idem*, *The Stations of the Sun: A History of the Ritual Year in Britain* (Oxford, 1996); Nicholas Rogers, *Crowds, Culture, and Politics in Georgian Britain* (Oxford, 1998), 22–4.

when anxieties were running high about an increase of vice and immorality, and about the temptations that might keep servants and apprentices away from their work and waste their money.[43]

Other holidays often created similar problems of crowd control and similar trouble in the streets—the Easter holidays and 'Whitsunweeke' among them. A particularly boisterous crowd always gathered to watch the procession on lord mayor's day, and commonly treated it as a day of 'misrule', stopping coaches and exacting money from the quality, breaking windows, throwing dirt and dead cats and dogs, letting off fireworks for some days before and after. The constables were frequently ordered to prevent this carnival. Occasionally they were told to distribute printed orders to the householders of their precincts to prevent their children and servants taking part in such 'disorders'.[44] The constables were particularly encouraged in this effort when the influence of the reformation of manners forces was at its height in William's reign. In 1697 the aldermen agreed that inhabitants should be warned to 'prevent their children and servants throwing fire-works in the Streets, or out their Houses, Balconies, or other Places'. All the peace officers—the constables, along with the beadles and watchmen—were to be on duty for several evenings before the lord mayor's day itself and prevent disorderly conduct. As a reward they were to receive ten shillings for the prosecution and conviction of offenders, and were threatened with prosecution themselves for 'Neglect, Default, or Concealment'.[45]

On particular occasions, the aldermen could turn out reasonably large forces of City constables and watchmen, drawing if necessary on the men of several wards. In 1710, for example, the City was rocked over several evenings with major riots in support of Henry Sacheverell during his impeachment by parliament. The constables and watchmen could do little to control crowds that numbered several hundred men determined to pull down dissenting meeting-houses and make bonfires of their furniture, and on some occasions crowds of well over a thousand. The government had eventually to turn to the soldiers guarding St James's Palace, including a troop of cavalry, to break up the demonstrations and restore order. When, following his conviction, Sacheverell's sermons were ordered to be burned at the Royal Exchange by the common hangman, the aldermen assembled a force of constables and watchmen drawn from seven wards 'for the preservation of the peace'. The constables were ordered to bring their staves, the watchmen their halberds, and to remain on duty from 10 a.m. until 6 p.m. There was no trouble.[46] The constables of Cornhill were on duty at the

[43] Jor 51, fos. 15, 16, 22, 25, 28, 102, 110. For constables' duties to keep order on the streets, see K. J. Lindley, 'Riot Prevention and Control in Early Stuart London', *Transactions of the Royal Historical Society*, 5th ser., 33 (1983), 109–19.

[44] Rep 104, pp. 574–7; CLRO: London Sess. Papers, January 1694 (deposition of Charles King).

[45] Precept of the lord mayor, 13 October 1697 (CLRO: P.D. 10.99).

[46] Jor 55, pp. 167–8; Geoffrey Holmes, *The Trial of Doctor Sacheverell* (1973), 156–76, 228; *idem*, 'The Sacheverell Riots: The Crowd and the Church in Early Eighteenth-Century London', *Past and Present*, 72 (August 1976), 55–85. The reliance on constables to control crowds had almost certainly been

same place when the Pretender's 'Declaration' was burned in public following the exposure of the Jacobite plot in 1722.[47]

Large public demonstrations that turned violent could easily become too difficult for the limited City constabulary to control. Constables were not well equipped to contain large gatherings or to manage crowds that got out of hand—not only large-scale political, religious, or economic protests but also the large crowds that gathered to watch punishments being inflicted on convicted prisoners. City constables were not routinely on duty at Tyburn before the middle of the eighteenth century, when several were given extra pay to stand on guard there.[48] On the other hand, constables were heavily involved in public punishments carried out in the City itself, both public whippings and the punishment of the pillory. The pillory could mean difficult and even dangerous work for constables, depending on the crowd's attitude towards the prisoner being displayed and chastised. The constables could easily find themselves confronted by hostile crowds, sometimes because friends of the prisoners attempted to rescue them, more often because large numbers of people came with the intention of imposing their own form of rough justice on the pinioned offender. The constables on duty did not always succeed in protecting prisoners from the hostility of such crowds, even if they wanted to, which it is clear was not always the case.[49] The pillorying of John Middleton in 1723 at Charing Cross revealed either the difficulty of crowd control for untrained constables or, perhaps on this occasion, the problems that arose when the constables shared the crowd's antipathy towards the wretch put on public display. Middleton, an informer, was no sooner set on the pillory than he was attacked by men who got inside the ring formed by the constables around the platform and so badly pelted him with dirt and filth that had apparently been laid in heaps ahead of time that he was killed, either by suffocation or by strangulation as he vainly tried to twist away from his attackers.[50] It was perhaps cases like this, and that of John Waller, who was killed a few years later as he stood on the pillory at Seven Dials for falsely prosecuting innocent men for the sake of rewards,[51] that explains why the number of

increasing since the Restoration because of the diminishing effectiveness of the Trained Bands and the absence of an alternative civil force. The Trained Bands were only rarely called out and were virtually defunct after 1720 (*ex inf* Nicholas Rogers).

[47] CLRO, Alchin MSS, Box S, no. CXLVI/17. [48] See below, pp. 155–6.

[49] When constables were not present, there was an obvious sense among those attempting to hold the crowd at bay that the authority of the constable's staff provided a certain amount of protection. Eight officers of the sheriffs' prisons, the compters, remarked on the absence of constables when they carried out the pillorying in Aldgate in 1717 of a man convicted of seditious words; they wanted constables to be present when they thought the crowd might attempt to rescue the prisoner, having been stirred up by a 'vile lewd woman' against the injustice of the sentence (SP 35/12/99).

[50] The government clearly thought that the constables were complicit and ordered an investigation carried out by Charles Delafaye, the under-secretary of state (SP 35/44/249–74).

[51] *Gentleman's Magazine*, 2 (1732), 774, 823. And see John H. Langbein, 'The Prosecutorial Origins of Defence Counsel in the Eighteenth Century: The Appearance of Solicitors', *Cambridge Law Journal*, 58 (1999), 353.

constables and other officers turned out for such duty was increased significantly across the century. After 1750 it was common for several hundred officers to be in attendance.

Without a close study of what had been expected of the constables before 1660 and the extent to which they had then been involved in street policing, it is impossible to say with any certainty that their duties had been significantly extended in the late seventeenth century and the early decades of the eighteenth. But there is a suggestion in the City records of that period of a piling up of work or at least an increased expectation of what they ought to be doing in the face of ever-increasing problems on the streets. If that is the case, it would help to explain—though it is not likely to be the whole explanation—a striking change in the composition of the constabulary that we will examine in the following section: that is, an evident reluctance on the part of men who could afford to buy their way out, to take on the post of constable, leaving it increasingly to poorer men who were willing to serve as a deputy for a fee. There is in the century after the Restoration a very considerable increase in the numbers of such deputies in the City constabulary. But before we leave the subject of the constables' duties we need to examine their involvement in two matters that had long been part of the constable's work that no one holding the office had been able to evade entirely, or that were at least regarded as central to the work of the office and of importance to the ordering of the City, and that must have produced regular if not continuous business for many of the men who held the post.

One of these routine duties was the regulation of the night watch, and more generally, the policing of the City at night. As we have seen, there was some ambivalence about what was expected of the constables during the daylight hours. When vagrants or beggars crowded the streets, or when anxieties rose about the way the young were wasting their time, or forms of popular amusements and sports seemed to the authorities to be encouraging vice and immorality the constables might be ordered to be more actively involved in surveillance and prosecution. But they were not expected regularly to patrol their precincts. Night was a different matter. Darkness brought danger to the streets of the capital, the danger most immediately of robbery and burglary and other assaults that threatened physical harm to people in the streets and in their houses. The constables had very particular duties with respect to the control and surveillance of the City's streets during the hours of darkness, a subject to which we will return when we look at the night watch.[52]

The second business that was likely to engage constables in a way that was difficult to evade entirely arose from the administration of the criminal justice system in which their involvement was crucial. It is perhaps in this area that the greatest differences are to be found between the responsibilities of the constabulary in the eighteenth century and the modern police, for it was not until the

[52] Below, Ch. 4.

second half of the nineteenth century (well after the establishment of the new-model police forces in the metropolis by Sir Robert Peel) that the police had any significant involvement in the prosecution of criminal offences.[53] The oath of office of the seventeenth- and eighteenth-century constable, and every explication of it, makes it clear that there was no expectation that a constable would investigate a crime, discover the perpetrator, formulate and bring the charges. Those are the most crucial activities—not to think for the moment about differences in organization, efficiency, technology—that the modern police have added to the formal responsibilities of the constabulary of the eighteenth century City. The unpaid and part-time London constable in 1700 could not be called on to do what was still thought to be the victim's work of discovering offenders and bringing (and paying for) the prosecution.

Two provisos need, however, to be added. First, constables could be hired, just as any other private citizen could be hired, to help find offenders, without that being thought to diminish their ability to fulfil their obligations. They could also use their office to engage in free-enterprise thief-taking, an activity much encouraged by the establishment of statutory rewards in this period. We will have reason to return to that subject when we look at active constables and examine thief-taking more broadly.[54]

The second proviso concerns the administration of the criminal law. The process of prosecution depended heavily on the victims of crime, who made the crucial decisions about initiating charges and who were responsible for discovering offenders and paying fees as cases went through their various stages. But the essential elements of the criminal justice machinery depended on public resources and public authority.[55] The constables, in particular, were crucial, indeed indispensable, agents of criminal administration. They had the authority to use physical force to make arrests, to get accused offenders before justices, and subsequently to gaol. If they received a complaint that an offence had been committed and a suspect was being held, they were obliged to go the scene, take the accused in charge, and, along with the victim and any witnesses there may have been, take him or her before a magistrate. If the charge involved theft or serious violence, and the magistrate committed the accused to Newgate or to another gaol to await trial, the constable was the only officer with the necessary authority to receive the magistrate's warrant and to carry out the instruction—using force if necessary to ensure that his prisoner did not escape, and being liable to serious penalties if he did. The escorting of accused felons to the magistrate and to gaol might be preceded by the constable's being ordered under a magistrate's warrant to carry out a search for the

[53] Douglas Hay and Francis Snyder, 'Using the Criminal Law, 1750–1850: Policing, Private Prosecution, and the State', in Hay and Snyder (eds.), *Policing and Prosecution*, 36–47.

[54] See Ch. 5.

[55] John H. Langbein, 'Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources', *University of Chicago Law Review*, 50 (1983–4), 55.

accused and perhaps for stolen property, during which he might if necessary use force to break into a house to secure the accused. Constables were also obliged to take some of those arrested by the night watch to Bridewell or before a magistrate.[56] Without constables, the criminal justice process could not have functioned as it did. As Saunders Welch said, 'The legislature may enact laws, magistrates may issue their processes; but the execution, the effect of all this, depends wholly upon the integrity and activity of the officers under them'.[57] It is simply not true, as is sometimes said, that early modern England was governed without police.

How well and efficiently constables carried out this work is impossible to say. There is simply no evidence that would enable such a judgement to be made, other than occasional—and in this aspect of their work, it must be said, very occasional—comments and complaints, and no standard of comparison. Perhaps offenders escaped because of the fumbling and incompetence, the indifference and timidity of constables. We cannot know. What *is* known is that several hundred accused felons went to trial at the Old Bailey every year, and in virtually all of these cases a constable must have been involved at some stage of the process. Not all accused persons were initially arrested by a constable, but many of those brought to trial had been caught red-handed and, as numerous depositions reveal, constables were commonly sent for when alleged offenders were being held after a burglary or theft, a serious incident of violence, or some other matter. Hundreds of examples can be found among the surviving depositions of the late seventeenth and early eighteenth centuries. A grocer of Fleet Street, given a bad shilling by a customer, sent for a constable who searched the accused and found seven more; a shopkeeper who suspected a parcel of goods he was offered had been stolen, caused the accused to be detained until he found a constable; the son of a merchant deposed that he spent an evening with a prostitute in an upstairs room of a tavern until he was attacked by her accomplice armed with a sword, whereupon, he said, 'the constable and watch were sent for'; a woman who suspected that one of her maids had given birth to an illegitimate child and had killed it 'sent for a Constable and a Midwife' to carry out an investigation.[58] In these cases, and many more at every session of the Old Bailey, the constable took these accused to be examined by the lord mayor or another magistrate. Just as commonly, constables brought in suspects after receiving a justice's warrant to search for a particular offender. A man whose maid servant had left his service 'in a secret manner', taking several watches and forty yards of silk, traced

[56] In his year-end account rendered to the precinct meeting in St Katharine By the Tower in 1664 (a parish on the edge of the City), a constable included a charge of £1.8*s.*0*d.* for taking prisoners on fourteen occasions to Newgate, Bridewell, and the New Prison; in the early eighteenth century the constables were given two pairs of handcuffs to help them carry out such tasks and for their use in what appears to have been a recently built watch-house (GLMD, MS 9680, fos. 148, 289).

[57] Welch, *Observations on the Office of Constable*, 1.

[58] CLRO: London Sess. Papers, July 1710 (Nicholls), July 1713 (Hatcher), February 1692 (Towse), February 1692 (Danniel).

her, got a warrant, and accompanied a constable who searched her new lodgings, found the goods, and took her into custody; a weaver got a warrant and went with a constable to carry out a search of the lodgings of a man and woman he suspected of breaking into his house and stealing muslin and ribbons.[59]

For the most part, the constables did not expect to go much beyond this limited, though crucial, involvement in apprehension, the first stage of prosecution. Occasionally they can be found helping the victim to collect evidence, by, say, taking the accused round to pawnbrokers and other shopkeepers to be identified as the person who had offered them goods for sale.[60] And, when there was no victim or relative to take the lead in gathering evidence, as in the case, for example, of the finding of the abandoned body of a dead new-born child, they might be ordered—as on one such occasion in 1689—'to make diligent search for the Mother and Murderer of the Child', and to bring for examination before a magistrate any woman lately delivered of a child who seemed suspicious.[61] At times of particular anxiety about crime, more highly organized systems of surveillance were imagined, in which constables would send monthly lists to justices of hostlers living in their precincts who let out horses for rent and who might be equipping highwaymen, along with lists of pawnbrokers and buyers of goods who might be acting as receivers. The royal proclamation of 1690, in which this was ordered, was addressed to the problems of burglary, robbery, and murder during a panic about the increases in such offences, the kinds of serious crimes that most alarmed the citizens of London. It went on to suggest that constables should engage in even more thorough surveillance of their communities by making lists of all 'suspected persons, where they lodge and where they resort', and to search regularly for those suspected to be 'of evill life and guiltie of any of the said heinous offences'.[62]

Those things did not happen. But constables could not have avoided all engagement in the process of criminal prosecution—ignoring their neighbour's request that they take someone in charge who had been caught shoplifting, or ignoring a magistrate's warrant. However inactive they would have preferred to be, they must have expected to be involved in such ways at least occasionally during their year in office. It is impossible to discover how frequently constables were so engaged because there is no complete record of their work. To some extent, how busy they were depended on their own commitment to the work and to the precinct and ward in which they lived. It also may have depended to some extent on whether they were elected constables doing their year of required service, or were men who had volunteered to take such a man's place and who were in a real sense hired officers. And to explore further the issue of how actively engaged in the business of the office City constables were we need to examine

[59] CLRO: London Sess. Papers, February 1696 (Dudley), October 1692 (Abraham).
[60] CLRO: London Sess. Papers, December 1710 (Thomas).
[61] Jor 51, fo. 20. For other such orders in the following years, see fos. 25, 117; Jor 52, fo. 102.
[62] Jor 51, fos. 107–9.

(to the extent the records make it possible) who they were and how they were appointed over the late seventeenth century and first half of the eighteenth.

APPOINTMENT AND CHARACTER

What appears from the aldermanic records to have been a succession of expanding demands on the constabulary over the late seventeenth and early eighteenth centuries would help to explain a significant change over this period in the kinds of men who served as constables. Perhaps it would be better to say an apparent change, since it is difficult to establish with certainty the social identity and economic circumstances of the men who acted in the post. But the evidence clearly points to a major shift away from men in the solidly middling ranks of the City's inhabitants who held the post for a year as an aspect of their civic duty and towards men of lesser rank and wealth, many of whom it seems right to assume did it as a way of supporting themselves.

The first task in exploring this subject is to discover who actually served. This is not as straightforward a matter as simply uncovering the names of those who were elected in their wards every year, because it was possible for men so elected to avoid serving. They could escape in two ways. In the first place, they could buy their way out, paying a fine that would excuse them from that one office or from all parish offices. Such 'fining', as it was called, could occur at the two points at which decisions were made about the ward's officers for the ensuing year: at the parish-precinct level, where nominations were made; or at the wardmote, where the precinct decisions were reported and confirmed. Most often fines were paid at the lower level. Indeed, they were an important element in the finances of many of the larger and less-wealthy parishes, since the fines were most often committed 'to the service of the poor' as a means of making up deficiencies in the Poor Law funds. Nominations in such parishes may have been made with an eye to increasing the revenues—deliberately choosing men who it was clear would not serve—with the result that several 'elections' might have to be held in the precinct or parish before the name of a prospective constable could be sent forward to the wardmote for confirmation.[63]

[63] For the election of five men in St Katharine By the Tower in 1660, each of whom paid a fine of £3.10*s.*0*d.* rather than allow their names to go forward to the wardmote see GLMD, MS 9680, fo. 135; and see Webb and Webb, *Manor and Borough*, 588–91. Not a great deal of evidence remains of the nomination and selection process at the parish or precinct level. It is likely that practices varied from place to place. A series of nominations and fines to escape were almost certain to have been more common in the large and poor wards, both because their parishes would have had more calls on their Poor Law funds with proportionately fewer householders contributing, and because the job of constable would have been more demanding. In other places, the nomination and selection process was apparently more settled and straightforward and men might have a year or two warning that their turn was coming to be elected constable. At the precinct meetings held for the parish of St Helen's in Bishopsgate in the 1720s, for example, three men were generally nominated for the office, one of whom was chosen. The next year, the two who had not been selected would be nominated, again along with a third, and one of them would be chosen. And so it would go on year after year. Once nominated, a man could expect to be elected the

At the ward level, there was further possibility of escape, for fines could also be paid there, and an alternative candidate elected. The usual course at the wardmote, however, was for a nominee who wanted to avoid service to propose a substitute—or to accept a substitute suggested by the ward leaders—and to pay that man a gratuity to act for him as his 'deputy'. Hiring a deputy was cheaper than paying a fine, certainly cheaper than paying a fine to be relieved for life from the obligation to serve in all local offices; only the richest inhabitants would be likely to contemplate that. It was also the case, as we shall see, that experienced, and thus acceptable, deputies were readily available. Men seeking to arrange for a substitute might propose someone with whom they had already come to an agreement. But as deputies became more common in the first half of the eighteenth century and as the ward managers came to control the process more closely, the arrangement of substitute constables was increasingly left to the deputy aldermen and the common councilmen who obviously had an interest in getting the best possible person and who knew the available candidates. The sums involved in either fining or paying for deputies varied from parish to parish and ward to ward.[64]

The ease with which service could be avoided by those who could afford a fine or to pay for a substitute meant that deputy constables were common by the late seventeenth century. They were to become even more common in the eighteenth. Such men were not necessarily inadequate: indeed, an experienced deputy might have improved the policing forces. But the number of deputies in service was no doubt one reason why the constabulary came in for such criticism in the eighteenth century—criticism that would lead one to believe that in fact most of the householders nominated as constables refused to serve and left

next year or the one after and so could prepare himself, either to serve or to pay a fine, or, as we will see, to find a substitute at the ward level (GLMD, MS 6848/1). See below, text at n. 107, for the objections raised by the churchwardens of a parish when their access to fines was threatened.

[64] The amounts paid in fines or in premiums paid to deputies are not easy to discover. Wardmote inquest books have survived for only a handful of wards, and even those do not often disclose the levels of fines paid. My guess is that fines at the ward level ranged from about £20—paid in Cornhill in the late seventeenth century (GLMD, MS 4069/2, fo. 400)—down to about £8, which seems to have been the amount paid in Cripplegate Within in the same period (CLRO, SM 62 at January 1692). In Bishopsgate the alderman declared in 1737 that he thought the fine ought to be raised to £10 because of a recent act of parliament that had increased the duties of the office, so it is likely that the customary fine there had been in the neighbourhood of £8 (GLMD, MS 1428/1). It is possible that at the precinct/parish meeting, especially in very poor parishes, the fines were rather less than that. In the parish of St Katharine By the Tower in the 1660s, for example, it cost £8 to purchase freedom from all offices, £3.10*s.*0*d.* to avoid serving as constable. Those sums changed over time and apparently could vary from person to person. In 1700 one man paid £2 to avoid serving as constable, another man £5; in the first decade of the eighteenth century men paid between £8 and £16 to be relieved of all parish offices (GLMD, MS 9680, fos. 135, 145, 268, 273, 289). I have found no reliable evidence of the amount elected men paid to deputies to serve in their place. It is likely that it too varied from place to place and possibly changed over time. A premium of about £5 seems a reasonable guess in most wards. In the early years of the nineteenth century, when substitution was very common indeed, Patrick Colquhoun said that premiums then being paid were between £5 and £10 (*A Treatise on the Functions and Duties of a Constable* (London, 1803), xiv).

the job entirely to elderly and infirm men who could find no other work. This has never, however, been investigated. In our examination of the work of constables in the City of London in the late seventeenth century and first half of the eighteenth, it would seem wise to begin by trying to identify those who were elected to office and, as far as it is possible, those who actually served.

Well over twenty thousand men served as constables in the City between the Restoration and the middle of the eighteenth century. I have taken as a sample those elected in three wards in the 1690s, when the tax records make it possible to identify the occupations of many of them and to some extent their social status.[65] There is, unfortunately, no complete record of serving constables in this period. The wardmote books, which include the names of those elected, and the ward presentments to the Court of Aldermen, which communicated the names to the governors of the City, are far from complete. They do survive reasonably well in the 1690s and into the early eighteenth century for the wards of Cornhill, Farringdon Within, and Farringdon Without, wards that also have the advantage of being in the inner, middle, and outer parts of the City, respectively.[66] Along with the tax assessments of 1692 and 1694, these records allow us to get some sense of the kinds of men who were elected and those who served for those wards in the last decade of the seventeenth century.

In Cornhill four constables were chosen every year, one in each of four precincts. Cornhill was a small ward at the very heart of the City. In 1696 only 269 households were contributing to a watch rate, for example, and that is likely to account for all but the very poorest households. Two hundred and forty-two of these households were headed by men, who presumably formed the pool from which constables would be elected.[67] In the smallest of the four precincts, only 45 men were heads of households in 1696, and thus eligible to serve as constable: the other precincts contained 51, 57, and 89. To judge by tax assessments in the 1690s, Cornhill was also one of the wealthiest wards in the City.

[65] Assessments for taxes provide some evidence of the wealth and occupations of the rate-paying population of the City in the 1690s. The most important for our purposes are those of 1692 (the poll tax) and 1694 (the 4*s*. aid). For the 1692 tax, see above, Ch. 2, n. 32. The aid authorized by parliament in 1694 was charged at the rate of four shillings in the pound of assessed wealth both real property and stock. I have followed Gary De Krey in using the annual value of real estate owned as a more reliable guide to wealth than personal goods and trade stock (Gary De Krey, 'Trade, Religion, and Politics in London in the Reign of William III', Ph.D. thesis (Princeton University, 1978), 326–8).

[66] The names of those elected can be recovered from three sources: minutes of the meetings of vestries or precincts in which the initial elections of constables took place; the wardmote books, which record the names of constables confirmed at the ward meeting; and the presentments that the wardmote subsequently made to the Court of Aldermen, which included the names of the constables elected for the following year. None of these records is complete for the late seventeenth century. A smattering of parish records and wardmote books has survived (held in the GLMD); ward presentments are held in the CLRO and survive in incomplete runs until 1704, after which they are complete for virtually every ward in the City.

[67] Cornhill wardmote inquest minute book (GLMD, MS 4069/2); John Smart counted only 180 houses in 1741 (Table 3.1)—a measure (if both counts were reasonably accurate) of the way the inner wards of the City were already losing resident population by the second quarter of the eighteenth century.

It ranked second in the proportion of its citizens who paid more than a basic rate of tax in 1692, for example: fully 70 per cent did so.[68] That does not mean that the City's richest citizens lived in the ward. But it does mean that the body of male householders from whom the constables were chosen in the first instance were on the whole men well into the upper levels of the citizenry of the City, men of standing in the community. In particular, these tax assessments confirm what one would expect in Cornhill: that it contained a significant number of prosperous shopkeepers and tradesmen.

The men elected as constables were fully representative of this community. A total of fifty-eight names of men elected between 1690 and 1706 can be recovered from the wardmote book. Of these, at least nine were acting as substitutes for men originally named at the ward meeting who paid to be excused. Two other elected men are known to have subsequently paid for deputies. Others may have done so: it is not possible in this period to be certain how many of those elected managed ultimately to opt out by paying for a deputy.[69] None the less, it is worth trying to establish from the tax assessments the occupations and social standing of the men who were at least named as constables and who had not stood down before their names were forwarded to the Court of Aldermen. Evidence can be recovered about forty-five of the fifty-eight men elected in Cornhill between 1690 and 1706. This is a high proportion, and is testimony to the stability of this community, considering that the tax assessments are from the years 1692 and 1694 and the body of constables I have examined includes men elected in the following twelve years.[70]

Evidence concerning the tax assessments of these forty-five Cornhill constables is set out in Table 3.2. What it reveals, in the first place, is that no one was elected who was paying at the highest rate of taxation, that is those who paid a guinea because they fell into certain occupational or status groups: merchant, gentleman, men of the learned professions, those who owned coaches. No such men in Cornhill allowed their names to go forward to the wardmote for election; presumably they had purchased their freedom from local office. On the other hand, close to 60 per cent of those whose assessments are known were wealthy enough to be taxed at the middling rate of eleven shillings, including substantial shopkeepers (linen-drapers, haberdashers, booksellers), and artisans. Across the City as a whole, just over 20 per cent of ratepayers fell into that tax category.[71] The remaining nineteen elected constables in Cornhill were

[68] De Krey, 'Trade, Religion, and Politics', 335 (Table 5).

[69] See below, pp. 140–50.

[70] Cornhill wardmote inquest book (GLMD, MS 4069/2). In tracing the occupations and wealth of these men from the tax records, I have relied on the work of James Alexander—particularly, in this instance, on the computer printout of assessed householders included in his thesis, a copy of which is in the CLRO: 'The Economic and Social Structure of the City of London, *c.*1700', Ph.D. thesis (University of London, 1989). There could be several reasons why some of the men named as constables in the period 1690–1706 cannot be found in the 1692 and 1694 tax assessments: the two most obvious are that the records themselves are incomplete, or the men came into the ward and were elected after the assessments were made.

[71] De Krey, 'Trade, Religion, and Politics in London', 335–7.

TABLE 3.2. *Tax assessments of constables in three wards: Cornhill, Farringdon Within, and Farringdon Without*[a]

	Tax category: 1692 tax			Assessed value of property: 1694 tax				
	1/-	11/-	Total known	<£21	£21–40	£41–60	>£6	Total known
Cornhill[b]								
No.	19	26	45	9	8	9	10	36
%	42	58	100	25	22	25	28	100
Farringdon Within[c]								
No.	35	17	52	30	17	5	—	52
%	67	33	100	58	33	10	—	101
Farringdon Without[c]								
No.	19	7	26	16	7	3	—	26
%	73	27	100	62	27	12	—	101

Notes:

[a] Sources: for constables–wardmote inquest books; for tax assessments: J. M. B. Alexander, 'The Economic and Social Structure of the City of London *c.*1700', Ph.D. thesis (University of London, 1989)

[b] Constables serving in 1690–1706

[c] Constables serving in 1690–2, 1699–1701

small shopkeepers, tradesmen, and men providing a variety of other services, such as barbers and musicians, all assessed at the basic rate.

The impression of substance in the Cornhill constabulary that the tax assessments of 1692 provide is further confirmed by the assessment of 1694 which reveals the assessed value of a household's real estate and stock.[72] Again, in the 1694 assessment few Cornhill constables were at the very highest levels and a quarter were in the lowest. Mainly they clustered strongly in the middle range, confirming the picture of elected constables as men of well above average wealth and standing in their communities. In broad profile, Cornhill constables resemble men who served as jurors at the sessions of the peace or at the Old Bailey in the City in the 1690s, or those who served on the Common Council.[73] Several of the men elected as constables indeed served on juries and as common councilmen in the same period, and at least one, George Merttins, a goldsmith, elected constable for Cornhill in 1699, went on to become an alderman, and, in 1724, lord mayor.[74] Most of these men appear to have served out their year in office rather than engaging a deputy.

Cornhill was one of the smallest and wealthiest of the City's wards. As might

[72] Following De Krey, I have used the former as a more likely guide to wealth.

[73] J. M. Beattie, 'London Juries in the 1690s', in Cockburn and Green (eds.), *Twelve Good Men and True*, 248–9.

[74] Another measure of the relative standing of the men elected as constables in Cornhill can be found in the payment of the watch rate, as that is recorded in the wardmote inquest book (GLMD, MS 4069/2). The assessment for 1696, for example, reveals that of the householders assessed, 30% paid 3*s.* or less,

be expected, not as many constables elected in the larger wards were so securely in the middling-to-wealthy ranks of the citizens of the City as the Cornhill records suggest. The middle City ward of Farringdon Within, for example, was a more populous and less-stable community than Cornhill, and a more troublesome place to spend a year as constable. In a ward with approximately 1,300 ratepayers in 1692, of whom 67 per cent, as against 42 per cent in Cornhill, paid at the basic rate of poll tax, it would hardly be surprising if the body of elected constables did not reflect that difference. As far as one can tell from the ward presentments that have survived for six years between 1690 and 1701, they did. They reveal that a larger proportion of the fifty men elected as constables in those years are missing from the tax assessments than in Cornhill (more than 40 per cent in 1692, for example, as against 25 per cent)—even though our Cornhill group included constables elected in several years after 1701, and were thus even further removed in time from the tax records. This could mean a number of things, not least a difference in the quality of the record keeping or record survival. But it also suggests that in a ward with a large and diverse population more of those chosen as constables would be among the poorer householders of the ward. That is also strongly suggested by the fact that among the elected constables whose poll tax payment is known, only a third of them in Farringdon Within paid at the surtax rate, compared to 58 per cent in Cornhill. And, whereas in Cornhill more than half of those elected had real property rated at a value of more than forty pounds a year, the comparable figure in the larger ward was 10 per cent (Table 3.2). Farringdon Within could still count some substantial citizens among those elected to the office of constable in the 1690s. Some of the sixteen precincts into which the ward was divided were by no means poor areas—St Paul's Churchyard and Paternoster Row, for example—and its constabulary continued to include vintners and goldsmiths, glovers and booksellers living in houses with a substantial rental assessment.[75] But the ward included proportionately fewer such men than in the richer inner-City ward. In Farringdon Within, a larger *number* of men paid more than the basic rate of taxation. If fewer of them were elected as constables, it may be because there were so many other candidates. But it is also possible that the problems the peacekeeping forces faced in such a ward also encouraged the more substantial citizens to avoid service by buying their way out.[76]

64% paid between 3*s.* 6*d.* and 5*s.*, and 6% paid between 6*s.* and 8*s.* The payments by the constables elected between 1690 and 1706 mirrored that almost exactly: the forty who can be found in that record were assessed in those three bands at the rates of 25%, 70%, and 5%, respectively.

[75] A list of inhabitants of Farringdon Within living on Cheapside collected in 1721 for jury purposes, included fifteen goldsmiths, ten linen drapers, six drapers, five hosiers, and smaller numbers of many other shopkeepers and artisans (Misc. MSS 83.3).

[76] The evidence for the ward of Farringdon Within is derived from the ward presentments for 1690–2 and 1699–1701 in CLRO; from De Krey, 'Trade, Religion, and Politics in London in the Reign of William III', 335–7; and from the tax returns of 1692 and 1694 as reported in Alexander's thesis, 'Economic and Social Structure of London, *c.*1700'.

A broadly similar pattern of election occurred in the even larger and more turbulent ward of Farringdon Without that sprawled along the western and north-western edge of the City, bordering the crowded and dangerous world around Covent Garden. In 1621 Farringdon Without had been said to contain 'many dangerous and suspected persons',[77] and in the early eighteenth century it remained notorious, among other things for the number of its brothels, there being more there than in the rest of the City together.[78] The ward had a large population of ratepayers in the 1690s—something on the order of 3,500—73 per cent of whom paid at the basic rate of tax, though with Fleet Street and Holborn both traversing the ward, it also contained substantial clusters of wealthier citizens. As in Farringdon Within—and in even larger numbers—the returns suggest that some reasonably substantial men were elected constable in these years: a coachmaker, haberdasher, two glovers, a confectioner, and a goldsmith, all of whom paid surtax, and who were no doubt drawn from the corridors of relatively prosperous shopkeepers and tradesmen along Fleet Street, Holborn, and Temple Bar. But the size and the poverty of the ward was likely to have discouraged large numbers of such men, as in Farringdon Within, from allowing their names to be sent forward, or serving if they were elected.[79]

DEPUTY CONSTABLES

The picture that emerges from this examination of three City wards suggests that in the last decade of the seventeenth century the body of elected constables was made up of men from a wide spectrum of society, including—in the small and more stable wards at the heart of the City especially—a significant proportion of middling, even substantial, citizens. We must remember that we have been dealing with the constables who were elected, not those necessarily who served. How many of them escaped service after election, either by paying a fine or by engaging a deputy is a difficult question to answer for the late seventeenth century. As we have seen, while fines could be paid at either the precinct meeting or the wardmote, the most common means of escaping the burden of office in this period was to pay for a deputy after being elected. In Cornhill, for example, the replacement of nine men by deputies is noted in the wardmote book between 1690 and 1706.[80] Unfortunately, precinct and ward records survive so haphazardly in this period that it is impossible to construct an accurate account of the proportion of elected constables who opted to buy their way out at those meetings. In addition, men elected as constables continued to engage

[77] In an act of Common Council governing constables and beadles (CLRO: P.A.R., vol. 8, p. 5).

[78] Tony Henderson, *Disorderly Women in Eighteenth-Century London: Prostitution and Control in the Metropolis 1730–1830* (1999), 65, Table 3.1.

[79] The evidence for the ward of Farringdon Without is drawn from the same sources as that for Farringdon Within, above at n. 76.

[80] GLMD, MS 4069/2.

substitutes between the meeting of the wardmote in December and the swearing in of constables on 8 January. No record exists of those transactions.

The names of some of those who agreed to serve as deputy constables in the second half of the seventeenth century can be recovered from the handful of wardmote inquest books that have survived and from a few letters of recommendation supporting appointments.[81] A more complete account becomes possible in the 1690s and after, as a result of the determination of the Court of Aldermen to exercise more direct control over the appointment of deputies. The aldermen had always asserted the right to approve the substitution of a deputy for the elected constable: at least since the reign of Elizabeth deputy constables had served in London only with the approval of the lord mayor.[82] In theory this oversight was transferred by an act of the common council of 1621 to the aldermen, the deputy alderman, and the common councilmen of the relevant ward.[83]

After the Restoration the Court of Aldermen made a gesture towards prohibiting deputies altogether, but a total ban was clearly unworkable, and the procedures established under the 1621 act essentially remained in place.[84] In the 1670s and 1680s aldermen and their deputies, and occasionally common councilmen, can be found writing to the mayor or the deputy registrar of the mayor's court, before whom constables took their oaths of office, to approve the appointment of deputy constables in their wards.[85] That rather loose and informal system was modified in significant ways after 1689, when the aldermen made an effort to assert their supervision over the appointment of deputies. This may have reflected their concern about the evidence that crime and disorder were increasing after the Revolution, particularly perhaps the insistent complaints of grand juries and the societies for the reformation of manners about the prevalence of vice and immorality. But they may also have sensed that the move to escape from office was becoming more pronounced in the 1690s—in a period in which policing problems were particularly difficult. Whatever the cause, it is clear that the aldermen became anxious to tighten up the rules governing the appointment of deputy constables and to improve the quality of the City's policing forces.

They did this in several ways. In the first place they attempted to give new life to a rule laid down in the 1621 Common Council act that required a man elected

[81] Wardmote inquest books dating from the last decades of the seventeenth century are available in the GLMD for the following wards: Aldersgate (MS 2050), Bridge (MS 3461/3), Candlewick (MS 473), Cornhill (MS 4069/2), Portsoken (MS 2648), and Vintry (MS 68). There are papers dealing with the appointment of constables, 1670–1711, in CLRO: Misc. MSS 17.16. It is difficult to discover how many deputy constables were being appointed in the decades after the Restoration. On a list of constables that appears to include those who took the oath of office in 1683, twelve names are crossed out and replacements written in the margin. They may be deputies; if so they represent 5% of the whole body (CLRO: Misc. MSS 19.12).

[82] Archer, *Pursuit of Stability*, 222.

[83] CLRO, Alchin MSS, Box E, no. 57.

[84] CLRO: P.D. 10.73 (Precept of the Lord Mayor, 25 November 1661).

[85] CLRO: Misc. MSS 17.16.

as constable who wanted to pay for a deputy to take the oath of office along with his replacement.[86] This did not burden the elected man with the legal consequences of his deputy's actions. But it did mean that he remained responsible for filling the post if his deputy refused to do the work or left the ward or died. The aldermen also attempted to assert control by insisting on their right to scrutinize deputies before they were sworn into office—presumably to ensure that they were at least minimally respectable inhabitants of the ward. In October 1693 they ordered that 'for the future noe person chosen Constable within this City be Admitted to put in a Dep[u]ty without the expresse order of this Court'.[87] With 237 new constables to be appointed within the space of a few weeks in December and early January every year, that was not an easy order to enforce. By the end of the decade the aldermen had to remind the man who actually oversaw the swearing-in of constables, the deputy registrar of the mayor's court, not to allow deputies to take the oath of office before he had been given permission in writing—a sure sign that he was not obeying the new rule in every case.[88] None the less, there is also no doubt that the aldermen made some effort to make it stick. The names of confirmed deputies began to be entered in the Repertories of the court in 1693. And as well as chastising the deputy registrar for disregarding their rules, they also summoned him before them in 1701 to explain why he had allowed a constable to be sworn before the court had given its approval. Finally in 1707 they told the town clerk ('whose immediate servant he is') to discharge him for his continued disobedience.[89]

One can see the aldermen's anxiety after the Revolution to impose some control over the constabulary not only in their scrutiny of deputies but in other efforts to ensure that constables were respectable and reliable men. After 1689, for example, they engaged more fully than they had before, certainly over the previous several decades, in adjudicating disputes between the wardmote and men elected as constables about their eligibility to serve. On several occasions the aldermen dealt with the cases of individuals trying to avoid service on the grounds that their work made it impossible for them to serve as constables. They excused a man who kept a grammar school because of 'his constant duty and attendance in such his imployment', and several artisans whose work took them frequently from home.[90] But the aldermen more often denied claims of immunity and insisted that elected men either serve or pay for a deputy—including, for example, an ensign in the trained bands, and several officers of the customs and of the two City compters, all of whom had argued the privilege of office.[91] Other men who

[86] Rep 95, fo. 99. [87] Rep 97, p. 492.

[88] Rep 104, p. 101 (1700); Rep 105, p. 100 (1701); Rep 106, p. 67 (1702), and other occasions thereafter.

[89] Rep 111, pp. 57–8.

[90] Rep 101, p. 79; Rep 104, pp. 158–9. For categories of men excused from service as constable because of their status or employment, see Hawkins, *Pleas of the Crown*, ii. 63–4.

[91] Rep 99, p. 192; Rep 100, p. 47; Rep 103, pp. 96–7; Rep 106, pp. 112–13; Rep 107, p. 113.

simply refused to serve after being elected were ordered to do so by the Court of Aldermen under threat of indictment at the sessions of the peace.[92]

In the two decades after the Revolution the aldermen also paid a good deal of attention to preventing men from becoming constables who might have used the office in a self-interested way. Victuallers posed the most obvious and frequent problems of this kind. There was a general rule prohibiting men who operated drinking establishments from acting as constables, no doubt because one of the constable's tasks was to ensure that such premises were licensed and that they obeyed the laws governing drinking hours. To be the only constables in their precincts would have been 'an advantage to themselves', as an alderman said in 1711, but 'cannot be of Service to the publick'.[93] Opposition to men who ran alehouses acting as constables was likely to come most vociferously from those who sympathized with the societies for the reformation of manners, and that is likely to explain why there was particular concern about this among the aldermen in the reigns of William and Anne. On the whole, when such cases came to light during the twenty years in which the aldermen were making some effort to control the constabulary, victuallers were prevented from serving, or had their licences revoked.[94]

The aldermen's close supervision of the appointment of deputies lasted less that two decades. Although they continued to record the names of deputy constables in their Repertories, they drew back from scrutinizing every candidate. In 1708 they were still anxious to know who was being appointed before they were sworn,[95] but two years later they agreed to allow deputies named by the wardmotes to be sworn into office without first obtaining the court's permission, 'any former order to the contrary notwithstanding'.[96] Thereafter, control reverted to the political leadership of the wards—the alderman himself, but particularly his deputy, in association with some of the common councilmen. They are likely all along to have influenced the choice of constables at the wardmote, including deputies named there,[97] but after 1710 they came more directly to manage the whole process. The registrar of the lord mayor's court still required authority before swearing in a deputy constable, but after 1710 the word of the deputy alderman or the other members of the ward leadership was sufficient. Their control over the naming of substitute constables further tightened the

[92] Rep 99, p. 338; Rep 104, p. 88.

[93] CLRO, Misc. MSS 64.4 (William Ashhurst to the Lord Mayor, 5 January 1711).

[94] Rep 101, p. 76; Rep 104, pp. 116–17; Rep 106, p. 68. This was a continuing problem, not easily solved, since victuallers—or some, at least—were clearly anxious to become constables. The advantages were such that some were willing to give up their licences for the year in order to do so—perhaps reckoning that they could operate with impunity in any case. See, for example, Rep 114, pp. 101–2; and CLRO, Misc. MSS 64.4 (letters of 8 February and 24 January 1710–11).

[95] Jor 55, fo. 15. [96] Rep 114, pp. 60, 65.

[97] The deputy aldermen and 'some of the common councilmen' of Tower ward were summoned to attend the Court of Aldermen in 1699 to explain 'why they have chose Mr Michael Mitford Constable' when he had served very recently. The aldermen simply assumed that the men who made up the Common Council of the ward had made the decision (Rep 103, p. 90).

hold that deputy aldermen and ward common councilmen were acquiring in the early eighteenth century on the management of local policing resources. Even victuallers became acceptable as constables if the ward leaders gave their approval in writing.[98]

How much the aldermen's efforts at centralized supervision had been political in intention in the years after the Revolution is difficult to say. But it is clear that political considerations came to play some part in the selection of deputies when control over the process reverted to the local élite—and it may indeed have been political circumstances that encouraged that reversion to those in the wards who are likely to have known the candidates well. For London was deeply and violently divided by the consequences of the Revolution, by religious conflicts—typified by the Sacheverell affair—by the wars and the making of peace, by the succession crisis and the establishment of the Hanoverian monarchy.[99] It is hard to judge what role, if any, threats to security and social order arising from those conflicts played in the changing procedures surrounding the appointment of deputy constables. But there is no doubt that political trustworthiness became one qualification for employment once the whigs were securely in charge of the City after 1714 and anxiety about a Jacobite rebellion and a foreign invasion in support of the Pretender were all too real possibilities. The fact that a prospective deputy constable was 'known to be well affected to his present majesty and Government' became for some years an attribute that was thought to justify appointments.[100]

How many and what kinds of men were being admitted as deputy constables in the process controlled by the aldermen and then, more certainly, by the ward élites is an important question since the burden of criticism of the constabulary of the metropolis in the eighteenth century so often came down to allegations about the character of the men who were allowed to serve in the place of respectable householders. It is useful to try to get some sense of who the deputies were in this period. The intervention by the Court of Aldermen in the process of appointment helps to make this possible in the period after the Revolution since the names of deputy constables began to appear in the court's Repertories.

[98] Rep 117, p. 98. Not everyone thought that this reversion to local control would make for more effective supervision of the officers responsible for keeping order. In December 1712 the newly elected mayor contemplated returning the control over the appointment of deputy constables to the aldermen. He was troubled by excessive violence on the streets of the City at night, violence he thought being perpetrated by 'Night Walkers and Malefactors', and he blamed the poor quality of deputy constables—their 'Inability and Corruption' in general, and their failure to supervise the watch in particular (CLRO, Papers of the Court of Aldermen, 15 January 1711–12 (two letters); and a draft precept of December 1712 that went no further (CLRO, Misc. MSS 38.25).

[99] Geoffrey Holmes, *British Politics in the Age of Anne* (1967; revised edn., 1987); *idem*, *Trial of Doctor Sacheverell*; *idem*, 'The Sacheverell Riots: The Crowd and the Church in Early Eighteenth-Century London', *Past and Present*, 72 (August 1976), 55–85; De Krey, *A Fractured Society*; Rogers, *Whigs and Cities*; *idem*, *Crowds, Culture and Politics in Georgian Britain* (Oxford, 1998), ch. 1; *idem*, 'Popular Protest in early Hanoverian London', *Past and Present*, 79 (May 1978), 70–100.

[100] CLRO, Misc. MSS 64.4 (letters concerning the appointment of constables, 1709–65—letters, for example, of January 1723 and January 1728).

This record is almost certainly not complete in the 1690s. The aldermen repeated their order often enough that a deputy only be sworn with their permission to suggest that it was not being obeyed in every case. It seems clear, too, that even if the rules were being followed, the recording of names in the Repertories was incomplete: in the 1690s deputies for some wards are included in one year, those from a different set of wards in the next. The Repertories do, however, identify *some* of those who served as deputy constables. Between 1693 and 1710 they record 262 occasions on which a deputy was approved by the court—a number accounted for by 196 individuals, several of whom served more than once. I have sought to identify the sixty-eight men who served in the years 1693–8, restricting the search to these six years so as not to stray too far from the tax assessment evidence used above, to discover what kinds of men were being brought into the constable's office who were (presumably) willing actually to do the job.

The results of such an examination, not surprisingly, confirm that deputies were distinctly poorer than the men they replaced. The list does not include linen drapers and goldsmiths. On the other hand, the deputies do not all appear to have been *very* poor men. The majority of those whose occupations are known (fourteen of twenty-three) were artisans; at least they were listed as carpenters, weavers, tailors, coopers, and the like in tax assessments, though it is unclear what that meant in practice. All but one of those who paid the poll tax were on the basic rate of a shilling, as one would expect. Of those whose property tax assessments are known, they were all towards the bottom end of the range: more than eight out of ten were rated at twenty pounds or less a year, compared to about 60 per cent of the elected constables in the two Farringdon wards, and a quarter of those in Cornhill.

As a group, the deputy constables of the 1690s were poorer than the elected constables in Farringdon Within and Without, and much poorer than those in Cornhill. They matched the lower band of the elected constables in all three wards. The most suggestive evidence that they were poor men may be the fact that twenty of the sixty-eight men who deputized in the City in the years 1693–8 did so on more than one occasion. Matthew Brightridge acted as a deputy in the ward of Coleman Street in 1693, 1698, and again in 1699; Robert Christmas did the same in Bassishaw on four occasions in the 1690s, and continued regularly to serve in Anne's reign; William Thornton was also regularly available in the last decade of the seventeenth century to fill in for elected men in Cheap; John Finch and John Harwood each acted as deputies on three occasions in the 1690s in Cornhill; and Edward Payne turned the post into a career, for he served in the ward of Vintry in every single year of William's reign and well into Anne's. None of these men appears to have been assessed for taxes, and were perhaps too poor to pay. On the other hand, several others among the twenty who deputized more than once in this period were assessed, though at the low end of the scale: a tailor in Aldgate, a coffeeman in Farringdon Within, a currier and a joiner in

Cripplegate Within. It seems reasonable to think that all these men were willing and available to be deputy constables because they may have drawn some local standing from acting so regularly, and because they regarded it as a job that helped them patch together a living.

A complete record of deputies in the 1690s, if that could be obtained, would almost certainly reveal that even more substantial middling men than our figures show bought their freedom by hiring a substitute when their turns came to act as constable. But it seems unlikely that a *very* large number would have done so without that being apparent in the wardmote inquest book itself. Most of those elected, even men of considerable standing in their communities, seem to have served out their year as constable in the 1690s and in Anne's reign. They also participated in the political and administrative life of their communities. Serving in an office for a year in their precincts, parishes, wards, or on the wider City stage was not an unusual experience for the male, ratepaying, inhabitants of the City—a circumstance that helped to sustain the City's resilience, and its sense of itself as a political and civic community. The men who were elected as constables of Cornhill in the decade and a half after 1690 were the kinds of men who regularly accepted responsibility for the ordering of the communities they lived in. Most had had experience (and would go on to have more) in the governing of their parishes as members of the vestry or as churchwardens and overseers of the poor, and, under the leadership of the alderman and his deputy, of the ward. They served on juries; and more than 80 per cent of the constables elected in Cornhill had served in the various ward offices. Their acceptance of such offices and their willingness to fill active posts and to sit on juries suggests a willingness to participate in local affairs, to act in and help to govern their communities.[101] Some of them did so, we might presume, out of self-interest, out of a desire to impose their vision of order on the community; for others it may have been a way of confirming their place in the community or because they believed in these forms of local self-government.[102]

The office of constable was almost certainly more demanding, however, than most other parish posts. And, as I suggested earlier, it seems to have become even more demanding in the early decades of the eighteenth century, as policing problems became more difficult to deal with, as the population of the metropolis rose, and there appeared to be more serious crime and more dangerous

[101] Beattie, 'London Juries in the 1690s', 214–53.

[102] Joan Kent found that similarly respectable men acted as constables in rural parishes and market towns about a century earlier (*English Village Constable*, ch. 4). For some men in London, the office may have been useful as a way of conferring local standing—granting a form of respectability that, for example, William Bird appealed to in petitioning the king to pardon his wife after she was convicted of theft and threatened with execution. Bird, a tailor living in St Andrew's, Holborn, based his plea on the grounds that the charge was malicious, the result of a private quarrel. But he also called upon his own standing in the community. He had been a householder in St Andrew's for more than thirty years, he said, 'and has borne all parish offices and been always in good repute'—a claim supported by the constable, churchwardens, and other inhabitants of St Andrew's. Hester Bird was granted a free pardon (CSPD 1682, pp. 207, 220).

offenders and more traffic on the streets. At the same time, and for the same reasons, the expectations held of them by the aldermen or their fellow citizens may also have been increasing. This may explain why men who could afford to do so were showing increasing reluctance to take on the business of being a constable in the early decades of the eighteenth century. Defoe said in 1714 that the office of constable was one of 'insupportable hardship: it takes up so much of a man's time that his own affairs are frequently totally neglected, too often to his ruin'.[103] The lord mayor and aldermen had complained soon after the Restoration about the number of respectable men who were refusing to serve as constables, to the 'disparagement', they said, of the office.[104] But it seems likely that, while deputy constables were being engaged then (as they had been at least since the beginning of the seventeenth century), the decades after 1689 saw a sharp increase in their numbers. More men than ever before appear to have been anxious—and perhaps more able—to pay someone to do their duty for them and there seems to have been a flight from the office of constable of men in the middling ranks of London society in a way that parallels the withdrawal of aldermen from the day-to-day work of the magistracy. It may have been the numbers of men now anxious to escape from this, and perhaps other local offices, and its acceptance (under their control) by the City authorities that explains why the provision of a 'Tyburn Ticket'—a certificate excusing the holder from taking on such offices—was introduced as a reward for the successful prosecution of shoplifters in a 1699 statute supported and indeed crafted by London men.[105]

The evidence in the Court of Aldermen's Repertories about the employment of substitute constables is much fuller by the second quarter of the eighteenth century than in the 1690s, and some of the apparent increase in the numbers of such deputies may simply reflect this. But the change is too sharp to be merely a matter of better record-keeping. Had there been as many deputy constables active in the City in the 1690s as there came to be by the 1720s and after, evidence of that would almost certainly have shown up in the half dozen or so wardmote inquest books that survive in that period. The increase in substitute constables over the first quarter of the century seems real enough, and to have occurred on a massive scale in some wards. The change in the ward of Cornhill, for example, was dramatic. Whereas only nine of fifty-eight men elected in the 1690s and the early years of Anne's reign bought their way out of the office, thirty years later, over 90 per cent of nominated men in Cornhill declined to serve. By the late 1720s it appears that nearly a hundred deputy constables were being appointed in the City every year—an apparently sharp increase from previous levels that helps to explain why the aldermen were unable to maintain their close scrutiny of the candidates and why after the first decade of the eighteenth

[103] Daniel Defoe, *Parochial Tyranny: or, the Housekeeper's Complaint*... (1727) 17.
[104] CLRO: P.D. 10.73.
[105] See Ch. 7. For 'Tyburn Tickets', see Radzinowicz, *History*, i. 192–4; ii. 155–61.

century they left the approval process in the hands of the deputy aldermen and common councilmen of the wards.

What is perhaps most striking about the changing employment of deputy constables is the huge variation across the City, revealed in the data in Table 3.3, which sets out the proportion of deputies among the serving constables in each ward in the four years 1728–31. These figures suggest that in Lime Street and Cornhill, virtually every constable serving in those four years was a substitute for the man originally elected; in Farringdon Without, on the other hand, only three out of the seventy-two serving constables were deputies, and in Cripplegate Without, none. The proportion of hired men in the other wards was spread reasonably evenly between those two extremes, with the largest number clustered between 35 per cent and 50 per cent. The median was 43 per cent and the average about 39 per cent. The number of substitute constables appears to have

TABLE 3.3. *Percentage of deputies among serving constables, 1728–1731*

Ward	Percentage of deputies among serving constables, 1728–31 %
Cornhill	94
Lime Street	94
Bassishaw	88
Coleman Street	71
Candlewick	61
Tower	60
Cheap	55
Dowgate	50
Bridge	48
Aldgate	46
Vintry	44
Bread Street	44
Walbrook	43
Billingsgate	41
Cripplegate Within	39
Bishopsgate	39
Cordwainer	38
Queenhithe	36
Aldersgate	28
Langbourn	27
Broad Street	23
Farringdon Within	19
Portsoken	10
Castle Baynard	8
Farringdon Without	4
Cripplegate Without	0

Source: Reps 132–5

continued to increase in the second half of the century; Patrick Colquhoun estimated that they made up 'nearly two-thirds' of the body of City constables in 1803.[106]

The data set out in Table 3.3 suggest a broad correlation between the proportion of reasonably wealthy householders living in a ward and the percentage of elected men who opted to pay for a deputy. The highest percentages of deputy constables in the four years examined around 1730 were to be found in the smaller and richer wards in the central part of the City; at the bottom were the wards at the other end of the scale with respect to population, size, wealth, and the number of constables assigned to deal with their manifold problems. Three of the bottom five were large extra-mural wards; the two that were within the walls were populous and poor.

Perhaps the most important point about the change that had occurred is the apparent flight from local office of the kinds of respectable men who seemed still to have been prominent among the constabulary in the late seventeenth century. The largest proportion of substitutes were employed in the wards in which men in the middling ranks of London society had been content to serve their year as constable fifty years earlier. There were fewer deputies in the largest wards not because none of their inhabitants could afford to pay, but, as we have seen, because the parish and ward authorities insisted that the only way to escape service as a constable or other officer was to pay a fine at the parish or precinct level and thus contribute essential revenue to parishes that otherwise would not be able to meet their Poor Law payments. In a petition to the aldermen in 1715 the churchwardens of the parish of St Anne Blackfriars, in the ward of Farringdon Within, complained that a man had been allowed to bring in a substitute constable at the wardmote instead of fining to be excused the office—an entirely new practice, they claimed, that threatened their Poor Law revenues. Because of the large numbers of lodgers in the parish and of poor to be supported, the parish had long depended on 'the fines which were got at Christmas' (that is, at the meeting to nominate officers for the coming year). They wanted the aldermen to order that no one be sworn as a constable of the precinct 'but those only who were duly chosen in their vestry', preventing a private arrangement between the nominated man and a substitute from which the parish would not benefit. It was so ordered.[107]

What appears to have been the sharp reduction in the number of substantial shopkeepers and tradesmen serving as constables in the early decades of the eighteenth century had important implications for several aspects of the policing of the City. In the first place, it may well explain the hostility towards the

[106] Colquhoun, *A Treatise on the Functions and Duties of a Constable*, x.

[107] CLRO, Papers of the Court of Aldermen, 1715 (11 January 1714/15). Another man who wanted to 'execute the office by a deputy' was told by the vestry of the parish that he had to 'perform the Duty of that Office in Person or pay the accustomed Fine for his Refusal' (CLRO, Misc. MSS 64.4 (petition of Samuel Batt, 1722/3)).

constabulary that is evident by the second quarter of the century. The fact that four out of ten constables were hired men by 1730—and many more than that in the wealthier parts of the City—may well have created (in a society so intensely conscious of social hierarchy) the negative perception of the constables that was to increase ever more strongly over the century, particularly the view that they were 'ignorant' and 'insufficient'. There was no doubt a good deal to fault the constabulary for, but the criticism in the City was surely intensified by its changing social character—by the increasing preponderance of hired men in the inner and middle wards, and elected men of no more than modest means in the large, populous, wards outside the walls.

REPEATED AND ACTIVE SERVICE

A second consequence of the changing nature of the constabulary—and another reason for criticism—may have been the appearance of constables who came to regard the post as a trade, as a way of making a living, or at least as one component of a living. We saw in the 1690s an apparent willingness on the part of some of the hired deputies to fill in whenever called upon. Some men held the post for several years together. That was even more common by 1730, when even more constables were remaining in office for sustained periods of time—perhaps at the urging of the deputy aldermen and the common councillors.

Evidence about the extent of repeated service can be derived from the wardmote presentments and the Repertories of the Court of Aldermen; I have examined the lists of constables and deputies in all the wards of the City in the four years 1728–31 (and a few years further afield before and after) simply to get some sense of the extent of repeated service in this period, not to measure it in detail. What this suggests is that at least half the men who served as deputies were likely to hold the post for several years. A four-year sample provides merely a hint of the extent of this long-term service. Half the deputies named in those years served once only. But 21 per cent acted in two years, 14 per cent in three, and a group of twenty-seven men (15 per cent of the total body of deputy constables in that period) served in all four years.[108] That many such men settled into the post of constable of their precincts can be shown by examining deputies over a longer period than four years: in Table 3.4 four wards with above average numbers of deputies are examined over a sixteen-year period. What these data reveal is that two-thirds of deputy constables in those four wards served more than once, that on average they served three to four years, and that some men served very often—eight individuals in ten or more of the sixteen years, one, in Bread Street ward, in all sixteen.

[108] Based on the wardmote presentments, which include the names of constables nominated by the wards, and the Repertories, which record the deputies who actually served.

TABLE 3.4. *Multiple years of service by deputy constables in four selected wards, 1721–1737*

Number of years served	Number of individual deputies in Bread Street	Coleman Street	Cornhill	Tower	Total number of deputies	%
1	6	6	7	12	31	33.3
2	3	1	1	10	15	16.1
3	6	2	3	4	15	16.1
4	3	3	3	1	10	10.8
5	2	—	—	1	3	3.2
6	—	—	1	2	3	3.2
7	1	—	2	3	6	6.5
8	—	—	—	1	1	1.1
9	1	—	—	—	1	1.1
10	1	1	—	—	2	2.2
11	—	1	1	—	2	2.2
12	—	—	—	1	1	1.1
13	—	—	—	1	1	1.1
14	1	—	—	—	1	1.1
15	—	—	—	—	—	—
16	1	—	—	—	1	1.1
Total number of deputies	25	14	18	36	93	
Average years served	4.2	3.4	3.0	3.3	3.6	

Source: Reps 125–41

In addition, as was happening in the 1690s—though now to an even greater extent—it was common for beadles to take on the additional role of deputy constable. In 1730, for example, eleven of the City's twenty-eight beadles also served as deputies; in 1742, sixteen.[109] It is possible that some took on the office because they were available and no one else would do it. It is more likely that they valued the extra fee it would provide on top of the salary that all beadles received, and at the same time the added authority and the measure of protection from the insults and assaults that might come their way in the streets.[110]

Whether frequent service meant devotion to the work of the constabulary is another matter. It is difficult in fact to discover how commonly the constables were likely to be called upon to perform some aspect of their duty. Only a small proportion of a busy constable's work would have left traces in the records, and in any case only a handful of records survive. One source that provides some indication of how busy a typical constable might be is the lord mayor's Charge

[109] Rep 134, pp. 91–5, 101–2; Rep 146, pp. 57–61.
[110] For beadles, see below pp. 163–8.

Book for 1728–33—the only surviving account of the lord mayor's work as a magistrate between 1705 and the mid-1750s. This lone volume is helpful on the issue of constables' work for, unlike the records that survive from the late seventeenth century, it includes the names of constables who brought suspects to the Guildhall to be examined. It provides only the briefest note of the matters at issue, but it does reveal how many and how often constables had business to conduct before at least one of the City's magistrates. In 1730, the year in which Richard Brocas served as mayor, 148 individual constables brought suspects before him (just under two-thirds of the City's constabulary), some on several occasions. These included suspects who had been picked up by the watch and kept overnight in the watch-house or for longer periods in one of the sheriffs' compters; others who had been charged with an offence by the victim of an alleged crime, and some who had been arrested by the constable in pursuance of a magistrate's warrant. The offences involved ranged from the most serious felonies to the most trivial misdemeanours, many of them forms of disorderly conduct on the streets, especially at night—street-walking, brawling, causing a disturbance, drunkenness, and the like.

The volume includes business in only about thirty weeks in Brocas's term,[111] and he was in any case only one of several magistrates who might have dealt with criminal business that year; Sir William Billers, seems to have been equally busy, though it is impossible to discover who among the constables took suspects to his door, and in what numbers. The Brocas record does, however, offer some insights into the patterns of constables' work. It provides evidence, for example, that, as one would expect, some constables were more actively engaged in the business of the office than others. In 1730 most of the constables who appear in the Charge Book do so on only one or two occasions. But thirty-three of the 148 men made more than four appearances, eight of them more than ten. Together, these men account for more than half the defendants brought to Brocas's attention.[112] Ten or more appearances before the lord mayor in seven months or so, even the twenty-four made by one of these men, do not suggest a feverish level of policing work. But, relatively speaking, when we remember that close to a hundred constables do not appear in the Charge Book at all, the busiest of these

[111] Several weeks of business went unrecorded because one of the four attorneys regularly failed to keep notes; and Brocas spent at least eight weeks in his mayoral year in attendance at the Guildhall sessions of the peace and the Old Bailey, during which he did not sit as a magistrate.

[112] Constables are named on 466 occasions in the charge book for 1730 (bringing many more suspects than that since they frequently brought more than one). The numbers involved are at follows:

No. of constables	Times named	Total appearances	% of whole
89	1–2	115	24.7
26	3–4	89	19.1
25	5–9	154	33.1
8	10–24	108	23.3

men look to have been deliberately active, to have sought engagement in the business of the office, or at least not to have shunned it.

Hardly surprisingly, given the number of targets available, constables from the largest and most crime-prone wards brought more suspects before the lord mayor than others: seven of the busiest men over the four years we have examined acted in Farringdon Without; four others lived in Aldersgate; and three each in Cripplegate Without and Farringdon Within. Edward Hartley, who was the constable appearing twenty-four times in the charge book in 1730 (and who brought in many more suspects even than that figure might suggest), and John Cathery, named in the charge book on nineteen occasions, were both constables of the ward of Farringdon Without. But there were active men in many wards, including a dozen in the smaller wards at the centre of the City who appeared in the lord mayor's Charge Book more often than the bulk of their fellows. Such men were at the least willing, possibly more than that, to engage in the business of the office. They were virtually all deputy constables who served in the office for more than one year.

As we will see, such active constables can be found at some periods co-operating with thief-takers to make arrests and to give evidence against offenders whose conviction might bring a share of reward money. That was particularly the case in the 1690s, when a large number of coining and clipping offences provided thief-takers and their constable allies with relatively easy pickings. There is less evidence of that in the 1730s, but some of the active constables were among those who received reward money, particularly for the conviction of street robbers—sharing in the 100 pound reward available under the king's proclamation after 1720 as well as the forty pound parliamentary reward. In 1730 John Cathery earned 35 pounds of the proclamation reward for his part in the arrest and conviction of Richard Smith, and £5 each for what was clearly a more minor role in the taking of two other street robbers.[113]

Such men were still very much a minority among the constables, most of whom almost certainly continued to look to serve out their year as quietly as possible. None the less, the changes in recruitment may have introduced some men into the constabulary who engaged more actively in the business of the office and who came to regard it as a way of putting together a living. At the very least, constables who had been hired to do the work were more likely than the tradesmen and shopkeepers they replaced to respond to financial inducements if the City had the resources to offer payments for extra work—for work that might expand the range of the constables' customary duties. One can see that working in a small way with respect to street policing, particularly the control of vagrants and beggars and others who helped to cause congestion. As we have seen, the aldermen frequently complained about the constables' failure to exert themselves to clear the streets.[114] A lord mayor put his finger on the problem, but

[113] For rewards, see below, pp. 230ff., 376ff.

[114] See text above at nn. 32–8.

also pointed towards a solution, when he was urged in 1719 by Charles Delafaye, an under-secretary of state, to deal with the number of ballad singers, mainly women, who were spreading anti-Hanoverian tracts on the London streets—a problem that was increasingly exercising the government, given the rumours swirling about of the threat of a Jacobite invasion. Lord Mayor Fryer told Delafaye that it was difficult to get the constables to do such work: 'so few officers will appear to do their Duty in takeing them up', he wrote. But he went on 'those that are willing to do it [are] so poor, that I think you would do very well to send me 20 [guineas] to dispose off among those that I know will be industrious'.[115] It seems likely that he had in mind deputy constables who looked upon the post as a job, rather than a civic duty. What Fryer proposed was an informal and *ad hoc* infusion of money, but it heralded a practice that was to be instituted as policy within a few years, in a period in which vagrancy and begging seemed to the London authorities to have become a particularly serious problem, or at least a problem to which the propertied were becoming impatient for a solution. If the constables would not accept it as part of their duty, then it would have to be made worth their while. That was clearly the sentiment behind an act of Common Council in 1738 (passed after some years in which the problem of the City's streets had been on its agenda) that established a payment of two shillings per head for every 'rogue or vagabond' taken before a City magistrate—a recognition that the constabulary was not now made up entirely of men taking up the post for a year, but in considerable part, of men doing it more permanently as one source of income.[116]

Taking up vagrants was not a new task for constables. But some men did in fact take on new duties in the second half of the century and in so doing helped to expand the range of constables' duties in the City. Men doing their year of civic service—especially the wealthier men among them—would not likely have made themselves available for additional work. But a force that included a significant number of paid men was clearly more flexible on that score. And over time, as necessity pressed and as the City could better afford it, some constables came to be paid from the public purse for extra work. Thus in 1752 the City marshals were authorized to pay two constables five shillings a day each to attend at the Old Bailey. It is unclear what prompted the authorities to bring in constables

[115] SP 35/19/48.

[116] Jor 58, fo. 71. A printed copy of the act is at CLRO: P.A.R., vol. 7, p. 119; and see the *London Evening Post*, 25–8 February 1738, in which the new policy is described as 'a Scheme for clearing the streets of Beggars, and 'tis hoped of Ballad Singers, Chairs and other Nuisances . . .'. In 1704 the governors of the Corporation of the Poor had established a reward of a shilling a head for all 'rogues, vagabonds and sturdy beggars' brought to the workhouse by constables, beadles, and the marshalsmen to be paid by the keeper (CLRO, Minutes of the Courts of the President and Governors for the Poor of London, 1702–5, fos. 172, 185). The two shilling reward in 1738 was, however, the first to be offered by the City government to be paid out of the City's revenue.

to police the sessions of gaol delivery for the first time—whether it was to control the prisoners or the spectators who crowded the galleries. It may well have been the former, since the court's calendar increased strikingly in the years around mid-century, a speculation that is given some support by the fact that by 1763 (another year of increased crime following the end of the Seven Years' War) the number of constables being paid for such work had been increased to eight. Several days' duty eight times a year represented a further extension of their routine work for a handful of men, and work that, at five shillings a day, was no doubt welcome to those who by then were looking to make some of their living as constables.[117]

But the greatest expansion of the duties performed by constables in the second half of the century clearly arose from concern on the part of the City authorities with the policing of crowds—crowds that gathered to witness celebrations or public punishments, or to protest against an injustice, or demonstrate in favour of a cause. This was to be particularly the case after the Gordon Riots and in the demonstrations in support of radical political causes in the years of the French Revolution. But long before those alarming events, the City authorities had moved to engage the constables more frequently in such policing work, and to increase the number of officers available. The constables had long had the duty to police public whippings and especially the pillory. The City constables had not, however, routinely been on duty at Tyburn, the place of execution for offenders convicted of capital offences at the Old Bailey. Some of the sheriffs' officers, along with the marshal and the six marshalsmen, had the duty (at least after the Restoration) of escorting condemned men and women to Tyburn, because the journey to the execution site began at Newgate in the City.[118] Constables from the county of Middlesex were on duty at Tyburn itself at least by the 1750s.[119] By 1763, however, a number of City constables were also in attendance at Tyburn, when I take it they were first engaged since the aldermen objected in that year to bills for this service submitted by the City marshal, who clearly retained the primary responsibility for keeping order at executions.[120] It seems likely that this was a response to the anxieties voiced by Henry Fielding in 1751 and by others about the way Tyburn hanging days provided opportunity

[117] CLRO, Alchin MSS, Box I, no. 1; P.A.R. vol. 12, pp. 23–7 (report of the Committee on the City Lands (1770)).

[118] V. A. C. Gatrell, *The Hanging Tree: Execution and the English People, 1770–1868* (Oxford, 1994), 33. The marshalsmen—as officers of the lord mayor's household—also acted as doorkeepers (and security men of a sort) in the various courts in which he presided: the justice room in the Mansion House when that was opened in 1752, the sessions of the peace in the Guildhall, and the Old Bailey.

[119] Welch, *Observations on the Office of Constable*, 28; Steven Wilf, 'Imagining Justice: Aesthetics and Public Executions in Late Eighteenth-Century England', *Yale Journal of Law and the Humanities*, 5 (1993), 55.

[120] CLRO, Alchin MSS, Box I, no. 1.

for drunken revelry, and too little sombre reflection on the wages of sin.[121] Whether the crowds were becoming more difficult to control or the attitudes of the authorities towards crowd behaviour at executions was changing, it was clearly thought necessary to add a contingent of City constables to join the escort from Newgate and to act as reinforcements to Middlesex constables around the hanging place.

Constables were hired in even larger numbers to police executions when the hanging place was moved from Tyburn to a gallows outside Newgate, in 1782.[122] The forces that came to be thought necessary to control the large numbers of people who all too often pushed into the streets around the gaol and the Old Bailey courthouse simply could not have been assembled routinely under the old system, in which men of middling station served for a year in their own person and in the understanding that their duty would be largely confined to their own wards. Indeed, there were increasing numbers of occasions by the last decades of the century on which such large numbers of constables were thought to be required to control crowds in the City that the marshal was authorized to hire men who became known as 'extras', that is, constables who were not on the ward establishments, but who were taken on from time to time for particular purposes. The City marshal had been eclipsed as a policing figure in the second quarter of the century when authority flowed strongly towards the wards and into the hands of the deputy aldermen and common councillors. He re-emerged as a useful organizer of crowd policing in the second half of the century, most especially after the Gordon Riots in 1780 and in the midst of the threats posed by radical political crowds in the 1790s and the early decades of the nineteenth century. He was given this work presumably because he had City-wide authority and had some responsibility to keep the streets clear. The marshal was in charge of hiring 'extra'constables for the purposes of street policing—an entirely *ad hoc* development which allowed the constabulary to be increased by two and three times its official numbers when it was thought necessary and which had come to seem possible presumably because many, perhaps most, of the ward constables were now also routinely paid for additional work.[123]

[121] Henry Fielding, *An Enquiry into the Causes of the Late Increase of Robbers, and Related Writings*, ed. Malvin R. Zirker (Oxford, 1988), 163–72; Radzinowicz, *History*, i. 410–13; Beattie, *Crime and the Courts*, 526; Nicholas Rogers, 'Confronting the Crime Wave: The Debate Over Social Reform and Regulation, 1749–1753', in L. Davison, T. Hitchcock, T. Keirn, and R. B. Shoemaker (eds.), *Stilling the Grumbling Hive: The Response to Social and Economic Problems in England, 1689–1750* (Stroud, 1992), 81–8.

[122] Gatrell, *The Hanging Tree*, 601–4; Wilf, 'Imagining Justice', 64–76.

[123] For the hiring of 'extra' constables, see Andrew T. Harris, 'Policing the City, 1785–1838: Local Knowledge and Central Authority in the City of London', Ph.D. thesis (Stanford, 1997), 63–7.

By the last decades of the century, when the City's resources were flowing ever more freely into policing, large numbers of ward constables were joined by extra constables to police crowds that could become particularly difficult—for example at the pillorying of offenders whose crimes made them likely targets of popular abuse. On one occasion in 1764 'all the constables of the City [and] the Javelin-Men, in short the whole civil Power' was assembled.[124] Two decades later, the possibility of hiring 'extras' made for even more formidable forces. At a pillorying in 1785 'the sheriffs . . . on horseback, with their officers, the two City Marshals, and upwards of 500 Constables' were assembled—that is, twice as many constables as were on the books.[125]

Remembering Thomas Garrard's caution in 1737 about increasing the number of constables by even a handful, this had been a remarkable transformation of the basis of this crucial element of the City's policing forces. It had been made possible by the sharp increase in the number of paid constables in the first half of the century. By 1800 such men not only made up two-thirds of the City's constabulary, by Patrick Colquhoun's reckoning, but they had come to be seen by reformers like him as the necessary foundation of a new system of police. Substitutes, Colquhoun said in the constables' handbook he published in 1803, were not only acceptable but were actually to be preferred. The office of constable had become much more demanding since 1660 because parliament had added so many duties and responsibilities over the intervening period. At the same time, the freemen who used to take their turns at filling the office as part of their civic duty, were now too busy to do so. Substitutes were 'unavoidable', Colquhoun said, 'in the present state of society, where so few are to be found, among the freemen, whose important pursuits will admit of that labour and attention which is now indispensible on the part of a Constable, who will do his duty'. The poor men among the freemen who could not pay the premium required to hire a sustitute served reluctantly, and did as little in the job as is 'indispensably necessary'. Substitutes, on the other hand, could be expected to bring vigour and energy to the post if they were adequately paid and carefully selected.[126]

Colquhoun's views reflect the sea-change in thinking about policing issues that had occurred in the eighteenth century. By 1800 the constables of the City were largely hired men and, in part as a result of that, their numbers could be increased as problems of crime and public order seemed to require. Such 'extras' could also be turned out to confront City-wide problems. These changes had been facilitated in the second half of the century—when the need for larger numbers of peace officers became overwhelming—not only by the City's ability to pay for larger numbers of extra constables, but also by the presence in the

[124] *The Public Advertiser*, 22 March 1764 (a reference I owe to Greg T. Smith). Javelin-men were the City marshalsmen who carried spears on such occasions, and for whom see below.

[125] *Gentleman's Magazine*, 55 (1785), 917.

[126] Colquhoun, *A Treatise on the Functions and Duties of a Constable*, x–xv.

Corporation of an officer who could act as a co-ordinator. This was the marshal, whose changing role in the policing of the City we must examine briefly.

CITY MARSHALS

There was clearly some ambivalence about what was expected of the constables during the daylight hours. When vagrants or beggars crowded the streets, or when anxieties rose about the way the young were wasting their time, or forms of popular amusements and sports seemed to the authorities to be encouraging vice and immorality the constables might be ordered to be more actively involved in surveillance and prosecution—to take up vagrants, for example, and encouraged with fees for doing so. But for the most part in the seventeenth and eighteenth centuries constables were not expected regularly to patrol their precincts. Indeed the more general expectation was that they would remain at home and be available to respond to requests for help. Any such patrolling of the streets during daylight hours before the second half of the eighteenth century was more the duty of two other officers, the city marshals and the beadles.

The marshals were salaried City officers, appointed by the lord mayor and aldermen and paid from the Chamber. Among the policing resources of the City in 1660 the marshals were a relatively recent creation, for they dated only from the reign of Elizabeth. The office originated in orders from the queen that the City appoint a 'provost martial' to deal with the threatening growth of vagrancy and 'masterless men', and following the establishment of such officers in the counties by act of parliament.[127] By the second quarter of the seventeenth century the appointed man was known simply as the marshal—though occasionally, until after the Restoration, as the provost marshal[128]—and he had acquired an assistant who was generally referred to as the under-marshal.[129] The marshal also acquired the support of six 'marshalsmen' in the early seventeenth century. By the end of the century the marshal received a salary of one hundred pounds from the City, the under-marshall sixty pounds, and the marshalsmen a shilling a day, or eighteen pounds, five shillings a year, and new livery which identified them as members of the lord mayor's household.[130]

[127] A. L. Beier, *Masterless Men: The Vagrancy Problem in England, 1560–1640* (1985), ch. 9; Paul Slack, *Poverty and Policy in Tudor and Stuart England* (1988), 91–102; Archer, *Pursuit of Stability*, 223–4.

[128] Rep 71, fo. 183 (1666); Rep 73, fo. 91 (1667).

[129] The marshal—technically, the 'upper marshal' but usually simply called *the* City marshal—retained his superiority, certainly with respect to salary, and it was his office that continued (and indeed continues to this day) when the under marshal's post was abolished in the nineteenth century. I have benefited in what follows from a brief history of the office in an unpublished essay by Betty Masters, 'The City Marshal', a typescript copy of which is in CLRO, Misc. MSS 135.4. The essay contains a useful list of all the marshals and under-marshals.

[130] Jor 52, fo. 50; Rep 92, fo. 165. The attachment of the marshals and marshalsmen to the lord mayor's entourage was underlined in 1687 when the aldermen ordered the

The marshals' authority and duties, as set out by the Court of Aldermen in 1626, were largely policing in nature.[131] Their central responsibility continued to be to take up vagrants, and they were commonly sworn as constables by the late seventeenth century to bolster their authority for that task.[132] In addition, the upper marshal was expected to exercise a general if vague supervision over night-time policing by riding around the City several times a week to see that the watches were being kept as they were supposed to be, to ensure that the beadles attended to the lighting of the ward lanterns, to take up prostitutes, and to search for vagrant children sleeping in the streets and under stalls and send them to Bridewell. He was allowed 10 pounds a year to keep a horse for this purpose. Instructions set out in 1603 and repeated in 1626 also included the duty to see that those who kept the markets in the City departed at the ringing of the curfew bell, and that the streets around the markets were properly cleaned—indeed, to ensure that the scavengers did their work of street cleaning more generally. In a similar vein, he was instructed to prevent women selling fish and oysters and other things in the streets unless they were licensed to do so, to check that unlawful measures were not being used in public houses, and to report unlicensed alehouses to the magistrates. The work of the two marshals and their six men thus centred on policing the streets and, because they were appointed by the central authorities of the City, it was a natural part of this duty that the marshals early acquired the task of keeping the streets clear during important ceremonial occasions—when the monarch came to the City, for example, and along the route of the procession on lord mayor's day.[133]

A great deal in the way of general supervision over the policing of the City streets had thus been heaped on this tiny force of two marshals and their six men. It was unlikely that they would ever manage to fulfil all the obligations set out for them, but after the Restoration their duties continued to expand.[134] Well into the eighteenth century the Court of Aldermen asked the marshals from time to time to oversee some new aspect of the policing of the City.[135] The lord mayor's Charge Book provides evidence that the marshals and their men engaged to some extent in policing the streets. When a man was charged by a constable on suspicion of being a thief in 1697 and the lord mayor was told that he was 'known by the Marshalls Men to be a person that is an old offender' that was

marshalsmen's liveries to be made 'suitable to the liveries' of the lord mayor's servants (Rep 92, fo. 165).

[131] Rep 40, fo. 183. [132] Rep 80, fo. 305.

[133] At the reception of William III in the City in 1697, the marshals were ordered 'to lead the procession on horseback with their six men on foot in new liveries to clear the way' (Rep 102, p. 22).

[134] See, for example, the lord mayor's detailed proclamation with respect to policing in 1676 (CLRO: P.D. 10.64).

[135] Among other things, checking that constables displayed their staves at their front doors (Rep 104, p. 95; Rep 123, fo. 347).

plausible enough evidence to get him sent to the Poultry Compter.[136] The marshals continued into the eighteenth century to arrest prostitutes and vagrants and others they deemed to be causing trouble in the streets. In the three years 1729–31, for example, the marshal charged a total of seventy men and women with various offences before the lord mayor—mainly for vagrancy or prostitution, for assault or making a disturbance in the streets, for selling illegally, or contravening other regulations. A quarter of these offenders had been named in a lord mayor's warrant that the marshal—or his hired men—carried out, and another third involved the bringing of accused offenders from the Bridewell or one of the compters.[137] The marshals continued to be ordered to police the streets in various ways—to arrest hawkers selling 'scandalous books and papers highly reflecting on the government' (1701), or to be diligent in taking up vagrants and beggars, especially children (1733).[138] And they were mobilized in 1745 when the City faced the threat that a Jacobite army might reach its gates, and were even issued with pistols.[139]

Given their City-wide authority and broad supervisory powers under the general direction of the lord mayor and the Court of Aldermen, the marshal might have emerged in the early part of the eighteenth century as the manager of the City's policing forces, as an early form of police commissioner. That he did not do so was almost certainly due in large part to the shift in effective control over policing matters from the lord mayor and aldermen to the leaders of the wards in the early decades of the eighteenth century. We have seen that the choice of deputy constables came under the control of the Common Council of the wards; in the next chapter we will see that the disposition of the watchmen and the organization of the street lights did so too. The marshals were given particular tasks from time to time by the mayor and aldermen, but by the second quarter of the eighteenth century the day-to-day management of the local policing forces rested very largely in the hands of the ward authorities.

The marshals also acquired a reputation for corruption. Opportunities to profit from their post arose from the breadth and range of their powers, and encouragement to do so from the significant cost of the office: the purchase price was 800 pounds by the early decades of the eighteenth century. Seventeenth-century marshals were accused of negligence by the Court of Aldermen, but not of corruption, or at least not to the extent that that charge was to be brought against their eighteenth-century successors. If they did become more grasping after 1714 than before, it may be because they lost a major source of patronage that they must have counted on to help recoup the price of the office when the lord mayor, after a prolonged dispute, made good his claim in 1723 to dispose of the six marshalsmen's places.[140] That would not explain the behaviour of a man

[136] CLRO: Charge Book, 1695–9, fo. 94.
[137] CLRO: Charge Book, 1728–31.
[138] Rep 106, p. 21; Rep 137, p. 98.
[139] Rep 149, p. 256.
[140] Rep 127, fo. 264.

like Charles Hitchen, who bought the office of under-marshal in 1712 for 700 pounds (with his wife's inheritance) and used it to build a thief-taking business in which he acted as a middleman between pickpockets and their victims—his authority giving him leverage with young pickpockets and other thieves.[141] But, along with what may have been the loss of prestige as the centre of policing shifted to the wards, that direct loss of revenue may have contributed to the broadening corruption associated with the office.

The powers of the office clearly provided opportunities for corrupt behaviour. It had long been part of the marshal's duty to prosecute violations of licensing and of the City's trading regulations—serving drink or trading without a licence, for example, or breaking any of the numerous rules that applied to those doing business in the City. Further powers were added in the eighteenth century, when the marshal was given the task of investigating and suppressing gambling houses.[142] The whole array provided marshals with numerous opportunities to negotiate pay-offs for agreeing not to prosecute—practices that had become sufficiently common by 1738 to lead the Court of Aldermen to complain about the 'connivance' of the marshals in the illegalities of unlicensed street traders, of those who conducted business on Sundays, and a range of other law-breakers.[143] Investigations into the corrupt practices and neglect of duty of the marshal took place in 1747,[144] and in the following year a major scandal involving the under-marshal—including, among others things, the charge that he had illegally arrested a black man and attempted to have him sent abroad into slavery—dragged on for two years before he was discharged.[145] Ten years later another marshal was discharged for extorting money from a victualler—at which point the City Lands Committee, which had the authority to sell the office—issued a public announcement (broadcast in the form of an advertisement in the newspapers) that the 'upper marshals of the City' had no right to extract money 'from brewers distillers vintners keepers of coffee houses victuallers bakers and others dealing in a public way under a pretence of excusing or conniving at illegal practices and misdemeanours'.[146]

In the event, neither this serious reputation for corrupt dealing nor the concentration of governance in the wards removed the marshals from all aspects of the City's policing.[147] Indeed, there are signs towards the middle of the century

[141] By outdoing him in ambition, skill, and viciousness, his one-time assistant, Jonathan Wild, was to demonstrate that the office was not, however, essential to the success of such a business. For Hitchen and Wild, see below, Ch. 8.

[142] Rep 149, p. 371. [143] Rep 142, pp. 174–7. [144] Rep. 151, pp. 365, 377, 396.

[145] Rep. 152, pp. 323, 331, 372, 443; Rep. 153, pp. 88, 111, 134, 329, 354, 399–400, 426, 493; Rep. 154, pp. 117–26, 179–81. Rumbelow, *I Spy Blue*, 86–8.

[146] Jor 66, fo. 224; CLRO, Misc. MSS 326.16.

[147] Though it seemed to the recorder and the common serjeant in a report on the office in 1775 that the marshal had ceased to have a role in the administration of justice (Jor 66, fo. 229).

that the City-wide authority of the office combined with increasing demands being made of the constables and other officers was providing the marshal with new opportunities to take a leading role in some aspects of the policing of the City. When a particularly serious outbreak of street violence occurred in 1744, committed by a gang of armed men in an area that spread from the western end of the City into Westminster and it seemed wise for the magistrates of the two jurisdictions to co-ordinate their reponses, it was the marshal, Edward Jones, who acted for the City in concert with Sir Thomas De Veil, the magistrate at Bow Street.[148] The marshal's role in City policing was considerably enhanced as the result of a further struggle in the early 1770s over the right to appoint the six marshalsmen, a right the marshals had lost to the lord mayor in 1723. The further conflict led to a new establishment of the small policing force under which purchase was abolished and the marshals and their men were given salaries. The result was to enhance the marshal's role at the centre of City policing.[149]

The wide ambit of their authority led to the marshals being given the leadership of a day patrol of ten men when that was established in 1785.[150] And their duty to arrange for crowd control at celebrations and processions, many of which they led, on horseback, wearing their scarlet uniforms and with their marshalsmen in attendance in the livery of the lord mayor's household and carrying their spears (their 'javelin men'), gave the marshals an enhanced role in the policing of the City streets and other public places as crowds and crowd behaviour took on a more threatening character over the second half of the century. Already by the middle decades of the century, as we have seen, the marshals had been given the task of hiring constables to attend at the Old Bailey and Tyburn and at sites of other public punishments, and payments for such appointments began to appear regularly in their accounts. This became a major feature of policing in the last two decades of the eighteenth century and the early years of the nineteenth as large numbers of 'extra' constables came to be deployed at hangings, particularly after the gallows were moved to Newgate in 1782, and at the two other common forms of public punishment at which large crowds gathered by the end of the century—the pillory and whipping.[151] By 1789 a committee of the Common Council thought of the marshals as the natural leaders of the City's peace-keeping forces, urging them 'to conduct themselves . . . as High-Constables of this City; and as far as in them lies to preserve the Peace and good Order of the Police', that is to be ready to lead the constables and others to suppress riots.[152]

These further developments of the marshals' policing role in the City were relatively short lived, however. As a consequence of the policing and penal

[148] *Gentleman's Magazine*, 14 (1744), 505.
[149] Rumbelow, *I Spy Blue*, 88–92; Harris, 'Policing the City', esp. ch. 3.
[150] Harris, 'Policing the City', 63–7.
[151] Harris, 'Policing the City', 75–87.
[152] CLRO: P.A.R., vol. 12, pp. 30–4.

reforms of the 1830s the City marshal was confined to purely ceremonial duties—leading the lord mayor's procession, and helping to stage other moments of civic celebration. These were forms of policing, but not the kind of policing that might have developed from this seed of a uniformed and paid City-wide force that had been established under the control of the mayor and aldermen more than two centuries earlier.

BEADLES

Unlike the marshals, beadles were long-established ward officers, and their involvement in the developing policing practices over the late seventeenth and early eighteenth centuries was enlarged as a result. Beadles were salaried because they were expected to be engaged full-time in policing and other activities—to move around the ward during the day and to help supervise the watch at night. If the beadle was doing his job properly, the assumption must have been, he would not be able to earn his living at a trade. He was the one official who could be assumed to be always available to carry out orders from above; and they were called upon often enough that, especially in the larger wards, they frequently had assistants, known as warders. Indeed, the very large wards in the eighteenth century had more than one beadle: Farringdon Within and Cripplegate Without each had two; Farringdon Without had four.

Beadles were elected annually. Until 1663 they had been chosen by the wardmote, but in an act of Common Council of that year (passed in conjunction with a parliamentary statute dealing with the watch) the choice of beadle had been placed firmly in the hands of the aldermen—that is to say, in practice, in the hands of the deputy alderman and a majority of the common councilmen of each ward who were empowered to place the names of two candidates before the wardmote, one of whom would have to be elected. The Common Council made their purpose clear. 'The place of Beadle', the act declared,

> is an ancient Office in every Ward of the Citty and very usefull to the Alderman for the Common busines and affaires of the ward when the same is served by an honest and discreet person as it ought to bee, but of late tymes divers very unfitt persons have by favour and sinister endeavours procured themselves to be elected to the said Place by whose insufficiencies and evill execucon thereof much trouble and disservice hath ensewed to the Alderman; and the watches and other common businesse and affaires of the ward, which depend much upon that Officer, have been neglected and hindered[153]

The beadle was in essence the executive assistant of the ward managers, who needed someone they could trust to carry out their orders or the orders they received from the mayor and aldermen. They were perhaps principally valued for the role they played in organizing the night watch. The beadles were responsible, for example, for keeping lists of inhabitants and establishing who in the

[153] Jor 45, fo. 427. For the Watch Act of 1663, see below, Ch. 4.

ward was liable for watch service, and, until watch rates were put on a more settled basis, for collecting money to hire substitutes from those who refused to serve. Whenever the watch came in for criticism—which happened frequently, certainly whenever burglary and robbery on the streets at night raised the level of anxiety—the beadles were among the first to be blamed (along with constables) and were liable to be asked to attend the aldermen or a committee of the Common Council to explain why the watch was undermanned, or otherwise ineffective, or asked to bring lists of names of the men who owed watch duty, or to account for deficiencies in the funds.[154] Their responsibility for the actual governance of the watch was enlarged as it came under the control of the wards' executive committee and as the system of watching became more elaborate over the late seventeenth and eighteenth centuries when it came to be based on more permanent structures (on watch-houses and watch-boxes) and to have a more visible presence than ever before.[155]

How well beadles did that is another matter, but there is no doubt that they were thought to be crucial to the system. This was clearly the main reason why efforts were made over this period to provide them with a reasonable salary and to base it on some permanent source. The Common Council act of 1663 required the wards to provide such a salary, but left the amount and the means of raising it to their discretion.[156] As we will see when we examine the creation of a paid night watch in the following chapter, there followed a long period in which the wards gradually came around to raising a rate for watching out of which they would also pay their beadle. By the early decades of the eighteenth century each ward was raising a fund from which the beadle's salary (and the cost of hiring watchmen) came to be paid. The weaknesses in that system in the end obliged the government of the City to go to parliament in 1737 for statutory authority to force the householders of the City to pay for the support of a hired watch, and along with that to pay the salary of the ward beadle. Each ward continued to decide what that salary would be, but there was some broad uniformity after 1737. In most of the wards, beadles received forty to fifty pounds a year, rather less in the half dozen larger and poorer wards, in which salaries were closer to thirty pounds.[157]

These arrangements no doubt enhanced an office that carried some local dignity and standing. The salary was certainly sufficiently large and sufficiently

[154] Jor 48, fo. 380; Jor 49, fo. 156; Rep 132, p. 466; Rep 137, pp. 199–200. And for further on the watch, see Ch. 4.

[155] See Ch. 4. [156] Jor 45, fo. 427.

[157] The beadles' salaries had been raised by a local rate at least since the reign of Elizabeth (Archer, *Pursuit of Stability*, 83). They varied from ward to ward, mirroring disparities in wealth, and continued to do so when they were raised as part of the watch rate authorized by parliament in 1737 (for which see Ch. 4). Beadles' salaries were henceforth listed in the watch establishment set out every year by the Common Council. For salaries in 1737, see Jor 58, fos. 59–64.

regular—and the opportunities to add to it by lawful and more shady ways sufficiently obvious—to attract men who were in a social bracket distinctly a cut above the watchmen. Beadles whose social standing can be identified in the 1690s were householders paying tax at a modest level. The post was also sufficiently prestigious and valuable that men settled into it for years on end and became well-known figures in their communities. Edward Payne was typical in being beadle of Vintry from 1690 to 1713, for example, and Robert Christmas was beadle of Bassishaw also through most of the reigns of William and Anne. But this is also a measure of the influence of the ward managers on the appointment. Beadles were clearly useful to them, and they would naturally have been anxious to keep an incumbent who did the job reasonably well.

The beadles were identified with the watch, but that was by no means their only set of duties. Their work must have varied from ward to ward, and perhaps from time to time under the regimes of successive aldermen and their deputies. In general terms they were agents of the City's central administration as well as of the ward executive. They acted as the link between the decision-makers and the inhabitants of the ward, communicating orders from the lord mayor, the Court of Aldermen, the Common Council, and the ward leaders to the constables or other officers, and on occasion directly to the householders. They were called upon to distribute important information, including changes in the statute law that had a direct bearing on the City and implications for its citizens. They had done so well before 1660. On one occasion in the late sixteenth century, for example, when there was considerable fear of riots and disorder by apprentices, Archer has reported that the beadles were sent to 'visit every householder to transmit the order that apprentices were to be kept indoors' over a two-month period.[158] The beadles were still expected to carry such messages—or to arrange to have them carried—a century later. At the time of the lord mayor's procession in October 1697, for example, and in anticipation of the usual raucous celebrations on that day, the beadles were required to go 'from house to house' in their wards to warn every inhabitant not to allow children and servants 'to make, throw, or fire any Fire-Works in the Streets, or out of their Houses, Balconies, or other Places . . .'.[159]

The beadles continued to carry out this crucial task of communicating orders from the City's central government in the eighteenth century, though by then often they were being asked to take printed notices around, to post them up in public places, or to publish them in the newspapers—all of which reveals the authorities' expectations about the literacy of the City's householders, at least of the heads of families whose servants and apprentices needed to be monitored constantly. When parliament passed the act removing theft from a dwelling house of goods valued at forty shillings in 1713—an act aimed specifically against thefts by servants—the Court of Aldermen ordered that the relevant clause be printed and 'by the Beadles delivered to every Housekeeper, that all

[158] Archer, *Pursuit of Stability*, 216. [159] CLRO: P.D. 10.99.

servants may be acquainted with the same'.[160] Similar orders sent the beadles round with an abstract of the Vagrancy Act passed in 1714, with the clause of an act in 1717 'to prevent mischiefs by fire' so that 'all servants may be acquainted with the same and know the penalties' contained therein, and with relevant sections of the Transportation Act of 1718.[161] Apart from these large-scale distributions of information, the beadles were also ordered from time to time to communicate orders and reminders to particular groups in the population—very often to the constables; at other times, for example, to alehousekeepers.[162]

It is an important question how the ordinary citizen learned about the law and how much they might be expected to know about changes introduced by parliament—an issue of particular importance in the eighteenth century, when parliament passed a host of statutes that bore directly on the lives of ordinary citizens. In the City of London newspaper advertisements were being employed by the middle of the eighteenth century at least, and the newspapers almost certainly became in time the main vehicle for the distribution of such information. Important notices were also placed in 'public places'. But well into the century the mechanism by which this public knowledge was created was in the hands of the ward beadles, men whose longevity in office and supposed full-time commitment to the post put them in a position to know the ward and its inhabitants in the intimate way such a task required. Presumably much of this work of informing the public was actually done by the warders, the beadles' assistants, of whom there were several in each ward, possibly even one in every precinct or parish in the larger wards.

The Common Council said in 1663 that beadles were valued for the part they played in the 'common business and affairs' of their wards. Much of that work could be broadly represented as surveillance. They were supposed to have some knowledge of the inhabitants of their wards; this is no doubt why they were thought the appropriate vehicle for the distribution of warnings and information. They were expected to keep a register of newcomers and to produce lists of inhabitants for rating purposes—another area that required detailed knowledge of the ward and its inhabitants.[163] There was also some expectation that beadles would make themselves known throughout the ward, to move around the streets and help keep them clear. They were ordered from time to time to join with the constables of their wards to arrest vagrants and beggars, to control the crowds at the lord mayor's day procession, to prevent sales of fruit and other goods in the streets on Sundays, and to deal with other problems in the streets.[164] The more active of the beadles (or perhaps those in the larger and

[160] Rep 117, p. 333. [161] Rep 118, p. 419; Rep 121, fo. 401; Rep 122, fo. 297.

[162] Rep 105, pp. 335–6, 468; Rep 106, p. 156; Jor 51, fo. 107.

[163] For the registration of newcomers in the sixteenth century, see Archer, *Pursuit of Stability*, 220.

[164] Rep 104, pp. 574–7; Rep 137, p. 37; Rep 142, pp. 174–7.

more turbulent wards) can be found prosecuting nuisances, arresting and prosecuting prostitutes, and occasionally taking men and women on more serious charges, including thefts and serious assaults, before the Bridewell court, the lord mayor, and the criminal courts.

Beadles thus shared some of the constables' duties, and on occasion those in the large wards were constituted as 'supernumerary' constables to give them the authority to do their work effectively.[165] But even more of them were also made constables for a different reason. As we have seen, fifteen of the beadles serving in the year 1701 were also constables during that year or in the year or two before or after, having taken on that office as a substitute for a man elected at the wardmote who opted to fine rather than serve. Similarly in 1742: sixteen of the beadles were also deputy constables, and it is even clearer then (because of the completeness of the records) that many of them served as beadles and constables of their wards over a considerable period.[166] The authority that was thereby conferred upon the beadle was no doubt valued. But the usefulness of having a man available to act as a substitute—and a man who was known—may have been the principal reason so many beadles can be found serving as constables. Certainly, many of them took on the constableship irregularly—serving one year, not the next, again the year after, apparently making themselves available as substitutes if needed, but without being necessarily called upon every year. The Court of Aldermen professed not to approve of beadles taking up one of the constable's places because it reduced the number of effective peace officers; a beadle who was also a constable would not necessarily always be available to respond to calls for help, or be available to serve through the night as the constable of the watch. But it was clearly an arrangement that the ward authorities were willing to accept much of the time because it solved an immediate problem of finding a substitute constable—and a man who was at least experienced, if not necessarily active. Beadles were presumably willing to fill in because of the extra income the post provided.

How often beadles—whether constables or not—were actually called upon to become engaged in the range of tasks that might fall to them must have depended on their temperament and the ward in which they lived and worked. The records disclose little about individual beadles' work—about how well or badly they did what they were supposed to do. Like other officers, they had considerable opportunities to profit illicitly by threatening charges or other forms of extortion of the kind some of the marshals were practising by the middle of the eighteenth century. It would be surprising if beadles did not collect protection money and other favours from prostitutes (as watchmen were clearly doing at least later in the century).[167] Evidence of such corruption surfaces from time to

[165] See the letter from the deputy of the ward of Cripplegate Without to the town clerk, 7 January 1723 in CLRO, Misc. MSS 64.4.

[166] CLRO, Wardmote Presentments (1701); Rep 146, pp. 57–61 (1741).

[167] Henderson, *Disorderly Women in Eighteenth-Century London*, 115–19.

time—as when John Rivett, the beadle of Billingsgate ward, was charged along with a constable in 1701 with having 'connived att and incouraged persons keeping Bawdy houses'.[168] And the beadles were occasionally lumped in with the marshals and constables when complaints were made by grand juries and similar bodies about the way the laws with respect to the sale of goods on Sundays, or the problems of vagrants and beggars, or other nuisances in the streets were not enforced because of the partiality or connivance of these officers.[169]

It is likely that beadles sought to profit as they could and that most failed to do their job as conscientiously as they might have. On the other hand, they were under more scrutiny than many other officers, if only because they were paid, and their duties were clear and essential. It is hard to believe that beadles could have slacked off entirely and retained their places over a long period. They were too important to the deputy aldermen to be entirely unwilling to respond when called upon to deal with a problem in the streets or to issue warnings or to distribute information to the inhabitants, and the like. The same might be said for their most important continuing duty, to provide the organizing force that would ensure an effective watch.

It was this night-time role as much as anything that confirmed the place of the beadles in the policing arrangements of the City. For, as we have seen, the problem of street crime and the threat of burglary and robbery during the hours of darkness was a continuing source of disquiet and of pressure for change and improvement in the way the law was framed and administered. And this was to be the source of a further set of changes in the policing of the City in the late seventeenth and early eighteenth centuries that require investigation—changes in the way the streets were watched and lit at night and that made a difference to the City's appearance, to the way life could be lived, and that at the same time extended the reach and responsibilities of City government.

To pursue these subjects, we need to examine two other areas of policing in which the constables and other ward officers were involved: the maintenance of order in the streets at night; and the efforts undertaken in the decades after 1689 to increase the number of offenders arrested and brought to trial. These larger contexts of policing also affected the kinds of work constables were called upon to do; indeed, they were likely to have been high on the list of reasons why men who could afford it were more anxious in this period to pay for a substitute when their turn came to take up the constable's staff for a year. Those fundamental changes in the policing environment form the subjects of the next two chapters.

[168] Rep 105, pp. 202, 213. [169] Rep 142, p. 28.

CHAPTER FOUR

Policing the Night Streets

THE PROBLEM OF THE NIGHT

Constables were not regularly drawn into daytime surveillance. Night was a different matter. It had been recognized for centuries that the coming of darkness to the unlit streets of a town brought a heightened threat of danger, that the night gave cover to the disorderly and immoral, and to those bent on robbery or burglary or who in other ways threatened physical harm to people in the streets and in their houses. Robbery and murder were 'the most vile Works of Darkness', a man reminded the Court of Aldermen in the late seventeenth century, and though his views were hardly disinterested since he was lobbying to get a contract to light the City streets, he was repeating a commonplace.[1] The ancient prayer said at Evensong in the Anglican church for protection against 'the perils and dangers' of the night continued to carry considerable meaning.

The guarding of the City at night had developed around the expectation that in the evening hours—the period of transition from the working day to the night proper—the inhabitants of the City would most likely be indoors and preparing for bed. The urban working day began at first light, and what would now be considered an early bedtime was natural and essential. Such habits were reinforced by the shortage and poor quality of artificial light. Most houses could only have been dimly lit, and the streets of the City would have been very dark indeed, except for the few hours in which candles barely illuminated the main thoroughfares and perhaps on cloudless and moonlit nights. The anxieties that darkness gave rise to had been met by the formation of a night watch in the thirteenth century, and by rules about who could use the streets after dark. These rules had for long been underpinned in London and other towns by the curfew, the time (announced by the ringing of a bell) at which the gates closed and the streets were cleared. Only people with good reason to be abroad could then travel through the City. The 1666 edition of Michael Dalton's guide to justices of the peace continued to quote statutes of the fourteenth century that expressed in spirit if not in detail the sense of restriction in the use of the night streets that continued to be enforced in practice in the seventeenth century. 'Every Justice of Peace', readers were informed,

[1] CLRO, Alchin MSS, Box B, no. 37.

may cause night-watch to be duly kept, for the arresting of persons suspect, and night-walkers (be they strangers or others) that be of evil fame or behaviour. . . . All such strangers, or persons suspected, as shall in the night time pass by the Watch-men . . . may be examined by the said watchmen, whence they come, and what they be, and of their business, etc. And if they find cause of suspition, they may stay them . . . the watchmen may deliver such persons to the Constable, and so to convey them to the Justice of Peace, by him to be examined, and to be bound over, or committed, untill the offenders be acquitted in due manner.[2]

Such controls continued to be exercised in the late seventeenth century. Guarding the streets to prevent crime, to watch out for fires, and—despite the absence of a formal curfew—to ensure that suspicious and unauthorized people did not prowl around under cover of darkness was still the duty of the night watch and the constables who were supposed to command them. The expectation that when night came the streets of the City would be largely deserted continued to shape the provision of urban services well into the eighteenth century. The inhabitants' duty to hang out a candle on houses on the main streets provided light, a lord mayor said in 1676, for the 'Convenience of all whose Affairs may occasion them to Walk abroad at seasonable hours in the dark of the Evenings'.[3] But in 1676, and for decades after, those candles were to be lit only until the watch came on duty—at 9 p.m. in the winter, 10 p.m. in the summer. After that, the assumption was that few people would have legitimate reason to be on the streets. In 1735 a man seeking to obtain a contract to provide lamps that would illuminate the streets through the night told the aldermen that such lighting would be useful 'for the Preservation of the Lives, Limbs, Properties and Business of Physicians, Surgeons, Midwives, Nurses, Servants, Market-Folks, And such as must come to or through London all Hours of the Night. . .'.[4] It was natural to him to think of such people as having legitimate reasons to be out at night, and by implication others—except, always, gentlemen, or anyone who could make a claim of respectability that would put them above suspicion and reproach—not to have reason to travel around the City in the dark. The time after which questions might be raised about people using the streets almost certainly changed over the early modern centuries, but for long, the old curfew time—when the watch came on duty—seems to have remained as a natural time to have the streets cleared. The magistrates at the City sessions of the peace (at a time when they thought taverns were allowing drinking late into the night and harbouring 'housebreakers, robbers' and other lewd and debauched men and women) were repeating an established notion when they ordered constables and watchmen in 1701 to prevent drinking or gaming in public houses after 10 p.m. on winter evenings or 11 p.m. in the summer.[5] Similar ideas lay behind the petition from a group of Middlesex magistrates, concerned about the problems of robbery in London in 1725, who

[2] Michael Dalton, *The Countrey Justice* (1666; 1st edn., 1618), 173. [3] CLRO: P.D. 10.64.
[4] CLRO, Alchin MSS, Box B, no. 37. [5] CLRO: P.A.R. Book 5, fo. 5.

asked the secretary of state to order that the soldiers of the king's guards stationed in the metropolis be kept off the streets after 10 p.m.[6]

Michael Dalton included in his guide to justices the injunction from a statute of 1417 that 'in great Towns walled, the Gates shall be shut up from the Sun-setting untill the Sun-rising'.[7] This was no longer the practice in the City of London, though, again, the *idea* of having gates to close had not yet been abandoned at the Restoration. Had it been, the City would presumably not have gone to the trouble and considerable expense of rebuilding Newgate and Ludgate when they burned down in the Great Fire of 1666. They did rebuild them—though at the same time widening the passages for traffic and constructing postern gates (that is, side gates) for foot passengers.[8] A guard of sorts was still occasionally mounted at the gates, and they were closed at night in times of particular trouble—as for example, during the anti-Catholic hysteria of the Popish Plot in 1678. But that was clearly unusual by then, as the aldermen revealed when they found it necessary to claim that they made the order 'pursuant to the Ancient Constitution'.[9] They also ordered the deputy alderman and the common councilmen of the wards in which the gates were situated to guard them in person, presumably because—ancient constitution or not—the inhabitants no longer accepted this as a customary obligation, and could neither be forced to serve nor to pay for a substitute.[10]

The gates were also guarded in the late seventeenth century, when crime or street disorders appeared to be on the increase. In 1700 the wardmote of Farringdon Within appealed to the City for help to pay for two men to mount an evening watch at Ludgate and Newgate to prevent 'Quarrells and picking of Pockets'.[11] And the postern gates at the main entrances to the City were also given a special force of watchmen in 1716, when street crime and violence were thought to be particularly serious and the areas around the gates (or perhaps the congestion they caused) seemed to provide cover for groups of pickpockets or gangs of robbers. But these men, who became permanent, were needed mainly to keep foot traffic moving and to prevent crowds forming.[12]

[6] SP 35/67/8. [7] Dalton, *Countrey Justice*, 173.

[8] T. F. Reddaway, *The Rebuilding of London after the Great Fire* (1940), 106–9.

[9] Rep 84, fos. 4–5; CLRO: P.D. 10.81. For the history of watches at the gates, see Donald Rumbelow, *I Spy Blue: The Police and Crime in the City of London from Elizabeth I to Victoria* (1969), 25–7.

[10] There was some thought in 1681 that this might become permanent, but there was clearly little chance of that (CLRO: P.D. 10.81). During the Jacobite rebellion of 1745, as the army of Charles Edward approached ever closer to London, the aldermen also thought then of 'securing the gates' as well as 'the avenues' of the City. On this occasion, the force they called on was the City's trained bands (Rep 149, fo. 437).

[11] CLRO, Wardmote Presentments, 1700. The gates may have been closed at what were thought to be other times of danger into the early years of the eighteenth century. It was reported in 1709, for example, that complaints had been made to the aldermen that 'divers Gentlemen, and Others, passing to and fro, in the Night, about their lawful Occasions, have been stopp'd in their Coaches at Aldgate and Newgate, and the Gates not readily open'd by the Watchmen (as they ought to have been) and that not without Suspicion of their Demanding and Receiving Money, in Breach of their Trust, and Neglect of their Duty' (*The Post Boy*, 25–7 January 1709).

[12] Jor 56, fos. 237, 246; CLRO, Journal of the City Lands Committee, vol. 14 fos. 59, 63, 124.

Whatever their role at the City's gates, the principal task of the watch in 1660 and for long after continued to be the control of the streets at night—imposing a form of moral or social curfew that aimed to prevent those without legitimate reason to be abroad from wandering the streets at night. That task was becoming increasingly difficult in the seventeenth century because of the growth of the population and the variety of ways in which the social and cultural life of the metropolis was being transformed. The shape of the urban day was being altered after the Restoration by the development of shops, taverns and coffee-houses, theatres, the opera, pleasure gardens, and other places of entertainment. These all depended on attracting customers from the middling as well as the upper ranks of the urban population. They remained open in the evening and, increasingly, extended their hours of business and pleasure into the night. With shops remaining open until 10 p.m.[13] and places of entertainment even longer, the main streets of the City took on new life—and a constantly expanding life—after dark. The idea behind the curfew—the 9 p.m. closing down of the City—was not so much abolished as overwhelmed.

The watch was inevitably affected by this changing urban world since policing the night streets became more complicated when larger numbers of people were moving around. And what was frequently thought to be the poor quality of the watch—and in time, the lack of effective lighting—came commonly to be blamed when street crimes and night-time disorders seemed to be growing out of control. There was nothing new in this: Paul Griffiths has noted a concern in the early seventeenth century about the dangers on the streets and complaints about the weaknesses of the constables and the watch.[14] But such anxieties were not only more intense after 1660; they were also accompanied by the completion of changes in the way the watch was recruited that had a fundamental effect on the nature of night-time policing. These changes were similar to those occurring in the constabulary (and in its own very different way in the magistracy) since they sprang from the growing unwillingness of men to undertake the unpaid duties that had sustained the urban community for centuries. In the case of the watch, it seems likely that large numbers of men had avoided night-time service by paying for a substitute well before 1660. Indeed, substitution had become so common by the late seventeenth century that the night watch was virtually by then a fully paid force.

The implications and consequences of changes in the watch were worked out in practice and in legislation in two stages between the Restoration and the middle decades of the eighteenth century. The first involved the gradual recognition that a paid (and full-time) watch needed to be differently constituted from

[13] A man who wanted a contract to take away the City's night soil in 1688 said that his men would work at night, beginning at 10 p.m. 'just at the shutting up of all shops' (Edmund Hemings's proposal in CLRO, Papers of the Court of Aldermen, 1688).

[14] Paul Griffiths, 'Meanings of Nightwalking in Early Modern England', *The Seventeenth Century*, 13 (1998), 218–20.

one made up of unpaid citizens, a point accepted in practice in legislation passed by the Common Council in 1705, though it was not articulated in as direct a way. The second was the recognition that this force could not be sustained without a major shift in the way local services were financed. This led to the City's acquis-ition of taxing power by means of an act of parliament in 1737 which changed the obligation to serve in person into an obligation to pay to support a force of salaried men.

The same broad forces and the same pattern of change underlay another major transition in this period in a second element of night policing: that is, the way the City streets were illuminated after dark. This entailed in the first place a remarkable increase in the number of lights in the City streets, the times at which they were lit, and a change in the character of the lights themselves—a transformation that began in the late seventeenth century and that had made a significant difference to the public life of the City by the middle decades of the eighteenth. As in the case of the watch, this, too, was accomplished in two broad stages. The first was a change in the way street lights were provided and supported, and the substitution of oil lamps for candles—a consequence in part (though, the story is more complicated than that) of anxieties in the last decades of the seventeenth century about the problem of night-time crime, especially burglary and street robbery. These changes (again, as in the case of the watch) put a strain on the system by which the streets had been illuminated for centuries, and at the same time enlarged the public's expectation of the levels of lighting that ought to be provided. The second stage also paralleled the transition to a publicly supported watch force, for the expansion of street lights similarly required the City authorities to obtain authority from parliament to shift entirely from the customary obligation of a few citizens to provide lights outside their houses for a limited number of days and hours to an obligation on many more citizens to contribute to a local rate that would sustain an entirely different lighting system. This transformation in street lighting and the linked change in the underlying character of the watch, both at least in part responses to the problems of night-time policing, form the subject of this chapter.

THE MAKING OF A PAID NIGHT WATCH

The Statute of Winchester (1285) continued to provide the legal foundation of the night watch in the seventeenth century, and watching continued to be the obligation of all householders, just as unpaid service in other ward offices or on juries continued to be a matter of civic duty. As in the case of the office of constable, it was possible for those called upon to take their turn at watching to pay for a substitute, and it is clear that by the seventeenth century the vast majority of householders had accepted this option to be released from the inconvenience of staying up at night, doing duty that brought little honour, in a post that carried

little authority.[15] The numbers of watchmen required in each ward had long been established by acts of the Common Council, and the customary numbers were confirmed at the Restoration. But in 1660, and for long after, the effective management of the night watch in the City resided at the ward or even parish and precinct level. Although the aldermen might issue exhortations and regulations from time to time, they found the process of appointment impossible to control, and the conduct of the watch difficult to influence. As a result, the character of the watch varied from one ward to another, indeed in some large wards, from one parish or precinct to another—one reason why it was frequently criticized when crime, begging, or other disorders in the streets appeared to be on the increase.

Concerns about the watch were of long standing.[16] They were being voiced within months of the Restoration of Charles II. In a letter to the lord mayor in 1661 the king complained that

> there is not that care and vigilance in setting the Night Watches in [the City] as for the peace and security thereof there ought to bee, but that the same for the most part consisteth of a few weak and feeble men, who if there were occasion, would not be able to suppresse any such disorders, as in these times of lycence and sedition may be easily apprehended. And that they usually depart from their Charge and breake up their Watches some houres before the day breake, whereby thieves and robbers have the opportunity to committ their Villanyes without comptroll or discovery.[17]

The City authorities received other complaints in 1661 that robberies and other felonies were being committed for 'want of a watch remaining through the night'.[18] Committees of the Common Council, made up of aldermen and commoners, were established to examine the way the watch was recruited and to see to its 'better ordering and strengthening'—the first in 1661, apparently without result, and again in 1662 and 1663. The outcome was an act of Common Council in October 1663, known as 'Robinson's Act' from the name of the sitting lord mayor, that confirmed the duty of all householders in the City to take their turn at watching in order 'to keep the peace and apprehend night-walkers, malefactors and suspected persons'. For the most part the Common Council act of 1663 reiterated the rules and obligations that had long existed. The number of watchmen required for each ward, it declared, was to be the number

[15] It is not possible to ascertain the number of citizens who served their turn as (unpaid) watchmen and of men hired as substitutes. Unlike deputy constables, who served as substitutes for an elected principal, and who had to take an oath of office, no lists of watchmen were apparently kept by precincts or wards in the late seventeenth century or the early decades of the eighteenth, or none that has survived. There were complaints from time to time about the quality of the hired watchmen, but the emphases in the century after the Restoration concerned their numbers, whether they did their duty through the night, and how the money for their support was to be raised.

[16] The Common Council had dealt with the familiar problem of under-manning in an act of 1621 that fixed the number of watchmen to be raised in each ward. The fact that it was re-issued in 1630, 1640, and 1655 suggests how unsuccessful it had been (CLRO: P.D. 10.49).

[17] SP 44/4 (25 October 1661).

[18] Jor 45, fos. 142, 275, 275; Rep 67, fo. 55.

'established by custom'—in fact, by an act of 1621. Even though it had been true before the civil war that the watch had already become a body of paid men, supported by what were in effect the fines collected from those with an obligation to serve,[19] the Common Council did not acknowledge this in the confirming act of 1663. The quotas established for each ward continued to be (as in the act of 1621) the number of men from whom those actually on duty on any one night would be chosen (Table 4.1)—a total amounting to close to a thousand watchmen. In fact, many fewer than that were raised and deployed, but it is clear that the Common Council could not find the language with which to express the

TABLE 4.1. *Numbers of watchmen, City of London, 1663 and 1705*

Ward	1663 act[a]	*c.*1700 numbers in practice[b]	1705 act[c]
Aldersgate Within and Without	44	—	25
Aldgate	34	25	25
Bassishaw	12	5	6
Billingsgate	30	14	21
Bishopsgate Within and Without	80	28	31
Bread Street	26	13	15
Bridge	25	20	20
Broad Street	39	23	24
Candlewick	24	12	12
Castle Baynard	40	17	24
Cheap	25	18	20
Coleman Street	32	18	18
Cordwainer	24	10	14
Cornhill	16	10	10
Cripplegate Within	40	24	24
Cripplegate Without	90	21	28
Dowgate	36	11	14
Farringdon Within[d]	50	28	36
Farringdon Without[e]	130	51	61
Langbourn	34	22	23
Lime Street	11	8	8
Portsoken	60	27	26
Queenhithe	40	11	10
Tower	40	28	28
Vintry	34	11	14
Walbrook	20	14	14
Total	1,036	(469)	551

Sources: [a] Jor 45, ff. 425–26; [b] CLRO: Misc. MSS 9.3; [c] CLRO: P.A.R. 7, p. 65 [d] including Blackfriars [e] including Whitefriars, Bridewell, St Bartholomews the Great, and St Bartholomews the Less

[19] K. J. Lindley, 'Riot Prevention and Control in Early Stuart London', *Transactions of the Royal Historical Society*, 5th ser., 33 (1983), 119.

reconceptualization involved, the change of the watch from a force of householders taking their turns to guard their neighbourhoods to a body of paid men doing it as a job. It was to be some forty years before they could begin to do so and eighty years before the machinery could be put in place that would bring effective financial support to this force.[20]

Robinson's Act also affirmed that the hours of watching would be from 9 p.m. to 7 a.m. in the winter months, and 10 p.m. to 5 a.m. in the summer. Those appointed to watch on a particular night were to meet the constable on duty at a place to be arranged: permanent watch-houses seem not as yet to have been common in many of the wards, though they were to be found necessary over the following decades. Nor was there any mention in the act of watch-boxes or 'stands', though such structures were likely to have been in use then; they were certainly being established in the following decades as fixed points throughout the wards from which the watchmen were supposed to patrol their beats.[21]

The act of 1663 confirmed the watch on its old foundations, and left its effective management to the ward authorities.[22] From time to time, a concern with some pressing issue—anxiety about vagrancy, prostitution, the state of crime, or a threat of violence—might engage the attention of the mayor or the Court of Aldermen in the business of the watch. During the panic over the Popish Plot and the fear of a Catholic uprising, for example, the aldermen established a committee to look into the regulations governing the watch and to consider what might be done to improve them. The beadles of each ward were required to attend on three occasions with lists of the names of inhabitants eligible to serve.[23] But once that particular anxiety and the conflict generated by the Exclusion Crisis passed, the wards were once again left to organize things as it suited them, with only an occasional reminder from the Guildhall about their duties under the 1663 act.[24] In those circumstances, as in so many other areas of administration, what actually happened on the ground varied from ward to ward.

The important matter to be arranged in the wards was who was going to serve and on what basis. How the money was to be collected to support a force of paid constables, and by whom, were crucial issues. The 1663 act left it to the ward beadle or a constable and it seems to have been increasingly the case that rather than individuals paying directly for a substitute, when their turn came to

[20] See below, pp. 184–97.

[21] A critic of the watch said in 1679 that they were ineffective in part because 'their stands are at soe great a distance' one from the other (CLRO, Misc. MSS 10.13).

[22] It did, however, require the inhabitants of each ward to pay their beadle a salary and in turn forbade him from pocketing the wages of watchmen who did not turn out for duty—one of the obvious and long-standing sources of under-manning. Another act of Common Council passed on the same day required beadles to be elected from a short-list of two nominated by the aldermen (Jor 45, fos. 425–7).

[23] Jor 48, fos. 359, 380; Jor 49, fos. 156, 176. For some of the returns submitted to the committee, see CLRO, Misc. MSS 112.15 (names of householders and lodgers in Bridge Ward, in St Andrew's, Holborn, and in St Sepulchre's, with their trades). Other returns made for the committee for the nightly watch in 1678 and 1680 are in CLRO, Misc. MSS 83.2.

[24] As an example: Rep 86, fo. 47 (11 January 1681).

serve, the eligible householders were asked to contribute to a watch fund that supported hired men. In Billingsgate, for example, where such collections were being made in the 1670s, a quarter of the money raised went to pay the beadle's salary, and the remainder to support the watchmen.[25] The Common Council of other wards also adopted a watch rate by the end of the seventeenth century.[26]

Well into the eighteenth century, local circumstances—particularly the wealth and social character of the ward—continued to dictate the kind of watch that would be raised and the way it would be supported. In very large wards, the watching system was virtually impossible to control. Farringdon Without, for example, was so large that each of its nine parishes or precincts had 'power to act separately as to Watches as if they were so many wards' and the result was a patchwork of systems. In some, a general fund was raised; in others individuals who chose not to serve continued to pay to hire watchmen in their stead. It was difficult in the poorer parts of the City to raise the necessary money, but the sheer size of many poor wards also prevented the deputy aldermen and others from keeping tight control over the constables and beadles who collected the watch rate and who from time to time were found to have deliberately kept the watch under-manned in order to pocket some of the proceeds.[27]

It was obviously easier for the wealthier wards to support paid watch forces than the poorer parts of the City, and it was in the former that the ward governors got more control after the 1663 act and, in some, developed what appear to have been workable arrangements—at least on paper—to collect watch money and to put a more effective watching system in place. But even in more manageable places the system of hired watchmen was not working well by the late seventeenth century when anxieties rose about the dangers on the night streets. When the City marshal was asked by the lord mayor in July 1696 to survey the watches and report the number of watchmen on duty, he praised the ward of Cornhill, but found the watch arrangements to be 'defective' in most wards. Virtually everywhere he looked there were fewer watchmen on duty than the act of 1663 required and they left their posts earlier than the rules allowed.[28]

[25] Rep 78, fo. 53.

[26] The act of 1705 recited that it was the custom of the City for all householders, free or not, to take turns watching, to nominate a substitute, or to pay the alderman, deputy, and common councilmen to provide a substitute—a payment that would be collected by a constables or the beadle (CLRO: P.A.R. vol. 7, p. 65).

[27] CLRO, Misc. MSS 9.3. In the equally large ward of Farringdon Within similar difficulties were apparent. Soon after the Restoration the constables in several of 'the lesser precincts' complained that they could not 'raise sufficient for the charge of their night watches', by which they meant presumably that there were not enough men qualified to watch or able to pay for their extensive watch force. They also claimed that the 'greater precincts' in the ward refused to contribute towards the watch charges of their poorer neighbours as they had formerly done. The alderman, deputy, and common councilmen (the 'common council of the ward') were ordered to examine the constables' accounts and find a solution in this case, but it is clear that problems of that kind were endemic (Rep 68, fo. 212). So, too, were simple refusals to serve or to pay (Rep 70, fo. 49; Rep 76, fo. 191). Shoemaker, for example, reports that 75 men were indicted in Middlesex in 1663–4 for refusing to serve on the watch (*Prosecution and Punishment*, 130).

[28] Rep 100, fo. 168.

The marshal's investigation was but one aspect of an increasingly intense scrutiny of the watch by the City authorities in the last decade of the century, as crime and vagrancy became more difficult to control. In royal proclamations and lord mayors' precepts, the City's problems were frequently blamed on the failures of the watch, as the lord mayor said in 1689, to 'exercise that care and circumspection which they are placed and intended for wherefore to prevent . . . mischiefs'.[29] A royal proclamation of 1692 'For Apprehending Robbers' complained that 'many heinous murders Robberies and Burglaries have been committed and many leud disorderly and wicked persons who betake themselves to committ such murders Robberies and Burglaries have been and may be emboldened to the like offences by reason of the negligence of due keeping of watch and warding . . .'.[30] The Common Council established a committee to investigate these matters in that year, without result.[31] Three years later, when the City marshal confirmed what everyone knew, that the watch was badly undermanned, a further flurry of precepts and proposals to investigate followed—again without result.[32] In most of these investigations, the blame for the inadequacy of the watch fell on the beadles and constables for hiring fewer constables than the rules required. Some vestries were also accused of deliberately keeping watches smaller than they were supposed to be in the interest of saving money.[33] But the constables bore the brunt of the criticism: indeed, it may well have been the perceived corruption of constables—collecting more money for the watch than they spent—that encouraged the Court of Aldermen to impose the tight controls over the appointment of deputies in the 1690s. Aldermanic orders and controls made little impression, however, on what had become settled, even customary, arrangements.[34] Every investigation revealed that the transition towards a fully paid watch that was going on in practice and in different ways and at different speeds depending on the circumstances of each ward, provided opportunities for private arrangements and forms of corruption that were being exploited all over the City.

The underlying problem, especially in the large wards, was a shortage of money. Until it was fully acknowledged that the watch had become a paid body that required an effective rating and collection system, poor wards could not raise sufficient funds to support the watchmen they were supposed to deploy. The contrast between the poor parts of the City and a rich ward like Cornhill could not have been clearer. In the latter, the wardmote inquest could afford to respond to policing problems by paying watchmen for longer hours of work when the need arose. They raised extra money in the difficult winter of 1692–3, for example, to pay their watchmen 'for extraordinary duty' from November to the end of February, and declared their intention to continue to do so in the future if necessary. This may have been 'morning duty', for which they were

[29] Jor 51, fo. 16. [30] Jor 51, fos. 107–9. [31] Jor 51, fo. 193.
[32] Jor 52, fo. 105; Rep 100, fos. 10, 168–9. [33] Rep 92, p. 238. [34] Rep 98, pp. 51, 76, 121.

paying extra to their beadle and watchmen in the winters of 1695–6 and 1697–8, and which presumably involved a number of men continuing to patrol the ward for some hours after the watch had been raised.[35]

The inhabitants of Cornhill could afford to support the watch, but the ward also contained important private institutions and interests that were willing to contribute to the support of more effective night-time surveillance for their own reasons. In the face of the crime problems of the 1690s, the ward leaders negotiated a new arrangement for the watch that combined private and public money. In accordance with an agreement accepted by the wardmote in 1696, an assessment was to be imposed on all rated inhabitants to support a force of ten watchmen and a beadle. In addition, the Mercers' Company agreed to pay the wages of six others, undoubtedly in the interest of providing extra protection in the highly commercial area around the Royal Exchange. All sixteen watchmen were 'to do the duty of the ward and Exchange equally alike'. The watch money would be collected by the constables, but they would be accountable for it to the Common Council of the ward. Further, the deputy and common councilmen established the placement of watch-boxes around the ward, the beats to be patrolled, and the rules to be followed. The sixteen watchmen were to be on duty every evening at 10 p.m., commanded initially by the beadle, who was to ensure that the watchmen were at their various posts throughout the ward by 11 p.m. Eight stands, at each of which two watchmen were to be on duty in turn through the night—an hour on, an hour off—were organized around public houses and were distributed through the ward:

1. At the King's Head, Mr Phipps, one stand
2. At the Saw and Cabinett, Mr Poole's door, one stand
3. At the Hen and Chickens, Mr Salter's door, one stand. This watchman's light to hang up as it may be seen down Bircher Lane
4. At the Golden Legg, Mr Legg's door, one stand. This watchman's light to hang up as it may been seen down Finch Lane
5. At the Globe and Lion in Birchen Lane, Mr Woolgar's door, one stand
6. At the Bull, Mr Barwell's door, one stand
7. At the Grasshopper, Mr Collin's door, one stand
8. At the Hand and Spade, Mr Fenwick's door, one stand

When these men had been sent off to their posts, the constable in charge of the watch was to come on duty and with four of the watchmen not yet in stands to walk the rounds of the whole ward. The beadle could then leave and the constable was supposed to remain—presumably in the watch-house, though none is mentioned in these 1696 orders—through the night. For their part the watchmen were to walk a beat around the area of the stand every half hour, relieving one another on the hour, until the watch was raised—at 5 a.m. in the winter months, 4 a.m. in the spring and autumn, and at 3 a.m. in the summer. Two

[35] GLMD, MS 4069/2, fo. 390.

further precautions were to be taken. The Royal Exchange was given special attention before the main watch was assembled, for one of the watchmen was to come on duty there at 9 p.m. and walk round the Exchange for an hour and then stand guard at the corner of Threadneedle Street from 10 p.m. until 11 p.m. And finally, in the winter months the constable was to remain on duty after the main watch was dismissed and to walk round the ward with four of the watchmen until 6 a.m., for which these watchmen were to be given extra pay.[36]

This was, of course, a paper plan which might or might not have worked this way, or, even if it had, might or might not have provided an effective deterrent against night-time crime and disorders of the kind the leaders of the ward were anxious to prevent. But it was an innovative scheme that combined private and public forces and disposed them around the ward in what seems to have been a more carefully worked out pattern than had obtained earlier—certainly in a more elaborately described way in the wardmote inquest book. Both the agreement with the Mercers' Company and the novelty of the watching system may explain why this Cornhill night watching plan was endorsed by the lord mayor of the day: he was present at the wardmote in December 1696 and, quite unusually, signed the page of the inquest book on which the new watch plan was set out.[37] The system of two watchmen working each of the eight beats was still being followed six months after it was established, when the City marshal made his inspection, and it may have encouraged what seems to have been a general adoption of watch-boxes and beats in other wards in the early years of the eighteenth century. Certainly, watch-boxes were common enough by Anne's reign to provide attractive targets for the gentlemanly hooligans known as the Mohocks, who took particular pleasure in rolling watchmen around in them (their novelty perhaps providing much of the fun).[38]

Cornhill revealed what could be done when public and private money was mobilized and there was a will to act. But across the City as a whole in the last decades of the seventeenth century the difficulties of raising money were such that the number of effective watchmen was shrinking rather than expanding. Frequent complaints repeated the charge that watchmen were too thin on the ground to do any good, and that in any case too many of them were 'Ancient and Infirme . . . and not fitt for soe lively and Active a duty'—though the man who said this, in 1679, had an interest in damning the watch as much as possible since he was trying to get himself appointed as a mounted 'scout or patrowle' to ride around the City every night and ensure that the constables and watchmen were doing their duty.[39] There is more direct and reliable evidence of the incapacities of watchmen, however, for ward officers themselves can occasionally be found

[36] GLMD, MS 4069/2, pp. 401–4. [37] GLMD, MS 4069/2, p. 85.

[38] Daniel Statt, 'The Case of the Mohocks: Rake Violence in Augustan London', *Social History*, 20 (1995), 179–99; Neil Guthrie, '"No Truth or very little in the whole Story"? A Reassessment of the Mohock Scare of 1712', *Eighteenth Century Life*, n.s. 20 (1996), 33–56.

[39] CLRO, Misc. MSS 10.13 (petition of Robert Wilkins to the lord mayor and aldermen).

complaining that the low pay they could offer prevented them from hiring the kinds of men they would have preferred.[40]

Another common complaint in the 1690s was that watchmen were inadequately armed. This was another aspect of the watch in the process of being transformed. The Common Council acts required watchmen to carry halberds—essentially, a pike with an axe-blade attached—and some were still doing so in the late seventeenth century. But it seems clear that few did, perhaps because the halberd was no longer suitable for the work they were increasingly being called upon to do. The man who was anxious to become the governor of the City's watch in 1679 said, as part of his criticism of its condition, that their halberds were 'weak and rusty and not fit for offence nor defence'—an ambiguous comment at best.[41] It was more often observed that watchmen failed to carry them, and it is surely the case that the halberd was no longer a useful weapon for a watch that was supposed to be mobile. It had been suitable, perhaps, for a man standing guard at a gate or at some other fixed position, but not for men walking a beat, men who were expected to be able to arrest nightwalkers, to stop and if necessary chase suspicious men on the streets late at night. The occasional repetition of the ancient orders about halberds were gestures without substance. That is suggested by the occasions on which the appearance of weapons was most frequently insisted on: on festival days or holidays, when the City authorities anticipated some lively crowd activity and ordered that a double watch be kept—that is, twice as many men as usual were to be drawn from the pool 'warned' to be available for that day. Invariably that double watch was ordered to be 'well weaponed', that is, to carry halberds. It seems likely that this was more for ceremony than use, that on these days the watch would be expected to stand at fixed locations, guarding, but little else.[42] For ordinary duty, the halberd was on its way out. By the second quarter of the eighteenth century, watchmen were equipped with a staff, along with their lantern.

Perhaps the most persistent concern about the watch by the 1690s was that its protection was not available long enough, that the constables in charge went home after a few hours and allowed the watchmen to do so too, leaving burglars to plunder at will. The City grand jury complained about this in its presentment in December 1699, at a time when street crime was thought to be particularly serious.[43] In the following October the aldermen ordered constables to ensure that the watch remained on duty at least until 6 a.m. through the winter months because of the reports they were receiving of the 'many Felonies Roberyes and

[40] See below, p. 198. A precept of 1704 required aldermen to cause the watches in their wards to be inspected—complaints having been made, the lord mayor said, about the number of watchmen on duty, their 'ability', and their weapons. The deputies and common councilmen were to ensure that the number of watchmen laid down in the act of 1663 were on duty—an order they all must have known was unrealistic, given the change in the character of the watch—and that the watchmen 'be all fit and able men well weaponed with halberts or Spears' (Jor 54, p. 137).

[41] CLRO, Misc. MSS 10.13. [42] Jor 51, fos. 16, 22, 102.

[43] CLRO: London Sess. Papers, December 1699.

Burglaryes . . . committed . . . after the Breaking upp of the Watches . . . to the losse and Dammage of many of the Inhabitants'.[44] Complaints were heard by the Court of Aldermen in 1701 against the beadles of Billingsgate and Bridge wards for 'keeping very short watches contrary to the ancient and known laws of the City'.[45] This was by then an ancient and well-known grievance.

Concern was also being expressed in the difficult years of the 1690s, when street crime seemed to be especially common, about the lack of surveillance on the streets in the evening hours, *before* the watch assembled. From time to time, and for brief periods, the watch was ordered to be on patrol at such times. In January 1691, to take but one example, the sitting lord mayor issued a precept complaining about the large number of robberies being committed in the streets in the evening hours before the watch came on duty—at 9 p.m. in the winter and 10 p.m. in the summer. Such offences were said to be committed 'by persons coming out of disorderly alehouses and tipling houses', and the precept authorized the aldermen to ensure that from 'the close of Evening before and untill the setting of the Watch there may be a convenient number of persons continually walking about the streets and lanes in your Ward'.[46] In the following winter, a similar order instructed constables to arrange to have persons with halberds walking the streets from 6 p.m. until the 'Grand Watch be set', almost certainly without effect, since the City made no offer to pay the extra costs of the men to be mobilized for such warding duty.[47]

By the last decade of the century concerns about dangers in the streets were so insistent that the mayor and aldermen were in the end forced to confront the structural problems in the watch, problems of undermanning and short hours that had clearly become serious in the long transition to a paid force. Over the course of a decade from the mid-1690s the City authorities made several attempts to replace Robinson's Act and establish the watch on a new footing. Though they did not say so directly, the overwhelming requirement was to get quotas adjusted to reflect the reality that the watch consisted of hired men rather than citizens doing their civic duty—the assumption upon which the 1663 act, and all previous acts, had been based. Because ordinary householders taking their turn would not have been able to watch every evening, the quotas set up in 1663 were designed to create an annual pool of eligible inhabitants from which a number of men would be chosen to watch for a particular night. But that quota would be too large once it was accepted that watchmen were salaried, since hired men would likely serve much more frequently, even perhaps

[44] CLRO: SM 70, fo. 78. [45] Rep 105, p. 294.

[46] The constables were also to search alehouses and tippling houses for suspicious persons and bring them before him or another magistrate to be examined (Jor 51, fo. 109).

[47] Jor 51, fo. 119. Not surprisingly, the same concerns were expressed in other parts of the metropolis about the absence of policing during the evening hours, when the streets were dark but also frequently crowded since the shops and taverns were open. The Middlesex magistrates ordered constables to set the watch from 'sunset to sunrise' in August 1700 (LMA, MJ/SP/1700/August (2)).

every evening. None of this was said directly, but it was surely the problem that had bedevilled the raising of the watch over the late seventeenth century, since there were no established guidelines as to the number of watchmen to be raised other than those established in the act of 1663. The corruption of the constables was merely a symptom of a much larger problem. What were required (it came to be agreed in practice) were realistic quotas for each ward and the establishment of a means of paying for them.

Efforts by lords mayor in 1692 and 1695 to instigate a thorough examination of the watch were clearly resisted, but by the end of the decade the defects of the watch finally became so intolerable as the level of prosecuted crime mounted at the end of the Nine Years' War that a committee 'to regulate the watches of the City' was agreed to and began a process that resulted in a new act of Common Council.[48] The committee began its work by collecting information from every ward, precinct by precinct (gathered and confirmed by the deputy and common councilmen) on the number of inhabitants 'capable to serve or to send a person to the watch', i.e. those who could be called upon either to serve or pay.[49] These officials were also asked how many watchmen they thought were needed to provide adequate surveillance in their wards. All the information gathered and the quotas proposed were summarized in a draft of a new act.[50]

Nothing came of this, presumably because of disagreements among the wards—large and small, rich and poor—about the number of men to be hired. A second committee took the matter up again in 1704, moved to do so by complaints about the level of burglaries and robberies which the aldermen were certainly receiving early in Anne's reign and which were, as ever, blamed on the inadequacy of the watch. Indeed, burglary was a sufficiently widespread concern over the entire metropolis in these years that reform of the watch became an issue in other jurisdictions, particularly in some of the large and fashionable Westminster parishes in which local policing arrangements were coming under intense criticism from a dominant core of wealthy, aristocratic, and politically important inhabitants. Their policing issues were the same as in the City, but there was an additional complication in Westminster in that the watch issue

[48] It is possible that the efforts we have seen being made by the Court of Aldermen in the 1690s and the first decade of the eighteenth century to control the appointment of deputy constables (Ch. 3) was connected in part with their anxiety to improve the watch. There is a suggestion in a lord mayor's precept of 1708, in which the appointment of several unqualified deputy constables is blamed for the failure of the watch to keep night walkers and malefactors off the streets at night, that the aldermen made such a connection (Jor 55, fo. 15).

[49] CLRO, Misc. MSS 31.1 (Minutes of the Committee, 27 May 1701). The returns from several wards are scattered through a number of manuscript classes in CLRO, including the Papers of the Common Council (1701); Alchin MSS, Box N, no. XCIII; Misc. MSS 9.1; Misc. MSS 11.30; London Sess. Papers, July–September 1701.

[50] See CLRO, Misc. MSS 9.3 ('Watches: abstract of Mr Newland's Bill for the C[ommon] C[ouncil]'). When the Common Council agreed that the committee should prepare a bill, all the aldermen and their deputies were added to the committee, obviously to ensure that no ward's interests were ignored (CLRO, Papers of the Common Council, 29 April 1701).

raised the problem of parish governance and gave rise to a struggle between vestries that were dominated by the wealthy inhabitants, on the one hand, and the high steward and burgesses of the City, who were appointed by the dean and chapter of the abbey, on the other.[51] Concern about the watch in Westminster stirred such a bitter internal dispute about how the city was to be governed that a group of well-connected inhabitants took the problem of the night watch to parliament, and got a bill introduced into the House of Commons in December 1703 'for the better regulating the nightly watch' in Westminster and in the parishes of Middlesex and Surrey within the Bills of Mortality. This failed at second reading, but the bill was introduced again and the battle continued over the succeeding three sessions.[52] All were successfully resisted by petitions opposing the central proposal of all the bills: the raising of a rate for the support of an enlarged watch.[53]

The concerns expressed in the City of London over the last decade of the seventeenth century about the adequacy of their night watch thus merged early in Anne's reign with a much wider set of anxieties in the metropolis. They arose from concerns about the dangers of violent crime in the streets, and violence threatened in the course of burglaries. How well-placed those fears were, it is difficult to know, but there is little doubt that the fear of burglary in the early years of the eighteenth century drove the efforts of men in Westminster and the City to establish their night watches on new foundations. That was made explicit when a bill to establish a £40 reward for the conviction of burglars was introduced into the House of Commons by the sponsors of the third of the watch bills and was sent after second reading to the committee already established to examine that bill. It emerged in 1706 as 'An act for . . . encouraging the discovery and apprehending of house-breakers'.[54]

None of the watch bills got past the committee stage because they threatened the vested interests of the dean and chapter of Westminster Abbey. The House-breaking Act passed in parliament because it threatened no interests and fitted a pattern of legislation established in the previous decade. It sought to diminish

[51] Elaine A. Reynolds, *Before the Bobbies: The Night Watch and Police Reform in Metropolitan London, 1720–1830* (1998), ch. 2.

[52] *JHC*, 14 (1702–4), 272, 298, 339, 461, 488, 491, 496, 498, 500, 503, 514, 520; *JHC* 15 (1705–8), 58, 62, 69, 117, 119, 122, 125, 132, 139, 142, 200, 204–5, 216, 217–18, 231, 240, 244, 254, 279, 280–1, 298, 303, 375.

[53] The dean and chapter of Westminster Abbey also claimed that the bills threatened their ancient rights; and (in the case of the 1706 bill) the churchwardens, overseers, and other inhabitants of the parish of St Dunstan, Stepney, also petitioned for exemption on the grounds that they would be faced with an 'unnecessary Charge'. They had always provided, they said, 'an able and sufficient watch' which served their parish well, 'in so much that, for a long time, they have not had any Robbery, or House-breaking' (*JHC* 15 (1705–8), 244, 254).

[54] For this bill and the statute that resulted as 5 Anne, c. 31 (1706), see *JHC*, 15 (1705–8), 202, 214, 217–18, 331–2, 353, 374, 376–7; *JHL*, 18 (1705–9), 293, 297, 311, 320; and below, Ch. 7. The committee also took up the cause of Joseph Billers, a self-styled thief-taker, active (by his own account) in the prosecution of burglars and recommended that he be compensated when he petitioned parliament for 'Encouragement and Protection' (*JHC*, 15 (1705–8), 303, 375). For Billers and thief-taking, see Ch. 5.

burglary and housebreaking, 'of late years become more frequent than formerly', by establishing a statutory reward of forty pounds for the conviction of burglars and housebreakers, over and above the Tyburn Ticket that had been granted for their successful prosecution at the end of William's reign.[55] Passing a statute to encourage prosecutions—and to encourage accomplices to turn in their companions by the then familiar offer of both rewards and pardons—was a good deal easier than enacting preventive measures, given the political conflict in Westminster.[56]

Officials in the City had no doubt been wary of the Westminster Watch Bills in case they encroached on their jurisdiction and threatened the ancient rights they were ever ready to defend. But they were also moved by the same concerns about burglary, and that presumably is why the work of the failed committees of 1700 and 1704 was revived in 1705 and resulted in a new act of Common Council to regulate the City watches.[57] A lord mayor's precept in 1705 on the subject of robbery and burglary in the City was followed within days by the establishment of a committee of Common Council that met in November and December, gathered information from the wards about how many watchmen they thought necessary, and, on this occasion, how many 'stands'—watch-boxes—they planned to establish, the point of that request being that the committee wanted to know where each ward intended to station its watchmen to enable them to judge the adequacy of the numbers proposed. The committee also gathered information about the number of watchmen who were actually deployed every night, as opposed to the number in the pool from which those actually on duty would be chosen.

The wards, inevitably, reported that many fewer watchmen were on the streets every night than the pool of men established by the 1663 act might have led some to expect. Some deputy aldermen thought it necessary to justify a smaller watch force than that mandated in 1663 by claiming that their ward's population had diminished over the intervening forty years.[58] But the main explanation was that the watch had come to be accepted as a body of hired men. As we have seen, the 1663 figures were based on what was almost certainly already an outdated assumption even then, that the watch would still be made up of householders doing their year of service and that the annual quota needed to be a large group from among whom some would be 'warned' to watch on particular nights. About half that number were actually at work when the committee of 1704 carried out its investigation because they were all in fact paid to

[55] In 10 & 11 Wm III, c. 23 (1699).

[56] 5 Anne, c. 31 (1706). The act did retain one connection with the abortive measures to strengthen the watch with which it was originally linked: the kin of watchmen who were killed in the pursuit of burglars or house-breakers were declared to be eligible to receive £40 rewards, or the portion to which they were entitled (s. 2).

[57] Jor 54, p. 137.

[58] CLRO, Misc. MSS 245.1: letters from the deputy aldermen of Walbrook and of Queenhithe.

watch every night of the year. There thus needed to be fewer of them. The 1705 act of Common Council accepted that as the basis of the watch and in establishing the new system, the committee that negotiated the details with the wards adopted the levels they had been deploying in practice. Only in the larger and poorer wards were larger numbers of watchmen mandated than the authorities had been sending out every night—seven more in Billingsgate and Cripplegate Without, eight in Farringdon Within, ten in Farringdon Without.

The new watch act also assumed that each ward had set up a system of watch-stands, rather like that of Cornhill in which two watchmen would stand guard at each watch-point and go on their rounds on a regular 'beat' through the night, spelling each other every hour. The fact that the 1705 act called for watchmen to be strong and able-bodied men seems further confirmation that the watch was now expected to be made up of hired hands rather than every male householder serving in turn. Householders could be counted on to be able-bodied—or rather those who were not could be excused—but in a system in which every man was expected to take a turn, it is not likely that strength would be announced as a crucial requirement.

The act of 1705 laid out the new quotas of watchmen and the disposition of watch-stands agreed to in each ward. To discourage the corruption that had been blamed for earlier under-manning, it forbade constables to collect and disburse the money paid in for hired watchmen: that was now supposed to be the responsibility of the deputy and common councilmen of the ward—that is to say, presumably, collectors nominated by them. The ward leaders were also to ensure that the constables took it in turn to supervise the watch every night, setting out the rota they were to follow, as well as the beats the watchmen were supposed to patrol.

For the most part, then, the act of 1705 adjusted to the reality of paid watchmen, but essentially retained the main lines of the old system. Watches continued to be raised in and for the wards by methods peculiar to each: no attempt at uniformity of rates or of pay across the City was—or perhaps could have been—imposed. The act did confirm and further encouraged several changes in the structure of the watch that had been underway at least since the middle decades of the seventeenth century and that served to give watchmen more of a presence on the streets: without using the word, it required the wards to build watch-houses if they had not already done so to serve as a point of assembly and as a place where anyone arrested by a watchman could be held until taken before a magistrate in the morning, or to Bridewell or one of the compters. Watch-houses had been gradually appearing since the 1650s, possibly before—there was certainly some form of watch-house at Holborn Bars in 1660, for example[59]—but they only became common in the 1670s and 1680s, when the aldermen were called upon from time to time to give permission for money to be raised for the

[59] Rep 66, fo. 3.

purpose and to deal with disputes about their location.[60] Their establishment went hand in hand with the expansion if not the creation in the late seventeenth century of watch 'stands' and regular 'beats'. In requiring watchmen to be stationed in their watch-boxes at places that would allow them 'to maintain a correspondence with each other' and enable them to come to each other's aid, the act of 1705 legislated this aspect of the watching system for the first time.[61]

The 1705 act accommodated some of the structural changes that were shaping the way the watch was raised without changing its duties. It confirmed, for example, that watchmen should carry halberds, even though they had clearly ceased to do so in practice. It also retained the established hours of duty (9 p.m. to 7 a.m. in the winter months, and 10 p.m. to 5 a.m. in the rest of the year) despite the fact that arguments had been made for mounting a watch much earlier in the evening. Indeed, almost immediately there was pressure to rethink that aspect of the act. In November 1706 a group of inhabitants of St Paul's Churchyard in the ward of Farringdon Within complained to the aldermen about the number of robberies on coaches and people on foot taking place in their area 'in the Evening', before the watch came on duty. Similar reports were received from the wards of Castle Baynard and Farringdon Without—that is, from some of the most crowded places in the City. The deputies and common councilmen of all three wards were asked to consider whether the act passed in the previous year would accommodate a watch being set 'as soon as it begins to grow darke in the before mentioned and all other Places within their said Wards usually Infested with such Malefactors'.[62] It was clear that it would not, since the numbers of watchmen had been reduced. Nothing came of this momentary panic, certainly nothing in the way of permanent policing at such times.

Further complaints about the watching system established on the basis of the 1705 act were inevitable, given its lack of flexibility and the failure to tackle (possibly to recognize) the problem of how the money was to be raised to pay the force of hired men. And complaints inevitably followed when the problems the watch was supposed to prevent not only failed to diminish but seemed to increase in number—as increase they did from time to time, and would have done, whether there was a fine watch force or none at all. They were particularly prevalent in the quarter century of peace between the end of the War of Spanish Succession (1713) and the beginning of the naval war against Spain in

[60] Rep 74, fos. 82, 120–1, 126, 228–9; Rep 86, fos. 183, 193; Rep 87, fos. 6, 45. In 1676 the dean and chapter of St Paul's and the inhabitants of Castle Baynard ward came to an agreement that would allow the ward to build a watch-house on ground belonging to the chapter to the south of the cathedral (GLMD, MS 25739A).

[61] The City also adopted a system of monthly watchwords following the act—setting out a secret way for one watchman to identify another if they met in the dark. One year's table of 'monthly City Words' (names of English towns) survives for November 1705–September 1706 (Bodleian Library, Rawlinson MS D.862, fos. 76–87, my knowledge of which I owe to Tim Wales). It is signed by Queen Anne, presumably on the model of the watchword given to the guard at royal palaces, where it continued to make some sense. It seems not to have survived in the City.

[62] Rep 111, p. 11.

1739 that broadened into a wider European conflict, when evidence of begging and vagrancy and other disorders in the streets and when violent offences committed by gangs caused anxiety and occasionally a sense of panic.

The main response of the aldermen and Common Council of the City to problems in the streets at night during the quarter century following the new legislation and to complaints about the ineffectiveness of the watch was (predictably) to urge ward authorities to put the provisions of the 1705 act into effect. They blamed the constables for failing to do their duty when complaints arose in the winter of 1712–13 about the number of 'Night Walkers and Malefactors who wander and misbehave themselves in the Night time within the Streets and Passages of this City', and this remained a familiar theme into the 1720s and beyond.[63] The aldermen called for an examination of the watch in 1728, for example, to ensure that the act of 1705 was being observed, 'it being of the greatest Concern for the preservation of His Majesties peace for the prevention of Robberies and for the Good Government of the City that good and Substantial Watches should be kept within the same'.[64] The act was reprinted and redistributed to the constables in that year and again in 1736.

But in fact the system set up in 1705 was too flawed to be effective, not merely because it required every watchman always to be available for duty, but also because of the weakness of the legal and financial base upon which it had been raised. A hired watch depended on the regular financial contributions of householders. Payments in lieu of service might have provided an adequate basis for a paid watch if everyone agreed to contribute. But, perhaps as memory of the connection between the payment and the obligation to serve began to fade, it became increasingly difficult to collect the required money. Inhabitants who might once have served or at least paid for a substitute were losing sight of that customary communal duty—withdrawing, one might think, from that civic role just as, in their own ways, the aldermen were withdrawing from engagement in criminal administration and men of middling station who could afford it were opting not to take on the active role of constable.

The particular problem of the watch was that it was difficult to enforce payments that were based on an obligation to serve in person. If men refused to pay—as increasing numbers appeared to do in the early decades of the eighteenth century, especially perhaps in the poorest wards—the only available means of forcing them to do so were too elaborate and too expensive to be usable on a large scale. To collect a few shillings, the City was obliged to prove that each delinquent had an obligation to pay, and that could only be established by means of an expensive and time-consuming prosecution before the sessions of the peace—an action that might require the City solicitor to draw a brief as well as a constable to prosecute.[65]

[63] CLRO, Misc. MSS 38.25; Jor 57, fo. 177; Rep 137, pp. 199–200. [64] Rep 132, pp. 421–2.

[65] Discussion of these difficulties, and orders issued to beadles and constables concerning the enforcement of the rules and orders about particular cases, can be found in the minutes of the Court of

It was the weakening sense of obligation to serve on or to pay for the watch that brought home to the Court of Aldermen and the Common Council of the City their need for new authority to support the collection of the rate. The only possible source of such authority was an act of parliament. A statute could authorize the raising of a rate and at the same time provide a simple mechanism to compel payment. It had the further advantage that the tax could be graduated in such a way that the wealthy paid more than the poor and yet the base could be broadened to include more contributors than before. In turning to parliament, the City authorities were again spurred on (as they had been in 1704–5) by the efforts of inhabitants of some of the Westminster parishes to get statutory support for similar schemes.

The issue had in fact come before parliament in 1720, raised once again by the struggle for control and reform of the watch in Westminster and by the widespread concern about dangerous streets.[66] A bill was introduced into the House of Commons early in that year 'for the better regulating the Night Watch and Beadles in the . . . Counties of Middlesex and Surrey', which renewed the effort to create a local rate to support the watch, in the hope—as one of its supporters wrote—that it would reduce the 'peril of being robb'd or murder'd if on the necessary Occasions of Life, we are obliged to be out of our own Doors after 'tis dark'.[67] The bill was once again opposed by the burgesses of Westminster and by other Middlesex parishes. It was again watched with care by the lord mayor and aldermen of London, who established a committee to draft and submit a clause that would ensure that any bill that passed would not apply to the City.[68]

That bill failed, but the failure drew the central government—a government increasingly active in the prosecution of crime in the 1720s[69]—into the discussion about the state of the watch in London. The magistrates of Westminster and Middlesex were called in by the lords justices, who acted for George I during his absence in Hanover in 1720, to be encouraged to consider other ways of improving the night watch in their jurisdictions in order 'to prevent robberies and disorders that happen in the streets'.[70] Secretary Townshend also discussed the issue of the watch with the experienced Middlesex magistrate Nathaniel Blackerby in 1725 and sought his suggestions about how street robberies and housebreaking might be suppressed. Blackerby's main recommendation was

Aldermen in the 1720s and 1730s: see, for example, Rep 129, pp. 72–3; Rep 132, p. 466; Rep 133, pp. 15, 50–1, 189–90, 205, 272; Rep 137, pp. 199–200. The unwillingness of owners of warehouses and other commercial buildings to pay the watch charge or provide a person to watch for them emerged as an issue in the late 1720s (Rep 133, pp. 189–90). Discussion of this matter, and of the parallel issue of payments for street lights outside public buildings, encouraged a significant broadening of the notion of public duty and a new conception of local services that was to be embodied within a few years in watching and lighting acts, as we shall see.

[66] Reynolds, *Before the Bobbies*, 11–15.

[67] N.M., *A Letter to a Member of Parliament concerning the Bill for Regulating the Nightly Watch in the City of Westminster and Liberties thereof* (1720), 28.

[68] Jor 57, fo. 41. [69] See Ch. 9.

[70] SP 44/283 30 August, 3 September, and 20 September 1720.

for an act of parliament to authorize the collection of 'a pound rate' to support a sufficient number of watchmen to enable their stands to be in sight of each other or at least in hearing.[71] At the same time a group of Middlesex and Westminster magistrates petitioned Townshend to urge him in effect to interfere in the struggle for control of parish government in Westminster in order to get 'a Law for regulating the Nightly Watch' as a crucial part of the battle against street violence.[72]

Such proposals were again put before parliament in 1728, and now with the support of the lord mayor and aldermen of the City—so long as the City could ensure it would be treated separately. The experience of the street violence of the 1720s had persuaded the City authorities that they too needed statutory authority to support an effective watch. They were also likely to have been encouraged to take such a view by a broadening public discussion of the problems of the night watch. Daniel Defoe, for example, criticized the watch in several pamphlets in 1727 and 1728 concerned with property crime and broader issues of social order. London, Defoe said, was becoming 'a Scene of Rapine and Danger'.[73] Rogues had grown 'more wicked than ever'—having been encouraged, in his view, by Gay's *Beggar's Opera* (1728) 'to value themselves on their Profession, rather than be asham'd of it'—and the watchmen were unable to control them because they were 'for the most Part, decrepit, superannuated wretches'.[74] Their numbers needed to be increased, in his view, and they needed to be more active and more able-bodied than the present force. To achieve those results, he recommended that their pay be increased—from what he had said in the previous year was six pence a night (or somewhere in the region of nine pounds a year) to twenty pounds a year, a sum that a poor man 'with Frugality, may live decently thereon'.[75]

Such concerns about the capacity of the watch to deal with violence on streets that were becoming increasingly busy at night encouraged the City authorities to join in 1728 in efforts being made yet again in parliament by members of the social élite of Westminster parishes to obtain the kind of authority that would enable them to make significant changes in their own night watch. Early in that year a committee of the Common Council was struck to consider how the Night Watch Act of 1705 'may be better enforced and more effectually executed'.[76]

[71] SP 35/61/52. Blackerby also recommended that the watchmen not be above the age of 50. He thought they should be on duty roughly at the times of the City watch, and that they should go on their 'Walks' every half hour, another characteristic of the City system: indeed, Blackerby clearly thought the City watch superior to that in Westminster.

[72] SP 35/67/8.

[73] Daniel Defoe, *Augusta Triumphans: Or, the Way to make London the Most Flourishing City in the Universe* (1728), 48.

[74] Ibid., 47–8.

[75] Ibid., 52. In *Parochial Tyranny: Or, the Housekeeper's Complaint*... (1727), Defoe also said that apart from the fact that in some parts of London there were too few watchmen, 6*d.* a night was too little to attract good candidates to take up the post.

[76] Jor 57, fo. 177.

What emerged from that was the conviction that the problems surrounding the watch were by then too deep-seated to be solved simply by more vigorous management. This committee of Common Council put forward a solution that was clearly driven by the men who ran the wards—the deputy aldermen and common councillors—a solution that required an accession of authority by act of parliament to raise a local rate for the support of the watch so that personal obligation could be abandoned as the basis of the system.

The ward leaders had come to that conclusion by the late 1720s because by then the problem of non-payment of watch money had reached serious proportions. The ward and parish authorities complained frequently about householders who refused 'to watch or to pay the rate in lieu thereof'. Among others, the constables of St Andrew's Holborn, and the beadles and deputy aldermen of the wards of Castle Baynard, Farringdon Within, and Tower complained about their difficulties—further evidence of the way that under-payment hit the largest and poorest parts of the City the hardest.[77] When the bill for 'Appointing a better Night Watch and regulating the Bedles in England and for the better Enlightening the Streets and publick passages within the Weekly Bills of Mortality' was introduced into parliament in 1728, the City was thus ready to ask for statutory authority for the collection of their own watch rate. The Court of Aldermen asked the common serjeant and recorder to prepare a clause to be inserted in the new legislation that would extend to the City powers 'for the better recovery of such sums of Money as for the future shall be assessed on the several Inhabitants' in support of the watch, by authorizing the deputy and common councilmen of each ward to seize and sell the goods of those who refused to pay the watch rate simply by virtue of a warrant signed by a magistrate. The clause made it clear that the payment of these rates was in lieu of the personal duty of watching and warding.[78]

In the end the complex politics of Westminster doomed this bill, too. But the issues it addressed and the crime problems it responded to were so insistent that within a few years the issue was raised again, and the City then successfully sought its own bill. After one final effort to make the old system work,[79] a noticeable shift occurred in the mid-1730s in the urgency with which the issue of night policing was dealt. The impetus clearly came from the wards; from the men who had to raise the watch with inadequate tools. The deputy aldermen and the common councillors seem essentially to have taken matters into their own hands. As we will see, the related question of how to provide adequate

[77] Rep 129, pp. 72–3; Rep 132, p. 466; Rep 133, pp. 189–90, 272, 282, 283.

[78] Rep 133, pp. 280, 307.

[79] Noting in 1733 'the frequent Robberies Committed in the night time in the Publick Streets of the City', the aldermen ordered the ward deputies and common councilmen to cause the beadles to give notice to every inhabitant when their turn came to watch as the act of 1705 required—not to get them actually to turn out, but 'to pay what shall be charged on them', and if they refused, to prosecute them (Rep 137, pp. 199–200).

street lighting in the City was being debated at the same time.[80] A committee of the Common Council had been established in October 1735 to give advice on that issue—replacing the City Lands Committee that had had this matter of the street lamps within its purview since the early years of the century. It obviously made sense to charge a committee already dealing with the dangers of the City streets at night with the problem of how to sustain an effective watch. Similar solutions were sought in each case because the issues were the same—the fact that the old basis of personal service and its financial substitutes were providing an inadequate foundation for what were thought to be the essential services. The structural problems in the old system reached a crisis point in the middle years of the 1730s, and the men who were confronted with the day-to-day consequences of those failures forced through a solution that promised an answer.[81]

The committee of the Common Council set up in October 1735 to deal with street lighting was given the parallel problem of the watch in December. By then, despite continuing conflict between the vestries and the burgesses, two of the wealthy parishes of Westminster had recently managed to obtain an act of parliament to authorize the collection of a watch rate, and five others did so in the early months of 1736.[82] The City followed suit. The Common Council committee drafted petitions to parliament asking for the authority to establish local rates for the support of watch and lighting services and a simple mechanism that could compel payment from the intransigent.[83] Like all Common Council committees, this body consisted of four aldermen and eight commoners. It was dominated by the latter. The subcommittees that put forward the crucial proposals with respect to the street lights and the watch (made up of those members of the main committee who chose to attend its meetings) consisted almost entirely of common councillors, among whom several deputy aldermen were particularly active. With respect to the watch bill, the subcommittee meetings—at which the petition to parliament was drafted and other crucial issues were decided—were mainly attended by deputies. Only one alderman, Sir Robert Godschall, showed a particular and consistent interest in the problems surrounding the night watch, whereas something in the order of seventeen common councillors

[80] See below, pp. 219–21.

[81] Another shift towards a broadening conception of the public and public duty emerged in the mid-1730s in the City in the debates about the provision of essential services. It was clearly in the interests of the poorer wards that empty houses should be taxed for watching and lighting and that such buildings as churches and company halls and commercial properties should also contribute to a service from which they benefited. This was a new view of civic duty. Previously, when rates had been raised to pave and cleanse the City streets and sewers under the authority of an act of parliament in 1671 (22 & 23 Chas II, c. 17), only individual citizens had been obliged to contribute. In 1737 a clause of the Watch Act gave the City the authority to pave before empty houses at the charge of the landlords on the same basis of watching and lighting (CLRO, Misc. MSS 141.9; Jor 58, fos. 28–30).

[82] Reynolds, *Before the Bobbies*, 17–20.

[83] The following account of the passage and implementation of the Watch Act of 1737 is based on the journals of the Common Council (Jor 57, fos. 360, 367; Jor 58, fos. 28, 33–4, 59–64) and on several bundles of related papers in CLRO, principally Misc. MSS 141.9, Misc. MSS 245.1, Misc. MSS 245.2.

were members of the various committees involved. Several of them were very active indeed, most particularly two deputy aldermen: John Dansie, a barber surgeon, of Bishopsgate Within; and John Child, a cheesemonger, of Farringdon Without.[84] It is no surprise perhaps that the men who pushed the hardest for a reform of the watch that would provide it with adequate funds were from the largest and the poorest wards, the wards that faced the most severe policing problems and had the fewest resources to draw on. Several other common councillors from wards with similar problems were almost as active as Dansie and Child—a packer from Billingsgate (Winterbottom, who was to be deputy alderman by 1744), a wine merchant from Dowgate (Razor), and two men from Bridge ward (Newland, Sturt). In consequence, perhaps, the watch bill was designed to give the greatest practical authority to the Common Councils of the wards. As it was being formulated, a summary of the 'Heads of the Bill' sent to the committee that was to draft it and pursue it in parliament included an enumeration of 'The powers by this Act to be given the Ald[erman] Dep[uty] & C[ommon] C[ouncil] of each ward'—that is, in practice, the powers that would be assumed by the local leaders of the wards as they took full charge of the day-to-day management of the watch.[85]

With information supplied by the ward leaders with respect to the number of watchmen currently employed, the number they would like to hire, the total cost of the watching system in their wards—including the salary of the beadle and the maintenance of a watch-house—the committee was able to report to the Common Council in February 1737 the size and shape of a new watch-force.[86] The committee further reported the resolutions they had come to on the central issues of the bill: how the watch would be constructed and governed; and how the money would be raised. They laid out a plan designed by ward leaders to centre on and be managed in the wards themselves, underlining a central point about the reforming effort in this period that the Watch Bill exemplifies—and that explains perhaps why these efforts were not remembered as significant achievements by later generations: that it was only within this established institutional framework that change of the magnitude embodied in the Watch Bill could be contemplated. The watch bill introduced a fundamental alteration in the way night-time policing was mounted. But it did so in the only way that would have had any chance of being accepted within the City: it went as far as possible towards imposing uniformity on the City's watch-forces, while accepting that the only available machinery under which the money could be raised and the watch governed was in the wards. Along with the Lighting Act enacted by parliament in the previous year, the watch legislation underlined the dominance in London governance of the ward élite—men who had been

[84] Deputies John Dansie and John Child, for example, were members of all the committees that dealt with the watch issue in the years 1735–7 and of the implementation committees that followed the passage of the act. For membership and the minutes of the committees, see CLRO, Misc. MSS 141.9.

[85] CLRO, Misc. MSS 141.9. [86] CLRO, Misc. MSS 245.2; Jor 58, fo. 29.

emerging as crucial City authorities over a very long period by then, and who assumed a position of critical leadership in the second quarter of the eighteenth century. They emerged as the dominant force in local governance in part because of the falling away of other centres of authority, the aldermen and the wardmote in particular, but also because the problems to be dealt with required responses that only those close to the scene could provide.

The committee's recommendations became the basis for the successful application to parliament for an act that would give them authority to raise the rate and to deal with defaulters.[87] Henceforth, the Common Council was authorized to publish an annual Watch Act which set out the number of watchmen and beadles to be hired in each ward. The immediate effect, in the first year of its implementation, was an increase to 672 men (about 20 per cent over the 1705 level) and what at least appears to have been a considerable infusion of extra money into the system—though, in the absence of estimates of the cost of the watch under the 1705 act, that cannot be known with certainty (Table 4.2). What is clear is that the fundamentally local nature of the watch system was confirmed. There was to be no City-wide sharing of funds; no drawing from the rich to support better policing of the poor. The act of 1737 increased the number of watchmen in nineteen wards and decreased it in one. The changes came in both the largest and poorest wards and the smallest and richest: a 58 per cent increase in Bishopsgate was matched by the same proportional increase in Broad Street.

The result ensured that the wards that could afford it continued to receive the most intensive night-policing. As part of its discussion of the problems of street lighting in April 1735, the subcommittee that was also considering the issue of the night watch was asked to calculate from the land tax records the number of houses in each ward with an annual value of ten pounds and upwards and those under ten pounds—the point at which settlement could be gained in the City, and a broad guide, presumably, to each ward's ability to support an expanded lighting system. It served the same purpose for the committee's discussions about the watch.[88] The evidence provided by the report (which was signed by John Smart, deputy alderman of Aldersgate Within) confirms that the City watch would continue under the 1737 act to differ sharply from one ward to another. The number of watchmen authorized under the act varied across the City—from the 10 houses per watchman in Cornhill to the 69.5 of Cripplegate Without, and an average of 32.2. As in the case of constables, the 'coverage' that this suggests, the intensity of policing in each ward, would be revealed as much wider than those figures suggest if the number of people living in those houses, not merely the number of houses themselves, could be calculated. None the less,

[87] Jor 58, fo. 34; and see the draft petitions in Alchin MSS, Box S, no. CXXVI. The bill was passed as 10 Geo II, c.22 (1737).

[88] CLRO, Misc. MSS 291.1.

TABLE 4.2. *Numbers of watchmen, City of London, 1737*

Ward	1	2	3	4	5	6	7
Aldersgate Within and Without	25	0	1,035	41.4	74.9	21	17=
Aldgate	31	24.0	1,089	35.1	68.9	20	21
Bassishaw	6	0	142	23.7	89.4	12	11
Billingsgate	20	4.8	398	19.9	97.0	6	4
Bishopsgate Within and Without	49	58.1	2,038	41.6	44.3	22	24
Bread Street	12	(–20.0)	331	27.6	91.5	16	9
Bridge	22	10.0	385	17.5	96.0	4	6
Broad Street	38	58.3	785	20.7	88.7	7	12
Candlewick	16	33.3	286	17.9	94.3	5	7
Castle Baynard	24	0	784	32.7	70.8	19	20
Cheap	26	30.0	367	14.1	98.6	2	2
Coleman Street	24	33.3	611	25.5	74.9	14	17=
Cordwainer	16	14.3	367	22.8	91.8	9	8
Cornhill	18	80.0[a]	180	10.0	96.9	1	5
Cripplegate Within	26	8.3	748	28.8	81.0	18	14
Cripplegate Without	28	0	1,946	69.5	31.2	26	26
Dowgate	16	14.3	369	23.1	77.3	11	15
Farringdon Within	49	36.1	1,368	27.9	75.8	17	16
Farringdon Without	89	45.9	4,278	48.1	64.4	23	22
Langbourn	23	0	530	23.0	97.2	10	3
Lime Street	10	25.0	209	20.9	89.6	8	10
Portsoken	28	5.6	1,385	49.5	35.4	25	25
Queenhithe	10	0	488	48.8	61.1	24	23
Tower	32	14.3	782	24.4	83.3	13	13
Vintry	16	14.3	418	26.1	71.5	15	19
Walbrook	18	28.6	293	16.3	99.7	3	1
Total	672	22.0	21,625	32.2 (ave.)	67.4 (ave.)		

Columns:
1 = Numbers of watchmen by 1737 act. *Source*: CLRO, Misc. MSS 141.9
2 = % increase from 1705 act
3 = Number of houses (*Source*: John Smart, *A Short Account of the Several Wards, Precincts, Parishes, etc. in London* (1741) [see note 89]
4 = Number of houses per watchman
5 = % houses rated above £10 per annum (*Source*: CLRO, Misc. MSS 291.1)
6 = Rank order of 4 (ascending)
7 = Rank order of 5 (descending)

Note:
[a] Cornhill had sixteen watchmen on the establishment, six of whom had been paid by the Exchange. Those were almost certainly now paid for by the ward: hence this apparent large increase. The effective number was two, an increase of 12.5%.

Smart's land tax evidence shows clearly enough the disparities across the City. He revealed that the proportion of houses in each ward assessed at an annual

value of ten pounds or more ranged between the 99.7 per cent in Wallbrook and 31.2 per cent in Cripplegate Without. Arranging the number of houses per watchman in rank order in the wards (from the lowest to the highest) side by side with the percentage of houses rated above ten pounds (from the highest to the lowest) confirms clearly what ward control of the watch meant for the City: the continuing close relationship in 1737 between the ability of a ward to support its watch and the intensity with which it was patrolled at night, supposing, of course, that the watchmen walked the beats as they were supposed to do (Table 4.2).[89]

Under the new act, the ward authorities also continued to hire their own watchmen and to make whatever local rules seemed appropriate—establishing, for example, the places in their wards where the watchmen would stand and the beats they would patrol. But the implementation of the new Watch Act did have the effect of imposing some uniformity on the watch over the whole City, making in the process some modest incursions into the local autonomy of the wards. This was certainly the case in the important area of wages—the low levels of which had been frequently seen as one of the weaknesses in the watch as it had become an entirely paid body. Of the eight wards that reported their rates as the 1737 bill was being prepared, five paid ten pounds a year, two paid less, and one paid a little more. One of the leading elements in the regime that emerged from the implementation of the new act was an agreement that every watchman would be paid the same amount and that the wages should be raised to thirteen pounds a year.[90] This increase in costs was to be met by a collection of rates that could be easily enforced and that was extended for the first time to institutions and businesses that had not contributed earlier.[91] The Common Council also confirmed the old watching hours and, in what may have been more a confirmation of practice than an innovation, declared that watchmen were to be armed with a 'good and substantial Ashen staff', five and a half feet long, with an iron ferule at each end.[92]

To outward appearance, not a great deal changed in the way the City watch worked. The force on the street was a little larger than it had been under the old system, but its duties had not changed. Those responsible for its passage had no other model of night-policing in mind. There was no thought that it would have

[89] I have drawn the number of houses in each ward from Smart's published reports on the wards (*A Short Account of the Several Wards, Precincts, Parishes, etc. in London* (1741)) in which he revised the numbers he reported to the committee in 1735. The earlier report, he himself said, was not complete (CLRO, Misc. MSS 291.1). The land tax assessments are drawn from the 1735 report since he did not include them in his later publication.

[90] There was disagreement about both those matters in the committee that implemented the act. A subcommittee recommendation that every watchman be paid £13 a year seemed to have been overturned by the whole committee, but none the less turned up in the City's Watch Act in 1737 and in the acts of subsequent years (CLRO, Misc. MSS 141.9; Jor 58, 59–64, 155–61, 192–7).

[91] One result was that a large number of such institutions, as well as individuals, took advantage of the appeal mechanism set up under the act, though most of the claims of unfair assessment were denied by the Court of Aldermen (see, for example, Rep 142, pp. 212, 220–1, 246, 342, 371; Rep 143, p. 296).

[92] Jor 58, fo. 64.

been useful—let alone possible—to create a larger, better paid, and centrally organized force. Ward autonomy in the raising of resources and in the organization of their own policing remained paramount. None the less, the act, and others like it in Westminster parishes, marked a significant moment in the transformation of conceptions of local government in that it translated the obligation to serve in person into an obligation, easily enforced, to pay in support of a service performed by waged officials.

'A FEW WEAK AND FEEBLE MEN': HOW EFFECTIVE WERE WATCHMEN?

The watch system confirmed by the 1737 act required watchmen to be at their posts every night through the year. They were supposed to assemble at their watchhouse at 9 p.m. in the winter and 10 p.m. in the summer, to be met by the man taking his turn to be the 'constable of the night', who would be in charge until the watch was dismissed the next morning. The ward beadle was also supposed to be present as the watch assembled to enter each man's name in a book, to see that they had their lanterns and candles and were armed with their staffs, and to ensure that they took up their positions at their stands or watch-boxes before leaving for the night.[93] The watchmen worked in pairs, as in the Cornhill arrangement we saw in the 1690s, alternating an hour each in the watch-house to be ready to respond to trouble, and an hour of watch duty, during which they were to beat their rounds twice, once calling the time, the other silently.

The 1737 act required the constable to remain on duty until the watch was raised in the morning, making a tour of the whole ward twice a night. Constables and watchmen were all, of course, supposed to be on the look-out for serious offenders, or merely suspicious people; and they were expected to arrest prostitutes and vagrants. Anyone apprehended by the watchmen or the constable was to be taken to the watch-house and then by the constable to a magistrate in the morning or to one of the compters to await examination.[94] The watch-houses seem to have become more elaborate, more like lock-ups, in the course of this period. By the second quarter of the eighteenth century some were being referred to as 'round-houses', buildings that were likely to have been more secure than the temporary arrangements that had served in some wards a few decades earlier.

How well all of this worked in practice is another matter. Given the fact that watching was full-time work for modest pay, it must have been difficult to attract good recruits—that is, strong, able-bodied, reasonably young, men. It is difficult to know if the increase in the wages to thirteen pounds a year helped in the

[93] If ward watch-books were in fact kept immediately after 1737, they have disappeared. The earliest such book for a City ward begins in 1799 and a handful of others survives from the early decades of the nineteenth century.

[94] CLRO: P.D. 10.194 (printed rules and orders to be observed by the constables, beadles, and watchmen in pursuance of the Act of 10 George II, c. 22).

recruitment of better men and solved the problem the deputy alderman of Candlewick presented to the committee on the watch in 1737, when he told them that shortage of money had 'oblig'd us to be satisfy'd with the Service of such Men, as the smallness of our Pay would enable us to employ, though perhaps less Capable of their Duty, than we could wish and desire'.[95] Candlewick was then paying its watchmen ten pounds a year. The new rate was well below the twenty pounds that Defoe thought a poor man required in London to live decently, if frugally.[96] And, at five shillings a week, it was almost certainly towards the low end of the range of income of London labourers.[97] On the other hand, a watchman's thirteen pounds provided a guaranteed income throughout the year, not subject to seasonal variation or interruption, as was so much work. It was also a base salary that would have been increased by tips and rewards and fees, not to speak of more corrupt possibilities—and perhaps sufficiently increased to encourage rather better recruits to take up watching at night than in the past.[98]

Watchmen's pay emerged as an issue, however, in the evidence taken by a House of Commons committee set up in 1751 (at the height of another post-war panic about crime in the metropolis) to look into the law enforcement apparatus in Westminster and a number of other urban parishes in Middlesex, and to 'consider the Laws in being which relate to Felonies, and other Offences against the Peace'.[99] Among its many resolutions on the watch, the committee commented on the deleterious effects of low wages on the quality of the watchmen serving in Westminster and other metropolitan parishes. In their view, 'the Salaries paid to Watchmen are too small to induce able-bodied Men to undertake that Service; and the Watching all and every Night makes it impossible for industrious Handicraftsmen or Manufacturers, to accept of being employed as Watchmen'. Not even unskilled men could afford to take it on, they thought, if they had to work every night. Their recommendation was not, however, that the wages be increased: that was not apparently a possibility they could imagine, given, one must presume, what they knew about the attitudes of the parish authorities and the ratepayers of Westminster. Their suggestion was to double

[95] CLRO, Misc. MSS 245.2.

[96] Defoe, *Augusta Triumphans*, 52.

[97] See L. D. Schwarz, 'The Standard of Living in the Long Run: London, 1700–1860', *Economic History Review*, 2nd ser., 38 (1985), 36, for London bricklayers, carpenters, and bricklayers' labourers' wages. The latter earned no more than 2*s*. 0*d*. a day in the first half of the eighteenth century. Peter Earle estimates the annual income of a London labourer at between £10 and just over £16 a year (*The Making of the English Middle Class: Business, Society and Family Life in London, 1660–1730* (1989), 14).

[98] Ruth Paley has found evidence that at least in the early decades of the nineteenth century watchmen in some Middlesex parishes were younger and more vigorous than the stereotype suggests ('"An Imperfect, Inadequate and Wretched System"? Policing London before Peel', *Criminal Justice History*, 10 (1989), 104, 114).

[99] Radzinowicz, *History*, 1. ch. 12; Beattie, *Crime and the Courts*, 520–30; Nicholas Rogers, 'Confronting the Crime Wave: The Debate Over Social Reform and Regulation, 1749–1753', in L. Davison, T. Hitchcock, T. Keirn, and R. B. Shoemaker (eds.), *Stilling the Grumbling Hive: The Response to Social and Economic Problems in England, 1689–1750* (Stroud, 1992), 77–98.

the number of watchmen, but engage each for only half the week, and for half the pay. The established budget would not be exceeded, but they expected that better, more able-bodied, recruits would be attracted than under the old arrangement, since, they said, 'it might be worth while for laborious People to undertake it, as it would not hinder them from following their own Occupations'.[100]

Salaries were higher in the City at that point, but still low enough that similar problems were being experienced there, too, by the middle decades of the century. Indeed, it was revealed in an investigation undertaken in 1773–4 that the rigidities of the watching system and the low pay offered had forced several wards in the City to take drastic measures to try to improve their watch without exceeding the financial caps that the annual Watch Acts continued to impose on them—and that they perhaps wanted. All the wards had at first conformed to the guidelines laid down by the Common Council in 1737, this investigation revealed, and had kept 'as strictly as possible to the literal order' of the annual Watch Acts. But at some point—when, they did not know or disclose, but it would not be surprising if it had been during the great anxiety about the increase in violent crime in the middle years of the century—several of the wards introduced drastic modifications in the practice envisaged under the 1737 act. In particular, wards with difficult policing problems tried to cope with the consequences of their watchmen's low pay and constant work by reducing the number of watchmen by half, doubling the wages of those who remained, and expecting them to serve through the night without relief. Others reduced the number of watchmen, but at the same time appointed 'Patroles' to move through the whole ward at night. The total number of men required was decreased under this plan and so they were able to give each watchmen, either on the beat or on patrol, higher wages than thirteen pounds a year while staying within the budget laid down in the City Watch Act.[101]

The conclusion of that investigation and what flowed from it is beyond my interest here: it would carry us on to the further development of the watching system and into the nineteenth century. The situation it exposed in the City does cast doubt on the possibility that a system requiring full-time duty from the watchmen would attract the kinds of men the ward authorities would have liked to hire—at least in sufficiently large numbers. That does not mean that the watch had not been improved over its pre-1737 condition. When contemporaries declared the watch (or any other institution) to be inadequate, they were making an explicit comparison not with what had gone before but with their current expectations. Continuing criticism does not mean that nothing had changed. It is indeed likely that, whatever improvement there might have been in the effectiveness of the watch, the problems on the streets and the changing expectations of the public would still have drawn criticism. And it does seem

[100] *JHC*, 26 (1750–4), 159. [101] CLRO, Misc. MSS 12.10.

that watchmen were more active and engaged in the second quarter of the century, though it is of course possible that apparent changes of that kind are more a reflection of the sources than watchmen's practice.

There are fleeting glances in the lord mayor's Charge Book and the court book of the Bridewell hospital of the watchmen at work—references to watchmen bringing prostitutes or men and women on more serious charges to be examined by the lord mayor, or to be committed to Bridewell.[102] Their work is almost certain to be masked in these records because most of the commitments of offenders would have been recorded as being made by the constable in charge of the watch even if a watchman had actually brought the suspect into the watch-house. Not that watchmen were ever likely to have brought in large numbers of street people, including prostitutes. Tony Henderson has shown that in the first half of the century street prostitution in the City of London tended to be concentrated in Farringdon Without, along the western edge of the City bordering the dangerous areas around Covent Garden and St Giles, and women from this area were occasionally charged by the City watch and constables with nightwalking. But Henderson has also confirmed what one might expect: that watchmen patrolling the same patch night after night got to know streetwalkers well, and their relationships tended to develop as one of negotiation, collusion, and corruption.[103]

Collusion was also likely with respect to more serious offences, but there is also evidence, especially in the second quarter of the century, of watchmen vigorously engaged in catching offenders. It is true that the principal source of such evidence, the Old Bailey Sessions Papers, is significantly richer after 1730 than for the first quarter of the century: one would not want to draw too firm a conclusion from the fact that reports of watchmen making arrests become more common in the years following the Watch Act. But such reports that show active watchmen at work are at the least some counterweight to the picture that has been so easily accepted of the watchman doing nothing but 'fuddling in the watchhouse or sleeping on their stands', as a newspaper complained in 1738.[104]

It is not difficult to find examples in the Old Bailey trial reports and occasionally in the press of watchmen being diligent, even brave—discovering and

[102] For the lord mayor's waiting book and the Bridewell court book, see above, pp. 27–9.

[103] Henderson, *Disorderly Women in Eighteenth-Century London*, 106–19. One man, writing against the imposition of rates in the watch bill, made the disingenuous point that rather than taxing the rich to pay for a waged system it would be better to force the poor to take their turns watching because each man would have to serve only occasionally and thus no cosy relationship between the watchmen and those they were supposed to police would develop. 'It hath been observable', he wrote, 'that a Standing Watch sometimes have been in fee with Thieves, they being certain always to be known; which if there were new Watchmen every Night, it would effectually prevent that Evil' (*Observations on a Bill entitled A bill for Appointing a better Nightly Watch and Regulating the Beadles in England; and for the better Enlightening the Streets and Publick Passages within the Weekly Bills of Mortality* (n.d.; possibly 1729)). Defoe also complained about the corruption of watchmen and the way they had street prostitutes 'under contribution' (*Parochial Tyranny; Or, The Householder's Complaint* (1727), 20).

[104] *The London Evening Post*, 7–9 November 1738.

confronting offenders and making arrests. Several of them helped an exciseman who was set upon by four men and stabbed with a butcher's knife as he was returning home near Smithfield market in 1717. The watchmen interrupted the attack before he had lost anything but his hat and wig, chased the four men 'round Smithfield' and caught one.[105] Another City watchman deposed at the trial of a burglar, who was convicted and sentenced to death, that when 'going his silent watch' he saw two men running out of a house. He pursued one, crying out 'stop thief' as he went, and with the help of 'his Brother watchman', cornered the man. One of them knocked him down with his staff, and they took him.[106] Another watchman responded to a woman's cry for help when she and her husband were robbed as they went along the notorious Chick Lane at midnight: her husband and a watchman trapped the attacker in a yard and arrested him.[107] At the following session, another woman testified that

she and another young Woman having been in Aldermansbury, about Business . . . were returning Home, pretty late at Night, and perceiving the Prisoner and another to follow them, who appeared to be shabby Fellows, were under some Apprehension of being injured by them; and going thro' Spittle Square, perceiving a Watchman not far off, said to her Companion, that now they were out of Danger; but had no sooner spoke the Words, but immediately the Prisoner came up to her, pull'd the Handkerchief off from her Neck, and ran away, and she crying out, the Watchman came, and he was apprehended.[108]

Coming upon a robbery in progress was the most obvious way the watch got drawn in. How often they turned the other way will, of course, never be known. But since there were rewards to be earned for the arrest of a street robber or a burglar, there was an inducement to come to the aid of a victim or to report an apparent burglary. A watchman in St Andrew's, Holborn, told the Old Bailey jury at the trial of two men for breaking into a bookseller's in Holborn, that just before 2 a.m. one morning

I went to the upper End of my Walk, that I might beat down again, when the Clock struck. When I was got just against this Shop, I heard a Clatter—a falling down of something. I immediately went up, and knocked at the Shop-door—Who is there, says I? There was no Answer—so I called out again—Who is there? A Man (who we found afterwards was Wilson) answer'd—it was his Brother's Stall, and he came there to lie that Night. I bid him open the Door; he would not. . . . a Brother-Watchman coming up to assist me, we forced the Door open, and laid hold of him.[109]

[105] *The Weekly Journal, or Saturday's Post*, 25 May 1717.

[106] OBSP, September 1719, p. 4 (Jones). Several watchmen claimed to have taken offenders after knocking them down with their staffs. One who came upon a robbery in progress in which the victim was being threatened with a bayonet, having called 'his Partner', struck at the offender with his staff. '[H]e was a Stout Fellow', he told the court, 'and I gave him several Knocks before I could fetch him down'. The evidence of the two watchmen convicted the accused and he was sentenced to death (OBSP, December 1726, p. 2 (Miller)). For other cases of watchmen felling fleeing offenders with their staffs, see OBSP, December 1737, p. 6 (Pardesty); and OBSP, April 1740, p. 131 (Cane).

[107] OBSP, April 1724, p. 3 (Winderam).

[108] OBSP, May 1724, p. 5 (Mobbs).

[109] OBSP, September 1740, p. 228 (No. 392, No. 393: Wilson and Murray).

Whether these watchmen shared in a reward for the eventual conviction of this burglar in unknown. It seems likely they did, and that was surely an inducement to them—as the statutory rewards were intended to be—not to pass by and ignore suspicious circumstances, or to leave victims of robberies to fend for themselves. Certainly, there are cases at the Old Bailey in which watchmen appear as interested parties, having pressed the victim to undertake the prosecution, on occasion against their will. In a weak case in which a boy was acquitted of the charge of stealing the hat and wig of the young child of a wealthy family living in the neighbourhood, the parents were induced to prosecute by the watchman who found the offending child wearing the hat and with the wig stuffed into his pocket. The boy claimed to have found them in the street. It seemed so clear that the watchman had pressed for prosecution that the judge remarked to him as he gave his evidence: 'I suppose you heard of a Reward for taking Street-Robbers?' John Allen, the watchman, acknowledged that he had indeed heard that, 'but what I did, was not for the Sake of the Reward I'll assure you'.[110]

A man who made five shillings a week was certain to know how he might profit from arrests and convictions, and it would be surprising if watchmen did not try to take advantage not only of the statutory rewards and the huge extra payments for the conviction of street-robbers in London offered by royal proclamation, but also of private gratuities and more local rewards.[111] But one also gets a sense from the trials in which watchmen gave evidence that some of them at least saw themselves as servants of the neighbourhood, with a particular responsibility for ensuring its peace and tranquillity. The language they so frequently used about their beats as they gave evidence in court, and the way in which they talked about their relationship to and knowledge of the inhabitants, carries a sense of their being embedded in the community, albeit as its servant. Some of their language in court was clearly self-serving—and, it is likely, was reported in the Sessions Papers because it struck the editor as pompous and amusing. But the sense conveyed of watchmen regarding themselves as community policemen seems real enough. John Sylvester, a watchman called to give evidence in a case in which a man claimed to have had his pocket picked by a prostitute—Mary Blewit, alias Dickenson, alias Bawler, who lodged in the house in which Jonathan Wild had lived until his execution the previous year—made this speech to the court:

> The Prosecutor you must know is one of my Masters, he's a Barber by Trade. . . . Now it's always my way to take care of my Masters, and see them safe home, whenever I meet any of them as I go my Rounds; and so it fell out between 12 and 1 a Saturday Morning, that I sees my Master Hartrey come out of a Coach very much fuddled, and who should

[110] OBSP, January 1733, p. 48 (No. 50, Fretwell).

[111] The parish of St Anne's, Westminster, for example, paid its constables and watchmen twenty shillings upon the conviction of every burglar they prosecuted (OBSP, May 1739, p. 76 (No. 264, Masters)).

he pop upon, but this very Gentlewoman at the Bar, Madam Blewit, or Dickinson, or Bowler, or what you please to call her for she was Wife to them all Three at the same Time, and the two First of 'em are now a hanging in Chains in St. Georges-Fields. Whether he wanted a Whore, or she a Rogue, is neither here nor there, but they presently laid fast hold of one another and grew woundy loving. I found my Master was in Danger, and did all I could to get him away. *Hussy*, says I, *You saucy Brimstone Toad you, what Business have ye with my Master, let him go, or I'll call by Brother Watchman, and have ye to the Round-House directly. And, Ah Master*, says I, *my dear Master, come away from that Hang-in-Chains Bitch.* Yes, I did call her Bitch, that I did, my Lord, and I can't deny it. *She'll certainly pick your Pocket*, says I, *or serve you a worse Trick. Come, come don't expose yourself*, but all signify'd nothing, he swore she was a Girl for his Fancy, and he would go with her, and so they went together, but it had been better for him if he had taken his poor Watchman's advice.[112]

Other watchmen spoke about 'my inhabitants', and, like John Sylvester, some reported helping people get home, lighting their way, often for a tip of six pence or a shilling.[113] One watchman talked in court about the loss of 'his' iron and lead after a rash of thefts on his beat, explaining 'not that it was my own, but my inhabitants'.[114] Watchmen revealed in court detailed knowledge of the lives of people in the communities they served. In a case in which a woman was accused of killing her husband—or her pretended husband—watchmen gave evidence about their relationship, one of them telling the court that he did not think they could have been married 'for they lived an abominable Life together'.[115] No doubt such knowledge of the community varied a great deal from one precinct to another, depending on how large and how settled they were. But it may well have been the norm in the small wards of the inner City that watchmen knew their communities well—that they knew their street life, who could be trusted, and who could not. A watchmen followed a man at midnight who, he said in court, he knew 'to be a loose chap' who was not going in the direction of his own house. With his 'Brother Watchman' he followed him at a distance, eventually saw him come out of a house of which the window had been forced, and caught him after sending for the constable who commanded their watch that evening. The man was tried and sentenced to death. John Sylvester, who got into the slanging match with Mary Blewit, had also acquired enough local knowledge as a watchman to know her reputation and to warn the man she had picked up; another similarly warned a man he saw going off with a prostitute to 'take Care'—too late as it turned out; and in yet another case in which a prostitute and her bully robbed a man at midnight, the victim's description of the women to a watchman led quickly to her arrest and conviction.[116]

[112] OBSP, July 1726, p. 4 (Blewit).

[113] OBSP, January 1717, p. 4 (Burdet and Winchurst); OBSP, October 1724, p. 7 (Slade); OBSP, January 1725, p. 2 (Hewlet)

[114] OBSP, April 1733, p. 105 (No. 15, Raven).

[115] OBSP, July 1726, p. 1 (Roberts).

[116] OBSP, April 1724, p. 7 (Jones); OBSP, October 1724, p. 7 (Smith).

It is possible then that some watchmen became trusted and reliable figures—more like college porters or hotel doormen than members of the flying squad. Certainly, trials at the Old Bailey provide evidence of people calling out for the watch's help when they thought themselves in danger, or going to fetch the watch when they thought they had been offended against and expected to be helped. The woman we met earlier who was being followed late at night but thought she and her companion were out of danger when they saw a watchman in the distance was expressing some of the reliance that seems to have been placed on the watch at the local level.[117] The watchman could be a valuable man to the inhabitants of the small area he patrolled: helping them home at night; waking them up when he found their doors or windows open, looking out for signs of fire; and so on. His commitment to that duty was almost certainly nourished by occasional tips and other rewards that filled out his meagre salary.[118] These perquisites, in turn, no doubt encouraged the watchmen to think of the householders they served as their 'masters'.

This language of dependency betrays the low esteem in which the post of watchman was held and the limited authority it conferred. It helps to explain why the watchman was something of a contemptible figure, a man who could be mocked and made sport of with impunity. Watchmen had suffered at the hands of the Mohocks in Anne's reign, the gangs of upper class hooligans who exercised their manhood by beating up people in the streets of London.[119] The Mohocks did not attack constables. Assaulting them was a reasonably serious offence: at least it was likely to bring a charge and indictment, though not perhaps a large fine. But constables were officers of the Crown. They took an oath which conferred on them authority to keep the peace. Watchmen took no oath and had little authority of their own. Their closeness to a small community, lighting people home and doing other favours for tips, helped perhaps to diminish them further in some people's eyes—an attitude expressed by a man in his cups in Drury Lane one night in 1717, who, when challenged by three watchmen said to them 'G–d d–mn you, You'll dance all Day long after a Gentleman to get a Pint of Drink of him'.[120]

Watchmen were not, however, without support. They had—or were supposed to have—a close relationship with the constables of their wards, who took

[117] See above, text at n. 105.

[118] One watchman knocked at a house at 4 a.m. to tell the owner his door was unlocked and got a tip of 6*d*. for his trouble from the man who turned out to be the burglar (OBSP, October 1738, p. 144 (No. 3, Pain)). The cultivation of the relationships upon which those mutual favours depended perhaps explains why watchmen apparently had a pact that they would not go into each other's beats, upon pain of a fine of six pence, 'such a Forfeit', one explained, 'being customary among the Watchmen if one comes into the other's Beat' (OBSP, January 1725, p. 2 (Hewlet)). Such a rule, if it was widely enforced, must have applied in very specific circumstances. There are too many examples of several watchmen working together for it to have been general.

[119] Statt, 'Case of the Mohocks', 192–3; Guthrie, 'No Truth or Very Little', 40–5.

[120] OBSP, January 1717, p. 3 (Burdet and Winchurst).

turns to command the watch every evening and who conferred authority on the men they very often called 'my watchmen'. In turn, watchmen giving evidence at the Old Bailey invariably referred to constables as their 'masters', by which they recognized not only their leadership but their social superiority. Constables, however poor, were householders; watchmen were more likely to be lodgers. There is no question that constables were the superior officers. They emerge from the little evidence we have of the watch at work as commanding figures. Seen from the vantage point of the mayor and aldermen, constables are small fry; from that of the watchmen they are men of consequence. They play a large part in watchmen's narratives in the Old Bailey Sessions Papers, while other officials, the beadles for example, rarely appear. They can be found organizing the watchmen to make arrests, taking charge of prisoners brought in, and on occasion—perhaps because of the possibility of a reward that they might share—making an effort to gather the evidence that would secure a conviction.[121] The constable could also assemble them for special duty, if necessary well outside the precincts and wards to which they belonged. Watchmen were on occasion called out in large numbers to help to deal with riots, for example.

The more active the constable, the more likely he would be to pressure his watchmen into activity, or to seek to get men appointed who would be willing to make arrests. Why Nicholas Wade became as engaged as he did when he got news that there was a good deal of revelry at the Shepheard tavern in Cheapside at 2 a.m. on a Sunday morning in 1693 is unclear. He may well have been active on behalf of the societies for the reformation of manners that were beginning then to conduct campaigns against blasphemy and vice, and that were particularly anxious to preserve Sunday as a day of rest and worship. Wade was the constable of the night in Cheap, and hearing about this illegality he gathered four of his watchmen and went to investigate. He found three men drinking in the tavern. As he later deposed before the lord mayor, when

> he askt them what they were doing att that time A night, one of them answered what was that to him, they were not to give him an account. Thereupon one of the watchmen sayd why do you speake so to the Constable, one of them answered they cared not A fart for him . . .

Wade ordered one of the watchmen to take that man to the compter. He led the rest upstairs, despite the efforts of another man to stop them by drawing his sword and telling them that 'there was a p[er]son of Quality above'. Up one flight they found a man drinking, and another playing a Welsh harp: Wade arrested them both and he and another watchmen took them to the compter. Informed by a watchman who came after them that there were still other revellers at the same tavern, they all went back again, demanded entrance 'in the King's name' when they found the door locked, and immediately arrested another

[121] OBSP, December 1732, pp. 8–9 (Dun). For a constable gathering evidence, see OBSP, September 1740, pp. 228–9 (Nos. 392, 393, Wilson and Murray).

man who 'reflected upon the Lord Mayor', questioned the constable's authority, and, according to one of the watchmen, gave Wade 'very abusive language, saying he was a pimpe'. On this second visit to the tavern they also came upon the person of quality, in fact a peer of the realm (not identified) who had been in an upstairs room and who now told Wade that the two men he had arrested were his servants and that 'he would lay [him] by the heels' if he did not go immediately and release them. He was sorry he had done it, Wade answered, but his 'power did extend only to committ, but not discharge'. And with that he left. The watchmen gave similar evidence.[122]

We can learn a good deal about this incident because on the Monday morning Sir John Fleet, the lord mayor, took depositions from Wade and the six watchmen who were eventually involved. He showed an unusually active interest in what was after all a relatively minor affair, no doubt because there was a peer involved. It was unusual in other ways, too. Presumably, constables did not take four watchmen from their posts every time they heard that there was illegal drinking going on in a tavern. Apart from the possibility that Wade was active in the reformation of manners movement, and these watchmen were of a like mind, Wade had had confrontations with Mr Shepheard before (the tavern was presumably named after its owner). Unusual it may have been, but the incidental details do tell us something about watchmen. They *were* watchmen; they were on their stands when Wade sent for them; and they at least do not seem to have been feeble, however old they were. None of them said anything in his deposition about the physical aspects of the confrontations that occurred, but it seems unlikely that men as arrogantly contemptuous of authority as two of those arrested (their attitudes no doubt owing to their being servants of a nobleman), and who had been drinking, and were armed to boot, were unlikely to have gone along quietly to the compter, especially if the watchmen had been incapable of manhandling them. Of course, we have only their own accounts to go on, but these watchmen emerge from this encounter as a reasonably formidable force. When Wade ordered them to arrest men, they were able to do so. When he ordered them to follow him upstairs, in the face of the man with a drawn sword, they apparently did that too.

One can draw no conclusions about the state of the night watch in London in the late seventeenth century and the first half of the eighteenth from this account or from the fragments of evidence drawn from the published accounts of trials at the Old Bailey in which watchmen appear to give evidence. But it does suggest that the policing of the City at night may not have been as hopelessly ineffective as the comments of contemporaries worried about the state of crime would lead one to believe. What should be emphasized is that there was almost certainly no uniform picture across the City. As in so many other aspects of life

[122] Informations given by Nicholas Wade and six watchmen, 8 March 1693 (CLRO, London Sess. Papers, March 1693).

in the City and across the metropolis as a whole, the watch may well have been a more effective and reliable force in the settled wards of the inner City than in the large wards on its outskirts. It is worth remembering that the Shepheard tavern was in Cheapside. Nicholas Wade and his men may not have been as willing to confront the company in a tavern in Blackfriars, or St Andrew, Holborn, or in any of the other poor and crowded areas of the City. Inevitably, the view of policing that can be derived from contemporary commentators or from grand juries or from complaints to the aldermen were likely to reflect the problems of policing in the largest and most difficult wards.

How effectively the night watch managed its policing duties or how its effectiveness may have changed in the century following the Restoration are matters about which there is no reliable evidence. It no doubt left a good deal to be desired as a policing body in 1750. But the watch had also changed over the previous ninety years—at the least in its structure (in the development of watchhouses and regular beats), in its financial underpinnings, possibly in the character and quality of its personnel. All things considered, it had come to resemble the force that replaced it in 1839 (when the City formed its own version of the Metropolitan Police) more than the watch that had taken to the streets in 1660.[123]

That is surmise. We can be more positive with respect to changes over the same period in one other area connected with crime-fighting at night that we have had occasion to mention: that is, the huge improvement that came over the City as a result of changes in the way its streets were lit. To that closely related subject, we will now turn.

STREET LIGHTING

Between 1689 and the middle of the eighteenth century the lighting of city streets was transformed in London and in many provincial towns.[124] The streets remained gloomy by modern standards, as they were bound to do until gas and then electricity replaced candles and oil lamps. But in relative terms the

[123] For the watch and policing forces generally at the end of the eighteenth century and in the early decades of the nineteenth, see Reynolds, *Before the Bobbies*; Paley, '"An Imperfect, Inadequate and Wretched System"? Policing London before Peel', *Criminal Justice History*, 10 (1989), 95–130; Clive Emsley, *The English Police: A Political and Social History*, 2nd edn. (1996); Stanley H. Palmer, *Police and Protest in England and Ireland, 1780–1850* (Cambridge, 1988), 11–18; Andrew T. Harris, 'Policing the City, 1785–1838: Local Knowledge and Central Authority in the City of London', Ph.D. thesis (Stanford University, 1997); Rumbelow, *I Spy Blue*, ch. 5, and other work cited in Ch. 2, n. 14.

[124] For helpful introductions to this, see E. S. de Beer, 'The Early History of London Street Lighting', *History*, 25 (1940–1), 311–24; and especially Malcolm Falkus, 'Lighting in the Dark Ages of English Economic History: Town Streets before the Industrial Revolution', in D. C. Coleman and A. H. John (eds.), *Trade, Government and Economy in Pre-Industrial England: Essays Presented to F. J. Fisher* (1976), 248–73. And for the convergence of public and private interests in the improvement of London streets in this period, particularly paving and provision for pedestrians, see Miles Ogborn, *Spaces of Modernity: London's Geographies 1680–1780* (New York, 1998), ch. 3.

differences wrought in the first half of the eighteenth century were dramatic. In the City of London the changes can be seen in the remarkable increase in the number of lights employed, the areas they illuminated, the number of hours they were in service, and the way they were financed. By the middle of the eighteenth century an essentially new public service had been established, and in the process the area regarded as public space had been significantly extended.

Soon after the Restoration of Charles II the customary system of lighting was confirmed by act of parliament.[125] Under this, householders on the main streets were obliged to place a candle in a lantern outside their houses for a few hours on a number of nights in the year. The rules in force had emerged in the City over the previous two and a half centuries. The obligations they set out had been enlarged gradually, but they had never aimed at providing anything more than the most modest of lighting. Essentially, the intention still in place in 1660 was to help pedestrians to avoid serious obstructions as they found their way home between sunset and the 9 p.m. curfew, but only when this was really necessary—that is, only in the winter months and only on nights on which there would be no natural light from the moon. Candles were to be lit between dusk and 9 p.m. from Michaelmas to Lady Day—29 September to 25 March—'when the moon shall be dark' (that is, from the second night after the full moon to the seventh after the new moon), a total of about 117 days in the year.[126] There would be no need for candles before 9 p.m. in summer; nor on moonlit nights in the winter because the candle power that could be mustered would not add much to the light provided by the moon (assuming there were no clouds). After 9 p.m. the expectation was that few people would be on the streets, except those wealthy enough to afford to have their way lighted by servants with links. In times of emergency or danger the lord mayor might order that householders 'renew' their candles at 9 p.m. to provide a few more hours of lighting on the streets, but that was clearly unusual.[127] Depending on the cloud cover and the phase of the moon, the streets of the City of London in the seventeenth century must have been varying degrees of dark or dim during the evening hours, and very dark indeed as evening turned to night.

Such street lighting came to be seen as inadequate for the City of London by the last quarter of the seventeenth century. One underlying reason may have been the changes introduced into the City as a result of the Great Fire of 1666, in which a very large proportion of the old buildings were destroyed. As tragic as the fire was for those who suffered by it, it provided an opportunity to make significant changes in the streets which had become increasingly inadequate by the seventeenth century as the population grew. They were narrow and crooked and difficult to negotiate for a vehicle of any size—a problem that only

[125] 14 Chas II, c. 2 (1662); De Beer, 'Early History', 315.

[126] Jor 25, fo. 98. For earlier regulations, and the meaning of 'dark' nights, see De Beer, 'Early History', 314–15; and Falkus, 'Lighting', 249–52.

[127] Rep 83, fo. 307 (1678).

increased as new buildings tended to encroach on the roadway and vehicles increased in size and number.[128] The fire razed the jumble of wooden buildings within the walls and provided an opportunity to ease some of the difficulties that the unregulated growth of the City had created. The Rebuilding Acts of 1667 imposed new standards of house construction, required streets to be of a certain width, and prevented buildings from encroaching into the streets as so many had in the old City. If only indirectly, these measures almost certainly encouraged improvements in the way the City was illuminated at night.[129]

An entirely new start was not feasible: the cost of buying land to lay out a new street plan would have been prohibitive, and in any case rebuilding and rehousing had to begin quickly. But something could be done to widen major streets and to remove bottlenecks, and some of this was successfully managed in the rebuilding of the City in 1667 and after, much of it due to Charles II's involvement and prodding. In the rebuilding not only were controls imposed to prohibit the encroachment of newly-built houses into the street, but the streets themselves were classified, and attempts were made to establish minimum widths for at least some of the more important of them. The Rebuilding Acts established categories of streets: high or principal streets; streets and lanes of note; and the by-streets and alleys and passages that connected residential courts to the streets.[130] The principal streets like Cheapside and the Poultry, Cornhill and Lombard Street were widened and made uniform; and the more important secondary streets and lanes were sufficiently enlarged to enable two drays to pass safely without endangering the houses on either side. In addition, as we have seen, the gates at the western edge of the City—Ludgate and Newgate—were rebuilt and widened after being completely destroyed, and posterns or side gates were built to accommodate pedestrians who would otherwise impede the road traffic. These measures did something to alleviate the fearful traffic jams that had long been common at these gates astride the two main routes between the City and West End because of the narrowness of the passages they had provided.[131]

How these new streets might be lit was not apparently considered by the rebuilders. The old system of street lighting was simply continued under new circumstances. But the old standard clearly did not suit the new City, perhaps because individuals were slow to work out ways of putting out lanterns on the new brick houses, or the old lanterns failed to light a sufficient portion of the newly widened streets, or because the new houses simply seemed to require grander illumination. The reconstruction after the fire may thus have suggested the inadequacies of the old lighting arrangements. They were to be increasingly exposed by even more profound changes in the City than those wrought by the

[128] Norman G. Brett-James, *The Growth of Stuart London* (1935), ch. 17.

[129] Reddaway, *Rebuilding of London*, chs 3–4, 6, 10.

[130] 19 Chas II, c. 3 (1666), s. 6; Peter Earle, *A City Full of People: Men and Women of London, 1650–1750* (1994), 11.

[131] Reddaway, *Rebuilding of London*, 102–11, 142–5, 288–99.

fire and the new building codes. By the last third of the seventeenth century and the early decades of the eighteenth commercial and cultural changes were also revealing the inadequacies of the lighting on streets that continued to be busy after 9 p.m., given the increasing numbers of people wanting to move around the City even when darkness fell.

Other considerations may be added to general shifts in social life that created new expectations with respect to urban amenities in the late seventeenth and eighteenth centuries, and encouraged new approaches to street lighting in particular. One was fear about the threat of violence on the streets, expressed in royal proclamations, in mayoral precepts and other public documents, in private correspondence, and by such bodies as the City's grand jurors, many of whom had long experience of the character and levels of offences prosecuted at the Old Bailey, and who had some standard of comparison. Anxiety about the streets of the City after dark, justified or not, was certainly shared widely enough to be plausibly brought into play as support for schemes to improve street lighting. The obligation of householders on the main thoroughfares of the City to hang candles outside their doors on 'dark nights' was confirmed by the Common Council in 1695 as a means of providing for 'the conveniency of Passengers', but also to secure 'Houses against Robbers and Thieves, [and] for the prevention of murder'.[132]

Despite the opposition of those with a vested interest in maintaining the customary system of lighting with candles in tin-lanterns with horn sides,[133] two other circumstances (apart from the conviction that street crime was getting worse) persuaded the City authorities there was a need for better lighting and help to explain why it was the City of London that took the lead in this area of urban improvement. One was specific to the City; the other not. The more general was the inventive and entrepreneurial energy being brought to bear on this, as on so many other aspects of social and economic life in this period. Several men in the 1670s and 1680s saw the possibility of providing a service and filling a need (and earning a profit) by developing oil lamps for city streets to replace candles and lanterns. Most were being designed to burn oil from rape seed and to have a glass rather than a horn casing.[134] Several of these inventions attracted investors interested in participating in joint-stock ventures to provide a lighting service in the City, and by the 1680s groups of such 'projectors' were competing for contracts to place their lamps in public places and to encourage individual householders to pay them to replace candles with oil lamps that the company

[132] Jor 52, fo. 61.

[133] For the complaints of the company of tallow chandlers that lamp lights varied from the ancient custom and would be prejudicial to their trade, and similar arguments by the horners, the butchers' company, and the tin plate workers, see Rep 92, pp. 78–9, 87–8; Jor 51, fo. 220; and *Company of Tallow-Chandlers, City of London. Reasons humbly offered to the Right Honorable the Lord Mayor, aldermen and commons, of the City of London . . . against setting up and establishing the lamp-lights of any sort in this City* . . . (n.d.).

[134] Falkus, 'Lighting', 254.

would install and maintain. The City of London clearly provided an attractive opportunity for such enterprises, since it contained a large and relatively prosperous population, and miles of streets—all under a single, centralized, government, so that one negotiation and one contract might provide opportunities to deploy large numbers of lights and earn significant profits.[135]

The City was an attractive target in another, and more negative way that fortuitously provided the occasion and the opportunity for lighting experiments: by the late seventeenth century it was in a parlous financial state and looking for ways to raise money. Indeed, the City had been essentially bankrupt since the 1670s in that its annual revenues were insufficient to cover its expenses.[136] What was of particular concern, and in the end required the problem to be publicly acknowledged, was that by the last decade of the century the City treasury was unable to repay the very large sums of money it held in trust for the children of deceased freemen—the so-called Orphans' Fund. The City's inability to repay the funds committed to its care required appeals to parliament in 1691 and subsequent years until assistance was granted in the so-called Orphans' Act of 1694.[137]

What is important from the point of view of those with projects to propose was that the City's bankruptcy required the Court of Aldermen and the Common Council to balance the accounts by reducing expenditures on the one hand and finding new sources of revenue on the other. From the 1670s, when the financial problems were first acknowledged, a range of ideas was floated—some by the Corporation itself, others by projectors—to raise money for the City. Some of these were grand business ventures, including, for example, an annuity scheme and a fire insurance office—neither of which in the end was realized. But they also included, as Kellett has said, proposals that 'offered the Corporation a large sum in return for the monopoly privilege of performing a public service'.[138] Among these were schemes to manage the City's markets, to arrange sewage disposal, to provide water, and—what is of importance to us—to take over the lighting of the principal streets. It was by this means that a group of investors in one of the oil lamp schemes was allowed to take over householders' obligations to keep a light outside their houses on certain nights during the winter.

The City awarded a lighting contract in 1694 as an aspect of the Orphans' Act. Its main point was to raise money for the impoverished chamber, the City treasury. But, as we have seen, there were other reasons why the work of

[135] William Robert Scott, *The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720*, 3 vols. (Cambridge, 1910–12), iii. 52–60; De Beer, 'Early History', 315–17; Falkus, 'Lighting', 254–5.

[136] For the following, see John R. Kellett, 'Some Late Seventeenth-Century Schemes for the Improvement of the Corporation of London's Revenues', *The Guildhall Miscellany*, 1 (9 July 1958), 27–34; *idem*, 'The Financial Crisis of the Corporation of London and the Orphans' Act, 1694', *The Guildhall Miscellany*, 2 (5 October 1963), 220–7.

[137] 5 & 6 Wm and Mary, c. 10.

[138] Kellett, 'Some Late Seventeenth-Century Schemes', 34.

improving the lighting on City streets might have been seen as serving a wider social purpose and to have been a response to broader needs that (unlike the Corporation's financial difficulties) were anything but temporary. These broader purposes, along with the profit to be made, ensured that what began as a modest scheme in 1694 to help solve a short-term financial problem not only continued long after that problem was solved but expanded considerably. Over the following decades, the provision of street lighting in the City was significantly transformed, as it was to be in other parts of the metropolis and indeed in cities and towns all over the country.[139]

The full story of the various street lighting devices that gained patents in the late seventeenth century and the conflicts, mergers, and rivalries formed around their exploitation in the City of London is too complex to recount in detail.[140] In the 1670s and 1680s several patents were obtained on a variety of glass reflectors to be used with candles, but the important improvements involved new oil-burning lamps. Richard Reeves was apparently the first in the field, obtaining a patent in 1675 for a glass reflector that could be used with either candles or an oil-burning wick. Anthony Vernatty claimed much later that he had first suggested the possibility of lighting the streets with oil lamps. He took out a patent on a 'new sort' of lamp in 1682, and over the next seven years sought royal patronage and the interest of the City by setting up tests of his 'glass lights' in royal palaces, and in Piccadilly and Cornhill. In James II's reign he proposed a scheme under which he would light all the City streets and pay half the profits to the benefit of the Orphans' Fund, but his ambitions were frustrated by the Revolution, when, as a Catholic sympathizer of James II, he thought it prudent to leave the country for a few years. He was to return and pursue his lighting schemes, though never successfully—no doubt more as a result of his politics than the quality of his lamps.[141] Several other inventors and groups of projectors entered the field at about the same time as Vernatty. In 1684 Edward Wyndam was granted a patent for a new oil lamp, though its inventor was probably Samuel Hutchinson. Another patent was granted in 1684 to Hutchinson himself for a lamp with a convex lens—a bull's eye glass that had the effect of concentrating the light—and he attracted a group of backers. Yet another group formed around Edmund Hemings, who had developed what

[139] For the adoption of oil lighting in other places throughout the country, see Falkus, 'Lighting', 257–71.

[140] See De Beer, 'Early History', 315–21; Falkus, 'Lighting', 255–7; Scott, *Joint-Stock Companies*, iii. 52–60. There is a great deal of material bearing on the negotiations over the lighting contract in 1694 in the journal of the Common Council, the repertories of the Court of Aldermen, and the minute book of the committee of Common Council appointed to 'improve the revenue and estate belonging to this City', 1692–6 (CLRO, 2 vols.). The conflict for and against lamps, and for and against particular lamps, was also carried on via a flurry of broadsides. See, for example, *A Proposal for Enlightening the Streets in London and Westminster, according to a bill prepared for that Purpose* (n.d.); *The Case of the Convex Lights* (n.d.); *Proposals about lights for the City* (n.d.); *Reasons . . . against the passing of a Bill for the sole use of Convex Lights* (n.d.); *Petition [with respect to the lights]* (n.d). Most are among the collection of broadsides in the Guildhall Library.

[141] Jor 56, fos. 199–200.

came to be known as the Light Royal, a lamp that was made entirely of glass and cast no shadows.[142]

Several promoters were thus at work in the City by 1690 developing oil lamps, setting up experiments, putting lamps up in public places to attract patrons and customers, and signing contracts with small groups of local householders to relieve them of the trouble of maintaining a lantern and candle outside their houses on certain nights during the winter. A complex competition to get the City to grant a monopoly can be followed in the records of the Court of Aldermen, the Common Council, and in the minutes of the committee set up in 1692 to 'improve the revenues of the City'.[143] One aspect of this story that I cannot follow in detail, but that should not go unmentioned, is its political dimension, at least the possibility that political conflicts in the City and parliament played some part in the way the competition among rival companies worked out. It is clear that Vernatty stood little chance so long as whig aldermen dominated the bench. And while it is not likely that support for or opposition to improved lighting was a narrow party issue, when Hemings argued that the Common Council undoubtedly had the right to increase the number of hours of lighting that each inhabitant of the City was obliged to provide he was making a contentious point that was likely to divide the Court of Aldermen; whigs tending to favour enterprise and innovation, tories the customary arrangements.

That is not likely to have been an entirely rigid and settled division, nor would it have prevented whig and tory aldermen who were also members of parliament from uniting to protect the City from threats to its autonomy. In the manœvring over the first such contract in the early 1690s, for example, one of the contending parties appealed to parliament in 1692 in an attempt to preempt the competition by asking for a monopoly over the lighting of public places throughout the kingdom for fourteen years. The City authorities were united

[142] For these inventors and inventions and the companies that formed around some of them, see Scott, *Joint-Stock Companies*, iii. 52–60; De Beer, 'Early History', 315–20; Falkus, 'Lighting', 255–6; CLRO, Misc. MSS 16.12. Hemings had also proposed better methods for cleaning and carrying away the City's night soil and other filth in 1688 and sought permission of the Court of Aldermen to make contracts with ward authorities. His men would work at night, he said, beginning at 10 p.m. They would wear badges with numbers and be supervised by overseers to be approved by the aldermen and—in a revealing comment on the authority of the office and of the anxiety about street crime and burglary in this period—he proposed that if the aldermen would appoint them constables they would be part of the City's policing forces. Such an appointment, he was confident, would 'wonderfully prevent Housebreaking and many other Roguerys, by Reason the Men will be in all parts of the Citty at worke, Ready to suppress any suspitious persons, and deliver them to the care of the Watch; and upon any disorders that shall happen in the Night, be a strength to the watch, and must consequently prove a safety to the Citty'. Hemings saw his two projects as intimately related. 'The Cleansing of the streets well', he argued, 'will Incourage another usefull undertakeing, which is the Lighting of the Citty, for if the Wards I Light are kept Cleane, it will Incourage other Wards to be lighted and cleansed by the same Methods.' The result will be that 'this will be the Happiest, safest, and best accommodated Citty in the World' (CLRO, Papers of the Court of Aldermen, 1688).

[143] CLRO, 'Minute Book of the Committee appointed for to consider and endeavour to discover and improve the revenue and estate belonging to this City', 2 vols. (1692–6).

enough on the matter to oppose the bill vigorously as a threat to their rights and independence since it could limit their power to regulate their own lighting arrangements.[144] That threat spurred the 'improvement committee' to arrange a contract with one of the rival companies that granted them a monopoly on the provision of lighting to individual householders in return for a substantial contribution to the City treasury. The Light Royal Company and the investors who owned the patent on Hutchinson's convex lamp invention were the leading contenders, and each offered proposals. In the end, after what appears to have been some rapid amalgamations, pooling of resources, and other manipulations, an expanded group of investors known as the Proprietors of the Convex Lights came to an agreement with the City.[145] They were, as Vernatty said later in explaining his own failure to win a contract with the City, 'a Company of Rich Men'.[146] And, he might have added, they were also a company of insiders, since they included Sir Samuel Gerrard, soon to be an alderman.

Their agreement with the City was embodied in the Orphans' Act passed by parliament in 1694 with the strong support of the City's whig allies and with the aid of some heavy bribery.[147] The act provided the City and the Orphans with an acceptable solution to the problem that had brought the Corporation to the edge of bankruptcy. It created a fund from which annual interest payments would be made to the Orphans, a fund that would be supported by some reorganization of the City's finances, by a new tax on the inhabitants, by other duties and fees, and by rents to be raised from those who contracted to light the City streets.

It was thus as part of the solution to its financial problems that the City was authorized by parliament to grant a lease for twenty-one years to the Convex Light Company 'for the sole use of the publick lights' in exchange for a payment of six hundred pounds a year.[148] The agreement was set out in an act of Common Council and a lease signed in October 1695. The act confirmed the duty of inhabitants whose houses fronted on thoroughfares to hang lanterns at their

[144] The City solicitor was asked in November 1692 to meet the four City members and encourage them to protect the City's interests; the recorder and the sheriffs presented a petition against the bill; and the Court of Aldermen established a committee to lobby against it in the House of Commons and—failing there—in the House of Lords (Rep 97, pp. 30, 43–4, 83, 112; CLRO, Alchin MSS, Box B, no. 50).

[145] CLRO, Minute Book of the Improvement Committee, vol. 1, pp. 1–174 *passim*; De Beer, 'Early History', 318. The proprietors of the Light Royal campaigned against granting a monopoly to the Convex Light Company on the ground that their lamp suffered from glare and shadow problems (points that were to be confirmed by future critics), and because there had been a great deal of stock manipulation in creating the group that put forward their proposal. See *Reasons against the Bill for the sole use of Convex Lights or Glasses* (n.d., ?1694).

[146] Jor 56, fos. 198–9.

[147] I. G. Doolittle, 'The Government of the City of London, 1694–1767', D.Phil. thesis (Oxford University, 1979), 78–87; Scott, *Joint-Stock Companies*, 57–9. Among those handsomely rewarded for smoothing the passage of the bill was Sir John Trevor, the speaker of the House of Commons, who was forced to resign when it came out; see Henry Horwitz, *Parliament, Policy and Politics in the Reign of William III* (Manchester, 1977), 149–50.

[148] 5 & 6 Wm and Mary, c. 10, s. 5.

doors on 'dark nights' between Michaelmas and Lady Day. That was the established obligation. But the time during which the candles were to be lit turned out to be two hours longer than before (6 p.m. to 11 p.m.), the contractors' interest in extending the hours of service, and the overtaking of the old notion of curfew by the broadening social and commercial life of the capital, having combined to increase the hours of obligatory lighting. Lights continued to be required only on dark nights, however, and during the six winter months of the year. The act declared that failure to light houses in the customary way would bring a penalty of a shilling for every night's default to be paid to the proprietors of the Convex Lights[149]—a sum calculated to encourage householders to pay the six shillings the company was authorized to charge for the installation and maintenance of the lamps through the lighting season. The assumption clearly was that the contractors would put up their lamps and then approach the householders for payment, rather than to treat with each in turn to establish their intentions. The act assumed that way of proceeding by ordering that lamps were to be no more than thirty yards apart on the principal streets and no more than thirty-five on the lesser streets.

Large parts of the most travelled areas of the City thus came to be lit by oil lamps over the last years of the seventeenth century and the beginning of the eighteenth. Something in the order of a thousand lamps were installed as a result of this lease. The convex lamp lit up much more of the street than a candle in a lantern with horn sides had ever managed to do, though the concentrated beam of light that it produced through its 'bull's-eye' glass was thought to be something of a problem. In the early years of the eighteenth century, Ned Ward wrote about the streets being 'adorned with dazzling lights whose bright reflections so glittered in my eyes that I could see nothing but themselves'.[150] The convex lamp also cast a large shadow since it had an entirely solid bottom. But even a patchy success confirmed the usefulness of improved lighting and of a contractor to maintain the lamps—to trim the wicks, keep them filled, repair damage, and so on.

The new system of lighting had been accepted by the City authorities because of their desperate need for income, but once installed it helped to raise expectations about acceptable levels of this civic service. There was no possibility that once the financial pressure was relieved, as it came to be in the eighteenth century,[151] the City would be able to revert to the customary system of street lighting. Rather, improvements created a desire for further improvements,

[149] Who was actually to do the collecting became a contentious point. A group of officers in the lord mayor's household called the 'young men', who had by custom the right to collect fines for failure to hang out candles on the appropriate nights, pressed their claim to continue to do the same in the new arrangement. That was confirmed, and the penalty of a shilling a night for every default was to be divided between the 'young men' and the lessees (CLRO, Journal of the City Lands Committee, vol. 14, fo. 11).

[150] Ned Ward, *The London Spy* (ed. by Paul Hyland, from the 4th edn., 1709; East Lansing, 1993), 29.

[151] Doolittle, 'Government of the City', chs 4–5.

particularly as the problems that better lighting addressed only became more pressing with the ever greater crowding of the streets in the evening and at night. Better lighting facilitated commerce. But the greatest encouragement to further improvements in street lighting was always likely to come from anxiety about crime, particularly the threat of violent offences, and crime was much on people's minds when the first contract came to be renegotiated twenty-one years on, in 1715, in the aftermath of the War of Spanish Succession.

Several competitors again entered the bidding when the first lease came to an end in 1715: the current lessees, who offered to continue their service using the convex lights; the proprietors of the so-called 'light-royal'; Anthony Vernatty, returned from Europe; and a new group that included an active Southwark magistrate, Sir John Lade, pushing the virtues of the so-called 'conick light'. The negotiations were by now not in the hands of the *ad hoc* 'improvements committee', but were taken over on this occasion by the powerful City Lands Committee.[152] Tests were held and the rival schemes were discussed, but it seems clear that the existing lessees had the inside track. They may not have had the best lamp, but they had the most influence, since one of their leading investors, Sir Samuel Gerrard, was not only now an alderman but also a member of the committee that would award the contract.[153] Not surprisingly, they were granted a new lease (at a reduced rent of four hundred pounds a year), and the system set on foot in 1694 was essentially continued.

The possibility of extending the lighting was also, however, very much on the agenda of the City Lands Committee, in large part perhaps because of the growing anxiety in the post-war years about the increase of burglary and violent street crime. As well as agreeing to renew the lease, the committee also investigated the possibility of enlarging the area of the City lighted by lamps by forcing the owners of 'public buildings'—churches, halls, schools, and the like—and not just householders to pay for lamps along the streets on which their property fronted. They also considered further the possibility of extracting some payment from inhabitants who lived in courts and alleys to support the addition of lamps at the entrances to their more private domains. These issues had been debated when the first contract was signed, but in the end they had been left in the 1695 lease to be settled by the alderman of each ward who was clearly expected to negotiate an arrangement between the lighting proprietors and the individuals concerned. The result had been disappointing to the proprietors. They were already complaining in 1696 about the failure of negotiations in most of the wards, and not for the last time aldermen were instructed to settle disputes about lighting around 'public buildings' next to streets and to 'determine the

[152] For the City Lands Committee, see [Jones], *The Corporation of London*, p. 55; and for its early history, N. R. Shipley, 'The City Lands Committee 1592–1642', *Guildhall Studies in London History*, II (1977).

[153] Negotiations over the new lease can be followed in CLRO, Journal of the Committee on City Lands, vol. 13 (1713–16) and vol. 14 (1716–18); and in Jor 56.

manner of lighting the courts and alleys' in their wards.[154] The same complaint was to be made later the same year, in the following spring, and indeed from time to time thereafter. Twenty years later, when the first lease was coming to an end, negotiations had still not been completed in eleven wards.[155] These difficulties—and presumably the shortfall in their profit—was one of the reasons the proprietors were always in arrears in paying their six hundred pounds annual rent, a running problem that was never satisfactorily solved from the City's point of view. When it came time to renegotiate the renewal of the lease in 1715 there was a good deal of thought as to how those who had never been under the customary obligation to contribute to the lighting of the City might be obliged to pay the proprietors of the new lamps.

While members of the City Lands Committee might have had an interest in increasing security on the streets, the driving force behind the effort to enlarge the range and scope of the new lighting was clearly the interest of the proprietors in charging as many people as possible. Pressed by the proprietors as the new lease was being discussed to extend these obligations, the City Lands Committee turned for guidance to the City's legal advisers, Duncan Dee, the common serjeant, and William Thomson, the recorder.[156] A series of questions was put to them, the import of which was to enquire how the scope of the established obligations could be extended. Their answers revealed fundamental disagreements about the springs of governance in the City and the obligations of its citizens. The recorder's responses to the committee's questions are particularly interesting. William Thomson, who had just come into office, revealed in his replies (as he was to do in his work as recorder generally) a tough-minded attitude towards dealing with crime in the City that was to be influential in a number of areas over the next quarter century. While Dee voiced serious doubts about the extension of obligations that the proprietors wanted the Common Council to build into the new agreement, Thomson sided with the proprietors. On the question of whether the City had the power to oblige masters of halls and schools and of all other public buildings and the churchwardens of parish churches to hang lanterns outside their buildings, Dee's response was essentially negative: lighting the streets was governed by custom, and the Common Council could not, in his view, charge anyone but inhabitants. They could not light the streets that ran alongside public buildings, or charge the owners, because the buildings were not inhabited. For his part, Thomson saw no impediment in law to extending obligations. 'I conceive the Common Council have a power to made such an order according to reason', he wrote, 'both as to the Distance of Lanthorns and the penalty for non performance.'[157]

On the question of whether the Common Council had the power to oblige occupants of houses in courts or places which were not thoroughfares to hang

[154] Rep 100, fo. 159. [155] Rep 100, fo. 189; Rep 101, p. 110; Jor 56, fo. 35.
[156] CLRO, Journal of the Committee on City Lands, vol. 13, fos. 289–90. [157] Ibid., fo. 289.

out lanterns, Dee's view again was that the City did not have such power, since the reason for the custom is the general convenience to all persons passing the streets, the lighting of courts would only be for the convenience of the persons who lived there. Thomson's answer again revealed his impatience with such arguments: 'The Common Council have power to redress all disorders and mischiefs by a proper and fitting remedy', he wrote, 'and to prevent Robberies, Theft, Murther, and other mischiefs which may happen in the Dark they may require Lights to be hung out in these Courts or places tho no thorough fares, 'tis also for the conveniency of passengers in those places.'[158]

Thomson was clearly determined to strengthen the defences against crime. He wrote as a prosecutor, and his contribution to this discussion underlines the importance of street lighting to those interested in crime prevention. The burden of his advice was that, faced with new problems, the Common Council had the power to make what rules they liked. From one point of view, what was being debated was the issue of what was public space, what private. Those who lived in principal streets had a duty to light them for the common good. The secondary streets that were not thoroughfares, even more the lanes and alleys and courtyards in which a large proportion of the population lived, were not regarded as 'public' in the same sense. And in 1716, when the new lease was awarded again to Alderman Gerrard and the other proprietors of the Convex Lights, that view prevailed. The matter of the lighting around large buildings and in the numerous dark courts and alleys of the City was again left to be negotiated by the aldermen, ward by ward and case by case. That problem continued to rankle.

Disputes over financial matters, and the continuing issue of payments for the lamps around public buildings for which payment had not been settled in the contract, and the arrears in rent owed to the City—all of these matters came to a head by the mid-1720s, made all the more pressing by the evidence that street crime was as serious as it had ever been. One can detect by then a clear shift in the attitudes of at least some of those in positions of authority in the City towards the usefulness of street lighting. The experience over three decades had demonstrated that the financial arrangements set up to support the new oil lamps in 1694 and renewed in 1715 were simply not flexible enough to underpin the kind of expanded, public, lighting service that was coming to seem necessary by the third decade of the eighteenth century. The disputes in the 1720s over the company's inability to collect what subscribers owed and the City's inability to collect their rent from the company were but surface manifestations of the more basic problem that the lighting provided by the Convex Lights Company was

[158] CLRO, fo. 289. On the question of whether the Common Council could change the established procedure with respect to convictions of defaulters, Dee predictably said no, they must only go before the lord mayor in the ancient way, whereas Thomson said: 'The Common Council have altered from time to time the methods and orders relating to the Lights and may again if they think other methods more proper not only as to the penaltys but the way of levying them also.' Ibid., fo. 290.

inadequate, given the emerging demands for improved lighting and public safety. There were renewed complaints about the shadow cast by the solid bottoms of the convex lamps and the way their bull's eye glass produced a beam of light that was likely to dazzle passers-by as light their way. Defoe complained in 1728 about the way they 'blind the Eyes' and cause pedestrians to 'stumble upon one another, even under these very Lamps . . .'. Even worse, he thought, the way they blinded people encouraged 'rather than prevent Robberies'.[159] As in the case of the night watch—in which a similar transition was underway in this period, a second stage in the emergence of a paid watch—the push for improved service led to an alteration in the quantity and quality of the lighting provided, and in the basis of provision when the City authorities were persuaded that only a publicly funded system would be capable of meeting their requirements.

What those requirements were became clear in the course of a few years from the late 1720s. They stemmed from what the Convex Lights proprietors heard in November 1728 were the intentions of the Court of Aldermen to improve the 'security of passengers in the streets by night'—ideas that were in the air perhaps as a result of the discussions then in progress concerning the night watch.[160] The company's response was to declare their willingness to join in this effort to make the streets safer, and, in return, the aldermen asked them to send in samples of lamps to be tested (with an eye obviously to getting away from the convex lamps and their problems), to calculate the cost of adding two months to the lighting season, and to make any other proposals that might provide 'more effectual lighting of the streets'.[161]

The determination on the part of some people in the City to expand and improve the street lighting can be seen in the activity of the City Lands Committee. In 1731, five years ahead of the expiry of the agreement then in force, the committee requested authority from the Common Council to begin the process of negotiating a new lease since 'the manner and the method of well lighting this City is a Matter of great concern to all the Inhabitants'. They used the time to test out a variety of alternative lamps and chose one that future contractors would have to use.[162] By 1735 they were advertising in the *Gazette* and the *Daily Post Boy*, inviting proposals from lessees who would agree to light the City streets using the form of 'globular glass lamps' the committee had decided were superior to other lamps—a pattern and specimen of which they kept at the Guildhall for public inspection. As further requirements to be met by any future contractor, they specified that the lamps were to be lit in the future every night (whether moonlit or not) between sunset and now 1 a.m. and from 10 August to 10 April, and that on the 'great or high streets' they were to be placed thirty yards from each other on each side of the street and even with the 'posts of the foot passage', and thirty-five yards apart on lesser streets.[163]

[159] *Augusta Triumphans*, 54–5. [160] Rep 133, p. 3. [161] Rep 133, pp. 3, 23, 61.
[162] Jor 57, fo. 236. [163] Jor 57, fos. 348–9.

Such ideas represented considerable extensions of the street lighting currently provided. They were introduced not by chance but by the growing conviction that better lighting was essential, a view represented by a group of common councilmen, including a number of deputy aldermen, from the largest and least well-provided wards of the City. The men who pushed for an improved night watch, funded in a new way, also campaigned for better street lighting, and for the same reason: because the wards they represented suffered the most from crime and disorder on the streets and yet were too poor to be well served by the customary way that the watch and lighting had been provided in the past. As we have seen, such men were well represented on the City Lands Committee; they attended regularly, and were particularly active on the subcommittee set up to work out the details of the new lighting contract—a self-selected subcommittee since it consisted of any member of the main committee who chose to attend. Deputy aldermen and other common councilmen attended the committee and its subcommittee assiduously. In 1734 all twelve of the commoners on the City Lands Committee attended virtually all of the meetings at which lighting issues were discussed, but only three of the six aldermen on the committee. In the following year of the eleven regular attenders, nine were commoners, including five deputy aldermen.[164] Such men, who had an immediate and practical interest in the management of the lights in their wards, also dominated the subcommittee established in November 1734 to think through the detailed issues surrounding a new lighting contract. It was this subcommittee that urged the adoption of glass globular lamps in place of the convex lamps, that suggested they be lit every day between 10 August and the end of April (not just on 'dark nights'), that they be lit from sunset until 1 a.m. (not 9 p.m. or 10 p.m.), and to be thirty yards apart—all of them ideas that represented a considerable extension of the system in being. They also pressed to have the streets measured and the houses counted, ward by ward, with an account of their rental values—surveys that seem likely to have been designed to reveal disparities among the wards between the space to be lit and (so long as the financial base remained the customary obligations of the wealthier householders) the resources available to support the number of lamps required.[165] Several members of the City Lands Committee and its subcommittee on the lights were involved in the decision to create a more extensive street lighting system, but the names that appear regularly in the minutes are those of the deputy aldermen and common councilmen from the largest and poorest wards, in particular John Smart, deputy aldermen for the ward of Aldersgate Within, Henry Wiley, deputy for Bishopsgate Without, Thomas Nash, deputy alderman for Farringdon Without, and Robert Evans, a common councilman for Tower ward.[166]

[164] CLRO, Journal of the Committee on City Lands, vol. 26, *passim*.

[165] The results of these surveys for the wards of Walbrook, Tower, Farringdon Without, Queenhithe, Langbourn, and Bread Street are included in a file of documents pertaining to street lighting at CLRO, Misc. MSS 15.5.

[166] CLRO, Journal of the Committee on City Lands, vol. 26, fos. 204, 210–11; vol. 27, fos. 15–18, 42.

The results of these initiatives, subsequently carried out under the direction of the City's surveyor, George Dance, were reported to the main City Lands Committee in June 1735 along with a calculation of the number of lamps required to light the City under the suggested rules.[167] Hardly surprisingly, it was this subcommittee that put questions to the City's legal advisers about the Corporation's powers to raise taxes by means of a by-law, a request that led directly to the decision to petition parliament for the statutory authority to raise a rate.

In the spring of 1735 the City Lands Committee advertised for contractors to light the streets, though, in the event, the negotiations on behalf of the City were turned over to a new committee of the Common Council set up to deal exclusively with this issue. The outcome was a plan of lighting that incorporated new and bold ideas. In October 1735 the Common Council endorsed a considerable extension of street lighting by passing a motion that 'the better to prevent Robberies and other Inconveniencies', the street lamps ought to be lit from sunset to sunrise every night of the year. It also accepted the financial consequences of such an extension. Since this lighting plan would cost much more than could be extracted from those with a customary obligation to contribute directly to the street lights, a committee of Common Council was named on 22 October 1735 to draw up a petition to parliament 'to obtain an Act to Enable this City to defray the Expense of such Lights'.[168]

In the course of a few months, a committee of the Common Council thus transformed the basis of the lighting arrangements in the City. What began as a discussion of improvements—better lamps, slightly longer hours of lighting each night, the addition of a month or two to the accustomed six of lighting on 'dark nights'—ended by reconceiving the City's lighting needs and imagining a new system on a new basis. In addition, within a month of its formation this same committee was also instructed to petition parliament for legislation to authorize the collection of a rate for the obviously related matter of the night watch.

The lighting legislation was enacted in 1736. The bill was prepared by the committee of Common Council struck in October 1735 who had reported a range of critical decisions to the Common Council over the intervening months. They set up trials of various kinds of oils, coming down in the end in favour of seal oil, which they claimed was not only cheaper than rape oil, but gave a better light and was not as likely to be affected by cold weather. They decided that the lamps on the main street should be twenty-five yards apart, rather than thirty, as had been suggested the previous year. They worked out a rating scheme based on the assessed values of houses, regardless of whether they were

[167] CLRO, Misc. MSS 141.9.

[168] Jor 57, fos. 348–55. Having lamps lit every night of the year—summer as well as winter—was not an entirely new idea. It had been proposed in *The Weekly Journal; Or, Saturday's Post* in 1722 (28 July) as a way of combatting street robberies on nights that are 'sometimes as dark as in the midst of Winter'. The author did not, however, propose a way of paying for this extra service.

on main streets, lesser streets, or in courts or alleys, hugely expanding what was regarded as public space.[169] The committee drew up a petition to parliament that blamed the seriousness of crime in the City on 'the insufficiency of the convex lights' and prosecuted the ensuing bill through both houses.[170]

The Lighting Act of 1736 set out the main features of the new lighting system as the committee had drawn it up.[171] What emerged was a massively expanded scheme that underlined the importance of the ward leaders in the management of the lighting service—as in the management of the new night watch being established at the same time. In the future no one lighting company was to have a monopoly in the City to erect and service the lamps—the experience of which system, the act announced, had led to higher costs and poor service.[172] Instead the deputy aldermen and common councilmen of each ward were empowered to sign a contract with any company they cared to engage to provide the lighting service for their ward for a year at a time, so long as the contractor conformed to the broad regulations laid down in the act, used the model of lamp approved for the whole City, and did not exceed a certain charge per lamp. In a further criticism of the previous system, the act made it illegal for an alderman or other elected official to have a personal interest in companies signing the contracts.[173]

Altogether, the new arrangements gave much more influence to the men on the ground, the leaders of the wards, who would actually have to deal with the requirements and the consequences of the new system. Their influence continued at the City level, too, on the committee of Common Council set up to implement the act—a committee that approved the annual contracts, oversaw the collection of the rates, and the negotiations over arrears. Deputy aldermen and common councillors dominated the meetings of this committee, as they had those in which the new system had been conceived. Over the first two years of the committee's life (1739–40) it met thirty-four times: those most assiduous in attendance were John Child, now deputy alderman of Farringdon Without (thirty meetings); Thomas Winterbottom, common councilman for Billingsgate, deputy in 1744 (sixteen); Richard Farrington, deputy alderman of Cripplegate Without (fifteen); and John Smart, deputy of Aldersgate Within (fourteen).[174]

It would be easy to play down the effectiveness of the lighting that resulted. The seal oil lamps were almost certainly very dim indeed, and even if spaced twenty-five yards apart, much of the street would have remained in darkness. But the relative change that had taken place in the City over less than half a century was remarkable. It was estimated by the early 1740s that a total of 4,440

[169] Jor 57, fos. 364–7. [170] Jor 57, fo. 366; *JHC*, 22 (1732–7), 555.
[171] 9 Geo. II, c. 20 (1736). [172] 9 Geo. II, c. 20, s. xiv. [173] 9 Geo. II., c. 20, s. xv.
[174] CLRO, Misc. MSS 290–293 (Minute Book of the Committee to put the Lighting Act into effect, 1739–46).

glass lamps were distributed throughout the City, ranging from a high of 744 in Farringdon Ward Without to 33 in Bassishaw. Though still concentrated on thoroughfares, they were now also to be found in courts and alleys. This was an extraordinary advance on the system set up under the first contract. There may still have been but a dim light produced in any one place in the City even after 1736. But it was produced until sunrise through every night of the year for the first time, and in places where there had never been light before. E. S. De Beer's judgement that the City had become the best lit urban area in Europe seems entirely reasonable given the extent of the changes.[175]

The change on the streets also registered in trials at the Old Bailey. It was not uncommon for victims and their witnesses in trials involving street crime in the second quarter of the century to claim to be able to identify the accused because of the light provided by street lights. 'How do you know the Prisoner to be the Woman' who robbed you, one man was asked: 'The Lamps gave a good Light', was his reply. Another witness in the same situation in 1737 was asked by the judge after making an identification: 'Was it dark at that Time?' 'Yes', he replied, 'but there were Lamps all around us'.[176] The point is not so much perhaps that this reveals how much the lighting of the streets had improved, but that such identifications were plausible and were accepted by the juries, who experienced the effects of the lights themselves every evening and were not likely to have been taken in by claims of this kind if there had not been a significant improvement in the quality of light on the streets. And claims for the value of the lights were made in other contexts. In supporting proposals for a number of improvements in Westminster in 1754, including better lighting of the streets, John Spranger could claim, for example, that the City's lighting arrangements were much superior to those of any other part of the metropolis and that they had had a decisive effect on the level of crime and street violence over the previous two decades. Indeed, he argued, robbery was now rare in the City of London—proof that well-lit streets would reduce crime. 'The wise Governors of that City', he said,

[175] De Beer, 'Early History', 323. The owners of some 14,000 houses, warehouses, and buildings were liable for the lights rates (Jor 58, fo. 16). The large number of appeals against assessments, especially from those asked to pay for the first time, and indeed of refusals to pay, gives some sense of how massive the change had been. For the large number of such appeals and judgments on them made by the Court of Aldermen, see Rep 141, fos. 23–5, 42–4, 55, 63–4, 85, 89, 104–5, 110, 129 (all in 1737), and for the arrears that accumulated in the accounts over several years as a result of non-payment, see Jor 58, fos. 83, 164, 199, 204, 206; CLRO, Alchin MSS, Box C, no. 13; and Rep 142, p. 28. The sense of inequity became strong enough that the committee of Common Council set up to oversee the lighting system was asked in 1744 to seek an amending act from parliament to place more of the burden of the rates on the wealthier bands of the population and to relieve those in the middle (Jor 58, fos. 283, 300). The result was a new statute: 17 Geo II, c. (1744). The committee that sought the new act and implemented its conclusion included men who had by then been interested in the City's street lighting for more than a decade, including deputy aldermen Child, Farrington, and Smart (CLRO, Misc. MSS 291.3: committee to petition parliament for an act to amend the Lighting Act).

[176] OBSP, December 1736, p. 19 (No. 37, Bailey); OBSP, April 1737, p. 107 (No. 52, Moreton).

(among numberless other Advantages) reap this Fruit of having their Streets equally, and regularly, lighted in Winter and Summer, from Sun-set to Sun-rise, that they are very seldom infested with Robbers; whilst we of Westminster, and the adjacent Parishes within the County of Middlesex, are exposed. every Night we pass through our Streets, to frequent Insults, Assaults, and Robberies.[177]

The act of 1736 made street lighting a public service supported by tax money but carried out by private companies—a further example of the marriage of private energy and public authority that is such a common theme in other aspects of policing and prosecution in this period. The fact that the service was operated by private contractors does not diminish the point that the lighting of the streets had been taken over as a responsibility of the governing authorities of the City, and that it represented an extension of the reach of the state—at least, of the state in its local guise. But the consequence of the Lighting Act was not merely that elected officials became responsible for the administration of a local service in ways laid down in statute. It also very considerably expanded the areas of the City in which there could be said to be a public interest in the provision of street lighting and significantly extended those parts of the City for which the central administration bore some responsibility and into which public authority might penetrate.

Street lighting was only one of a number of improvements in the urban environment in this period; one of a number of services supported by public money. Schemes for the improvement of street cleaning and of paving, the marking-off of pedestrian areas from the roadway on major streets, better provision of drinking water—these and other improvements were underway in London and elsewhere from the seventeenth century, all contributing to what has been called the 'urban renaissance' of the eighteenth century.[178] But street lighting was not just a matter of general improvement in the urban environment. In the City in the 1720s and 1730s it was also, and perhaps mainly, thought of as a policing device in a more specific and more modern way—as a way of bringing the streets under surveillance and control. Effective lighting would help pedestrians to be on their guard and the night watch and the constables to prevent crime and to be able to distinguish between those who had legitimate reasons to move around the City in the dead of night and those who did not; to distinguish the respectable from the criminal and immoral. The problem of violent street crime had been at the heart of the argument supporting the petitions to parliament for

[177] John Spranger, *A Proposal or Plan for an Act of Parliament for the better Paving, Cleaning, and Lighting the Streets . . . of the City and Liberty of Westminster* . . . (1754), preface. The contrast between the lighting of the City and Westminster was also pointed out in the *London Magazine* in 1743—'the Ungentility of this Darkness at the Court End of Town, when the City of London is all illuminated'. While this writer mainly wanted to make the feeble joke that young men were at a disadvantage in picking up a prostitute in the Strand 'without being able to distinguish her Face', the superiority of the City's lighting was clearly a plausible argument (December, 1743, 608—a reference I owe to Randy McGowen).

[178] Peter Borsay, *The English Urban Renaissance: Culture and Society in the Provincial Town, 1660–1760* (Oxford, 1989), ch. 3. See also P. J. Corfield, *The Impact of English Towns, 1700–1800* (Oxford, 1982), ch. 10.

the lighting and watch statutes, a point worth attending to even if we were tempted to think that such an argument had only rhetorical value. But it was clearly more than that. Crime was believed to be a serious problem in the City in the 1720s and 1730s. That is why lighting and the watch were closely related, and why it was agreed in 1736 that the lamps should be lit all night and throughout the year—a decision that would be inexplicable if the general improvement of the urban amenities had been the only force at work.

CHAPTER FIVE

Detection and Prosecution: Thief-takers, 1690–1720

Early modern policing, like modern policing, centred broadly on the maintenance of the peace and the keeping of order in society.[1] Then, as now, crime prevention was a major concern of the authorities, and, as we have seen, they thought that surveillance on the streets and public places was one way to achieve that. But in 1700 other aspects of what we take to be matters at the heart of modern policing were not within the purview of the constabulary or the night watchmen. No public body had the responsibility to investigate crimes, to detect offenders, or to gather the evidence that would sustain a prosecution. All of that was left to the victim. The state provided the machinery of criminal justice, but there was no expectation that constables, or other public officials, would act as detectives or prosecutors—not, at least, with respect to the serious offences that harmed individual victims.

That is not to say, however, that the business of detecting and apprehending offenders had to await the emergence of the professional police of the nineteenth century or even the policing innovations that Henry Fielding and Sir John Fielding put in place at Bow Street in the third quarter of the eighteenth. The Fieldings gave policing considerable visibility, and new institutional forms. They made innovative use of the press and demonstrated the possibilities of aggressive detection and apprehension of serious offenders.[2] But in so doing they took advantage of changes long underway, and of which indeed their attitudes and outlook were themselves a product. They extended, harnessed, and publicized forces that had been taking shape in the metropolis at least since the late

[1] Much of the research for this chapter was the fruit of my collaboration with Tim Wales on a project to write a joint article on thief-takers. We collected much more material than we anticipated, and came to the conclusion that we should each draw on the evidence and write separate pieces. Tim used it in his contribution to *Londinopolis* (Manchester, 2001), edited by Paul Griffiths and Mark Jenner, and I have drawn on it in this chapter.

[2] Radzinowicz, *History*, iii. chs 1–2; John Styles, 'Sir John Fielding and the Problem of Criminal Investigation in Eighteenth-Century England', *Transactions of the Royal Historical Society* 5th ser., 33 (1983), 127–50; *idem*, 'Print and Policing: Crime and Advertising in Eighteenth-Century Provincial England', in Hay and Snyder (eds.), *Policing and Prosecution*, 55–111; Nicholas Rogers, 'Confronting the Crime Wave: The Debate Over Social Reform and Regulation, 1749–1753', in Lee Davison *et al.* (eds.), *Stilling the Grumbling Hive: The Response to Social and Economic Problems in England, 1689–1750* (Stroud, 1992), 77–98.

seventeenth century and perhaps much earlier, forces created by the merging of private energy and self-interest with public resources and authority.

A central figure in the emergence of more active policing was the so-called 'thief-taker'. Thief-taking describes a range of activities. At its narrowest, it meant the detective work of private citizens (usually men, though very occasionally women) who sought out, apprehended, and prosecuted suspected offenders for profit. Rewards for convicting offenders were occasionally offered by victims. But the main support for the activities of thief-takers were the rewards paid under the authority of statute (supplemented by those offered by royal proclamations) for the conviction of certain kinds of offenders, including robbers, burglars, and coiners.[3] The principal rewards were instituted in the reigns of William and Anne to encourage private efforts to apprehend and prosecute, and (along with the offer of a pardon) to encourage offenders to impeach and give evidence against their erstwhile accomplices.

The incidence of prosecution for the rewards offered by the state may have fluctuated over time, depending perhaps on the availability of accessible targets and on alternative opportunities to profit from crime. But this was not the only business that attracted men who had contacts in criminal circles—and it may not have been the most profitable, though on the matter of profits from the variety of activities that thief-takers engaged in we remain very largely in the dark. There was clearly money to be earned by those who could help victims to recover their stolen goods—arranging to get belongings returned for a fee that would compensate the middle man and the thief, and at the same time cost the victim less than the value of stolen possessions. Such brokering or mediation had long been practised, since if they could not have both vengeance and their goods back, most victims of theft or robbery or burglary are likely to have at least wanted their belongings returned. Tim Wales's study of newspaper advertisements, through which thieves and thief-takers were making contact by the last decades of the seventeenth century, has shown the way the expanding press facilitated this form of thief-taking activity.[4] The career of Jonathan Wild, who combined ruthless prosecution with the profitable return to their owners of goods stolen by the thieves he controlled, was to make it abundantly clear that it remained particularly common in the early decades of the eighteenth century.[5]

Thief-takers engaged in other practices in the first half of the eighteenth century, some of them shady, even illegal, some vicious. An illuminating analysis of a mid-century gang who earned rewards by drawing young men into committing robberies who they could then easily prosecute and convict has confirmed how readily thief-taking led to corruption and to blood money conspiracies.[6]

[3] See pp. 230–2, 376–83.

[4] Wales, 'Thief-takers and Their Clients in Later Stuart London', in Griffiths and Jenner (eds.), *Londinopolis*, pp. 67–85.

[5] Gerald Howson, *The Thief-Taker General: The Rise and Fall of Jonathan Wild* (1970).

[6] Ruth Paley, 'Thief-takers in London in the Age of the McDaniel Gang, *c.*1745–54', in Hay and Snyder (eds.), *Policing and Prosecution*, 301–41.

The treatment that some members of that gang received in the pillory when they were finally exposed—treatment that resulted in one of them being killed—makes it clear that there were decided limits to popular acceptance of thief-takers' activities. Indeed, the public's view of them almost certainly depended entirely on what they did. They were not invariably regarded with the disdain and hostility that was visited on informers who made it a practice to report victimless offences. Helping victims of property crime to get their goods back—even if the means employed were not strictly legal—was not likely to meet with popular disapproval. And at least some aspects of what one might call detective thief-taking appear to have been regarded as an acceptable pursuit, or at least with nothing worse than ambivalence. Thief-takers occasionally helped ordinary people to get their stolen property returned by finding and prosecuting the thief, as well as negotiating the return of goods for a fee—services that no public official was prepared to offer. That some thief-takers were accepted as men performing a useful, though perhaps distasteful, service is suggested by some of them being known as 'Mr so-and-so, the thief-taker'—as a man doing what was apparently regarded as a legitimate job. Certainly, much of what thief-takers did was encouraged and supported by public policy, and in turn they drew both the central government and local authorities into their work, bringing to bear a blend of private energy and public authority in the business of detection and prosecution. The result, unintended and in the end largely negative, was that thief-takers played an important role in the emergence of policing forces and in public attitudes towards police.

THIEF-TAKERS AND CONSTABLES IN THE 1690S

Thief-takers did not appear for the first time in London in the late seventeenth century. Men had been engaged in some aspects of thief-catching a hundred years earlier. Indeed, in the 'rogue' or 'cony-catching' literature in vogue in the late sixteenth century, they had a central role in accounts of thieves and conmen, prostitutes and receivers in the capital.[7] The picture that these accounts suggest of a highly-organized underworld in Elizabethan London does not stand scrutiny.[8] But it seems unlikely that thief-taking activity would have been entirely invented for the purposes of these pamphlets; and there is no reason to think that the self-interest that encouraged significant numbers of men to seek out offenders, to facilitate the return of stolen goods, to mount or manipulate prosecutions in the late seventeenth century was entirely missing in the reign of Elizabeth. Indeed, there appears to have been in the late sixteenth century something very like thief-taking centring on Newgate, where the turnkeys, or

[7] Ian W. Archer, *The Pursuit of Stability: Social Relations in Elizabethan London* (Cambridge, 1991), 204–5.

[8] See, for example, John L. McMullan, *The Canting Crew: London's Criminal Underworld, 1550–1700* (New Brunswick, NJ, 1984), who uses this literature to study the organization and extent of crime in London in the late sixteenth and seventeenth centuries. Archer finds little to confirm the size or organization or sense of permanence of the underworld to be found in the rogue literature (*Pursuit of Stability*, 206).

assistant keepers, along with other gaolers, were given warrants that authorized them to arrest known thieves and other suspicious people, and to go in search of felons.[9] The name was also known and used. As early as 1609 one John Pulman, who had been engaged by the victim of a crime to find the man who had stolen from him, was labelled a thief-taker by a magistrate drawing up a recognizance.[10]

Forms of thief-taking were thus being practised in the early seventeenth century. Thief-catchers were also employed soon after the Restoration by ministers of Charles II's government, concerned not only about the threat of republicans and religious dissenters to the stability of the restored regime, but more broadly about the threat of crime, particularly of gangs, and their possible links to political dissidents.[11] One can see this in the efforts of secretary Williamson and of Sir William Morton, one of the judges of the court of King's Bench, to prosecute highwaymen in the late 1660s and early 1670s. Some of Morton's claims to have caught and convicted more than a hundred highwaymen should perhaps be discounted since they are included in a letter emphasizing his expenses in getting those men arrested, and requesting a grant to enable him to continue his work.[12] But his correspondence with Williamson over several years does confirm his active engagement in the apprehension and prosecution of serious offenders. Morton created a network of agents to pursue gangs of robbers and burglars and the apparently increasing numbers of men and women engaged in counterfeiting and clipping the coinage.[13] In 1670 he reported on his efforts to apprehend a gang of thieves who had travelled back and forth from England and Ireland, committing numerous offences. One of the gang, Francis Martin, who among other things was suspected of stealing from the Duke of York, had been caught, and Morton 'employed [him] as a thief-catcher', granting him a warrant to arrest some of the thieves he knew.[14]

A good deal of evidence of efforts by the government in the 1660s and after to encourage the detection and apprehension of serious offenders is to be found among the State Papers. In addition, on several occasions in the late seventeenth century the keeper of Newgate gaol was granted warrants that authorized him to arm a party of his turnkeys and other officers, or indeed anyone he cared to employ, to 'ride about the highways' to seek out robbers.[15] There is

[9] Archer, *Pursuit of Stability*, 236–7.

[10] Alexandra F. Johnston and Robert Tittler, '"To Catch a Thief" in Jacobean London', in Edwin Brezette DeWindt (ed.), *The Salt of Common Life* (Kalamazoo, Mich., 1995), 233–69.

[11] The political context of thief-taking and possible links between thief-takers and officials in both the City and the central government is developed in Wales, 'Thief-takers and their Clients'. On Williamson and the court's concerns about religious and political disaffection, see Alan Marshall, *Intelligence and Espionage in the Reign of Charles II, 1660–1685* (Cambridge, 1994).

[12] CSPD 1671–2, p. 298.

[13] CSPD 1668–9, p. 242; CSPD 1670, p. 50; CSPD 1671–2, pp. 131–2, 134, 144, 147, 238, 299.

[14] CSPD 1670, p. 393.

[15] CSPD 1678, p. 41; CSPD 1685, pp. 56–7. On the latter occasion a similar warrant was issued to the keeper of Warwick gaol (CSPD 1685, p. 57).

evidence, too, of rewards being offered by victims of theft and robbery to induce private men to search for stolen goods. After a theft of two silver tankards from an inn in Hertfordshire in 1688, for example, it was revealed in a subsequent investigation by Chief Justice Holt that a man called John Whitwood had been 'imployed to find out ye Tankards' and that an agent of his had apprehended a man who was afterwards charged before a London magistrate and committed to Newgate. Holt's investigation revealed that Whitwood was a receiver who controlled a number of thieves and occasionally returned stolen goods to their owners for a reward. It also revealed that he had accepted a bribe from the accused man he had arrested to produce the perjured evidence that acquitted him. As Jonathan Wild was to do on a more dramatic scale, Whitwood (and no doubt others like him) combined receiving with organizing thefts, earning rewards for detecting offenders and making arrests, and at the same time using bribery, intimidation, and perjury to arrange outcomes that would suit his interests.[16]

Whitwood had presumably been moved in the first place by the victim's offer of a reward for the arrest of the thief or the return of the stolen goods. The state also began to offer rewards in the seventeenth century for the prosecution of felons, and there is some evidence that such rewards became more common in the thirty years after the Restoration. *Ad hoc* rewards had perhaps long been paid to individuals at the suggestion of judges and the secretaries.[17] But in addition—following the lead of the Rump Parliament—the government also began to make a standing offer of a ten pound reward to be paid by sheriffs to anyone who gave the evidence that would convict robbers and burglars. Perhaps as a way of signalling the reassertion of the king's control over the administration of the criminal law, these were offered not by statute but in a series of royal proclamations.[18] The payment of rewards by the state was also expanded in the years after the Restoration to counter the very large increase in coining offences in the 1680s, including counterfeiting but primarily clipping. Men and women who informed on coiners and clippers or were in other ways instrumental in their arrest and conviction were being given gratuities in the 1660s, not by right but in response to their petitioning the Treasury and on the strength of a judge's confirmation of their role in bringing offenders to justice.[19] The officers of the Mint also became increasingly active in the prosecution of coiners in this period,

[16] CLRO, London Sess. Papers, July 1691 (examination of Robert Bennison).

[17] CSPD 1665, p. 203.

[18] Rewards for the conviction of highwaymen, burglars, and housebreakers were established by legislation in the Rump Parliament in 1652 (J. M. Beattie, 'London Crime and the Making of the "Bloody Code", 1689–1718', in Lee Davison, *et al.* (eds.), *Stilling the Grumbling Hive*, 52). They were renewed after the Restoration in royal proclamations in 1661 and later years that offered £10 to be paid by sheriffs for the conviction of robbers and burglars (CSPD 1661, pp. 189, 194, 262; CSPD 1677, pp. 203–4; CSPD 1680, p. 410; CSPD 1683, p. 35).

[19] CTB 1667–8, pp. 386, 604; CTB 1669–72, pp. 259, 483, 630. For offences against the coining, see above, Ch. 1, work cited in n. 114.

particularly the clerk of the warden, who by the 1670s was prosecuting coiners at the Old Bailey and travelling the country to manage the trials of counterfeiters and clippers at the assizes. His recompense, like the payments to private individuals, depended on the accounts he submitted to the Treasury and the judgment of the warden of the Mint as to the legitimacy of the claims put forward.[20]

The prevalence of coining offences had the effect of increasing the number of rewards paid in the reign of Charles II, though they remained irregular at best and were usually late in coming.[21] Secretary Williamson did not have a great deal of money at his disposal for the prosecution of property offenders (the prosecution, for example, of robbers and burglars and housebreakers), though he was deeply interested in combatting such crime and closely in touch with a number of agents. Resources for such purposes became more plentiful after the Revolution of 1689, especially when parliament engaged more actively than ever before in seeking solutions to the problems of crime and the weaknesses of prosecution. Undoubtedly, the regularity with which parliament began meeting after the Revolution provided opportunities for members with an interest in matters of domestic social policy to initiate discussions and to offer legislation. A large number of bills on crime and related matters were introduced in the reigns of William and Anne, and several significant statutes were passed—many more, certainly, than in the previous hundred years altogether.[22] Parliament provided a platform and an opportunity for expression of new ideas and new approaches to what appeared to be serious levels of crimes against property, both violent offences in the streets and on the highways, and more petty and pervasive thefts from shops and houses.

Some of the responses embodied in statutes were important for the policing issues we are concerned with here—most especially those that aimed at preventing crime by improving detection and stimulating prosecutions. Of particular importance in this regard was the introduction by statute in the reigns of William and Mary and of Anne of a range of rewards that would be paid at the local level by sheriffs on the presentation of a certificate signed by the trial judge. They included forty pound rewards for the conviction of highwaymen (1692), coiners and clippers (1695), and burglars (1706). Another statute granted a certificate of exemption from local office, popularly known as a Tyburn Ticket, for the conviction of burglars, horse-thieves, and shoplifters (1699).[23]

The introduction of rewards paid by the state for the conviction of serious offenders altered the context of prosecution. A number of other developments in

[20] CTB 1669–72, pp. 952–3, 966, 979, 990, 1,023, 1,096, 1,102, 1,107, 1,135, 1,156, 1,181, 1,337, 1,298; CTB 1672–5, p. 483.

[21] CTB 1672–5, p. 427; CTB 1681–5, pp. 531–2; CTB 1685–9, pp. 673, 1330, 1379.

[22] Beattie, 'London Crime and the Making of the "Bloody Code"', 49–76; and below, Ch. 7.

[23] 4 & 5 Wm and Mary, c. 8 (1692), s. 2; 6 & 7 Wm III, c. 17 (1695), s. 9; 10 & 11 Wm III, c. 23 (1699), s. 2; 5 Anne, c. 31 (1706), s. 1. For the reward system, see Radzinowicz, *History*, ii. ch. 3; Langbein, 'Structuring the Eighteenth-Century Criminal Trial', 106–10; Beattie, *Crime and the Courts*, 50–5.

the 1690s further encouraged victims and others to bring charges, and supported them in doing so. A second solicitor of the Treasury was appointed in 1696, for example, specifically to handle funds set aside to aid in the prosecution of Crown cases. It is true that the primary reason for this was almost certainly the Treasury's interest in further improving the prosecution of coining cases, which had reached unheard of levels by the middle 1690s, and perhaps other cases of particular importance for the administration. But the Treasury solicitor's interests and engagements broadened over time, or perhaps the sense of what was of immediate interest to the government changed, and in the first half of the eighteenth century his office was helping to pay some of the prosecution charges of a wider range of cases, including some ordinary felonies involving private victims.[24] In addition to that stimulus from within the government, it is also worth remembering the more pervasive and more general encouragement of prosecutions that arose from the vigorous activity of the Societies for the Reformation of Manners in the years following the Revolution. The reformers offered rewards for the prosecution of blasphemy and sabbath breaking, of prostitution and gambling, indeed of vice and immorality of all kinds, which, as we will see, led some men into thief-taking more broadly.

A contemporary defined thief-takers as those 'who made a Trade of helping People (for a gratuity) to their lost Goods and sometimes for Interest or Envy snapping the Rogues themselves, being usually in fee with them, and acquainted with their Haunts'.[25] Two activities are described here: the one illegal and corrupt, since it was against the law to compound a felony; the other legal, but apparently rare, and only practised against those the thief-taker had been dealing with as a receiver. This 1699 definition was accurate but incomplete. Arranging for the return of stolen goods was a useful service to victims—and perhaps as much as any of them wanted. It had been a central activity for some time of those who had knowledge of the criminal world, and with the help of newspapers it was to become perhaps more highly organized in the first quarter of the eighteenth century by Charles Hitchen and even more by Jonathan Wild. But there was more than that to the thief-taking business in 1699. Thief-takers' sights were also on the money that could be earned by apprehending and convicting robbers, coiners, and other offenders—rewards that had been enlarged by parliament in the course of the 1690s and that were further amplified by royal proclamations advertised in the *London Gazette* and other newspapers.[26]

The surviving records of prosecution and trial make it impossible to gauge the extent to which cases came to the notice of the magistrates and the courts as

[24] See Ch. 8.

[25] B.E., *A New Dictionary of the Terms Ancient and Modern of the Canting Crew in its Several Tribes of Gypsies, Beggars, Thieves, Cheats etc.* ... (1699).

[26] On newspaper advertising of rewards in this period, see Wales, 'Thief-takers and Their Clients', pp. 69–70; Malcolm Gaskill, *Crime and Mentalities in Early Modern England* (2000), ch. 5.

a result of people being willing to inform on their neighbours. Such information must have been crucial to the prosecution of some offences, especially offences like coining that were carried on in private and in which it was rare for there to be a victim whose interests were immediately harmed. My interest here is on the men (and the few women) who acted on that information and on their own knowledge of the criminal world to arrest and prosecute offenders whose conviction would bring financial rewards—rewards occasionally from victims, more commonly from the state. Such thief-takers appear with some regularity in the records of the courts. John Pulman, who was labelled a thief-taker by a Jacobean magistrate, can be found playing various roles at the Middlesex sessions and was named sixty-seven times in the recognizances and indictments of that court alone in the decade 1606–16.[27] In the 1690s and the first few years of Anne's reign, some thirty to forty men and a few women can be found in the court records of the City of London acting in ways that suggest that for longer or shorter periods of time and to a greater or lesser degree they engaged in thief-taking. I give an account of some of the best documented among them as a way of illustrating the prosecuting activities of thief-takers in this period and to uncover an aspect of their business that seems to me very important indeed in the history of policing in the metropolis: the extent to which thief-takers were associated with officials in the City and in particular cases with constables.

Thief-takers got involved in what was always likely to be a seamy business by a variety of routes. One was from the criminal world itself. Both Anthony Dunn and Anthony St Leger were pardoned felons when they took up the trade of thief-taking. St Leger was said to have been associated with the receiver and thief-taker we met earlier, John Whitwood, and to have taken part, at Whitwood's direction, in the burglary of the Countess of Portland's house in March 1688 in which more than three hundred pounds' worth of plate was stolen. In a later deposition, St Leger was said to have been 'sent . . . into Ireland or some other place beyond the seas' by Whitwood, presumably to get him out of the way while efforts were being made to find the countess's plate. He returned and was once again associated with Whitwood, though for how long is unclear.[28] In August 1689 he turned up at the Old Bailey for the first time, when he was tried and acquitted of burglary. He was back in court in January 1690 on a similar charge but was convicted of the lesser offence of grand larceny, making him eligible to plead his clergy and—he would have every reason to expect—to be discharged with a warning from the judge that he better not repeat such bad behaviour. In fact, and unusually, judgment was not passed immediately by the court, and his case was respited till further order. St Leger was returned to Newgate and it is clear the judges at the Old Bailey intended to see if something a little stiffer could be imposed on him, perhaps simply to frighten him a little, for

[27] Johnston and Tittler, 'To Catch a Thief', 245–6, n. 24.
[28] CLRO: London Sess. Papers, July 1691 (deposition of Robert Bennison).

they noted that the court intended 'to consider further of his Cause, being an old Offender though a young man'.[29]

In the event he was released,[30] and went back to breaking into houses. He was again caught and indicted of a very large burglary within a few months, again acquitted,[31] and obviously took up his old practices, for he was named in a royal proclamation in October 1690 as one of a gang of robbers and burglars who was being urgently sought by the authorities.[32] Perhaps he lay low for a while, but early in 1692—in what appears to be the conclusion of his overt criminal career—he was arrested for breaking into the house of Henry de Nassau-Overkirk, the king's cousin and his master of the horse. On this occasion St Leger was granted a free pardon in return for being 'instrumental' in discovering his accomplices: that is, he betrayed his former colleagues to save his life.[33]

St Leger may have agreed to rather more than that in return for his pardon. Instead of returning to robbery and burglary, in a way that was all too familiar, and eventually ending his young life on the gallows at Tyburn, he turned thief-taker, putting to use his knowledge of the world of gangs and of men on the run of which he had been so much a part. It is impossible to discover why he took up that safer option. All we know is that he subsequently appeared in dozens of court documents—in depositions and recognizances, in the witness lists on indictments, in reward certificates, in the correspondence of the Mint—testifying against and prosecuting a range of accused offenders. My evidence is based mainly on the records of the London courts, but it is clear that he was active elsewhere too, and there is good reason to believe that if one could recover the court records of every English county over the next decade or more, he would appear regularly all over the country as an agent of authority and a major earner of reward money—and perhaps more darkly as the recipient of money paid by those he agreed not to prosecute.

This was obviously a dangerous life. To the extent that men like St Leger were perceived to be 'informers', turning in let us say illegal alehouse keepers or others who contravened some economic regulation that only troubled a small section of those in authority, he would be disliked by a very broad section of the public; it is unclear whether that same public would have disliked his more specific thief-taking—catching robbers, for example, or even coiners and clippers, whose activities were regarded with some ambivalence by the public.[34] To the extent that he went after reasonably well-organized gangs of thieves or coiners, he could expect some more pointed opposition. And it is no doubt for this reason that such thief-takers as he became, like members of criminal gangs, tended to work in pairs or

[29] OBSP, August 1689 (St Leger); January 1690 (St Leger).

[30] Perhaps speeded by his petition to the king in March 1690 claiming to have been found guilty on the evidence of a convicted felon. The petition was referred to the attorney-general (CSPD 1689–90, p. 528).

[31] OBSP, June 1690 (St Leger).

[32] Jor 51, fos. 107–9.

[33] CSPD 1691–2, p. 110.

[34] Gaskill, *Crime and Mentalities*, chs 4–5.

even larger groups. St Leger's partner for much of his thief-taking career—as in some part of his criminal career—was a man called Anthony Dunn.

Dunn made his first appearance in the records that I am aware of in 1686, when he was tried with two others at the Old Bailey on a charge of theft from the house of the Countess of Orrery.[35] He was acquitted, and at some point thereafter took up robbery and housebreaking again, for in 1690 he was included in the royal proclamation that had named St Leger and fourteen other men as highwaymen and burglars. The proclamation announced that such offences, as well as housebreaking and murder, were at a dangerously high level and that this 'Party and knott' of men had been responsible for many of them. They 'commonly do keep companie the one with the other', the proclamation went on to say, 'and all of them fly from Justice altho great endeavors pains and cost have been used for their Apprehension'.[36] The proclamation urged magistrates around the country to send copies of commitments of anyone charged with violent offences, along with descriptions of the men involved, of the horses they rode, and of the goods they stole, to a judge of the court of King's Bench so that information could be pooled and these men brought to justice for all the offences they had committed. It also offered a reward of twenty pounds for the apprehension of anyone convicted of murder, robbery, burglary, or housebreaking.

The proclamation may have dispersed the gang. But early in 1691 Dunn was caught with five other men and charged with burglary, the dire consequences of which he dodged by giving evidence against his accomplices—and possibly earning in addition the reward promised by the proclamation: twenty pounds each upon the conviction of the five men he sent to trial.[37] Perhaps this experience persuaded him (as something persuaded St Leger) that this provided a safer and more suitable career opportunity than the life of a highwayman and burglar. At any event, Dunn too dropped out of the offender side of the court ledgers in 1691, and began to appear frequently on the other side, along with his former associate, Anthony St Leger. Within a few years they were both styling themselves 'gentleman'.

Like many other thief-takers, Dunn and St Leger established themselves in the 1690s by taking on the relatively soft targets of coiners and clippers, though without entirely forgoing opportunities to profit from the rewards available for convicting robbers and burglars. Coining offences came to a massive peak in the 1690s, driven by the weakness of the coinage and the opportunities that counterfeiting and especially clipping offered. The government's effort to stem the assault on the coinage by vigorous prosecution of counterfeiters and clippers provided encouragement and opportunities for men like Dunn and St Leger. According to their own, perhaps inflated, claims, it was against the coining and clipping trades that they established themselves as thief-takers. In February

[35] OBSP, May 1686, p. 3 (Dunn *et al.*). [36] Jor 51, fo. 107.
[37] LMA, MJ/SP/1691/April/67 (confession of Anthony Dunn).

1693 they appeared together before Sir Salathiel Lovell, the recorder of London, along with a hatmaker, his wife, a second woman, and a constable, to accuse a Dr Best of being a clipper. In the typical way such depositions were phrased, Dunn and St Leger deposed that they 'had notice' of Best's activities from someone unnamed—the informers in this case were almost certainly the hatmaker, who was Best's landlord, and his wife—and went to his lodgings and searched him and his room. There they found shears, clipped money, and other evidence of coining, and Best was committed to trial.[38]

Dunn and St Leger carried on such prosecutions in the expectation of being rewarded by the Treasury. They were to appear together as witnesses in at least a further nine clipping or coining cases from the City in 1693, and no doubt many more from Westminster and Middlesex, for they went wherever business took them.[39] Indeed, in a petition to the Treasury for compensation in June 1693, they were to claim that they had already made eighty arrests and secured forty convictions of clippers and coiners, 'money-changers', and their accomplices, and that they had recovered false money, clippings, and tools to the value of a thousand pounds.[40]

It might be said that while the Mr Recorder Lovell, the lord mayor of London, and Mr Justice Ward, submitted a strong letter of recommendation to the Treasury commissioners in support of rewards for Dunn and St Leger on this occasion, the warden of the Mint, Benjamin Overton, was less enthusiastic about them. He had his reasons for casting doubt as to 'how fitt those men are to be Employ'd, or Encouraged, in the prosecution of Clippers', since he was interested in asserting the Mint's leading role in prosecuting coining offences. The day after he replied to the Treasury's enquiry about whether Dunn and St Leger should be encouraged in that work, Overton wrote to reaffirm the Mint's belief that clippings and tools and all materials related to coining seized in London should be sent to them, and asked the Lords of the Treasury to press the reluctant authorities in the City and in Middlesex to do so. He also said, in a further comment on the City's enthusiasm for encouraging people like Dunn and St Leger, that he had himself 'deputed (newly) severall Trusty persons to prosecute such Criminals upon notice given Thereof to my Office in the Mint in the Tower'.[41]

It is possible that Dunn and St Leger were disappointed of their rewards in 1693, given this struggle over turf. But they were not shut out entirely. In 1694 and the following few years they made appearances at the Old Bailey, prosecuting both City and Middlesex coining cases, most commonly, as before, in association with a constable.[42] Along with John Gibbons, whom we shall meet

[38] CLRO: London Sess. Papers, January 1693.

[39] Based on the files and minute books of the City sessions of the peace and of City cases at the Old Bailey, 1693 (CLRO: SF 391–8; SM 63–4).

[40] PRO, T 1/22, no. 40, fo. 150. [41] PRO, T 1/23, no. 6, fos. 26–7; T 1/23, no. 8, fo. 30.

[42] CLRO: London Sess. Papers, February 1694 (two depositions), April 1696 (two depositions: Dunn with two others); LMA, MJ/SP/1694/May/14, 26; MJ/SP/1695/January/16; MJ/SP/1696/January/66. They also appeared in three recognizances in 1694.

presently—they survived a great deal of evidence collected in 1696 by Isaac Newton, the new warden of the Mint, that they had been corruptly 'helping away clippers and bringing them to compositions, under the colour of apprehending them', an accusation that other evidence reveals as entirely accurate.[43] And, perhaps because by the middle years of the decade coining seemed to be entirely out of control, Dunn and St Leger clearly worked their way back into the good graces of the Mint and the Treasury. In August 1697 Dunn and John Gibbons were employed by the Treasury to travel 'into the country for His Majesty's special service' to conduct prosecutions.[44] And when the statutory rewards were created for such prosecutions, Dunn and St Leger were among those successfully making claims.[45]

Coiners, and especially clippers, made easy targets for men like Dunn and St Leger, but they were not their only prey. They had come from the company of burglars and highwaymen, whose habits, haunts, and receivers they knew well, and from the beginning of their thief-taking enterprise they earned reward money by prosecuting them, too.[46] But they seem to have turned more regularly to seeking out such men when coining and clipping diminished with the Great Recoinage, and to have gone far afield to do so. Dunn received a portion of an eighty pound reward from the Treasury for apprehending burglars in 1698; in 1703 St Leger earned portions of the statutory rewards for convicting highwaymen in Wiltshire and Leicestershire.[47]

How lucrative all this activity had been it is impossible to say. A woman who went to St Leger's house in Red Lion Square in 1698 to engage him to help her brother who had been accused of coining, reported to Newton in her deposition—clearly in answer to his pointed question—that though his house was 'mean', as she described it, she had seen a trunk full of plate, parcels of Flanders lace, 'and other things of value'.[48] He was at the least not poor.

Dunn and St Leger had taken up thief-taking after being in danger of being hanged. Several of the active prosecutors of serious offenders in William's reign had been for some time active in the reformation of manners campaign, the efforts of voluntary societies (with official blessing) to support the prosecution of vice, immorality, and irreligion. Two such men—Bodenham Rewse, an

[43] G. P. R. James (ed.), *Letters Illustrative of the Reign of William III from 1696 to 1708, addressed to the Duke of Shrewsbury, by James Vernon, Esq., Secretary of State*, 3 vols. (1841) i. 9. In a deposition before Newton in a coining case in 1698 it was said that a woman arrested with counterfeit money had been persuaded to become an evidence against her four associates 'by the means of Dunn and St. Leger', presumably because they had something on her they had not reported (PRO, Mint 15/17, no. 19). Another woman seeking help for someone charged with coining in 1698 was put in contact with St Leger (PRO, Mint 15/17, no. 42).

[44] PRO, T 38/736, p. 49.

[45] CTB 1697–8, p. 150.

[46] St Leger, for example, earned £40 in 1694 for the conviction of a highwayman (CTB 1693–6, p. 524).

[47] CTB 1697–8, p. 213; CTP 1702–7, pp. 167, 181; CTB 1703, p. 359. They also earned further rewards in 1703 for the conviction of four counterfeiters in London (CTB 1703, p. 420).

[48] PRO, Mint 15/17, no. 42.

embroiderer, living in the early 1690s in Bow Street, Bloomsbury, and James Jenkins, a clockmaker in Exeter Court, off the Strand—had been joint secretaries and 'fully employed informers' of the original Society for the Reformation of Manners in Tower Hamlets.[49]

Rewse and Jenkins were among the most active agents in the society's efforts to eradicate vice and immorality.[50] In the two years 1693–5 they brought numerous prosecutions before the bodies that dealt with such offences, sometimes separately or with other men, more often together. They appeared at the City sessions of the peace, before the lord mayor sitting as a magistrate, and before the Bridewell court. The lord mayors' waiting books and the Bridewell court books disclose that, together, separately, or with others, they were responsible for charging at least twenty-two women as prostitutes or nightwalkers, or as lewd or lascivious persons, or on suspicion of pocket-picking, and at least fifteen owners of disorderly houses or bawdy houses. When one considers that these figures are for the City only, that within the City there were many magistrates besides the lord mayor before whom such cases could have been brought, and that neither the lord mayors' waiting books nor, especially, the Bridewell court books contain a complete account of their business, it is clear that Rewse and Jenkins were very active indeed in pursuing the prosecutorial ambitions of the reforming societies to take vice off the streets and to close down disorderly alehouses and bawdy houses. Jenkins was sufficiently active—and sufficiently resented—to be attacked several times in the street, and, as he complained in a charge he brought against two men before the City sessions, to be called an 'informer'.[51]

Rewse and Jenkins also, however, developed other targets—or rather, perhaps, they had other targets very much in mind when they joined the moral reform crusade. Jenkins was a witness in a larceny case tried at the Old Bailey in 1693, for example; in the following year he joined with Rewse and a constable to bring a clipping case, helped to prosecute an attempted rape at the sessions, and in 1695 was bound over to give evidence with three others in another clipping case.[52] He appeared from time to time in coining cases in succeeding years, for the most part associated with Rewse.[53]

[49] Radzinowicz calls them 'the first regular detectives' (*History*, ii. 16, n. 68.) For the prosecuting activities of the societies, see Faramerz Dabhoiwala, 'Prostitution and Police in London, *c.*1660–*c.*1760', D.Phil. thesis (Oxford, 1996), ch. 5; Robert Shoemaker, *Prosecution and Punishment*, ch. 9, and *idem*, 'Reforming the City: The Reformation of Manners Campaign in London, 1690–1738', in Davison, *et al. Stilling the Grumbling Hive*, 99–120. In *Prosecution and Punishment* (p. 242), Shoemaker quotes a resolution of the Tower Hamlets society to employ two persons 'to search out houses of lewdness and bawdry and persons that haunt them in order to their legal prosecution, conviction, and punishment'.

[50] Dabhoiwala, 'Prostitution and Police in London', pp. 155–6, 169–70.

[51] CLRO: SF 494, August 1694, recog. no. 1.

[52] CLRO: SF 398, December 1693, Gaol Delivery ind. (Katherine Moore); SF 405, October 1694, Gaol Delivery ind. (Elizabeth Harris); SF 402, May 1694, Sessions of the Peace, recog. 32; SM 66, July 1695, Gaol Delivery, recog. 13.

[53] In an information before a magistrate in August 1696 Rewse gave evidence about apprehending a coiner with Jenkins and John Dawes, a constable. They stopped and searched him in the street, finding,

Bodenham Rewse was even more active than Jenkins, and moved easily from prosecuting 'loose' women on behalf of the reform societies to other targets. He was, for example, the only witness, besides the victim, in the prosecution of a highwayman at the Old Bailey in February 1695—though he failed to earn a large reward when the accused was acquitted by the jury.[54] He more than made up for this in the following year, when he shared a reward of a thousand pounds with four others for the part he played in the arrest of one of the conspirators in the plot to assassinate William III.[55] In the meantime he had taken up the prosecution of coiners and clippers. He was involved in such cases in 1694 and 1696,[56] and even more actively towards the end of the decade, when counterfeiting rather than clipping was at the heart of the Mint's concerns. By 1699 at the latest Rewse was one of several thief-takers employed by Newton at the Mint to seek out and arrest coiners. He worked frequently with a man we shall learn more about presently, Robert Saker (occasionally spelled Seger or Segars), who was an active thief-taker over this period. In March 1699 Saker deposed before Newton that having learned from an informer that one John Ellis had given her counterfeit money to put off for him, he, Rewse, and a constable lay in wait and apprehended Ellis in Aldersgate Street, searched him, and found him carrying counterfeit coins.[57] In December Rewse got a warrant from Newton on the basis of 'certain concurrent informacon that he hath had from severall Persons' and—again with Saker and a constable—arrested Humphrey Hanwell in Southwark as he was making counterfeit shillings in a cellar.[58] And, under another warrant from Newton, he also arrested Cecilia Labree, who was to be in and out of court on coining charges over the next several years.[59]

That Rewse had acquired a considerable knowledge of coining networks in London and in the country by the end of the decade is confirmed by his being able to depose before Newton in December 1699 about the identity of a man in whom the warden of the Mint was interested, and able to confirm—or so he said—that he had been indicted at the Old Bailey for coining eighteen months earlier.[60] Newton clearly put a good deal of faith in him. And it was perhaps through this connection, or perhaps because he had been in and around the London prisons so much in the course of his hunting for coiners and had made sufficient money by it (rather than as an embroiderer, which he continued to be called in court documents), that Rewse was able to buy the post of head turnkey, or deputy keeper, of Newgate gaol in 1701.[61]

as they must have anticipated, equipment used in the making of counterfeit half guineas (CLRO: London Sess. Papers, September 1696).

[54] CLRO: SF 408, February 1695, Gaol Delivery ind. (Harrison). [55] CTB 1696–7, p. 277.

[56] CLRO: SF 404, August 1694, Gaol Delivery inds. (Ilive and Penny); SF 405, October 1694, Gaol Delivery ind. (Harris); SM 66, August 1695, Gaol Delivery recogs. 8 and 9; SF 412, August 1695, Gaol Delivery ind. (Walthall).

[57] PRO, Mint 15/17, no. 164. [58] PRO, Mint 15/17, nos. 253–4, 295.

[59] CLRO: London Sess. Papers, January–February 1700. [60] PRO, Mint 15/17, no. 238.

[61] We know he bought it then and how much he paid for it because in 1715 his estranged wife brought

One of Rewse's frequent collaborators, Robert Saker (or Segars) was an active thief-taker in his own right over much of this period, well-enough known to be referred to casually by the ordinary of Newgate as 'Mr Segars, the Thief-taker'.[62] Saker was involved in thief-taking from at least 1694, when he provided information to a City magistrate about an escape from Newgate.[63] Like many thief-takers in the 1690s Saker was an active prosecutor of coiners and clippers. He gave numerous depositions before Newton, the warden of the Mint, about arrests he made on his own and with others, including Dunn and Rewse, as well as another thief-taker, John Bonner, and with a City constable named John Hooke.[64] Saker and his wife worked together from time to time to entrap and arrest offenders. On one occasion, having offered to receive a number of counterfeit gold pistoles from Mary Miller, who had been asked to distribute them by a coiner, Francis Ball, Mrs Saker set up a meeting with Miller and Ball in an alehouse in Smithfield, at which her husband and other men burst into the room at the crucial moment of transfer and arrested them. Since Miller knew the business the Sakers were in, it seems likely that she intended from the beginning to betray Ball.[65] Mrs Saker was not the only wife who collaborated with her husband in thief-taking.

Those who prosecuted for profit followed a variety of paths and took up a variety of targets. The one thing they were likely to have in common, especially if they survived for a number of years, was some knowledge of the most important and most serious offenders, their associates, their favourite taverns and alehouses, and the receivers they dealt with. To some extent thief-takers had to be part of that world themselves, or at least to have good contacts in it. The negative side of that, from the point of view of the authorities, who for the most part were happy to use and support such men, was that their knowledge and their contacts were a sure temptation to corruption. The availability of rewards for convictions was a standing invitation to entrap innocent men into committing offences for which they could be easily prosecuted, as was to become all too clear in the eighteenth century. That no such cases came to light in this period may mean simply that the authorities were less concerned and less vigilant than some of them were to become fifty years later.

a libel suit against him before the consistory court of London, in which the source and level of his income became a matter of importance since she was seeking maintenance (LMA: DL/C/156, fos. 237–8; DL/C/199, fo. 373; DL/C/199, fos. 366–83; DL/C/255, fo. 383). Rewse continued as turnkey until at least 1727; see [Thomas Bayley Howell,] *Cobbett's Complete Collection of State Trials and Procedures for High Treason and other Crimes and Misdemeanours, from the Earliest Period to the Present*, 34 vols. (1809–28), xiii. 775.

[62] Ordinary's *Account*, 21 June 1704, pp. 1–2. Saker's son was alleged in 1712 to be a well-known pick-pocket—suggesting the possibility that, like Dunn and St Leger, Saker came by his knowledge of the criminal world first-hand (CLRO, Papers of the Court of Aldermen, October 1712: information of Henry Broom against Charles Hitchen, 9 October 1712).

[63] CLRO: London Sess. Papers, July 1694.

[64] PRO, Mint 15/17, nos. 19, 60, 62–3, 73, 164, 167, 252, 270, 443.

[65] PRO, Mint 15/17, nos. 6, 12, 14, 15, 24, 141.

The forms of corrupt dealing that came to the attention of magistrates in the generation after the Revolution—though without at first causing much of a stir—arose from the opportunities for blackmail that thief-takers' knowledge of crimes and offenders provided. A case in 1701 involving John Connell (or Connelly) and Mary, his wife, illustrates some of the possibilities that a position poised between the authorities and criminals gave rise to—some of the pressures they could exert when they themselves acquired a certain degree of authority. The Connells had been involved in thief-taking through the 1690s with several associates—with John in particular appearing as a witness or prosecutor in cases involving highway robbery, coining, and clipping. He also shared in at least one reward payment—a sum of two hundred and eighty pounds paid by the sheriff of Surrey in 1702.[66] In the previous year the Connells had been accused of extorting money for agreeing not to prosecute. They had been employed by the victim of a theft to find three rolls of cloth stolen from a wagon and, by means that are not disclosed, discovered one of the rolls in the shop of Gavin Harding. The wagoner was willing to pay for the return of the cloth, but it appears that the Connells agreed not to tell him about their discovery in return for a handsome pay-off. Mrs Harding later complained to a magistrate that in the first of two meetings in public houses, Mary Connell 'menac'd [her] and threatened to have her gaoled', whereupon she gave her four guineas; on the second occasion 'by Threatnings and Canting upon her, sometimes giving her Sweet words and sometimes Sower', she paid over a further four guineas, Mary Connell promising 'you shall never here [*sic*] noe more of it'.[67]

Corrupt manipulations of this kind were not confined to those who engaged in thief-taking. Constables, watchmen, magistrates, even Sir Salathiel Lovell, recorder of London in the 1690s and well into Anne's reign, were accused of illegally profiting from the discretion they could wield over various stages of prosecution.[68] But thief-takers had more frequent opportunities to do so. Many years later Connell was remembered at the time of Jonathan Wild's trial, and an elaborate story was told about him by Bernard Mandeville, to illustrate the proposition that there were 'Thief-Catchers of note before Jonathan', and that they were invariably corrupt.[69]

Other opportunities for corruption are illustrated by the shady career of John Gibbons, who prosecuted coiners and clippers in the 1690s, but was accused of profiting mainly by protecting them. The most damaging evidence was given by an accused Irish coiner William Ivey (or Ivie) and his wife, who were deposed at

[66] PRO, T 1/80, no. 71, fo. 236. [67] LMA, MJ/SP/1701/April/28–9.

[68] Lovell's greed and corruption was attacked by Thomas Brown, *Letters from the Dead to the Living* (1702), in which the devil is made to say that Lovell 'never sav'd any Man for his Money, but he hang'd another in his room' (pp. 49–50). And for other evidence, see Wales, 'Thief-takers and their Clients', p. 83, n. 39.

[69] *The British Journal*, 24 April and 1 May 1725. These letters follow by two weeks the six printed by Mandeville in the same newspapers that were to form the basis of his *Enquiry into the Causes of the Frequent Executions at Tyburn* (1725).

length by Newton while they were in Newgate awaiting trial. Ivey said of Gibbons that his 'business is to take up Clippers and Coyners' and he knew a great many of them, but that he mainly used this knowledge to collect protection money from them, in particular to save them from arrest by giving them prior notice of raids to be conducted by constables, the king's messengers, or agents of the Mint.[70] If Gibbons had such prior information, it is possible that it came from his position as porter at Whitehall Gate and as a messenger for the secretaries of state.[71] Other deponents confirmed the charge that Gibbons was able to give notice of raids on coiners' houses and lodgings, and that a number of coiners and clippers were his 'pensioners'.[72]

That a man like Gibbons was able to operate in these ways points to a crucial issue: the relationship between the thief-takers and the authorities. It is clear that his activities were well known, and equally clear that he was regarded as fundamentally untrustworthy. But he was also useful. Secretary Vernon reveals some of the ambivalence of the government's attitude towards Gibbons and others like him when, in 1697, the administration was pursuing a man called William Challoner, who was thought to be forging exchequer bills—a matter, Vernon said, 'of the highest concern to the nation'. It is a complex story that need not detain us. What is of interest is Secretary Vernon's thoughts about how Gibbons could be used and how much he could be trusted. He wrote to the duke of Shrewsbury:

> It has come into my thoughts that John Gibbons might be of some use in this matter, if he were fit to be trusted. He has an old intimacy with Chaloner. If he has not been among them at the coining trade he has been one of their scouts, and if he is concerned with them in point of profit, I am afraid he will betray any one else rather than them. But he is a tool with so devilish an edge, that I dare not venture upon him without allowance, and yet I think something of this nature ought to be done.

In a later letter, in which he muses further about how deeply Gibbons had been involved in the affairs of the gang the government was pursuing, Vernon says 'he is such a bold crafty rascal, that to hope to get any thing out of him, one must be able to put him into a thorough fright'.[73]

There is a good deal of evidence that thief-takers were known to the authorities and that they were used by them—as detectives, occasionally as a strike

[70] PRO, Mint 15/17, nos. 31, 91.

[71] Gibbons doubtless owed these positions to political contacts deriving from his earlier career as a footman to the Duke of Monmouth, and to his having been implicated in plots against Charles II. Narcissus Luttrell noted the part Gibbons played in the tracing and apprehension of Count Conigsmark for the murder of Thomas Thynne in 1682, and his being charged with involvement in a plot in 1683 (Luttrell, *A Brief Historical Relation of State Affairs from September 1678 to April 1714*, 6 vols. (Oxford, 1857), i. 165, 288). Gibbons gave evidence at Conigsmark's trial, at which the Count was acquitted (Howell, *State Trials*, ix. 58–9). Ivey's hostility to Gibbons no doubt also had its origins in the Exclusion struggles since Ivey had then been a government agent (Wales, 'Thief-takers and their Clients', p. 77).

[72] PRO, Mint 15/17, nos. 88, 97, 99, 198.

[73] James (ed.), *Letters Illustrative of the Reign of William III*, i. 330, 344.

force. Lovell, the recorder of London during the period we have been dealing with, seems to have had an especially close relationship with such men. Certainly, he took a very large number of depositions in cases in which they had an interest. He was greedy, and possibly corrupt; certainly he was ever on the lookout for the possibility of picking up an estate forfeited by a convicted coiner. It is clear that Lovell encouraged and protected the thief-takers; that he valued their contribution to the policing of the City and of the metropolis generally, and at whatever cost.

Lovell may have placed particular reliance on thief-takers. But he was not unusual in using and supporting such men. The Mint had developed its own prosecutorial staff by the 1690s, led by George Macy and other men who served as chief clerk, but Newton, and other wardens, also sent thief-takers to apprehend coiners and to give evidence against them at the county assizes. The secretaries of state and under-secretaries also had their own staffs of police and prosecutors in the forty messengers of the chamber who were on the lord chamberlain's establishment, but who worked almost exclusively for the secretaries. Their main business was to carry the diplomatic mail, but they were also sent to arrest and detain suspects in cases of interest to the Crown, and in the 1690s that included a number of coining cases.[74] From the 1660s, if not earlier, the messengers were used by the secretaries of state to make arrests, to give evidence, and to take part in other ways in prosecution drives. But in addition, as we have seen in the case of secretary Vernon, thief-takers also played a large part in those campaigns.

A striking instance of thief-takers working together, and of their being employed by the authorities, occurred in 1696, when the sheriffs of London went to Newgate gaol to interrogate a number of suspected coiners and took with them a force of thief-takers. The sheriffs' account—as it emerged in affidavits taken when the case went to King's Bench—was that in the course of an examination of a woman who had been arrested by Rewse and Jenkins and found to be carrying a large amount of clipped money, recorder Lovell learned about a major clipping enterprise being carried on in Newgate gaol.[75] Taking a few men with them, the sheriffs went to Newgate, searched the rooms in which a goldsmith called Greene and his partner David Davies were being held, and, without offering violence of any kind, removed the considerable sums of money and silver bullion they found there.

The version offered in their examination by the defendants, Greene and Davies, differed in many respects from this account and seems likely to be closer to the truth. Davies described it this way:

on Munday the sixth of January last betweene the howers of three and foure of the Clock in the afternoone Sr Edward Wills one of the present Sherriffs of London came

[74] J. M. Beattie, *The English Court in the Reign of George I* (Cambridge, 1967), 49, 120–1.

[75] King *v.* Davies and Carter and King *v.* Greene (PRO: Records of the Court of King's Bench (KB) 2/1 Part I (7 Will. III): affidavits of Jenkins and Rewse, 4 February 1696).

into the Prison of Newgate into the Roome of this Deponent accompanied by [Du]n S. Ledger Rouse Jenkins with severall others formerly Convicts but now knowne by the name of Thiefe [takers in a] most rude and barbarous manner secured the person of this Deponent rifled his pocketts trunke and boxes. . . . [They left, only to return an hour later, when the sheriffs] drawing their Swords rushed into the Roome of this Deponent and with frightful menacing words Comanded the rude Men they brought with them to search this Deponents pocketts Trunk and Boxes as formerly they had done Ordered the Gaoler to bring Irons for him and pointing their Swords at his breast Comanded him to sitt down . . .[76]

After which they took away two hundred guineas and a bag of silver. What is of particular interest is that the sheriffs chose to take Dunn, St Leger, Rewse, and Jenkins on this raid. They also took two constables, Ralph Harbottle and Matthew Hanson, who stood guard over the door to prevent other prisoners coming into the room while the search was in progress. There were no other witnesses to the defendants' claim that they were threatened and treated roughly and menacingly by the four thief-takers. But it seems entirely likely to be true. They were brutal men—certainly Dunn and St Leger had violent pasts—and were employed for that reason by the London magistrates, the recorder, and the sheriffs. They detected, enforced, and prosecuted. They were not employed by the City, but used by the City. They worked for themselves, and, it seems likely, took advantage of the numerous opportunities that came their way to line their pockets corruptly. But they were tolerated because they were useful: private interest and public necessity produced an amalgam that matched the possible forms that such policing forces could take and suited the resources available.

The story of the sheriffs' raid on these prisoners in Newgate touches on another theme that constantly recurs in depositions and examinations concerning searches and arrests, and that is evident in recognizances and witness lists on indictments: that is the indispensable role played in the operations of these thief-takers by constables—indispensable because the constable had the authority to enter a house and carry out a search, to arrest suspects and take them before a magistrate for examination, to guard a door. They provided a guarantee that an arrest made after such a search could not be challenged as unlawful. In a typical case, Dunn and St Leger reported in one of the many informations they gave to Salathiel Lovell, the recorder, that

they haveing apprehended one Mary James for suspition of Clipping, the said Mary James did then declare to these Informants that shee had the same morning sold a parcell of Clippings to one Edward Tunkes who lived in Grub Street neere moore fields, where upon these Informants with a Constable, on the next morning following, went and searched the said Tunkes house . . .

They found shears, a parcell of recently clipped coins, and a melting pot:

[76] King *v.* Davies and Carter and King *v.* Greene (PRO: Records of the Court of King's Bench (KB) 2/1 Part I (7 Will. III): (affidavit of David Davies, 1 February 1696). Text illegible in places.

'whereupon these Informants brought the said Edward Tunkes to the Constables house, and left him in the Constables Custody with the money and Tools for Clipping'.[77]

Inevitably, some constables were more active, or more available, than others, and were called upon regularly. Some were active enough to have been hardly distinguishable from the thief-takers. James Cooper, a barber surgeon and a constable of Bread Street ward, was an extremely active prosecuting constable. Between 1694 and 1697 he worked regularly with Rewse and Jenkins, with Dunn, and with several other frequent prosecutors, especially on coining and clipping cases. He collaborated with Nathaniel Whitebread, a London goldsmith whom Cooper had arrested and charged with clipping in December 1694, and who subsequently used his knowledge of coiners and clippers to turn prosecutor himself.[78] Cooper also joined with other active constables, including Thomas Udall and Christopher Priddeth (or Pritty), to carry out searches and make arrests. With John Woodcock, he executed a search warrant in April 1695 and deposed before a magistrate that they found clippings and clipping tools. He gave evidence before Lovell in 1695 that reveals that he and Priddith, acting on information, went at 8 a.m. one day to a house in Cripplegate where they found Charles Bellett in the cellar with the door locked. Having 'forst the same with a sledg' (which they had presumably brought for the purpose), they arrested Bellett, and seized tools, clipped money, and clippings. Bellett for his part told the recorder he had gone to his cellar to feed his rabbits and locked the door to prevent their escaping.[79]

Apart from his engagement in the prosecution of clippers and other felons, Cooper profited from the rewards offered by the reformation societies. In the summer months of 1694 he committed at least eighteen women to the Bridewell as prostitutes and 'nightwalkers' and brought several others before the lord mayor on similar charges. Many of these women had been perhaps picked up initially by the watchmen of his ward, but Cooper had arrested several of them himself. He apprehended one woman, he deposed before the Bridewell court, for having taken a man

[77] CLRO: London Sess. Papers, April 1693.

[78] CLRO: SF 406, December 1694, Gaol Delivery, calendar. Within a few months of this threatened prosecution, Whitebread laid a series of informations before Alderman Ashhurst, in which he named five men as clippers, including two goldsmiths, with whom he had had dealings. He said of John Brighton, a cobbler, that he was a man 'who both clipt and facilitated clipping', that he had seen him receiving clipt money from clippers at the Queen's Arms in St Martin's to carry to others, that he (Whitebread) had himself given Brighton clippings to keep for him, and had bought clippings from him. He claimed to have received 'large parcells of broad money' from one of the goldsmiths—that is, coins suitable to be clipped—as much as £50 at a time, and for which he paid him a guinea for each 20*s*. in broad money (CLRO: London Sess. Papers, May 1695). He also joined with Cooper and Dunn in that same month to prosecute 'a notorious clipper' (CLRO: London Sess. Papers, April 1696. Deposition against James Raymond). With Cooper he prosecuted another man for a coining offence (CLRO, SF 410, May 1695, sessions of the peace, recog. 8).

[79] LMA: MJ/SP/1695/July/26.

to a private house where she offered to lye with him and told him she would show him the Postures and would faine have felt in his breeches asking him many lewd and obscene Questions telling him there was convenience enough in that house and she would have him feele whether she was man or woman.[80]

Cooper regularly gave depositions before magistrates in the middle years of the 1690s,[81] and as regularly appeared as a witness at the sessions of the peace and the Old Bailey—in at least fifteen cases in 1694–5 alone.[82] He was clearly known to magistrates as a man who could be trusted to execute a warrant, carry out searches, investigate a suspect, and make arrests. He was sent by a City magistrate in 1696 to bring a witness from Suffolk to testify in a clipping case, and in connection with the same charge, he and Anthony Dunn were ordered to search a house in London for clippings and tools.[83] On at least one occasion Cooper and Jenkins were bound over to prosecute two men for attempted rape—presumably having been engaged to find and arrest them.[84] Cooper's prosecuting activity was also well-enough known to the public that he was assaulted and verbally abused, and he and Jenkins were both threatened with violence and called 'by the name of informers'.[85]

Cooper was the most active City constable in the 1690s, or so the court records would suggest. But there was a core of other constables—at least seven or eight[86]—who were much more engaged in searches, arrests, and prosecutions than the image of the elderly, infirm, and reluctant constabulary would suggest. As we have seen, active constables were not typical of the men who served their year in the office. But the engagement of some in the business of criminal prosecution—many of them deputies—does emphasize the potential power of the *office* of constable, and its importance to the system of judicial administration. It makes clear how crucial the authority of the constables was to the work of the magistrates and to the functioning of the courts, how indispensable

[80] Bridewell Court Book, 1694–5, p. 322. He also knew and raided the bawdy houses in his ward (Bridewell Court Book, 1694–5, pp. 343, 380; CLRO: Charge Book, 1692–5, fo. 188).

[81] CLRO: London Sess. Papers, October 1694, April 1695, June 1695, July 1695, April 1696 (2).

[82] Cooper was bound over in recognizances to give evidence for the prosecution (alone and with others) in the following gaol delivery sessions at the Old Bailey and sessions of the peace at the Guildhall: SM 65, August 1694, Gaol Delivery, recog. 7; SM 65, December 1694, Sessions of the Peace, recog. 37; SM 65, January 1695, Sessions of the Peace, recog. 31; SF 407, January 1695, Old Bailey, SF 407—two indictments; SM 65, April 1695, Sessions of the Peace, recog. 40; SM 65, May 1695, Sessions of the Peace, recog. 25; SM 66, July 1695, Gaol Delivery, recogs. 4, 13, 19, 28; SM 66, August 1695, Sessions of the Peace, recog. 3; SM 66, August 1695, Gaol Delivery, recogs. 8, 9. I have not searched the recognizances and indictments for the names of prosecutors and witnesses beyond December 1695.

[83] CLRO: London Sess. Papers, April 1696; and see London Sess. Papers, June 1695; and LMA: MJ/SP/1696/Feb./23.

[84] CLRO: Charge Book, 1692–5, fo. 148; SM 65, May 1694, recog. 32.

[85] CLRO: SF 401, April 1694, Sessions of the Peace, recog. 93; SM 65, August 1694, Sessions of the peace, recogs. 1, 7; SM 65, December 1494, Sessions of the Peace, recog. 37. In February, 1694, Cooper had charged two other men with assaulting him in the execution of his office (LMCB, 1692–5, fo. 137).

[86] They included Thomas Udall, John Hook, John Runwell, Thomas Oatman, Thomas Oakley, Christopher Priddeth [Pritty], and John Daw [Dawes].

the powers they, and they alone, were able to exercise. It was crucial, too, to the efforts of government departments like the Post Office and the Mint to mount prosecutions, and to the work of the secretaries of state in their pursuit of domestic enemies. The secretaries commonly instructed the messengers of the chamber, for example, to take a constable with them when they mounted a search or intended to make an arrest of someone suspected of sedition—for reasons made all too clear later in the century in their conflict with John Wilkes and the printers of the *North Briton*, when arrests made by the secretary's messengers without the support of constables left them open to prosecution.[87]

THIEF-TAKERS AND RECEIVERS, 1700–1720

It is possible that the level of prosecuting activity by thief-takers was unusually high in the 1690s because coining and clipping provided a large number of soft targets. Knowledge about such targets was also easy to come by: there seem to have been plenty of people willing to pass on information about their neighbours, especially when they themselves came under suspicion—and large numbers came under suspicion because of the huge volume of new coins and clipped coins available to be 'put off'.

When clipping became more difficult following the recoinage, opportunities to prosecute for profit diminished. There continued to be substantial rewards to be earned for the conviction of other felons: cash payments for highway robbers and burglars; a certificate with a market value that granted relief from the obligation to serve in local offices awarded for the conviction of shoplifters; further money awards added in the eighteenth century in royal proclamations. And men continued to earn those rewards, not merely by prosecuting when they were themselves victims of an offence, but by 'vigorously endeavour[ing] the discovery and apprehending of . . . malefactors'—as the act creating the forty pounds reward for prosecuting burglars enjoined.[88] One such man in Anne's reign was Joseph Billers, a silkman in Cheapside, who, according to his own brief published account, became involved in thief-taking when burglars broke into a warehouse in 1704 and took fifty pounds' worth of his silk. He set out to find the culprits, joined by agents of the East India Company, which had also lost silk to the same gang of burglars, and for some years thereafter engaged in detection and prosecution.[89] He was commended by a parliamentary

[87] On the basis of the illegality of the warrant and of the arrests, the printers involved were able to mount successful actions for damages against the messengers. See John Brewer, 'The Wilkites and the Law, 1763–74: A Study of Radical Notions of Governance', in John Brewer and John Styles (eds.), *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries* (1980), 143.

[88] 5 Anne, c. 31 (1706), preamble

[89] *A Short State of the Case of Joseph Billers, Citizen of London. Shewing the Occasion of his being concern'd in the Prosecution of Burglars, and other Criminals; His Progress therein; And the many Obstructions he hath met with in the Course of it.* (1709). They caught some of those involved when a woman confessed to receiving the stolen silk and revealed their names. John Smith was indicted in December 1705 for breaking and entering and

committee examining the bill that became the burglary act in 1706 to which he gave evidence about his activities. The committee resolved that 'Mr. *Joseph Billers*, of the City of *London*, hath been at great Expenses, and Hazard of his Life, in detecting, and bringing to Justice, several Burglars and other Criminals, for which he deserves Encouragement, and Protection'.[90] Protection was necessary because he had been subjected to 'Browbeatings, Threats, odious and reproachful Reflections'. He was also charged—maliciously, it turned out—with corruptly attempting to obtain a reprieve for John Read, a condemned robber and horse-thief, who had given Billers information about his accomplices. He was acquitted and published his *Case* to clear his name.[91]

Billers remained engaged in prosecutions for some time.[92] He was not the only man to do so in Anne's reign or to be labelled a thief-taker. But other aspects of the thief-taking business, besides prosecuting for profit, seem to have come increasingly to the fore then, perhaps because of the diminishing number of cases of serious crime coming to the attention of the courts, the offences that drew parliamentary rewards. There were no standing rewards for the conviction of minor offenders—pickpockets, for example, or the petty thieves whose depredations so exasperated the propertied middling classes of the metropolis. It would not have benefited thief-takers to bring such offenders to justice. Private gratuities might occasionally have been available in such cases, but no thanks, and no reward, from the state.

On the other hand, there was a potentially lucrative service to be offered by those who could put victims of such offences in touch with those who had stolen from them and negotiate the return of the goods for a fee. This required the same kind of information about thieves, receivers, and suspicious alehouses that thief-takers needed if they were to engage in the more dangerous business of prosecution. The increasing number of newspapers also facilitated the work of such brokers.[93] Acting as an intermediary must surely have been an attractive option in cases in which rewards were not available, even though compounding

the theft of silk valued £53, property of Joseph Billers, and, with other defendants, for several other thefts. Others were indicted for similar thefts in subsequent sessions, and several women for receiving (CLRO: SF 494–7).

[90] *Case of Joseph Billers*, 3; *JHC*, 15 (1705–8), 375.

[91] Billers sought and got copies of the documents involved in that pardon process from the aldermen, and was able to establish his innocence when his trial came on before Chief Justice Holt at the Guildhall on 18 February 1709 (CLRO: Papers of the Court of Aldermen, June 1708). The offender in question, John Read, was executed at Tyburn, 28 January 1708. Apart from clearing his name, Billers's *Case* was also intended to plant the suggestion (which he does liberally throughout, and which is reinforced by the long appendix he adds setting out the law on all the grievances he hints at in the body of the pamphlet) that the charges against him were inspired by corrupt officials who found his detective work too thorough and too honest.

[92] A glimpse of Billers's continuing thief-taking is provided by the ordinary of Newgate's account of the life and execution of James Hacket, who was hanged at Tyburn in June 1707, and who said before he died that 'he had given Mr. Joseph Billers a true information of all the Robberies by him committed' (Ordinary's *Account*, 6 June 1707).

[93] Wales, 'Thief-takers and Their Clients', pp. 69–70.

a felony in this way was illegal. Many victims were clearly willing to pay for the return of their goods—an outcome the criminal law could not guarantee. Such transactions were also presumably attractive to thieves who might find returning the goods for a portion of their value (and a promise not to prosecute) safer and more profitable than dealing with a receiver. The author of *Hanging, Not Punishment Enough* complained in 1701 that such 'Private Compositions' were frequent. They were, he thought, a consequence of the failure of the criminal law to support the victims of offences—forcing them to undertake and pay for prosecution, while failing to ensure, in the case of a theft, that their stolen goods would be returned if defendants were convicted.[94]

The author of this pamphlet did not notice the part that thief-takers might have played in arranging these exchanges. But such mediation—if it can be thought of that way—was almost certainly being practised in the late seventeenth century and seems to have increased further in the first quarter of the eighteenth.[95] One of Joseph Billers's informants, the burglar John Read, confirmed, for example, that 'the practice of pretended Thief-takers was to compound Felonies for the Thieves, to prevent their Prosecutions, and to harbour them, and receive their stoll'n Goods'. He also said that two men engaging in those practices 'belonged to the City-Marshal'—a foretaste of what was to come when Charles Hitchen got that office a few years later.[96]

Thief-takers' intercessions between thieves and their victims may have increased in the last years of the seventeenth and early years of the eighteenth centuries because they provided an alternative way of profiting from crime for men who had been drawn into thief-taking by the statutory rewards offered after 1689 and who had found the easy pickings provided by coiners and clippers drying up after the recoinage. As we have seen, it was also the case that prosecutions of minor crimes against property increased in the metropolis in those years; crimes for which no large cash rewards were offered, but that were deeply aggravating if they increased too much—shoplifting and theft by servants, for example. These two offences were so common in this period that they were both removed from benefit of clergy and made subject to capital punishment, in 1699 and 1713 respectively.[97] But the terror of the gallows clearly failed to bring them under control. Indeed, possibly the reverse, since it is entirely likely that, even in this period when the statutes were fresh-minted, the men and women of the middling propertied classes, who are likely to have been most willing to prosecute petty thefts, were not anxious to bring too many offenders to trial.

[94] J. R., *Hanging, Not Punishment Enough for Murtherers, High-way Men, and House-breakers* (1701), 15.

[95] It seemed so to William Blackstone looking back from the mid-century; see his *Commentaries on the Laws of England* (Oxford, 1765–9), iv. 132.

[96] *Case of Joseph Billers*, 3–4. Read also said that two men were indicted at the Old Bailey in December 1709 for such practices: John Osborne and Thomas Charlesworth, were indeed tried at the Guildhall Sessions 17 April 1710 (CLRO: SM 77) for compounding a felony, having been indicted in December 1709. They were found not guilty.

[97] See below, Ch. 7.

Threatening too many shoplifters and servants with the gallows was potentially damaging to their local standing and generally not in their best interests. Getting their lost goods returned for a fee perhaps remained a more attractive option. It was certainly the view of a group of men in London who argued in favour of the bill to make shoplifting a capital offence in 1699 that the offence was prevalent because shopkeepers preferred to compound with thieves than to prosecute them.[98]

This was true not only of shoplifting and servants' theft but increasingly also of pocket-picking, an old capital offence that took on a new character in an age in which increasing numbers of valuable documents were being carried by merchants and financiers in London. Some pockets were also picked by offenders whose prosecution might prove embarrassing to the victim—by prostitutes, for example. In addition, a large number of the more-skilled pickpockets were young boys who, even if convicted, would not be seriously punished since they were unlikely to be hanged, certainly not in large numbers. In any case, they were almost certainly acting under the direction of older offenders.[99] Brokers who could arrange the return of stolen goods were no doubt particularly valued by men who lost a pocket book containing bills or business papers to a thief whom it might not be prudent or satisfying to prosecute.

The services of a middle-man may also have become more attractive for thieves because of the efforts being made by the authorities in this period to discourage receiving. There are strong suggestions in the examinations of suspects by London magistrates in the reigns of William and Anne that receivers were being targeted as instigators of crime. In case after case, accused thieves—and especially shoplifters and pilfering servants—were routinely induced to name their receivers.[100] And at the same time attempts were made to strengthen the law in ways that would make the conviction of receivers more certain and their punishment more serious. Until this period receiving was no more than a misdemeanour at common law. It was only in 1691 that parliament made receivers accessories to felony, and hence punishable as a felon if the principal was convicted.[101] Further efforts were made in parliament early in Anne's reign to ensure their effective punishment. A statute of 1702 established that, even in cases in which the principal escaped punishment by being admitted to clergy or pardoned, a receiver was to be regarded as an accessory; and in 1706 it was further enacted that, even when the thief could not be taken, a receiver of stolen goods could be convicted for a misdemeanour.[102] Whether they were put into effect or

[98] *The Great Grievance of Traders and Shopkeepers, by the Notorious Practice of Stealing the Goods out of their Shops and Warehouses, by Persons commonly called Shoplifters; Humbly represented to the Consideration of the Honourable House of Commons* (*c.*1699). See Ch. 7. The recorder of London had complained as early as 1663 about shopkeepers' willingness to compound with thieves (SP 29/97/188).

[99] This was to be revealed most clearly by the investigation of the corrupt under-marshal of the City, Charles Hitchen, for whom see below, pp. 252–6.

[100] See Ch. 7. [101] 3 & 4 Wm and Mary, c. 9 (1691).

[102] 1 Anne, stat. 2, c. 9 (1702), s. 2; 5 Anne, c. 31 (1706), ss. 5–6. The 1702 statute was aimed not only at

not, such measures made receiving apparently riskier than it had been—and that in turn made it riskier for thieves to deal with receivers they could not entirely rely on. Returning the stolen goods to their owner for a portion of their value may have come to seem a safer option. In the case of objects with little inherent value, or at least with value that could not easily be realized—shopbooks, or bills of exchange, or other commercial paper, for example—the usefulness of negotiating with the victim for their return was even more obvious.

Certainly, such mediation was thought to be widespread in the early years of the eighteenth century, and to have been regularly practised by those known as thief-takers, including some of those active in prosecuting in the 1690s.[103] Anthony Dunn was named in a deposition in the City in 1707, for example, as 'a pretended Thiefe Taker' who had arranged for the return of forty pounds' worth of plate to its owner for a fee.[104] The victim had 'applied' to another man whom he clearly thought was likely to have information about the theft and receivers (a 'Mr. Keyfar', possibly Kiffett) who in turn put him in touch with Dunn. Within a few weeks the goods were returned at an alehouse, and Dunn accepted a fee of five guineas. Dunn was presumably called a 'pretended Thiefe Taker' because he had no intention of 'taking' the thief, but rather locating him and getting him to return the goods rather than selling them to a receiver. Another five guineas went in the same case to Robert Saker.

Dunn and Saker no doubt found such business coming their way because they had become well known. The experience of Thomas Hunter, a shoplifter, provides some further insight into this. Hunter had committed several thefts in goldsmiths' shops in 1704 with two accomplices, Jacob Volt and Richard Lewis. After one such theft, the goldsmith had sent around the neighbourhood a printed notice about his loss, aimed at potential receivers of the 'several rich goods' he had lost. The paper had come to Robert Summers, who was associated at other times with Saker and who Hunter was to describe as a thief-taker in his conversation with the ordinary of Newgate. Summers obviously had some idea of who might have been involved and where to find them, for he found Hunter, Volt, and Lewis at the Dog Tavern near Newgate, where he

> read aloud the Paper which Mr. Fordham [the goldsmith] had sent abroad concerning his Loss; and thereupon Sommers [*sic*] asking them (and particularly Hunter) whether they knew anything of it, they answered no. . . . But to remove all Suspicion of it from

those who bought goods without enquiring too closely into their ownership, but also at 'the counsellors and contrivers of theft and other felonies', who, along with receivers, were said to be 'the principal cause of the commission of such felonies'.

[103] As we have seen, it was at the very end of that decade that a man thought that thief-takers were best known even then as those 'who made a Trade of helping People (for a gratuity) to their lost Goods and sometimes for Interest or Envy snapping the Rogues themselves, being usually in fee with them, and acquainted with their Haunts' (B.E., *A New Dictionary of the Terms Ancient and Modern of the Canting Crew, in its several Tribes of Gypsies, Beggars, Thieves, Cheats, &c.* [1699], unpaginated).

[104] CLRO: London Sess. Papers, December 1707.

themselves, they immediately went to Mr. Segars [i.e. Saker] in the Old Baily; where [they] staid a little while and talked of the matter, saying they knew nothing of it.

Saker must have appeared to them to be a man of some consequence, and a man who could call off Summers if he could be satisfied—in some way not specified—that they had not been involved in the thefts. The story did not end there, however, which is why we know about these negotiations. Shortly afterwards Jacob Volt was arrested for another offence and Hunter and Lewis became concerned that he would 'discover' them to save his own skin. To forestall that, they sent for Segars and told him they could procure the goods stolen from Fordham. They did so. The thief-taker paid them off and returned the goods to the goldsmith, who no doubt reimbursed the money he had given the thieves and added a reward. Hunter's career as a shoplifter continued, until, soon after these events, he was arrested, convicted at the Old Bailey, and hanged at the age of 23,—a young man, the ordinary observed laconically, 'but an old offender'.[105]

Unlike that of a highway robber or a burglar, the conviction of this shoplifter earned Summers and Saker no large monetary reward from the sheriff of London. The shopkeeper, on the other hand, would pay to get his goods back. What an experienced thief-taker had to offer such a victim was information—information about thieves, about receivers and pawnbrokers who were known to handle stolen goods, and about other thief-takers who might know what had happened to the goods, or could find out. The world of illegality was not so large that a network of men could not keep up with at least the serious thefts and known receivers. Thief-takers commonly worked together in this way. Knowledge—and mutual help—enabled them to apprehend offenders who were vulnerable and valuable. It also enabled them to profit from the misfortunes of some of the victims when it was not possible to profit from the conviction and execution of the offenders.

If there was an increase in such mediation between thieves and their victims in the first quarter of the eighteenth century, it was almost certainly facilitated by the growth of the London press in this period, for the advertising columns of the newspapers made it possible for thefts to be publicized and contacts to be established. The impression that such contacts between thieves and victims were being more regularly and systematically forged in the first quarter of the eighteenth century also derives from the activities of Charles Hitchen and the more notorious Jonathan Wild.[106] It is impossible to know whether Hitchen—to deal with him first—was a more active go-between than men like Saker and Summers. We happen to know a good deal about him because he got into competition with Wild as the latter was establishing his empire, and published a pamphlet about thief-taking practices that he clearly knew about from

[105] Ordinary's *Account*, 21 June 1704.

[106] For the careers of Hitchen and Wild and the relationship between them, see Howson, *Thief-Taker General*, chs 6–8, 12.

first-hand experience.[107] But we also know about Hitchen because he was an officer of the City, having purchased the place of under-marshal for seven hundred pounds early in 1712.[108] Within a few months of taking office he was accused of receiving and concealing stolen goods and of encouraging thieves and pickpockets—and of misusing the authority of his office to support these illegalities.[109] The charges were made so soon after he came into office that it is inconceivable he only took up these activities then. Indeed, he may have been willing to pay a large sum for the post because he saw how the authority it conferred might help him extend his business. He made himself a target and many enemies, including Joseph Billers, who was to play a part in orchestrating the case brought against Hitchen before the Court of Aldermen within a year of his taking office.[110]

The evidence about Hitchen's activities as a go-between came in the first place from several victims of pickpockets whom Hitchen offered to help recover their stolen goods—for a fee, of course. Several of them complained to the aldermen and were too respectable to be ignored. The Court of Aldermen set up an enquiry in September 1712 and established a committee to look into his activities. The aldermen heard from Thomas Rogers, a Blackwell Hall factor, that having lost a letter case and pocket book at the Royal Exchange he published an advertisement in the *Daily Courant* offering a reward of two guineas for its return to a coffee house in Basinghall Street, no questions asked. A day or two later, Hitchen sought him out and told him that he should have applied to him in the first place, and that for ten guineas he could recover it for him, for 'he knew several Clubs of Pick Pockets'.[111] Rogers apparently did not take up his offer. But Walter Corbet did. He too was a victim of a pickpocket: as he stood watching the pillorying of three men at Charing Cross, someone stole his letter case containing exchequer bills to the value of two hundred pounds. Corbet advertised a reward of five guineas, after which, as he told the committee, Hitchen got in touch with him and pressed to be employed in procuring the letter case, 'insinuating the great Knowledge he had of the Thieves and Pick Pockets and his power over them'. Hitchen wanted 'a Reward of 50 or 60 Guineys', which in the end

[107] See below, pp. 255–6.

[108] The money came from his wife, who raised it by selling land she had inherited from her father (Jor 57, fo. 207).

[109] The following account is based on a considerable body of evidence in the CLRO, particularly among the Papers of the Court of Aldermen for 1712 and 1713, the Repertories for those years (Reps 116–17), and a collection identified as Misc. MSS 105.8. Howson used many of these records in his account of Hitchen's career (*Thief-Taker General*, ch. 6).

[110] It emerged in the course of the investigation that Billers had a personal reason for pressing the case against the marshal, for one element of the charges eventually brought against Hitchen was that he had 'falsely charged Mr. Billers before the Lord Mayor' (CLRO, Misc. MSS 105.8 ('Articles against Hutchins [i.e. Hitchen]')).

[111] CLRO, Papers of the Court of Aldermen, 1712 (information of Thomas Rogers, 2 October 1712; included in the abstract of 'Informations upon Oath agt Charles Hitchen the Under Marshal taken before a Committee of Aldermen', no. 1).

Corbet paid when Hitchen in fact arranged to have his exchequer bills returned to him. A similar story was told by Richard Lawrence, an apothecary, for whom—for the modest reward of two guineas—Hitchen negotiated the return of a letter containing bills of exchange that had been lost in the Post Office.[112]

The committee learned more about Hitchen's relationship with pickpockets and thieves from Nathaniel Smith, another Blackwell Hall factor and a Quaker, who had lost his pocket book to a thief in Exchange Alley, and who described a campaign of vilification carried on against him by Hitchen (when Smith declined his services) designed to extort money from him for the return of his pocket book. Smith also reported that he was encouraged 'by some of his Friends and Neighbours' to seek Billers's advice and assistance—presumably because after a decade of fishing in the murky waters of thieves and receivers in the City, he was well known as a thief-taker and a fixer. It was from that contact that Nathaniel Smith's complaint to the Court of Aldermen, and indeed the complaints of Lawrence, Rogers, and Corbett, arose.[113]

Hitchen was so confident of the protection his marshal's office provided that, as part of his sales pitch, he had taken Smith on a tour of the western edge of the City, around Temple Bar, where he spoke to some thirty or forty young thieves, many of whom he knew by name. The Committee of Aldermen also learned a great deal about Hitchen's dealing with pickpockets from a constable named Wise who knew the neighbourhood of Moorfields well and who reported seeing the marshal buying stolen goods in the Black Horse tavern, the Three Tuns, and other public houses.[114] It was from him that the aldermen learned the names of the young pickpockets who were subsequently called before the court. They confirmed Wise's allegations. One of them said that they dealt with Hitchen because he had threatened them with his authority, and that 'if they did not Love him he would make them fear him and if they did not obey him as much as they did their parents he would put them in Prison'.[115]

The aldermen were urged by Billers and others of his accusers to punish Hitchen severely; several of them wrote to the lord mayor to remind the court of the 1706 statute that had increased the severity of the penalties for encouraging felony, and particularly for receiving.[116] The aldermen were clearly loath to come down too hard on Hitchen. Having received the committee report in December 1712, they waited until June to suspend him from office and then

[112] These and other charges against Hitchen are included in Informations among the Papers of the Court of Aldermen (CLRO), October 1712; they are also included among the abstracts of those charges contained in the same bundle.

[113] CLRO, Papers of the Court of Aldermen, October 1712 (information of Nathaniel Smith, 22 October 1712).

[114] CLRO, Papers of the Court of Aldermen, October 1712 (information of Constable Wise).

[115] CLRO, Papers of the Court of Aldermen, October 1712 (information of Henry Broom, 9 October 1712, and of Thomas Battle and Robert Nend).

[116] CLRO, Papers of the Court of Aldermen, 1712 (Memorial to the Lord Mayor from Billers, Lawrence, Smith, and Corbett). The statute in question was 5 Anne, c. 31, ss. 6 & 7.

reinstated him in the following April, when he claimed to have a plan that would rid the City of most of its thieves.[117] It seems likely that the aldermen were not so much concerned to protect Hitchen himself as they were anxious to ensure that the office of under-marshal retained its market value since the City received a portion of the proceeds of its sale, even though the transaction was between the holder and the purchaser. They may have been concerned that prospective under-marshals would be discouraged from paying a reasonable sum if Hitchen was more seriously punished. At any event, when Hitchen's accusers reminded the aldermen that they had 'been at great pains in getting severall matteriall Informations upon Oath, laid before the said Committee, against the said Hitchin in order to Convict him', the aldermen simply left it to them to 'prosecute him if they think fit'.[118]

Hitchen survived, though he was soon to be eclipsed as a thief-taker and go-between by Jonathan Wild. Despite his obvious familiarity with some aspects of the London underworld, Hitchen does not appear to have prosecuted actively for rewards. He did not deal with robbers or the kinds of serious offenders whose convictions would have brought a handsome payment from the sheriff of London. In this he differed from Wild, who got his start in 1713 as Hitchen's assistant and took advantage of the marshal's suspension to extend his activities. He soon outstripped his master in ambition and daring. Within a few years Wild was organizing the return of stolen goods on a much larger scale than anyone had ever attempted, using the press to good advantage. But he also engaged in the prosecution of serious offenders, partly for the rewards (which after 1720 included the hugely attractive sum of a hundred pounds for each convicted robber who had committed an offence in London)[119] and partly as a way of imposing control over active thieves and robbers to force them to turn their stolen goods over to him. This pattern of extortion, prosecution, compounding, and acting as a go-between was revealed in contemporary accounts of Wild's career, and it has been sufficiently examined in modern work.[120] But it is worth emphasizing about Wild that he combined at an apparently new level the two sides of the thief-taker's practice as they had developed over the previous two decades: prosecution for rewards; and mediation between thieves and victims in return for a fee based on the value of the stolen objects.

It was Wild's more elaborate and more effective organizing of the return of stolen goods that Hitchen had attacked in a pamphlet of 1718. He wrote it to eliminate a business rival. But its publication may also have been related to under-marshal Hitchen's need to repair bridges with his employers, the Court

[117] Rep 118, pp. 55, 219. The Court of Aldermen noted in February 1713 that Hitchen offered 'to make Discoveries of great Numbers of Thieves, Burglars, Pick-Pockets and other Felons in and about this City, and of persons who receive and harbour them, and that he can propound a Method of Suppressing them' (Rep 117, p. 129).

[118] Rep 117, pp. 279–82; CLRO, Papers of the Court of Aldermen, 1712 (Memorial of Billers *et al.*).

[119] See Ch. 8. [120] See Howson, *Thief-Taker General*.

of Aldermen, and his anxiety to be given financial support for the scheme he claimed to have worked out to suppress property crime and violence in the City.[121] In his pamphlet, Hitchen noted that parliament was also responding to the abundant evidence that receiving and thief-taking had merged in new and striking ways in the years in which prosecutions of property offences had increased in London since the end of the War of Spanish Succession. And indeed, one clause of the Transportation Act which parliament passed in 1718 and which was itself clearly a product of the anxiety about London crime, addressed the issue of receiving and returning stolen goods for a fee. Apart from its main business of making it possible for the courts to transport non-capital felons, the act made it a felony to arrange the return of stolen goods for a fee, and a felony that would bring capital punishment if the offence in which the goods had been taken had been excluded from clergy.[122]

The Transportation Act and the decision in 1720 to introduce the extraordinary reward of a hundred pounds on top of the forty pounds already available by statute for the conviction of a man or woman who committed robberies in the metropolis mark a new phase of policing—a more intensive effort to deter violent crime in London. It was an effort that for the first time owed a great deal to initiatives taken within the government, rather than by members of parliament supported and encouraged by interested groups in the country. The government was drawn into this engagement in part by the evidence that violent crime was a serious issue in the capital in the years after the War of Spanish Succession and following the rebellion of 1715, and even more by their anxiety about the stability of the new Hanoverian regime in the face of violent political protests on the streets of London and the apparent strength of Jacobite feeling. Their concern with violent property crime was only one aspect of their concern with dissidence and violence of all kinds. And it introduced such new elements into the prosecution and punishment of crime, that we will return to take up the career of Jonathan Wild and thief-taking when we have examined the nature of this new world of prosecution and punishment in the second part of the book.

[121] *A True Discovery of the Conduct of Receivers and Thief-Takers in and about the City of London* (1718). The inclusion of the City in the title suggests that the pamphlet was aimed at the aldermen. It almost certainly grew out of Hitchen's earlier efforts to curry favour with the court and to prove his value as a crime-fighter. His 1718 pamphlet repeated his earlier claim to be able to devise a plan to rid the City of crime. If only he had money enough—for guards to protect him, among other things—he would eradicate crime by the only method with any chance of success: the suppression of the receivers who, like Wild, trained, encouraged, protected, and profited from thieves (pp. 19–23). Wild responded to Hitchen's pamphlet in the same year with *An Answer to a . . . libel, entitled A Discovery of the conduct of receivers and thief-takers . . . wherein is proved . . . who is originally the Grand Thief-Taker . . .* (1718). Hitchen republished his own pamphlet, slightly altered, in *The regulator: Or, a discovery of the thieves, thief-takers and locks, alias receivers of stolen goods . . .* (1718).

[122] 4 Geo. I, c. 11 (1718), s. 4. Predictably—since he was pressing his own scheme and seeking financial support for it—Hitchen thought this inadequate (*True Discovery*, 22).

Part II

Prosecution and Punishment

CHAPTER SIX

The Old Bailey in the Late Seventeenth Century

We have seen some of the ways in which alterations in the policing of the City of London in the century after the restoration of Charles II reflected changes in the society and economy of the metropolis as well as contemporary anxieties about crime. The following four chapters take up the parallel story of the variety of responses to the crime problem in the criminal justice system more narrowly, centring on the changing nature of the law and the work of the most important criminal court in England, the Old Bailey. We begin with a chapter on the way trials were conducted in the late seventeenth century, with the nature of juries, the verdicts reached in property cases, the penal options available to the courts at the beginning of our period, and the way the criminal law was put into practice. The following chapter will include an account of the initiatives taken in parliament, by the central government, and in the City of London to enlarge the deterrent capacities of the law in the generation after the Revolution of 1689, as well as an account of the effects of those initiatives on jury verdicts and the patterns of punishment at the Old Bailey. Chapters 8 and 9 take up the story of innovations in the criminal law and the work of the court in the generation following the accession of the first Hanoverian king in 1714.

TRIAL PROCEDURE

The form of trial at the Old Bailey in the late seventeenth and early eighteenth centuries differed in fundamental ways from the modern jury trial, perhaps the most immediately striking difference being its brevity.[1] Where criminal trials before a

[1] For the trial in the seventeenth and eighteenth centuries, see John H. Langbein, 'The Criminal Trial before the Lawyers', *University of Chicago Law Review*, 45 (1977–8), 263–316; *idem*, 'Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources', *University of Chicago Law Review*, 50 (1983), 1–136; *idem*, 'The Prosecutorial Origins of Defence Counsel in the Eighteenth Century: The Appearance of Solicitors', *Cambridge Law Review*, 58 (1999), 314–65; Douglas Hay, 'Property, Authority, and the Criminal Law', in Douglas Hay, Peter Linebaugh, John Rule, E. P. Thompson, and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (1975), 17–63 (esp. 26–31); Beattie, *Crime and the Courts*, ch. 7; *idem*, 'Scales of Justice: Defence Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries', *Law and History Review*, 9 (1991), 221–67; J. S. Cockburn, *Calendar of Assize Records: Home Circuit Indictments, Elizabeth I and James I: Introduction* (1985); Thomas A. Green, *Verdict According to Conscience:*

jury are today measured in days and weeks, if not months, a trial in 1700 would be measured in minutes, only occasionally in hours, never in days. An unusually detailed printed account of the Old Bailey session of December 1678 enabled John Langbein to establish that in a two-day sitting on the eleventh and twelfth of that month, beginning at 9 a.m. each day and, after a break (at a time unspecified, but perhaps 1 p.m.), continuing at 3 p.m. and into the evening, the court tried thirty-two cases, involving thirty-six accused. After the commissions were read and other essential preliminaries were completed, the jury found verdicts in twelve cases on the first day, twenty on the second. Some of those trials involved relatively petty thefts. But the calendar at that session also included charges of rape, murder, burglary, and horse-theft—all of which were capital offences—and, at the conclusion of the trials, five men and a woman were condemned to death. Nor was there anything unusual about this session, other than the detail provided in the extended printed report of the evidence given in court and of the speeches made by Recorder Jeffreys in sentencing the condemned.[2] An average of fifteen to twenty cases a day was entirely typical at the Old Bailey in the late seventeenth and early eighteenth centuries, and of the trial of felonies at the county assizes in the same period.

The rapidity with which trials were conducted in this period was the result of several features of court procedure—a consequence of a form of trial that tilted strongly towards the side of the prosecution. This was not a matter of embarrassment, nor yet a matter of criticism; on the contrary, the criminal trial was regarded in this period, and long after, as one of the cornerstones of English liberty. Particularly following Bushell's case and the establishment of the legal independence of the jury—its freedom from judicial coercion—trial by jury was celebrated as a crucial defence against the threat of royal tyranny.[3] Few in England would have doubted the truth of Sir Matthew Hale's assessment that it was 'the best Trial in the World . . .'.[4] Compared to what were thought to be the flagrant injustices perpetrated on the Continent, English criminal procedure was praised for guaranteeing the right of defendants to face their accusers in a public court, their right to bring evidence to answer the charges against them, above

Perspectives on the English Criminal Trial Jury, 1200–1800 (Chicago, 1985), chs 6–8; Cockburn and Green (eds.), *Twelve Good Men and True*, chs 5–11; Stephan Landsman, 'The Rise of the Contentious Spirit: Adversary Procedure in Eighteenth Century England', *Cornell Law Review*, 75 (1990), 498–609.

[2] *An Exact Account of the Trials of the several Persons Arraigned at the Sessions-house in the Old-Bailey for London and Middlesex, beginning on Wednesday, Decemb. 11, 1678, and ending the 12th of the same month* (1678). And see Langbein, 'Criminal Trial Before the Lawyers', 274–5. The fact that this was Sir George Jeffreys' first session as recorder surely explains why the trials were reported at such unusual length and why the recorder's speeches to the prisoners as he sentenced them were printed verbatim. Jeffreys, the future lord chancellor, had been elected recorder at Charles II's urging and following the purposive promotion of Sir William Dolben to the judiciary (G. W. Keeton, *Lord Chancellor Jeffreys and the Stuart Cause* (1965), 122. His task was clearly to control unrest in the City at the height of the Popish Plot. The extensive printed account of the Old Bailey session of December 1678, including Jeffreys's speeches which naturally emphasized the duty of obedience to lawful authority, were presumably part of that campaign.

[3] Green, *Verdict According to Conscience*, ch. 6.

[4] Sir Matthew Hale, *The History of the Common Law of England*, ed. by Charles M. Gray (Chicago, 1971), 160.

all the right to have their guilt or innocence determined by their peers. The French observer Henri Misson made it a point after describing the procedure at the Old Bailey at the end of the seventeenth century, to emphasize that the trials were conducted 'in an open Court, and every thing spoken with a loud Voice. This is one of the Privileges of the English Nation.'[5] It was central to notions of liberty in England that lives and property were not at risk before secret tribunals of inquisitorial magistrates.

There were as yet, however, few safeguards against wrongful conviction of the kind that lie at the heart of the modern common law trial.[6] The trial was the conclusion of a process that had begun when the accused was taken before a magistrate and charged with an offence. The form and procedure of this preliminary hearing, as we have seen, had been designed in the sixteenth century to ensure that all charges of felony would be sent to an appropriate court for trial, and that cases would not fail there for want of evidence given by victims and their witnesses. Magistrates were instructed by the Marian Bail and Commitment Statutes to record verbatim accounts of the prosecution evidence, to examine the accused, and to bind over in recognizances those who could prove the charge.[7]

For the most part, men and women accused of felonies in the City of London and Middlesex were committed to gaol to await the next gaol delivery session at the Old Bailey. When they came to trial, accused felons undoubtedly had some sense of the charge they faced. But they had no right to be given prior knowledge of the wording of the indictment (which was in any case only drawn up as the session began), or to know the evidence that would be presented against them. In addition, even if they could afford it or could make the necessary arrangements, the accused (unlike the prosecutor) had no access to machinery to compel the attendance of witnesses who might testify on their behalf. They were to come before the court unprepared and were expected to respond to the evidence as they heard it given from the witness box. The brevity of the trial has to be understood within that framework. It was not the callous indifference of judges and juries that explains why the court could rattle through fifteen or twenty felony trials a day, a pace of something under half an hour on average. It was rather that the trial expressed most fully and clearly the intentions and purposes, the ideology, that framed the entire criminal process. The tilting of advantage towards the prosecution can be seen at its most decisive in two aspects of the trial in particular: the accused's limited ability to offer a defence; and, more broadly, the way in which the juries deliberated and the grounds on which they reached their verdicts.

In the seventeenth century, unlike modern practice, defendants were

[5] Henri Misson, *Memoirs and Observations in his Travels over England* (1719, written in 1698), 328.

[6] For some of those characteristics with respect to jury practice, see Langbein, 'Criminal Trial Before the Lawyers', 300–6.

[7] For the origins of this procedure in the mid-sixteenth century, see John H. Langbein, *Prosecuting Crime in the Renaissance: England, Germany, France* (Cambridge, Mass., 1974), pt I.

arraigned in batches. They were brought before the bench in groups to have the substance of the charge against each of them read in turn and to plead whether they were guilty or not guilty of the offence alleged. When a number had been so arraigned, they were charged to a jury. The pattern of trial at the Old Bailey was complicated by the fact that defendants from two jurisdictions—the City of London and the county of Middlesex—had to be tried before juries of their own peers. Arraignments and trials thus alternated between London and Middlesex defendants. We can see how that worked by examining the detailed account we are fortunate to have of the December 1678 session.[8] On the first morning, following the completion of essential formalities, two London defendants were arraigned and tried to the City jury—only two, perhaps, in order to get the session underway quickly. When their trials were completed, the rest of the morning was taken up with the trials of eight of the accused from Middlesex who had been arraigned together and who were now tried before a jury from the county. The afternoon session (beginning at 3 p.m. and clearly stretching well past dark, considering that this was December) was taken up with the trial of three more London cases, one of which, involving the rape of a child, produced a good deal of evidence on both sides and an extended conflict between the bench and the jury over their initial verdict.[9] When the court convened at 9 a.m. on the second day, the Middlesex jury heard nine cases involving eleven defendants, and the London jury followed by trying six accused felons and a group of soldiers for rescuing one of their comrades from custody after he had been arrested on a civil charge—all before the break. The session was completed in the afternoon when the convicted soldiers were sentenced by the recorder, six remaining Middlesex felons were arraigned and tried, the juries were discharged, and the defendants who had been convicted over the two days were sentenced.

The rapidity of this procedure was made possible by the nature of the trial. The facts at issue were normally presented orally by the victim of the offence, supported by witnesses who, like the victim, gave their evidence briefly and generally under the questioning of the judge who acted as examiner and cross-examiner. His principal interest was to present defendants with the evidence that pointed to their guilt and to get them to respond to it. Defendants had the right to call witnesses to the facts they themselves alleged, and witnesses to their character. But they essentially came before the judges in the Old Bailey sessions house unprepared for what was to come. And, apart from their ignorance of the precise charge or the evidence they would soon be asked to answer, they suffered two other disabilities: the circumstances under which they had been held for trial in Newgate or the compters ensured that if they were not dirty and

[8] *An Exact Account of the Trials . . . Decemb. 1678* Langbein analysed aspects of this account in 'Criminal Trial Before the Lawyers', 274–5, 279–86, 291–5, 301.

[9] For the significance of that case, see Langbein, 'Criminal Trial Before the Lawyers', 291–5.

half-starved when they were committed, they would be when they were herded into court on the first morning; and they were obliged to speak entirely for themselves.

It was a rule in common law criminal trials for felonies in the late seventeenth century (though not for misdemeanours) that defendants had no right to engage counsel to put forward their case or to speak for them to the judge and jury. That rule also applied in trials for treason against the king's person until it was altered by a statute in 1696 that allowed accused traitors to be fully represented in court.[10] But it continued to apply in felony trials. If accused felons had a defence to put forward, they had to offer it themselves and, if it was to be effective, to support it by calling witnesses. Defendants were forced to be active participants in their own trials not only because they were not allowed counsel but also because they could not rely on the judges' instructions to juries to ensure that the evidence against them would be properly evaluated. Not only were there few safeguards against tainted evidence being introduced, there was as yet no governing notion that the defendant was to be regarded as innocent until proven guilty beyond a reasonable doubt. In the late seventeenth century defendants began with no such advantage. If the evidence given by the prosecution seemed to implicate them, they would have to explain it away or to give the jury some other reason to excuse them if they hoped to be acquitted.[11]

Both the severe limitations on the ability of the accused to prepare for trial and the rule prohibiting defence counsel in felony cases were defended by William Hawkins in his influential treatise on the criminal law published in the second decade of the eighteenth century.[12] Hawkins drew a distinction between

[10] The Treason Act (7 & 8 Wm III, c. 3). The statute grew out a concern for fairness in treason trials that was raised after the Revolution because of the numerous trials in the last years of Charles II's reign in connection with the Popish and Rye House Plots. The fact that many of the defendants were gentlemen—and some peers—clearly focused the attention of the political class on the issue. Fundamental objections were raised against a form of trial that was prepared and conducted by counsel for the Crown, often led by the attorney-general, in which a large amount of evidence was given entirely orally, and to which the accused was expected to reply without having had the benefit of prior knowledge of the precise charges to be faced, the evidence to be given, or who the witnesses would be, and to do this without the help of counsel. The disadvantages under which the defendant laboured in such a trial became an urgent issue in parliament after 1689 and resulted eventually in a statute granting defendants a range of rights not hitherto available, including the right to counsel. For the Treason Act, see Samuel Rezneck, 'The Statute of 1696: A Pioneer Measure in the Reform of Judicial Procedure in England', *Journal of Modern History*, 2 (1930), 5–26; James R. Phifer, 'Law, Politics, and Violence: The Treason Trials Act of 1696', *Albion*, 12 (1980), 235–56; and Alexander H. Shapiro, 'Political Theory and the Growth of Defensive Safeguards in Criminal Procedure: The Origins of the Treason Trials Act of 1696', *Law and History Review*, 11 (1993). For its longer term implications, see Langbein, 'The Prosecutorial Origins of Defence Counsel', 317, 360–5; and see below, Ch. 8.

[11] For the role of the defendant in felony trials in this period and the absence of controls on evidence, see the sources cited in n. 1 above, and two further essays by John Langbein, 'The Historical Origins of the Privilege Against Self-Incrimination at Common Law', *Michigan Law Review*, 92 (1993–4), 1,047–85; and 'Historical Foundations of the Law of Evidence: A View from the Ryder Sources', *Columbia Law Review*, 96 (1996), 1,168–1,202.

[12] William Hawkins, *A Treatise of the Pleas of the Crown*, 2 vols. (1716–21), ii. 400.

trials for high treason, which 'are generally managed for the Crown with greater Skill and Zeal than ordinary Prosecutions', and trials for felony, including all the offences against property, in which it could still be assumed in 1721 that the prosecution would not be organized and presented by lawyers. It remained the dominant view that since trials for felonies were essentially confrontations between victims and the accused, prisoners were at no disadvantage in speaking for themselves. As Hawkins said, it required 'no manner of Skill to make a plain and honest Defence'. If the jurors could watch the accused respond to the evidence as he heard it for the first time and hear his defence as it naturally occurred to him, he argued, the truth of his innocence or guilt would be apparent.[13] That view of the trial was almost certainly widely shared when Hawkins wrote his treatise in the second decade of the eighteenth century, though there would arise soon thereafter good reason to doubt the continuing fairness of trial procedure in all cases, and some major alterations as a consequence.

JURORS AND JURY PRACTICE

The two criminal courts in the City—the sessions of the peace held in the Guildhall and the gaol delivery at the Old Bailey—each required two juries, as at the quarter sessions and assizes in the rest of the country: a grand jury to decide whether the evidence presented against each of the accused justified their being sent to trial; and a petty or trial jury that would decide their guilt or innocence. The system by which these jurors were assembled was well established in the late seventeenth century. On the first day of the sessions eight times a year a panel of fifty jurors was summoned to the sessions of the peace in the Guildhall, from which a grand jury was chosen and began its work. A trial jury for the sessions of the peace was also chosen from the same panel and the lord mayor, recorder, and the other City magistrates in attendance began the trial of offenders charged with misdemeanours. After two days the City officials invariably moved on to the Old Bailey for the opening of the gaol delivery session and the trial of the accused felons from Middlesex as well as the City. The City sessions of the peace were adjourned for the duration of the gaol delivery at the Old Bailey. The grand jury that had begun at the Guildhall also moved the few hundred yards to the Old Bailey and continued its work there, examining now the bills of indictment drawn up against the City prisoners being held in Newgate.[14] The Guildhall trial jury did not move to the Old Bailey, however. A new

[13] Hawkins, *A Treatise of the Pleas of the Crown*, ii. 400–2.

[14] The account of the gaol delivery session at the Old Bailey December 1678 (*An Exact Account of the Trials . . .*) reported that on the first morning, after six London prisoners and ten Middlesex prisoners had been arraigned, 'the Grand Jury for London coming in to bring in their bills, were sworn anew, to enquire upon the New Commissions . . .' (p. 5). They were sworn again, but not charged, that is addressed by one of the judges on the tasks they were to perform and the law they were to enforce. Grand juries were invariably charged at both quarter sessions and assizes, and dozens of such charges were subsequently printed. For a list, see J. N. Adams and G. Averley (comps.), *A Bibliography of Eighteenth-Century*

jury of twelve men had to be chosen from another panel of sixty summoned to attend on the first morning. Three juries thus had to be raised in the City of London eight times a year: two trial juries of twelve, and a grand jury which normally consisted of seventeen men.

The grand jury met at both the Guildhall and in the sessions house in the Old Bailey in rooms assigned for the purpose and, case by case as the indictments were drawn, heard a stream of prosecutors and their witnesses lay out the evidence they would present in court, on the basis of which they either threw out the charge or endorsed it as a 'true bill' and sent it to be tried before the trial jury. When that work was concluded, the grand jury went on to its second task of drawing up a 'presentment' to lay before the magistrates. The grand jurors generally finished their work well before the end of the session, and that may have added to the attraction of such service for men who inevitably lost time from work when they were summoned for jury duty. Certainly, grand jurors were less troubled in this respect than those who served on the other juries, for one of the striking characteristics of the trial of criminal offences in London in this period —both at the sessions of the peace and the Old Bailey—was that the same twelve trial jurors normally served through the entire session, whether that lasted one day or five, and dealt with twenty or a hundred cases. This practice was encouraged by the need for expedition, and was presumably made possible by the jurors' being able to return home at night and so avoid the expenses for lodging and food that many jurors at the county quarter sessions and assizes would have faced. Dependence on a single trial jury was also made possible by the structure of the Old Bailey sessions and the way juries deliberated in finding their verdicts.

As we have seen, the defendants at the Old Bailey were arraigned and tried in alternating batches. A group of City prisoners would be tried one after the other to the City jury, and when the last case was completed the jury retired from the court to deliberate and find their verdicts on all of them.[15] While they were out, a batch of Middlesex prisoners would be arraigned and tried to a separate jury from the county. At some convenient point, the London jury returned to the court to report their verdicts, and to take up another batch of arraigned prisoners when the Middlesex jury in their turn retired to deliberate. So the session continued, with juries alternating in hearing cases and finding verdicts. That so few men made so many crucial decisions so quickly makes it particularly important to discover who the jurors were.

Legal Literature (Newcastle upon Tyne, 1982), 403–6. The City grand jury was not charged by the recorder or the mayor either at the session of the peace at Guildhall or at the Old Bailey: at least there are no such charges in print. The Middlesex and Westminster grand juries, on the other hand, were charged at the opening of their comparable sessions by the chairmen of the magistrates. Many of those charges were subsequently printed through the eighteenth century and are among the best examples of the genre; several are included in the collection edited by Georges Lamoine, *Charges to the Grand Jury, 1689–1803*, Camden Society, 4th ser., 43 (1992).

[15] See below, pp. 270–1.

The law governing eligibility for jury service was such that the sheriffs' officers, who called the juries, had a large number of candidates to draw on. A property qualification of land, tenements, or goods of a hundred marks in value—about sixty-seven pounds—that had been established in the reign of Henry VIII and that was still in place in the late seventeenth century meant that a significant proportion of the male householders of the City must have been eligible to serve.[16] In the 1690s the availability of tax assessments helps to identify the social and economic standing of many of the men who were called.[17] In that decade something in the order of a thousand prospective jurymen were summoned to the eight sessions of the London courts every year, of whom close to 800 actually appeared and 328 were chosen to serve. How they were chosen is unclear. The sheriffs and their officers, the secondaries, were responsible for summoning the men from whom the juries would be assembled, and they drew their candidates from the wards according to a schedule that by the late seventeenth century had established a settled pattern of service.[18] But how they decided whom to call is unknown; nor—in the absence of a balloting system, not established until 1730[19]—is it clear how the men who would serve were selected from the panels that assembled in court. The clerk of the peace or the magistrates or any deputy aldermen present may have had a hand in selecting suitable men.

It seems clear at any event that no part of the process was entirely random. Some thought and local knowledge went into the selection of the men who took their place on the grand and trial juries. Only that would explain one of the distinctive characteristics of juries in this period: the repeated service of a number of men who returned over and over again to sit on juries—men who liked that particular limelight or saw it as a way of enhancing their standing in their community, and who were at the same time presumably satisfactory to the magistrates.

Such a pattern of frequent service on juries was not unusual in the quarter

[16] 4 Hen. VIII, c. 3 (1512). For legislation concerning juror qualification over the early modern period, see James C. Oldham, 'The Origins of the Special Jury', *University of Chicago Law Review*, 50 (1983), 137–221, especially 212–13 for London juries, and the valuable Appendix, 214–21, listing relevant acts of parliament. According to Gary De Krey, the total number of ratepayers in the City was 18,500 ('Trade, Religion, and Politics in London during the Reign of William III', Ph.D. thesis (Princeton, 1978), 335–7). As we shall see, the jurors were drawn from the upper ranks of that rate-paying population.

[17] For the two taxes, collected in 1692 and 1694, see above, Ch. 3, n. 65. The collectors' returns on these taxes have been recorded by James Alexander, 'The Economic and Social Structure of the City of London, *c.*1700, Ph.D. thesis (London, 1989), appendix. For the strengths and weaknesses of the evidence they provide of the wealth and occupations of the thousands of City inhabitants, see De Krey, 'Trade, Religion, and Politics'; and *idem*, *A Fractured Society*, 171–3. For a general account of the taxes collected in William's reign, see William Kennedy, *English Taxation, 1640–1790: An Essay on Policy and Opinion* (1913), 44–50.

[18] For a more extended discussion of the system by which juries were selected in the City in the last decade of the seventeenth century and the composition of the juries that resulted, see J. M. Beattie, 'London Juries in the 1690s', in Cockburn and Green, *Twelve Good Men and True*, 214–53.

[19] By 3 Geo. II, c. 25 (1730).

sessions and assizes in the rest of the country,[20] but the degree of repetition may have been even higher in London than elsewhere. It is difficult to compare the experience of jurors in the City and in the county courts because, as we will see, London men found it acceptable to serve on both grand and trial juries, which was not the case at the county quarter sessions, and particularly not at the assizes. The London courts also met much more frequently than courts elsewhere in the country. Whatever the reason, the pattern of repeated service was very striking in the City. Between 1692 to 1699, for example, about 600 of the 1,350 men who were sworn to a jury had already served on at least one occasion in *that* period—which means, of course, that many more than that would be found to have had experience if we went back to examine the juries of the decade and more before 1692. Just within those eight years almost half the jurors had served before, and a quarter of them three times or more.[21] A typical grand jury of seventeen men would have included eight at a minimum who had served on that or one of the trial juries at least once before; and half the trial jurors in the 1690s would have had previous experience, and were to that extent familiar with court procedure, the criminal law, and the consequences of their verdicts. It seems clear that the sheriffs' officers had no difficulty finding men to serve in what may have been regarded locally as rather prestigious posts.

As one would expect, given the social structure of the City, there was not as wide a social gap among the jurors as at the county assizes, where, by the late seventeenth century grand jurors were firmly in the gentry class, many of them in fact magistrates, while trial jurors tended to be drawn from the distinctly more middling ranks of farmers and craftsmen.[22] There were some broad differences in the City, but they were not so clear or decisive as entirely to prevent a man who sat on the grand jury at one session from taking his place on one of the trial juries at a later time, a situation unimaginable at the county assizes by this period.

In asking what kinds of men sat on the City juries, we can thus begin by exam-ining the whole body together. And we can get some sense of what kinds of men they were from the returns of the taxes collected in the 1690s which we have used earlier in examining the status of constables. These provide

[20] Cockburn and Green (eds.), *Twelve Good Men and True*, 88–94, 144–6, 164–6, 236–7. Experienced trial jurors were much less common in late eighteenth-century Essex and Staffordshire than in London a hundred years earlier, but, as King and Hay show in this volume of essays, juriors with previous service were being increasingly sworn (though by different means in each county) by the end of the century. (Peter King, '"Illiterate Plebeians, Easily Misled": Jury Composition, Experience, and Behaviour in Essex, 1735–1815'; and Douglas Hay, 'The Class Composition of the Palladium of Liberty: Trial Jurors in the Eighteenth Century', 344–8).

[21] For these data, see Beattie, 'London Juries in the 1690s', 236, Table 8.4.

[22] King, '"Illiterate Plebeians, Easily Misled": Jury Composition, Experience, and Behaviour in Essex, 1735–1815'; and Hay, 'The Class Composition of the Palladium of Liberty: Trial Jurors in the Eighteenth Century', in Cockburn and Green (eds.), *Twelve Good Men and True*, 254–304, 305–57.

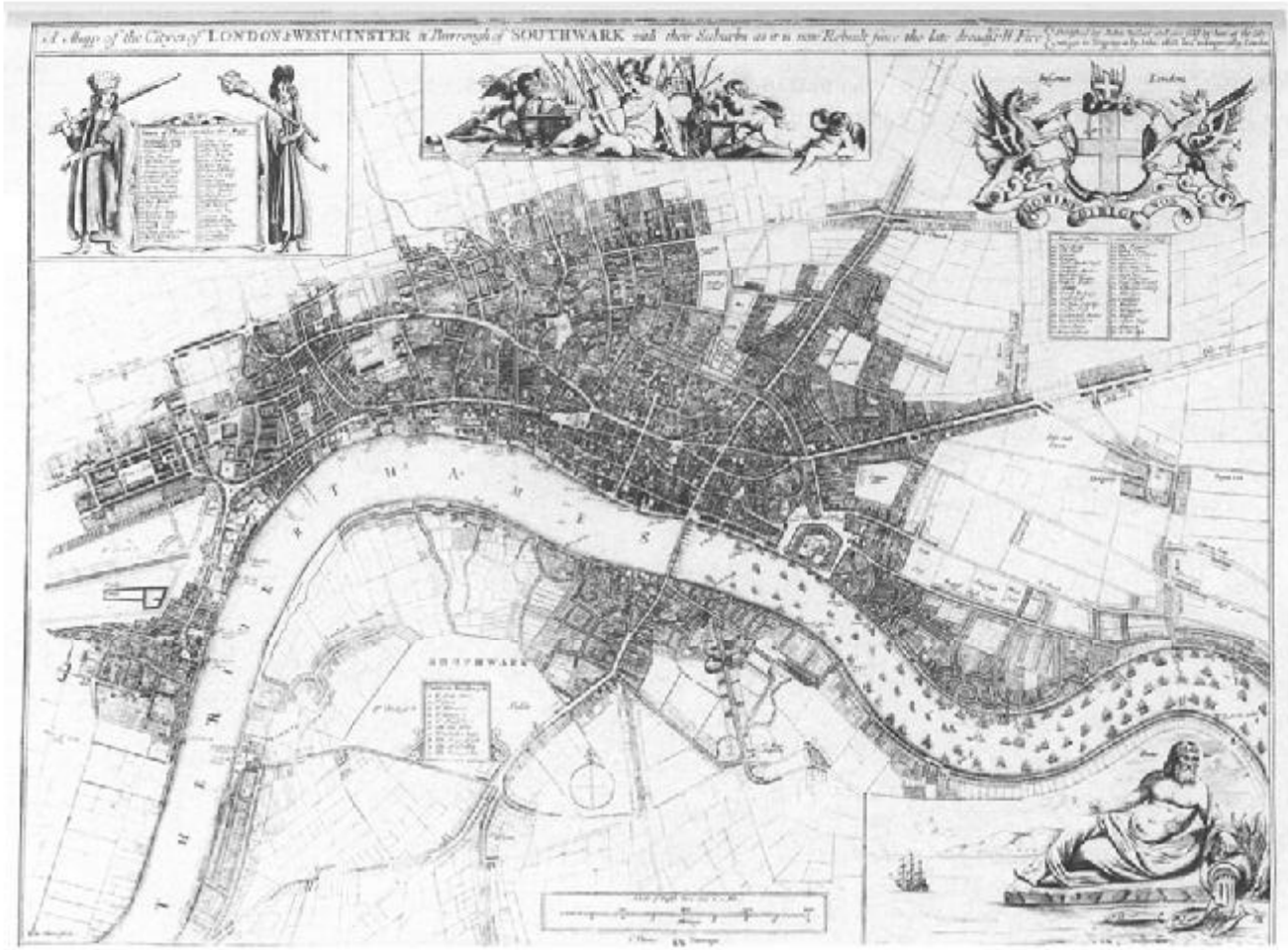
evidence about the wealth and occupations of a considerable proportion of the jurors who served in the City. The returns on these taxes reveal that more than 80 per cent of the jurors sworn in 1692 paid tax above the basic level and were thus drawn from the upper third of the male householders of the City. They were overwhelmingly shopkeepers, tradesmen, and artisans, whose worth was assessed at more than three hundred pounds, or merchants, gentlemen, and professionals.[23]

The picture that emerges from the data suggests that while the wealthiest of the men chosen for jury service tended to congregate on the grand jury, there was no sharp social division between the two juries in the City. More than 90 per cent of the men who sat on the grand juries of the 1690s paid the surtax; 42 per cent were assessed for property with an annual value of forty pounds or more; 80 per cent were in wholesale or retail trade. In each case, these indicators of wealth and standing place them higher up the social scale than the men who sat on the trial jury at the Old Bailey, who were more likely to be in manufacturing or skilled trades and likely to have less in the way of assessed wealth. Men with the highest assessed levels of real estate—a list that includes linen drapers and haberdashers from Cornhill, as well as booksellers and merchants—were more likely to sit on the grand than a trial jury: the top twenty such jurors were together sworn thirty-one times on the City grand jury in the 1690s, twelve times on the sessions trial jury, and only five times on the trial jury at the Old Bailey.[24] Assessed wealth, of course, is likely to have been in part a function of age. The age of jurors was not recorded in this period, but it seems entirely possible that grand jurors were older and more experienced as a group than those who sat on the trial juries.

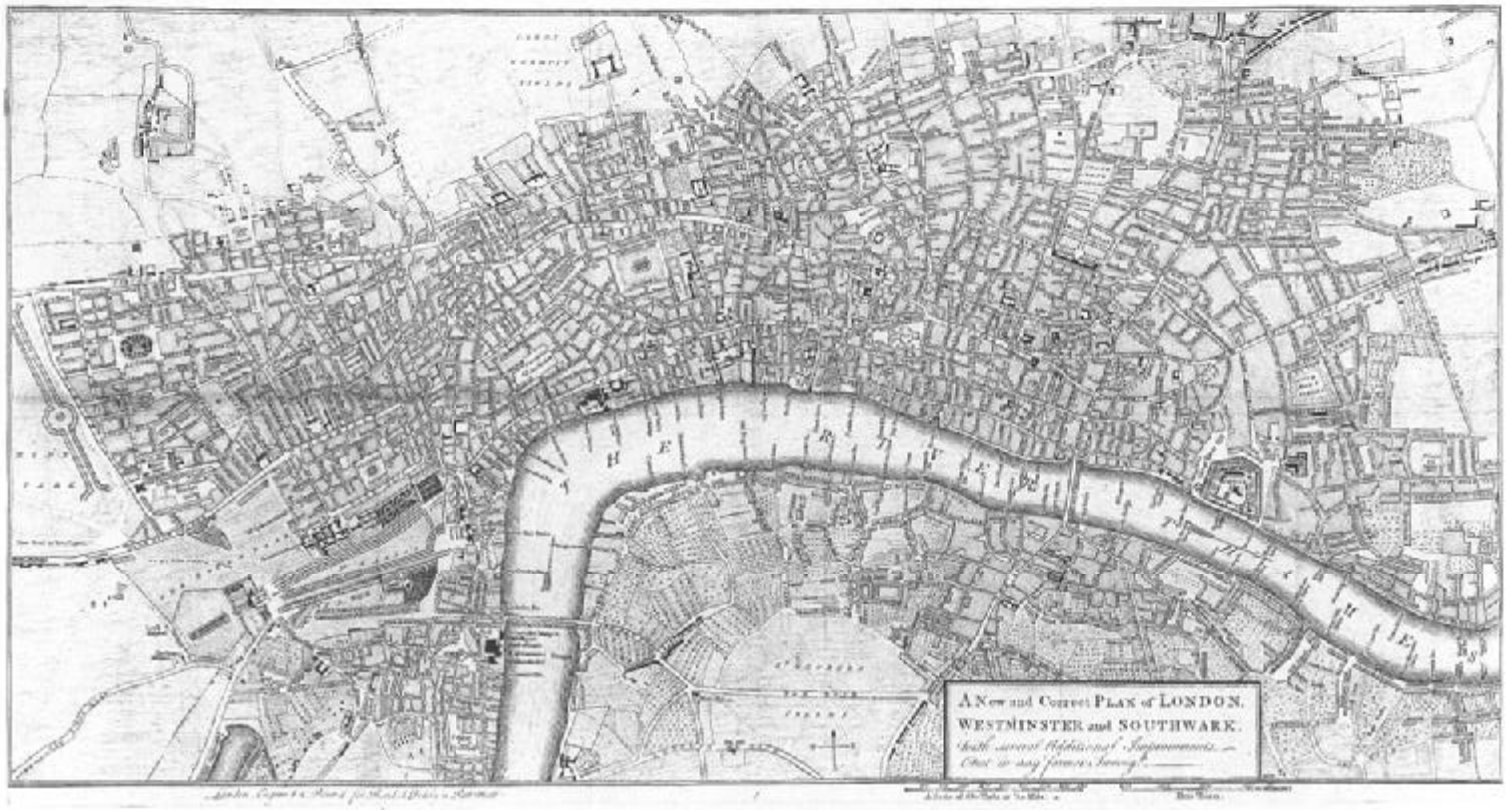
There seems to have been an understandable preference on the part of these wealthier (and possibly older) men for the comparative dignity of the grand jury room, or at least for the sessions of the peace, over the bustle and anxiety and stench of the Old Bailey courtroom. The sharp divisions that appeared at the county assizes in this period were not, however, evident in London. Some of the wealthiest men also served on trial juries, even at the Old Bailey; and a significant number of artisans whose assessed real estate placed them towards the bottom of the list sat on the grand juries along with merchants and prosperous linen drapers from Cornhill. All the London juries, at Guildhall and the Old Bailey, were dominated by men from the broad middling ranks of the City, from a wide spectrum of the property owning and employing class—a significant point when one remembers that many of the accused brought before such juries were charged with theft from employers or from shops and warehouses and other places of business.

[23] Based on analysis of the 271 men sworn to jury service in 1692 who can be found in the surviving returns of the tax gathered that year.

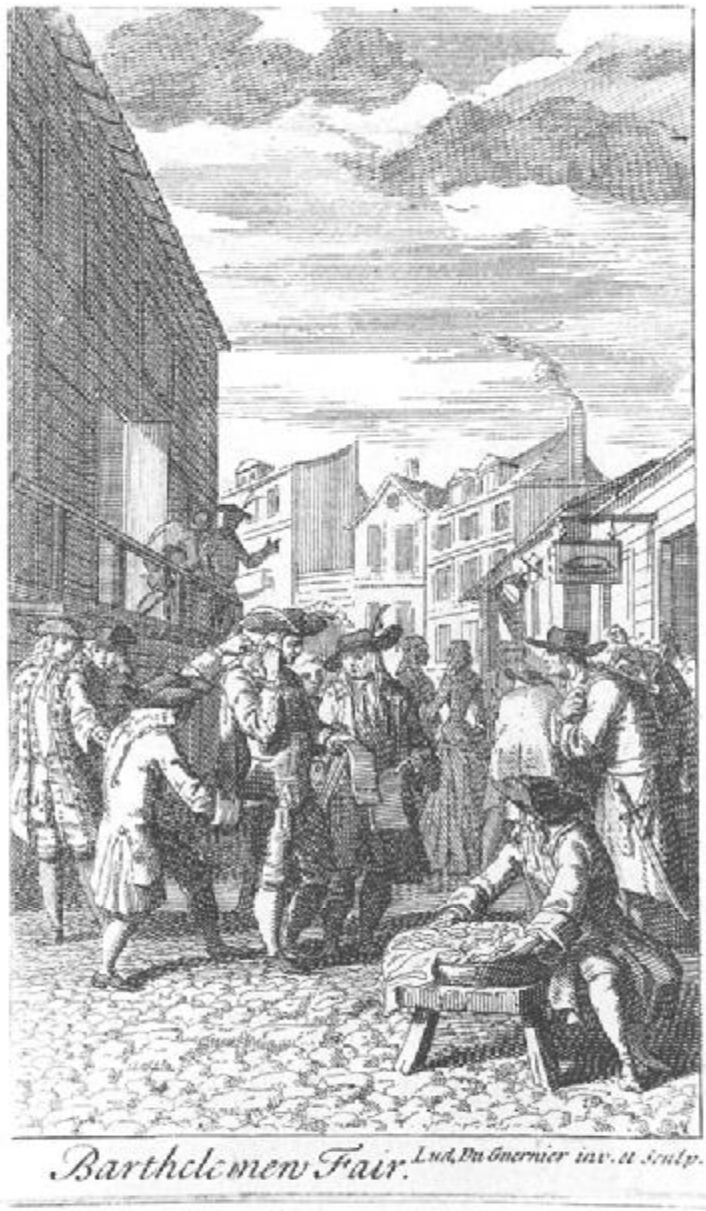
[24] Beattie, 'London Juries in the 1690s', 243–4.



1. The Cities of London and Westminster and the Borough of Southwark, 1680 (Oliver John).



2. The Cities of London and Westminster and the Borough of Southwark, 1761 (R. and J. Dodsley), showing the growth of the metropolis since the late seventeenth century.



3. St Bartholomew's Fair, Smithfield (c. 1715), illustrating what was thought to be the immorality of the Fair and the dangers of crowds. A thief induces a man conducting business to lift his hand by tickling his neck with a feather in order to pick his pocket.

4. Work and punishment in the House of Correction. William Hogarth, *The Harlot's Progress* (1732).

5. View of Cheapside, Thomas Bowles (1757), showing Wren's church of St Mary le Bow, street traffic, and numerous shop signs.

6. The Guildhall Magistrates' Court. William Hogarth, *Industry and Idleness* (1747), plate 10. Jack Idle has been brought before Francis Goodfellow, formerly his fellow apprentice, who is taking his turn to sit as a magistrate in the court created a decade earlier at Guildhall. (Reproduced by permission of the Art Gallery of Ontario, Toronto).

7. A City of London watchman, drawn and engraved by John Bogle, 1776. The watchman, who is consulting his watch and carrying his lamp, rattle, and staff, appears to be more capable of doing his job than the common caricature of the eighteenth-century watchman would lead one to believe. Note the oil lamps attached to buildings across the street.

8. 'The Punishment of the Whipping post for Vagrants and Sturdy Beggars', from *A booke of the Punishments of the Common Law of England* (1678?). The difference in dress between the constable and beadle underlines the expectation that City constables of the seventeenth century would be drawn from at least the middling ranks of society.

9. 'The manner of Whipping at the Carts Tayle For petty Larceny and other Offences', from the same collection as pl. 8. The prisoners — women as well as men — were stripped to the waist and beaten over an established route.

10. 'Mode of punishment for Branding, or burning on the Hand, at the New Sessions House.' An illustration in *The Malefactor's Register; or New Newgate and Tyburn Calendar* (5 vols., 1778).

11. Sir William Thomson, Recorder of London, 1714–39, by Enoch Seaman.

The evidence of the tax categories and occupations of the jurors who served in 1692 is confirmed by the more general evidence of the place of residence of all the jurors sworn on the three City juries in the eight years 1692–9. More than 2,500 men sat on the juries in those years: despite large differences in ward populations, the largest number came from the older, least populous, but much richer, wards at the centre of the City—almost certainly the result of deliberate selection.[25] In addition, in the pool of men summoned for jury duty, the richest among them were called more often than those less wealthy; and on the juries chosen to serve when the courts convened, there was a similar tendency for the wealthiest of those who responded actually to be selected.[26] If the late seventeenth-century juries rarely included large numbers of the truly rich, and never the truly poor, they were drawn from men well within the upper third of the population, men with a strong interest in both their property and the existing social order.[27]

It was also characteristic of jurymen in this period that they were drawn from that class of men who engaged most commonly in other aspects of the government of their communities—of their parish and precinct, their ward and the City itself. In the ward of Cornhill, for example, the wardmote inquest book reveals that fully 80 per cent of the men who served on the criminal juries in the 1690s also held another office in that decade, including eleven men who sat on the Common Council of the City, and others who acted in their parishes as constables, churchwardens, overseers, and collectors of the poor. Cornhill was not unusual in that regard. At least 200 of the City jurors we have identified also served on the Common Council at some point, seventy of them while they were on the juries. Jurymen were thus not impartial citizens, randomly chosen, but at least to some extent a self-selecting and active group of men who were likely to

[25] Ibid., 231–1, tables 8.1, 8.2. [26] Ibid., 244–8.

[27] Jurors at the county assizes and quarter sessions in the late eighteenth century were composed overwhelmingly of men drawn from similar social groups, though Hay places the jurors of Staffordshire and Northamptonshire slightly higher in the upper range of income and status (King, '"Illiterate Plebeians, Easily Misled", in Cockburn and Green (eds.), *Twelve Good Men and True*, 266–74; Hay, 'Class Composition of the Palladium of Liberty', ibid., 325–43). There were complaints from time to time, it is true, that jurors were being returned 'of meane ranke and very insufficient for that service', as was said in 1677—complaints about their ability to find satisfactory verdicts. Much of this was blamed on the corruption of the returning officers, on their willingness to take bribes to excuse men from service (Rep 82, fos. 98, 135, 260). As a result of complaints in 1691 about the 'inability' of the persons returned to juries, the Court of Aldermen ordered that the secondaries make lists of eligible inhabitants, and that the aldermen ensure that the names of 'discreet and substantial men' were included. They also ordered the town clerk to keep a record of jurors who were summoned and failed to appear (Rep 95, fos. 215, 227, 259). Some of the concerns expressed in the late seventeenth century about the quality and character of jurors extended to those called to the sessions of the peace and gaol delivery. But the most persistent complaints of this kind seem to have been directed against those named by the wardmote inquests for jury service at the minor (though important) civil courts in the City—the courts of the lord mayor and the sheriffs—who had to meet a lower property qualification and whose judgments could be deeply irritating for propertied men in the City (CLRO, Misc. MSS 38.25; Rep 113, pp. 315–16). Criticism of jurors in this period was mainly directed at those who served in those minor civil courts, rather than at the sessions and gaol delivery. There was little overlap in personnel between the two bodies.

make little distinction between office holding and jury service, and who may well have regarded a role in the drama at the Old Bailey as one of several ways of confirming their standing in the community.[28]

It is essential to emphasize the decisive colouring that this gave to the juries that administered the criminal law in London. It is clear at the very least that, given such juries, the point and purpose of the trial could only have been very different indeed from the modern ideal, in which jurors are expected to make a judgment entirely on the basis of the evidence they hear in court. Prior knowledge or an interest in the outcome would today be grounds for a juror's exclusion. It would be unthinkable in the modern courtroom for an official—a welfare officer, social worker, or city councilman—to be included on a jury to try men and women they knew from their communities. But that was entirely acceptable in the seventeenth century. The London jurors' previous service and their experience in the administration of their wards and parishes prepared them for their role in the criminal courts and the speed of decision-making that was required once the evidence was in. It was their total experience, not merely of courtroom procedure but of civic duty and office holding in general, that taught the jurors who sat through these rapid-fire trials their role and their powers and duties. As they heard the evidence and listened to and watched the defendant, they knew what they were looking for, as they knew the parameters within which they could exercise the considerable discretion available to them.

The process of jury deliberation contributed to the speed with which trials were conducted at the Old Bailey. In the late seventeenth century the jurors did not need to sit together because they normally left the courtroom to deliberate and find their verdicts. According to the guide for clerks of assize, some sat on one side of the court, some on the other.[29] Occasionally, if they were charged with just a few prisoners and if those cases appeared to be straightforward, the jury might deliberate and announce their verdicts without leaving the courtroom. The London jury at the December 1678 session we discussed earlier did this, for example, in the case of the first two defendants to be tried. But, for the most part, Old Bailey juries did not deliberate in court in the seventeenth

[28] There seems to have been an office-holding group in each ward, an élite from whom office holders were mainly chosen. I can only speculate that this is why the City jurors apparently wore gowns. The frequency and significance of that remain as yet unclear, but there is evidence of their doing so. When, after finding verdicts in the first two cases of the December 1678 session, the London jury gave way to the jury from Middlesex, they were told to return at 3 p.m. 'in their gowns' (*An Exact Account of the Trials . . . Decemb. 1678*, p. 6). These were not gowns that they acquired in court, but that they had apparently brought with them. A blank warrant for the summoning of jurors in 1710 required the addressee to appear at the Old Bailey at 7 a.m. on the first morning 'in your Gown' (CLRO, Instruction Book, 1703–10: loose printed paper). Did men acquire gowns for jury service? Does the requirement that they turn up 'in their gowns' suggest that the gown in question was a multi-purpose garment—that it was something they might wear at other times? Was it worn at the wardmote, for example? Since it is unlikely that men would acquire gowns in anticipation of jury or other service, it does raise the possibility of there being a group of men in the City who had such expectations.

[29] *The Office of the Clerk of Assize* (1682), 45.

century. The more common practice was the one they followed for the rest of that session. After those opening cases in December 1678 the Middlesex jury tried eight accused offenders one after the other and then retired to find verdicts on them all in a room set aside for the purpose.[30] While they were out, five prisoners were tried to the London jury, and when they retired in turn, the Middlesex jury took up the trial of the next batch of arraigned prisoners from the county. And so they went on, alternating through the session, each hearing a group of cases—as many as nine, involving eleven accused, in one of the Middlesex batches—and then retiring briefly before returning to announce their verdicts, which they did as soon as they were agreed, interrupting the procedure if necessary. The possibility that the jury would confuse one defendant with another was at least minimized by each prisoner being required to answer to his name and hold up his hand as his trial began and the jury being told by the clerk of assize: 'Look upon the Prisoner, you that have been sworn, and hearken to his cause.' When they left the court to deliberate they were provided with a list of the defendants' names. And when they returned, each prisoner was again asked to stand and acknowledge his name before a verdict was rendered.[31]

Leaving the courtroom to deliberate was a long-established practice, the principal purpose of which had not been to ensure careful deliberation, but to expedite the business of the court. At the provincial assizes, that form of jury deliberation was disappearing by the second half of the seventeenth century. James Cockburn has shown that on the Home Circuit the established practice had been for the assize courts to constitute a series of juries, each of which heard a batch of cases, left the court to deliberate, and then was essentially excused from further service once its verdicts had been reported. Since individual jurors were not often asked to return to a subsequent panel, this procedure required that a large number of men be called for service. It seems likely that it was the difficulty of finding a sufficient number of acceptable jurors—men reconciled to the new republican regime, or at least willing to co-operate to the extent of seeing that the courts continued to function—that explains why, in 1650, apparently on orders from the Rump Parliament, the sheriffs on the Home Circuit began to call many fewer jurors, with the result that each man was required to serve on several successive juries. In those circumstances, it was difficult to maintain the practice of one jury hearing a batch of cases and then leaving the courtroom to deliberate. The consequence was that, at some point after 1650, the Home Circuit assize juries adopted the practice of deliberating and reaching their verdicts in court, at the conclusion of each case, rather than leaving to consider several

[30] The trial jury room was presumably shared in turn by the Middlesex and City jurors. The City grand jury also had a room set aside for their deliberations at the Old Bailey (Rep 121, fo. 80). For the provision of rooms to which juries in the borough courts of the sixteenth and seventeenth centuries might retire to consider their verdicts, see Robert Tittler, 'The Sequestration of Juries in Early Modern England', *Historical Research*, 61 (1988), 301–5.

[31] *The Office of the Clerk of Assize* (1682), 39–49.

at once. Occasionally jurors still found it necessary to withdraw to discuss a verdict on which they failed to agree immediately. But for the most part their routine practice on the Home Circuit, into the eighteenth century and beyond, was to form a huddle around their foreman once a trial was concluded, to come to an agreed verdict, and to announce it immediately.[32]

It would be natural to assume that a change from private to public deliberation would have had a serious effect on the quality of the juries' work. That is impossible to discover. It may have speeded up their decision-making to some extent, but we are not entitled to conclude that it reduced in a substantial way the amount of time juries had devoted to each case in private. It is true that twelve men deliberating in public and with the eyes of the court upon them would hardly be able to settle into a serious discussion about the evidence they had just heard. But that may not have been very different from the practices they had followed in the jury room with a list of eight or more cases to be decided one after the other. Swift decisions with little discussion were typical of those private deliberations too. The Middlesex and City juries at the well-reported December 1678 session at the Old Bailey are each said to have retired for only 'a short recess' before finding verdicts on seven and six cases, respectively.[33] Rapid judgment with apparently little discussion was typical of jury practice whether their deliberation was held in the jury room or in court.

The fact that the juries at the Old Bailey continued to withdraw to find verdicts on a list of cases long after that practice had been abandoned at the assizes is not, then, a reflection of that court's greater commitment to serious deliberation, but more simply that the double juries at the Old Bailey had allowed the old system to continue. So long as two separate juries—one for Middlesex cases, the other for the City—were able to alternate in a roughly equal way, the Old Bailey maintained that system. It was only in 1738, when Middlesex cases had come to outnumber City cases so seriously that the smooth alternation could not be maintained without calling a second Middlesex jury to take a turn, that Old Bailey juries began to deliberate in public and to announce their verdict at the conclusion of each case.[34] It was said that the change to the form of public discussion common in the rest of the country had been resisted in London not out of fear that the new procedure would impair proper deliberation but, revealingly, because it was thought likely to add to the time each case would take and extend the session by several days.[35] That did not happen. The time given

[32] J. S. Cockburn, 'Twelve Silly Men? The Trial Jury at Assizes, 1560–1670', in Cockburn and Green (eds.), *Twelve Good Men and True*, 164–6; Beattie, *Crime and the Courts*, 395–6.

[33] *An Exact Account of the Trials . . . Decemb. 1678*, pp. 25, 29.

[34] For the changing balance between Middlesex and City cases at the Old Bailey, see Ch. 1, Table 1.2.

[35] The report in the press strongly suggests that the imbalance between the Middlesex and City caseloads was at the root of the change. The lord mayor who announced the change in court was said to have justified it on the ground that 'it had been thought improper for the juries to sit so long, and give their verdicts on so many trials (which have commonly been twelve or more together) depending on the strength of their memories or the assistance of their notes'. What he did not say was that it was the

to each case seems hardly to have been affected—making it clear that verdicts had been reached in most straightforward felony trials as rapidly in private as they were now reached under the gaze of defendants and spectators.

The speed with which the vast majority of criminal trials were conducted in the century after the Restoration was the result in part of the limited amount of evidence put before the jury by the prosecution (conducted very largely by the victims themselves) and the even more limited responses offered by most defendants. Neither side, as we have seen, was represented by counsel until the third decade of the eighteenth century and even then, and for several decades, few prosecutors or defendants engaged lawyers to act for them. Nor were there prohibitions against testimony that might be prejudicial to the defendant or misleading to the jury—the kind of evidence (hearsay, for example) that is shielded from a modern jury by an elaborate structure of law, activated in the courtroom by the vigilance of lawyers and the rulings of the judges. In the absence of lawyers, there was no one to raise objections to such evidence as a matter of routine, and in the absence of routine, no hardening of practice. Rulings about matters of evidence were made occasionally by judges. They might warn a jury about the dangers of hearsay evidence in a particular case, or the safety of an accused's confession made in the course of the pre-trial procedure, or the problem of the uncorroborated evidence of accomplices. But they would almost certainly leave it to the jury to evaluate such evidence.[36]

It is difficult to discover how juries actually arrived at verdicts. Within a matter of minutes, twelve men came to unanimous decisions about the guilt or innocence of defendants, some of whom they were condemning to death. It is striking that they only rarely disagreed; or at least only on rare occasions did they apparently require more than a few minutes to come to a verdict, whether they deliberated in the privacy of the jury room, in which they might consider the fate of eight or ten prisoners at once, or in public in the courtroom, taking each case in turn. One can only presume that they could come to rapid agreement in property cases because they shared assumptions and understandings of the law and the assessment of evidence and character. The juries in the City of London in this period were very different from their modern counterparts in that they were more socially cohesive. Many jurors must have known one another and have served together at previous sessions. They were also more knowledgeable at the outset about the law, about the tasks they were asked to perform, and the options open to them. For juries made up of employers and

Middlesex jurors who had to deal with batches of twelve or more; the City jurors continued to deliberate on fewer than that. The lord mayor went on to say that to facilitate deliberation in the courtroom that 'their seats were accordingly now so placed, that they might consult one another, and give in their verdict on each trial immediately . . .'. The high court judges present confirmed that this was the practice 'in all other courts' (*London Evening Post*, 5–7 December 1738).

[36] For the development of the law of evidence, see Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 123–4; *idem*, 'Historical Foundations of the Law of Evidence', 1,197–1,201; T. P. Gallanis, 'The Rise of Modern Evidence Law', *Iowa Law Review*, 84 (1999), 499–560.

masters, of men experienced in civic affairs as well as the ways of the court, making judgments about men and women who were not unlike their servants and employees was a natural and familiar activity. Nor, in the seventeenth century, were they as strictly bound to base their verdicts only on the evidence heard in court as modern jurors are expected to do, or forbidden to act on their own knowledge. They enjoyed wide latitude in judging the credibility of the prosecutor and the witnesses, as well as the accused. As Hale said:

> if there be just Cause to disbelieve what a Witness swears, [jurors] are not bound to give their Verdict according to the Evidence or Testimony of that Witness. . . . they are to weigh the Credibility of Witnesses, and the Force and Efficacy of their Testimonies, wherein . . . they are not precisely bound to the Rules of the Civil Law, *viz.* To have two Witnesses to prove every Fact, unless it be in Cases of Treason, nor to reject one Witness because he is single, or always to believe two Witnesses if the Probability of the Fact does upon other Circumstances reasonably encounter them; for the Trial is not here simply by Witnesses, but by Jury; nay it may so fall out, that the Jury upon their own Knowledge may know a Thing to be false that a Witness swore to be True, or may know a Witness to be incompetent or incredible, tho' nothing be objected against him, and may give their Verdict accordingly.[37]

How the business of finding unanimous verdicts was actually managed is not at all clear. The speed with which the juries arrived at their decisions ensured that they could not normally have reviewed the evidence carefully or discussed their assessments of the witnesses. How did they proceed—especially perhaps when they reached their verdicts in the courtroom? In all probability the lead was generally taken by a small core of jurors, led by the foreman, and the rest simply concurred in their judgment.[38] In seeking a verdict juries had a range of options available, depending on the offence. Some past experience and knowledge of what those choices were no doubt counted for something. But leadership must have been important in pointing the way towards a verdict. It may also be assumed that in choosing a foremen they recognized the natural leadership that came with social standing, experience, perhaps age—someone whose views would be respected and trusted. It seems likely that such a foreman, along with one or two others of similar status, all perhaps sitting near one another in the juryroom or the courtroom, would have made their assessments in the course of the trial and at its conclusion, with little more than a word and a nod, proposed a verdict that was most of the time acceptable to the rest. Each body of twelve men no doubt managed their business in slightly different ways, but it is difficult to explain every jury's ability to reach verdicts in serious cases in a matter of minutes unless they commonly looked to someone to take the lead whose judgment carried weight. Inevitably, the assumption of leadership led to occasional disagreement and conflict.[39]

[37] Hale, *History of the Common Law*, 164–5.

[38] On the importance of the foreman, see Cockburn, 'Twelve Silly Men?', 167–71, 175.

[39] In a case in 1737 an Old Bailey jury foreman successfully resisted his fellow-jurors' willingness to change their verdict in a murder case when sent back twice by the judge to reconsider. One of the

The speed of deliberation was also facilitated by the absence of a notion that the prisoner was to be regarded as innocent and the evidence then assessed with that in mind. Judgment did not have to be withheld until all the evidence was in. Indeed, it seems reasonable to think that the foreman and other influential jurors were making up their minds as the trial went on and that the decision had already essentially been made when the jury went into their room or into a huddle in the courtroom.[40] The jurors would also have expected to get a lead from the judge, who remained the dominant presence in the late seventeenth century trial.[41] The judge's conclusions about the evidence they had all just heard were generally conveyed indirectly to the jury, in good part by his treatment of the witnesses as he was leading them through their testimony. In straightforward cases his opinion about the evidence or the defendant, conveyed in hints and suggestions, or in the briefest of summations, were likely to have been decisive.[42] Where there were complications, he might offer clear direction. In a trial at the December 1678 session involving theft from a shop by an elderly customer who was well known to the shopkeeper and in which a good deal of conflicting evidence was produced, the judge was said by the reporter to have 'directed the Jury to find' the defendant guilty, which it did. On the other side, in a case in which a man was charged with theft by someone he was suing for slander, the judge declared it to be a malicious prosecution and 'directed the Jury to find the Prisoner not Guilty', which it also did.[43] 'Direction' perhaps overstates the judge's authority in such cases, but not his influence.

There is little sign of conflict between juries and judges in most routine cases involving the taking of property and no reason to doubt that the jury found the judges' hints and recommendations and directions helpful. Disagreements might arise in cases involving political or religious issues, and in homicides or other violent affairs in which motive and intent were at issue, or in which members of the jury might have knowledge of the circumstances and background of

jurymen complained about his 'obstinacy'. The foreman, it was said, insisted that they stick to their guilty verdict on the grounds that to change 'it would have betrayed a Weakness in our Judgment' (SP 36/42/193–4). Another jury that brought in an unpopular verdict at about the same time was said to have been 'overpersuaded' by two of its members (SP 36/43/131). Matthew Hale acknowledged that at least occasionally small groups of jurymen exercised considerable influence on verdicts. At the conclusion of a passage in which he asserts the superiority of the common law jury trial over other systems of criminal administration, and in which he emphasizes the importance of the rule requiring that jurors be unanimous in their verdict, he concedes that 'it must be agreed that an ignorant Parcel of Men are sometimes governed by a few that are more knowing, or of greater Interest or Reputation than the rest' (*History of the Common Law*, 166).

[40] Peter Lawson cites work that suggests that modern jurors make up their minds about a verdict early in the trial; see 'Lawless Juries? The Composition and Behaviour of Hertfordshire Juries, 1573–1624', in Cockburn and Green, *Twelve Good Men and True*, 141.

[41] For the judges' powers and influence in felony trials in this period, see Langbein, 'Criminal Trial Before the Lawyers', 284–300.

[42] For the complex subject of judge–jury relationships in this period, see the sources listed in n. 1 above, and in particular Green, *Verdict According to Conscience*, chs 6–9.

[43] *An Exact Account of the Trials . . . Decemb. 1678*, pp. 23–4 (Leech, Hunt).

the crime. In the December 1678 session we examined earlier, for example, the judge hearing a rape case forced the jurors to reconsider their verdict when they acquitted the defendant, sending them back to reconsider until they agreed to convict—the outcome the bench thought the evidence required.[44] But the judges' ability actually to compel verdicts in such cases had been severely limited by the verdict in Bushell's case in 1670 and its subsequent elaboration.[45] Some judges adopted other bruising tactics to get their way—perhaps when they were under pressure from the government at moments of anxiety to display the power and authority of the law. There were two such moments at the Old Bailey in 1689 and 1690, when judges chastised and dismissed juries that failed to find the verdicts they required.[46] But most often the relationship between the bench and the jury was more harmonious than that. The judges could expect their advice to be taken, and over the long term they were released from the need to force any particular pattern of verdicts by the establishment after the Revolution of a form of tenure that made them more independent of the Crown.[47] On the other side, juries were considerably strengthened in the late seventeenth century by the explicit defence in the writings of John Hawles, Henry Care, and others of their right to find verdicts without fear of judicial retribution.[48] The jury emerged from the political and constitutional contests of the Restoration as a more resilient and more independent body. A jury might occasionally be chastised and humiliated for defying the judge's clear recommendations, but a strained relationship between them would not have made possible the processing of fifteen or twenty felony trials a day. That depended on their shared understanding of the law, the assessment of evidence and credibility of witnesses, and of the legitimacy of the punishments they arrived at

[44] For this case (Arrowsmith) and the larger issue of the relationship of judges and jurors, see Langbein, 'Criminal Trial Before the Lawyers', 291–5.

[45] Green, *Verdict According to Conscience*, ch. 6.

[46] After the jury brought in a partial verdict and then an acquittal at the session of December 1689, the judge told them that 'they did not Act like true English men, nor indeed like true Citizens of London', and dismissed them (*An Exact Account of the Trials . . . Decemb. 1678*, 1–2). It seems clear that the judges at the February 1690 session—on their own initiative or under orders from the government, anxious perhaps about disorder in the capital so soon after the Revolution—were determined to send a severe message to potential offenders in London by threatening large numbers of accused men and women with the death penalty to make visible the terror of the law. Failing to get satisfactory verdicts on the first day of the session, the judges declared the jurors to be 'unfit to serve', reprimanded and discharged them. Their replacements on the following day were so satisfactory that a remarkable total of twenty-five defendants were sentenced to death when the session was concluded (OBSP, February 1690, pp. 1–3). Ten of those condemned to death were women, of whom eight were reprieved.

[47] For the uncertainty of judicial tenure under Charles II and James II, see Alfred F. Havighurst, 'The Judiciary and Politics in the Reign of Charles II', *Law Quarterly Review*, 66 (1950), 62–78, 229–52; *idem*, 'James II and the Twelve Men in Scarlet', *Law Quarterly Review*, 69 (1953), 522–46. Tenure based on good behaviour rather than the monarch's will emerged in practice in the reign of William III and was established in the Act of Settlement (1701). See David Lemmings, 'The Independence of the Judiciary in Eighteenth-Century England', in P. Birks (ed.), *The Life of the Law* (1993).

[48] John Hawles, *The Englishman's Right* (1680); Henry Care, *English Liberties: or, The Free-Born Subject's Inheritance* (1682); *A Guide to Juries: Setting Forth their Antiquity, Power and Duty* . . . (1682).

together; perhaps, in the end, it depended on the juries' willingness to accept, even eagerness to hear, the judges' views about the bearing of evidence and the credibility of witnesses.

PENAL IDEAS AND PRACTICES BEFORE 1660

The defendants on trial for property offences at the Old Bailey faced two kinds of charges: felonies to which benefit of clergy still applied and those from which it had been removed by act of parliament: that is, felonies that were broadly speaking capital offences and those that were not.[49] The difference was dramatic since a clergied offender would normally merely be burned on the brawn of the thumb and allowed to go free at the conclusion of the session, whereas to be convicted of a felony without clergy meant the possibility of capital punishment. Which offences were within clergy in 1660 and which without, and who among the accused were eligible to make a claim, were thus matters of crucial importance to the juries and judges as they considered the fates of the prisoners on trial before them. In general terms, the non-clergyable felonies were the more serious offences: among property crimes they included burglary, robbery, some forms of housebreaking, horse-theft, and pocket-picking—all of which had been excluded from clergy by parliament in the sixteenth century as offences that were too serious to be punished lightly.[50] Apart from those offences, all other forms of theft remained within the purview of clergy in 1660, including the offence that continued to make up the majority of charges involving the taking of property, simple grand larceny.

The nature of the offence was only one consideration, however, in determining who could claim clergy. The identity of the defendant was another. The privilege of clergy was ecclesiastical in origin, and eligibility to claim its benefit retained traces of those beginnings, even as it became otherwise secularized through the middle ages. In the seventeenth century a male defendant could claim clergy only if he could prove that he was literate by reading a verse from the fifty-first psalm, popularly known as 'the neck verse'. Until 1623 women could make no claim of clergy at all. In that year parliament extended benefit of clergy for the first time to women convicted of relatively petty thefts—larceny below ten shillings in value. That rule held in 1660. It was not until thirty years later, in 1691, that women were allowed to claim clergy as freely as men (and without having to prove their literacy).[51]

For a large number of those who came to trial at the Old Bailey the ability to enter a successful plea of benefit of clergy was a crucial issue, in the determination of which the jurors and the judges had massive discretionary powers. Juries

[49] For the changing rules surrounding clergy in this period, see Beattie, *Crime and the Courts*, 141–4.

[50] Beattie, *Crime and the Courts*, 141–6; Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 37–41.

[51] 21 James I, c.6 (1623); 3 & 4 Wm & Mary, c.9, s.6 (1691).

could alter the consequences of a conviction, for example, by acquitting the defendant of a non-clergyable offence and finding him or her guilty instead of a lesser, clergyable, offence—what came to be called a 'partial verdict'. With respect to some offences, the juries thus had the power of life and death. And so, too, did the judges. In the testing for literacy conducted by a clergyman in court, the judges could overlook an obvious mumble and send the prisoner home; or they could intervene if they chose and insist on a level of reading accuracy that might result in denial of clergy that would threaten the prisoner with the gallows. Conversely, judges could also reprieve men and women convicted of capital offences and seek their pardon by the king.

The stark choice between clergyable discharge and capital punishment encouraged jurors and judges to apply the law with discretion. It was here that experience in the jury box became so crucial. Jurors might be guided by hints or even directions by the judges, but in order to respond effectively they had to know the alternatives available to them. The judge might hint at the ways they could exercise discretion, but he could hardly tell them explicitly to find someone guilty of a lesser charge than that set out in the indictment. The experienced men who served at the Old Bailey would know the consequences of a particular verdict in the case of a particular offender charged with a particular offence. Their verdicts largely determined the punishments that followed.

It is not surprising that the flexibility available to juries had its roots in the sixteenth century, for it had been under the Tudors that the criminal law had been made much tougher than it had been over the previous two centuries. Perhaps the most striking aspect of the many-sided Tudor assault on crime and immorality was the effort to impose the severest punishments on those convicted of serious property offences by the statutory removal of the privilege of clergy from highway robbery, burglary, housebreaking, picking pockets, and horse-theft. Ian Archer has revealed that at the beginning of Elizabeth's reign the attitudes towards crime that lay behind those enactments also produced a high rate of convictions in the London courts for property offences of all kinds. Conviction rates (and the levels of death sentences) were particularly high in cases of robbery, burglary, and horse-theft. But the harshness of the courts was most clearly revealed in their treatment of men accused of simple grand larceny, an offence that remained within clergy for defendants who could prove their literacy. Archer has shown that in the 1560s half the defendants convicted of simple grand larceny were sentenced to death, having been denied clergy by the judges.[52] These figures are based on incomplete data; and they are *sentences* passed in court and do not take into account pardons that may have been subsequently granted by the monarch. None the less, when set alongside convictions and sentences in non-clergyable cases, they suggest that there were very

[52] Ian W. Archer, *The Pursuit of Stability: Social Relations in Elizabethan London* (Cambridge, 1991), 246–7, table 6.4.

high levels of capital punishment early in Elizabeth's reign and support the notion that the criminal law was particularly bloody under the Tudors.

Archer goes on to show that this severity was tempered in London over the last decades of the sixteenth century, when a certain flexibility came to be introduced into the administration of the criminal law by means of jury verdicts and the exercise of judicial discretion. Most significant was a notable increase in acquittals and partial verdicts, and, as a consequence, a decline in the level of death sentences, especially for simple grand larceny. In addition, Archer notes a greater willingness among the judges to allow benefit of clergy, especially in cases in which the accused was willing to plead guilty and throw himself (for this applied only to men) on the mercy of the court. Further, because of the increasing willingness of juries to find partial verdicts, more offenders came to be convicted of petty rather than grand larceny and were sentenced to be whipped.[53]

This trend towards a greater leniency in Elizabeth's reign (if whipping rather than clergyable branding was so regarded in the sixteenth century) was to some extent arrested and reversed in the 1590s. And there were to be high levels of capital punishment in other parts of the country in the difficult decade of the 1620s and in the early 1630s. But the underlying tendency towards a more flexible application of the law had the effect over the longer term of considerably moderating high levels of execution. Studies of the patterns of prosecution and punishment in several parts of the country suggest that the rate of capital punishment for property offences declined in the second quarter of the seventeenth century, and that that trend was to accelerate after 1640.[54]

An overriding pattern is clear, despite fluctuations over time and differences from place to place. The stern imperatives of a criminal code in which, under the Tudors, execution appears to have become common for a wide range of property crimes gave way in practice to a more moderate regime, the harsh sanctions of the law being blunted by juries and judges alike. More acquittals and partial verdicts, a more liberal attitude towards clergy, more reprieves and pardons (encouraged perhaps in the early decades of the seventeenth century by the possibility of transportation to the new colonies in America as a substitute) resulted in falling rates of hanging and the elaboration of a number of alternative, non-capital punishments. By the second quarter of the seventeenth century the levels of execution were returning to what had been the late medieval norm, and a significant number of convicted offenders were being discharged with a branded thumb, subjected to whipping, or, in a few cases of men and women

[53] Archer, *Pursuit of Stability*, 245–7. James Cockburn found a similar pattern with respect to partial verdicts on the Home Circuit of the assizes in Elizabeth's reign: whereas there were no such verdicts before 1573, they had become common by the last decade of the century (*Calendar of Assizes Records: Introduction*, 115).

[54] J. A. Sharpe, *Crime in Seventeenth-Century England: A County Study* (Cambridge, 1983), 141–5; *idem*, *Crime in Early Modern England, 1550–1750*, 2nd edn. (1999), 90–2; Philip Jenkins, 'From Gallows to Prison? The Execution Rate in Early Modern England', *Criminal Justice History*, 7 (1986), 51–71 (esp. 54–61).

pardoned from a capital sentence, transported to America.[55] As a pattern of greater discrimination in both verdicts and sentencing was established, the criminal law was becoming, as Archer has argued, 'a more subtle and flexible instrument discriminating between degrees of seriousness in crime'.[56]

These patterns of verdicts and punishments derived from the practice of the courts. They must have derived, too, from widely shared views about the best way to manage capital punishment, and from a growing conviction that there was a need for alternative sanctions for petty offences. At least it seems reasonable to suppose that the assumptions acted on in the courts in the decades before the civil war were to some degree the seed-bed of the ideas that came to be expressed in the remarkable outburst of writing and speculation about the criminal law that followed the breakdown of authority after 1642 and accompanied the experiments in governance in the 1650s. Nothing remotely like the extreme radicalism with respect to the criminal law voiced then by several pamphleteers had been heard before. Though some were extreme, the proposals put forward for the reform of the criminal law offered solutions to problems that had been recognized in the practice of the courts since Elizabeth's reign.

When the opportunity arose in the 1640s and 1650s to write and speak freely about magistrates and criminal procedure, about trial and punishment, much of the criminal law came under serious examination. The reform of the law became an issue of urgent concern, particularly for the Levellers and other radical groups and, from the mid-1640s—as debates were engaged on the parliamentary side about the shape of future settlements—an extraordinary range of ideas was voiced about the law, the courts, and especially about capital punishment and the unjustness and inadequacy of the penalties available to the judges in sentencing convicted offenders. The Rump Parliament was moved to begin a process of fundamental reform, and established a commission in 1652 under the chairmanship of Matthew Hale to recommend ways in which the criminal law should be restructured.[57]

There was no unanimity among the leading proponents of criminal law reform in the 1640s and 1650s. But the more radical among them shared a broad ambition to change the bases and principles of the common law with respect to the punishment of criminal offences, especially its dependence on capital punishment. The most striking idea, common to many of the leading pamphleteers, was that punishment ought to be proportional to the offence—an idea that went to the heart of a criminal justice system in which it was possible for any convicted felon to be executed, and in which the courts had little leeway to impose

[55] Barbara A. Hanawalt, *Crime and Conflict in English Communities, 1300–1348* (Cambridge, Mass., 1979), 57–9; J. A. Sharpe, *Judicial Punishment in England* (1990), 28–32.

[56] Archer, *Pursuit of Stability*, 248.

[57] For the range of ideas expressed about the criminal law during the civil war and interregnum, see Donald Veall, *The Popular Movement for Law Reform, 1640–1660* (Oxford, 1970), chs 1, 5; Nancy L. Matthews, *William Sheppard: Cromwell's Law Reformer* (Cambridge, 1984), 169–72; Robert Zaller, 'The Debate on Capital Punishment during the English Revolution', *American Journal of Legal History*, 31 (1987), 126–44.

alternative sanctions. Only Winstanley among the leading critics supported the total abolition of capital punishment,[58] but most of the proponents of criminal law reform argued for a sharp reduction in the scope of execution as it had been hitherto applied. There was general agreement, for example, that minor thefts should not be punishable by hanging, and some writers would have removed capital punishment from all property crimes.

The justifications put forward were as various as the plans proposed. They drew heavily on Scripture, on what the Law of Moses required and allowed. Perhaps the fundamental argument advanced in the 1640s and 1650s against the scope of capital punishment was that execution was wrong for property crimes because it put too little value on life. Several reformers were also concerned about the distortions that the death penalty introduced into the administration of the law, and offered arguments that would be resurrected in different circumstances and with different emphases a century and a half later in a renewed and ultimately successful attack on the dominance of capital punishment in the English penal law. It was argued in the 1650s, for example, that the prospect of an offender being executed discouraged victims from prosecuting, or, if not that, encouraged jurors to acquit and the judges and the authorities to pardon large numbers of those who were convicted—all of which was believed to embolden and encourage thieves and robbers. The argument was also made that the indiscriminate use of the death penalty led some offenders to kill their victims in order to remove the only witnesses who could convict them.[59]

The abolition of capital punishment was a novel and deeply radical idea. But limitations on its uses had emerged in the practice of the courts before the civil war, along with proposals to find alternatives to the death penalty. The argument that lesser punishments would not only be more justifiable but also more effective as deterrents made explicit the assumptions that supported the discretionary uses of the law which had already become common by 1642. A range of proposals to find a more limited punishment for petty offences was made in the interregnum. Among those commonly advanced was the notion that restitution in the case of theft (twice or four times the value of the goods stolen) not only accorded more with Scriptural authority but would also be a more effective punishment and deterrent. Failing that—in cases in which the offender was not able to make restitution—a favoured penalty was some form of labour. This was not entirely a new idea. The reformative possibilities of work had been pioneered in London a century earlier in the Bridewell, though hard labour had not been extended in England as a punishment for serious offenders in the way that that had developed on the Continent, particularly in Holland and the German states.[60] It was discussed as a possible alternative to the death penalty in the

[58] Zaller, 'Debate on Capital Punishment', 141–2. [59] Ibid., 137.

[60] For an account of the emergence of imprisonment at hard labour as a penal sanction in early modern Europe and its relationship to capital punishment and other forms of non-capital punishments, see John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Regime* (Chicago, 1976), ch. 2;

interregnum, though frequently in forms that would emphasize its deterrent rather than reformative potential by insisting that the labour be performed in public—in mines, or with the prisoners chained to carts.[61]

The more extreme Leveller ideas about capital punishment almost certainly failed to persuade many people. But those that addressed the need for non-capital punishments for minor property crimes were speaking to a problem that one can only think was of concern to large numbers of men in the trading, artisanal, shopkeeping, and professional population of London. Indeed, they reflected aspects of prosecuting practices actually being carried out in London, where minor property offenders were simply not being taken to the criminal courts but punished, if at all, by a spell in the house of correction. Others anticipated schemes that would be embraced after the Revolution of 1689. There is evidence, at the least, that the problems addressed by the radical proposals were of concern to a wider public, and that the ideas expressed were not as unusual, or as removed from the established range of views, as they might seem at first sight. What was unusual was the opportunity that the civil war and interregnum provided for their public expression and discussion.

Little in fact was to change on the surface; no significant initiatives embodying fundamental reform were agreed to in the parliaments of the interregnum in which the defence of property remained a matter of central concern.[62] The restoration of the monarchy in any case meant the rejection of everything that had been done and contemplated since 1642, and the closing down of public speculation about fundamental structures. The criminal law was once again the king's to administer, once again dependent on his personal engagement and the ameliorative capacity of the prerogative of mercy to shape the pattern of its enforcement to the needs of the moment. And yet changes introduced in practice in the 1650s were not only retained but expanded upon—particularly in the extended uses made of transportation. The need for a more effective response to the varieties of urban crime than simply a reliance on the terror of the gallows remained fundamental, and continued to shape the way the law was actually administered at the Old Bailey.

PUNISHMENT IN PRACTICE, 1660–1689

As in so many other respects, the return of the monarchy meant the return of the courts, the law, and the penal regime as of 1642. And to all outward appearance, little was to change in the next thirty years. The courts continued to administer

Pieter Spierenburg, *The Prison Experience: Disciplinary Institutions and Their Inmates in Early Modern Europe* (New Brunswick, 1991), chs 2–3.

[61] Emphasis was also placed on the value of other forms of shaming and humiliating punishments—branding offenders on the face, for example, or forcing them to wear a uniform or an iron collar around their necks for life (Veall, *Popular Movement for Law Reform*, ch. 5).

[62] Christopher Hill, *The World Turned Upside Down: Radical Ideas During the English Revolution* (1972), 216–18.

a criminal law that provided the narrowest of penal options and that continued to rely on discretionary manipulations of verdicts and sentences to construct a more flexible outcome than would have seemed possible on paper. Discretionary powers continued to make the brief court process a trial and a sentencing hearing in one. What, then, was the pattern of verdicts in City of London felony cases prosecuted at the Old Bailey in the years after the Restoration and what punishments were imposed on those convicted? And what do these verdicts and punishments suggest about the attitudes towards the criminal law on the part of the decision-makers at the heart of the administration of justice in London?

Some defendants accused of property offences at the Old Bailey in the 1670s and 1680s did not go to trial because the grand jury did not endorse the indictment brought against them as a 'true bill', signifying in so doing their dissatisfaction with the evidence offered by the prosecutor, or perhaps their sense that the charge was frivolous or malicious. In the thirty years following the Restoration these so-called 'ignoramus' verdicts by the grand jury—which led to the accused being discharged 'by proclamation' at the conclusion of the session—represented about 10 per cent of property offenders charged.[63] A few other men and women, who may have been held in gaol for several weeks awaiting trial, were similarly discharged when their prosecutors failed to appear to give evidence against them.

A number of other defendants made trial unnecessary by pleading guilty to the charge in their indictments. They did so, one must presume, in the expectation of being treated more leniently at the sentencing stage than if they insisted on a trial. This was occasionally made explicit in misdemeanour cases, in which judges had considerable flexibility and could choose from several penal options.[64] In felony cases, the bench was much more constrained. They could manipulate the rules governing benefit of clergy by insisting or not on a strict literacy test and by imposing or overlooking the rule that a previous conviction excluded a defendant from clergy altogether. Judges might encourage juries to downcharge; and they could reprieve defendants convicted of a capital offence and recommend them to the king for a pardon. But judges could not choose among a range of punishments in sentencing convicted felons and they could hardly

[63] For the grand jury's scrutiny of bills, see Beattie, *Crime and the Courts*, 400–6. Samples taken at ten-year intervals suggests that such 'ignoramus' verdicts accounted for something under 10% of charges in City of London property offences in the last decades of the seventeenth century. That level fluctuated from session to session, but tended to rise in the eighteenth century, reaching an average closer to 20% by the second quarter. For the possible significance of that increase, see below, Ch. 8.

[64] At the trial for trespass of the weavers who had rioted in London in 1675, the judge promised the defendants that if they would confess and 'humble themselves to the court' they would find favour. Three did so and were fined twenty marks; eight did not and upon their conviction were told that 'for their contumacy, they were thought worthy of a greater Punishment'. They were fined five hundred marks, imprisoned until the fine was paid, pilloried on three separate occasions, and ordered to enter into sureties for their good behaviour for their lives. See *A True Narrative of all the Proceedings against the Weavers at . . . the Old Bailey* (1675), 7–8.

make promises ahead of the trial about verdicts or the royal pardon. None the less, the hope of a better outcome following a confession must have seemed a reasonable expectation to some prisoners, and so it proved. In the case of ten women in our Sample—of one session in three between 1663 and 1689[65]—who confessed to an offence for which they were not eligible to apply for clergy and were thus in danger of being hanged, all but one were subsequently reprieved. Two of the three men who pleaded guilty derived no such benefit from confessing to offences that were regarded as too serious to be forgiven; they were sentenced to death and hanged. But in non-capital cases—offences for which benefit of clergy remained available—confession did have some marginal benefit for men. Of the fifty-four men who were willing to plead guilty to the charges they faced, three-quarters were allowed clergy, and were thus burned in the hand and discharged from the court at the conclusion of the session; of men in that position who insisted on taking their trials, 60 per cent were granted clergy.[66]

The vast majority of those accused of property offences pleaded not guilty and were brought to trial before City juries. The verdicts arrived at in their cases are set out in Table 6.1. Perhaps the most striking aspect of the juries' decision-making is the level of acquittals they brought down. Forty-two per cent of men and 48 per cent of women on trial for property offences in the thirty years after the Restoration were found not guilty by City trial juries and were released. Juries were especially inclined to acquit women accused of the most minor offences—those charged with clergyable felony, which in this period were thefts of less than ten shillings in value. Even though only forty-five such charges were laid in the sixty-nine sessions of the court we have sampled over thirty years, more than half the women involved were acquitted. Whatever intentions lay behind the extension of clergy to women convicted of theft below ten shillings in value in 1623, the effect had clearly not been to encourage prosecutions, or at least had not encouraged magistrates to send women accused of these petty offences to trial at the Old Bailey. The trial juries at the Old Bailey seem to have shared that reluctance. The few women who were selected to be tried for theft below ten shillings had not apparently been chosen with a view to the strength of the evidence against them, but for some other consideration—perhaps the insistence of the prosecutor.[67]

[65] For the 'Sample' see above, p. ix.

[66] There was a further advantage at the sentencing stage. Men who were denied clergy were in danger of being sentenced to death. In the case of those who confessed and were denied clergy, all were reprieved by the judges before sentence and ordered to be transported. As we will see, some of the men who were excluded from clergy after being tried and found guilty, were in fact executed. The expectation of being branded and discharged led some men to plead guilty not only to the offence with which they were charged, but in addition to 'all others [with which they might have been charged] within the Benefit of the Clergy'. See, for example, *The Tryals of Several Notorious Malefactors . . . in the Old-Baily . . . December 1681*, 2 (Smith, Stevens, Clark).

[67] Some married women were acquitted because they were charged with offences committed in the company of their husbands, as in the case, for example, of Mary Granvil, found not guilty of two burglaries because she 'was not capable by Law to commit any Felony in the presence of her Husband'

TABLE 6.1. *Jury verdicts at the Old Bailey in property offences in the City of London, 1663–1689*

	Not guilty	Guilty	Partial verdict	Other[a]	Total
Non-clergyable					
Men	94	71	39	8	212
%	44.3	33.5	18.4	3.8	100.0
Women	167	106	71	5	349
%	47.9	30.4	20.3	1.4	100.0
Clergyable					
Men	183	202	44	12	441
%	41.5	45.8	10.0	2.7	100.0
Women	23	15	7	—	45
%	51.1	33.3	15.6	—	100.0
Total					
Men	277	273	83	20	653
%	42.1	41.8	12.7	3.1	100.0
Women	190	121	78	5	394
%	48.2	30.7	19.8	1.3	100.0
Grand Total	467	394	161	25	1047
%	44.6	37.6	15.4	2.4	100.0

Note:
[a] Including accused discharged, charged on another indictment, special and unknown verdicts

Source: Sample

Considering the rapidity with which trials were conducted and the disadvantages under which the accused suffered, the acquittal rate in all property offences—clergyable as well as non-clergyable and for men as well as women—was strikingly high in the years following the Restoration. Certainly it was much higher than it had been in the second half of the sixteenth century. Archer has found that 38 per cent of women accused of simple grand larceny at the Old Bailey in the late sixteenth century were acquitted. But men were much more harshly treated by their juries in that period than they were to be after 1660. Only 17 per cent accused of simple larceny were acquitted at the Elizabethan Old Bailey, compared to 42 per cent in the later period; and in the case of non-clergyable—that is, in essence, capital—felonies, the earlier acquittal rate was 12 per cent compared to 44 per cent in the years following the Restoration.[68] Juries were notably lenient in the late seventeenth century. The 45 per cent

(OBSP, February 1681, p. 2). That rule accounted, however, for very few of the large number of not guilty verdicts in this period (Beattie, *Crime and the Courts*, 238, n. 71).

[68] Archer, *Pursuit of Stability* (calculated from the data in Table 6.4, pp. 246–7). On the other hand, the largest body of data available for the assize courts in the late sixteenth and early seventeenth centuries—James Cockburn's multi-volume calendars of indictments at the Home Circuit assizes, 1558–1625—shows an acquittal rate in those five counties surrounding London of 40% over that period (*Calendar of Assize Records: Home Circuit Indictments, Elizabeth I and James I. Introduction* (London, 1985), 114, Table 10.

average acquittal rate in all property offences over the years 1660–89 was also significantly higher than the level that became common in the eighteenth century: as we shall see, it averaged just over 30 per cent at the Old Bailey in the first half of the eighteenth century, an outcome that Peter King has shown was sustained in Essex into the early nineteenth.[69]

Why juries were finding such unusually high levels of not guilty verdicts in the Restoration years is not easy to discern. The Old Bailey juries based their decisions in property cases on the evidence presented in court, the guidance provided by the judges, and on what they could make of the character of the prosector and the accused. It is possible that they were influenced in this period by considerations outside the courtroom since this was a period of intense conflict between the monarchy and the City over political and religious issues, conflict arising particularly around the government's prosecution of religious nonconformists and the prospect that Charles II's Catholic brother would succeed him on the throne. This was also the period in which the Bushell case established the independence of juries from judicial control. But apart from the few cases with obviously political and religious implications, it is difficult to see why the shopkeepers and tradesmen of London would have taken a more sympathetic view of thieves and robbers out of hostility to the court.

On the other hand, the jurors may be presumed to have had the penal outcome of their verdicts in mind as they came rapidly to judgment. And if that had been the case, several aspects of the pattern of verdicts—including the acquittal rate of close to 45 per cent—might be explained by their dissatisfaction with the punishments available to the courts. Direct evidence of that is not likely ever to be found, but the pattern of verdicts is at least suggestive. In the case of nonclergyable offences in which execution was a likely outcome, an acquittal rate approaching 50 per cent raises at least the possibility that some of the jurors at the Restoration had been influenced by the debate over capital punishment in the 1650s and the argument that the most radical proponents of radical reform of the criminal law had advanced that questioned the legitimacy of hanging for property offences on biblical grounds. But the figure that most clearly suggests dissatisfaction among London jurors with the established penal structure and the narrow range of sanctions available to the bench is that for partial verdicts—the verdicts, that is, by which juries convicted defendants, but of a lesser offence

Taking account of the trials being held at the quarter sessions in those counties has the effect of reducing that level. In East Sussex, between the 1590s and 1640, Cynthia Herrup found an average acquittal rate of about 31% in larceny cases at the quarter sessions and assizes and 37% in non-clergyable property offences (*The Common Peace*, 144: calculated from Table 6.2). In Essex between 1620 and 1680 James Sharpe found an average acquittal rate in theft cases (at the quarter sessions and assizes together) of 24% (*Crime in Seventeenth-Century England: A County Study* (Cambridge, 1983), 94–5.

[69] See below, Tables 7.2 and 9.1. Peter King, *Crime, Justice and Discretion: Law and Social Relations in England, 1740–1820* (Oxford, 2000), Table 7.4a. Acquittal rates in larceny cases seem to have remained relatively high at the assizes in the north-east through the eighteenth century (Morgan and Rushton, *Rogues, Thieves and the Rule of Law*, 70).

than that charged in the indictment. Almost 20 per cent of the men and women faced with offences that had been removed from clergy and for which they might thus have been hanged were found guilty instead of what were in effect the non-capital charges of grand or petty larceny; and about 10 per cent of those charged with grand larceny were convicted of petty larceny instead.

A verdict of grand larceny opened the possibility of benefit of clergy, which might or might not be granted by the court. But at least it was likely to save defendants from a death penalty. In the case of a partial verdict of petty larceny—that is, theft of goods of less than a shilling in value—the outcome was almost certain to be a sentence of public whipping. Most partial verdicts thus diminished the seriousness of the punishment that the bench could impose in sentencing. The reduction of a charge from grand to petty larceny could be thought to increase the pain that would be visited on those convicts for whom it meant a public whipping rather than the branding of clergy, but it is not clear that contemporaries would have taken that view. Partial verdicts were to be an increasingly important means in this period by which the criminal law could be manipulated in the interest of broadening the choice of sanctions available to the courts—a subject we will return to in this and the following chapters. For the moment it may be sufficient to note that such verdicts, along with exceptionally high levels of acquittals, seem to indicate some dissatisfaction with the rigidities of the penal law in the years after the Restoration.

The cases that came to the Old Bailey from the City in the sample we have studied in the Restoration were divided roughly equally between clergyable and non-clergyable offences. There were what would at first glance seem to be surprising gender differences in each category until one remembers that, unlike men, women were not allowed to claim clergy for larceny over ten shillings in value, and, in addition, that the London magistrates were disinclined to prosecute women for the clergyable offence of theft under ten shillings. The result of these distortions was that women accounted for 62 per cent of the offenders charged with capital offences in this period, but only 10 per cent of those charged with non-capital thefts. Because of their restricted access to clergy, more women than men faced the possibility of being hanged at Tyburn. At the conclusion of the trials in our sample years, 116 women and 74 men had either pleaded guilty or been convicted of a non-clergyable offence and were thus in danger of being sentenced to death. As we will see, many were saved from the gallows—and, especially in the case of women, even from the sentence itself—by the judge's reprieve and by the grant of a royal pardon.

Pardon from a capital conviction was an act of the monarch's grace, deriving from authority inherent in the royal prerogative, and the function, Shakespeare said, which showed the monarch at his or her most God-like.[70] By the seventeenth

[70] 'It is an attribute to God himself, | And earthly power doth then show likest God's | When mercy seasons justice.' *The Merchant of Venice*, IV, i.

century pardons in ordinary felony cases were part of the criminal process, commonplace and accepted as essential to the management of a criminal justice system in which large numbers of offenders were in danger of being hanged. They were sufficiently common and sufficiently integrated into criminal justice procedures by the Restoration that it seems reasonable to think of there being two kinds of pardons relating to felony convictions. The largest number by far were what one might call 'administrative' pardons. They were decided fundamentally by the judge who heard the case at the provincial assizes or by the judges and the recorder at the Old Bailey. Their reprieve of a convicted felon whom they had sentenced to death was tantamount to a pardon. The recommendation of mercy was processed by the office of the secretaries of state. The pardon document, issued by the Chancery, would be authorized by the monarch's signature, but each case almost certainly did not require the king's or queen's personal approval. On the other hand, a petition for mercy from a defendant who had been passed over by the judge and left to be hanged might well come to the monarch's attention and the decision whether to grant a pardon or confirm the sentence (after the relevant judge's opinion had been sought) may have been made with their involvement—though how often that happened in the case of ordinary felons is difficult to say. The distinction between administrative and more personal pardons none the less remained important: it was still very much alive in the first half of the eighteenth century, for whenever George I and his son visited Hanover they left lords justices with power to confer pardons on condemned felons who had been reprieved by the judges in court, but reserved to themselves decisions with respect to prisoners who had been left to be hanged and who petitioned for their mercy.[71]

A pardon could relieve the recipient from any punishment that followed a criminal conviction. The most important pardons—certainly the most visible, in the sense of making a public demonstration of the king's mercy—were those that saved a convicted offender from the death penalty. But pardons were also granted to mitigate other, non-capital, punishments; Charles II relieved gentlemen from the branding that followed a conviction for the clergyable felony of manslaughter, and from the fine that was occasionally imposed in such cases. In the years after the Restoration large numbers of what were called 'special' pardons were issued under the Great Seal—that is, a single pardon for a named individual. Such documents were very expensive indeed and were most often sought by wealthy men who had been prosecuted for murder but convicted of manslaughter—having killed someone in a duel or by accident or in self-defence—and who faced the possibility of being branded on the thumb, or, as convicted felons, of having their estates forfeited to the Crown.[72]

[71] See below, p. 450.

[72] Convicted felons' estates were still occasionally confiscated and sold in this period, and pardons continued to be granted to include 'all paines penalties and forfeitures . . . with restitution of lands and goods as in like cases are Usuall . . .' (SP 29/76, fo. 181). But confiscation was rare, and by the first decades of the eighteenth century those convicted of manslaughter can no longer be found seeking a formal

The value of an individual pardon, inscribed on parchment and issued by the Chancery under the Great Seal, was presumably that it would prevent any subsequent difficulty over the inheritance of an estate. Few of the men and women who were pardoned after being convicted of property offences could afford or had need of such a document. They were included in a document passed under the Privy Seal by a simpler procedure and known as a 'general' or 'circuit' pardon for the 'poor convicts' being held in a particular gaol, or in the gaols of an assize circuit—'poor' convicts because of the assumption that they would not be able to afford a separate pardon under the Great Seal. In Lord Keeper Guilford's 'Directions for drawing of circuit pardons', he emphasized that 'No person to be inserted [in a circuit pardon] that is able to bear the charge of a particular pardon'.[73] Most of the condemned felons pardoned in Middlesex and London were bundled together in a general pardon issued from time to time for the Old Bailey.[74] When such a document passed the seal, after what could be a long wait, the offenders named were brought back into court from Newgate (or were ordered to appear in the case of those fortunate enough to have been granted bail) and were allowed to plead their pardon on their knees—a ceremony that provided the judges with an opportunity to discourse on the king's goodness and on the chance afforded these pardoned men and women to make a fresh start in life.[75]

pardon. If confiscation was no longer common, the branding of clergy remained possible following a manslaughter conviction, and the king was frequently petitioned to relieve men of the humiliation of a permanent felon's mark on the thumb and of other punishments (imprisonment, for example) that were occasionally imposed in such cases. Such pardons were regularly granted: indeed, it was not uncommon for them to be granted in advance of the trial, to take effect if the accused was in fact convicted of manslaughter. For examples in this period of warrants to the recorder and the sheriffs of London reprieving men before their trial at the Old Bailey if they were convicted of manslaughter, and deferring the punishment for which they were liable, see CSPD 1661–2, p. 423, 470; CSPD 1670, p. 580; CSPD 1673–5, p. 347; and many examples in subsequent years. Charles II had followed a rule, Secretary Jenkins said in 1684, of not granting pardons before trial in the case of 'high offenders', that is serious offenders (CSPD 1683–4, p. 278).

[73] BL, Add. MSS 32518, fo. 117.

[74] General or circuit pardons were distinct from the kind of general pardons occasionally issued to celebrate royal coronations and other days of high festivity, under which the monarch might choose to extend mercy to groups of petty offenders, and from statutory pardons. Jacob Joyner, indicted at the Old Bailey in May 1686 for the theft of a jewel valued £700 from the Earl of Stamford, 'was pardoned by His Majesty's late General Pardon', issued following James II's coronation when the court noticed that the theft had taken place before 10 March and thus fell into the period covered by the proclamation (OBSP, May 1686, p. 4).

[75] The ceremony at which pardons were formally conferred were occasionally noted in the Minute Books of the gaol delivery sessions for the City at the Old Bailey (CLRO: SM 53, September 1682; SM 57, March 1685) and occasionally in the printed proceedings of the court. The Sessions Paper for January 1692, for example, reported that at the conclusion of the session, thirty-five men and women condemned at previous sessions, were brought into court, called over by name, and asked 'why execution should not be awarded against them . . . [to which] they all upon their respective Knees pleaded Their Majesties . . . most Gracious Pardon . . .' (OBSP, 15–19 January 1691/2, pp. 5–6). Accounts of pardon ceremonies, with the names of defendants and the conditions attached to the pardons granted, were also occasionally separately printed in the late seventeenth century: see, for example, *An Account of the Proceedings upon His Majesties Gracious Pardon* . . . (21 March 1685).

Those among the condemned who had been passed over by the bench at the conclusion of the session and 'left to be hanged' could petition the king for his mercy or have friends or relatives do so on their behalf—though, the opportunity to appeal to the monarch was more limited in the seventeenth century than it was to become in the eighteenth because of the brevity of the period between sentence and the day of execution.[76] Such petitions as arrived were generally handled by the secretaries' office and in London were most commonly sent to the recorder of the City for his comment and his recommendation as to whether the petitioning convict was a 'suitable object of the king's mercy'. A positive recommendation could lead to a warrant signed by the king and returned to the recorder to authorize him to include the named convict in the next Newgate pardon.[77] As we will see, the rather loose informality of the London pardon process was to be changed in crucial ways after the Revolution of 1689, and in ways that may have brought the monarch even closer to the pardoning process in the capital. The new procedure also enhanced the recorder's decision-making role and made him an even more prominent link between the metropolis and the national government.[78]

Convicts pardoned from the death penalty were subject to some alternative punishment if the king chose to impose one. Or they might be pardoned absolutely—given a free pardon, as it was sometimes called—and discharged from gaol without further penalty. From the early decades of the seventeenth century, and especially from the 1650s, transportation to the Americas had been a favoured pardon condition. It was a sanction that served the several purposes of the penal regime by punishing offenders in a serious way while acting as a warning and deterrent to others. Although the transference of English labour to the colonies did not accord with the prescriptions for national strength and security being voiced in the seventeenth century by mercantilist economic writers,[79] the practical usefulness of transportation as a penal device, and as a way of managing the level of execution, was too appealing to be resisted. In the 1650s transportation had assumed a significant role as the condition most commonly imposed on pardoned felons, a role that was continued at the Restoration.[80]

[76] See below, pp. 460–1.

[77] Dozens of references to the recorder are calendered in the *CSPD* for the reigns of Charles II and James II; the recorder's responses and recommendation are occasionally included. One of George Jeffreys's reports (on a bigamy case) in 1680 is noted, for example at CSPD 1679–80, p. 42. The warrants are also noted in CSPD for the reigns of Charles II and James II; for an example, see CSPD 1680–1, p. 358 (warrant to Sir George Treby, recorder, and the sheriffs of London and Middlesex, for inserting in the next general pardon for poor convicts of Newgate and for putting into the clause for transportation, Thomas Jepson, condemned at the last Old Bailey sessions for highway robbery).

[78] See below, pp. 346–62.

[79] Joyce Oldham Appleby, *Economic Thought and Ideology in Seventeenth-Century England* (Princeton, NJ, 1978), ch. 6.

[80] I have set out the seventeenth-century origins of transportation in Beattie, *Crime and the Courts*, 470–83, which I summarize and develop here. See also Abbott E. Smith, *Colonists in Bondage: White Servitude and Convict Labour in America, 1607–1776* (1947; reprint edn., Gloucester, Mass., 1965), ch. 5; and for a brief and suggestive account, Joanna Innes, 'The Role of Transportation in Seventeenth and

Indeed, transportation seemed likely to develop after 1660 into a major element in the English penal system. It became so firmly established as a pardon condition for large numbers of offenders that in the years after the Restoration judges at the Old Bailey routinely announced that they had reprieved convicted offenders 'for transportation'—acting on the certainty not only that their reprieve would result in a royal pardon but that the condition imposed would be transportation. Condemned offenders petitioning for their lives also learned to ask for transportation in place of hanging.[81] And it became routine for royal warrants to the recorder granting pardons to convicted offenders to specify whether those spared from hanging were to be included in the 'clause for transportation' or 'without transportation'. (In the latter case it was understood they would receive a free pardon and be discharged.)

No doubt the enthusiasm for transportation in the middle decades of the century derived in large part from the rapid development of the colonies in America and the Caribbean. In the early years of the Restoration merchants with American and West Indian interests were eager to take pardoned offenders across the Atlantic.[82] So many convicted men and women were pardoned in the early 1660s on condition of transportation and returned to gaol to await ships that Newgate appears at times to have become seriously overcrowded—creating not only a security and health danger, but extra costs for the sheriffs of London and Middlesex, who supervised the gaol. It is revealing of the profit that was assumed to be available to those who transported prisoners that the sheriffs were given the right on at least two occasions to act as agents to dispose of some of the convicts 'so they may have benefit for themselves in recompense' for their expenses in managing so many prisoners in Newgate.[83]

The clearest indication of the enthusiasm for transportation in some circles, and the major role it was coming to play in the administration of the criminal law, can be seen in the efforts made in both houses of parliament in the early years of the Restoration to get it established in law as a punishment for felony and petty larceny. Transportation was successfully included in several statutes dealing with specific offences in the last years of the 1660s as a punishment that could be awarded at the judges' discretion as an alternative to hanging.[84] Early

Eighteenth-century English Penal Practice', in Carl Bridge (ed.), *New Perspectives in Australian History* (1990), 1–24.

[81] CSPD, 1666–7, p. 399.

[82] W. L. Grant, James Munro, and Almeric W. Fitzroy (eds.), *Acts of the Privy Council of England: Colonial Series*, 6 vols. (1908–12), i. 310. In 1663 a merchant was given authority to transport three men and two women who had been acquitted of minor charges at the Westminster quarter sessions but held in gaol as 'Incorrigible Persons' (ibid., 370–1).

[83] SP 44/14, p. 1 (19 December 1662); and for another such warrant, SP 29/92, fo. 123 (10 February 1664).

[84] In an act aimed at preventing 'theft and rapine' on the northern borders which removed clergy from a variety of thefts committed in Northumberland and Cumberland but also allowed the judge to substitute transportation for life in place of execution (19 Chas II, c. 3 (1666), s. 2); an act that removed benefit of clergy from the offence of stealing cloth at night from tenters or racks on which it was being

TABLE 6.2. *Selected parliamentary bills and statutes, 1663–1689*[a]

A: Failed bills

Title/purpose	Reference
Bill to authorize transportation for grand and petty larceny	JHC, 8, 437 (1663)
Same	JHL, 11, 529 (1663)
Same	JHL, 11, 587 (1664)
Bill for the better trial and conviction of persons indicted for petty treason, murder, and felony	JHC, 8, 613 (1665)
Committee to consider laws with respect to thieves and robbers, and in particular to consider their transportation	JHC, 9, 5 (1667)
Bill to prevent burglaries and robbing of houses in London	JHC, 9, 494 (1678)

B: Statutes

Title/purpose	Number
To prevent 'theft and rapine' on the northern borders; authorizing transportation	19 Chas II, c. 3, s 2 (1666)
Stealing cloth at night from tenters; authorizing transportation	22 Chas II, c. 5, s 4 (1670)
Rural incendiarism; authorizing transportation	22 & 23 Chas II, c. 7, s 4 (1670)
Habeas Corpus Act	31 Chas II, c. 2 (1679)

Note:

[a] In the case of bills, the reference to the journals of the House of Commons (JHC) and of the House of Lords (JHL) is to the first mention of the proposed legislation; further references can be found in the indexes

in the decade in the flush of enthusiasm that some men shared for the possibilities that transportation offered, much more ambitious efforts were undertaken to introduce a sentence of transportation for broad classes of offences. Bills were introduced in 1663 and 1664 to authorize those convicted of clergyable felony and petty larceny to be transported. It was noted in both bills that although the judges were empowered to imprison defendants for a year who successfully claimed benefit of clergy as well as ordering them to be burned on the thumb, the threat of such punishments did not 'prevent persons from committing the like crimes again'. The legislation was intended to give judges the discretion to order anyone convicted of a clergyable offence or petty larceny to be delivered to a merchant and transported to Jamaica, Virginia, or any other plantation for five to nine years.[85] In 1665 a proposal was put forward to impose transportation in some circumstances as an alternative to capital punishment in a bill 'for the

stretched that also allowed the judges the power to order transportation instead of hanging (22 Chas II, c. 5 (1670), s. 4); an act to punish forms of rural incendiarism with execution included a clause that enabled the convicted offender to petition for seven years' transportation (22 & 23 Chas II, c. 7 (1670), s. 4).

[85] *JHC*, 8 (1660–7), 438, 461; *JHL*, 11 (1660–6), 529, 550, 561, 587, 588, 590, 591. For the draft bill, see *Historical Manuscripts Commission: Seventh Report* (1879), 175.

better trial and conviction of such persons as shall be indicted for petty treason, murder, and felony'.[86] This was likely to have been the legislation referred to by a petitioner who wanted the right to arrange the transportation of 'felons and other convicts not judged worthy of death, a bill being now before the Commons to change their sentence into transportation'.[87] These attempts all failed in their early stages, but an ambitious proposal in October 1667 to establish transportation as a possible punishment for highway robbery got much further before dying with the end of the session in the following year.[88]

This is a decidedly mixed legislative record, but one that none the less makes it clear that transportation was viewed in some quarters in the 1660s as an important addition to the penal arsenal, both as a substitute for hanging and for non-capital offences. It was surely the ease with which the authorities expected to dispose of convicts across the Atlantic that encouraged judges in the 1660s and into the 1670s to engage in two forms of verdict and sentencing manipulation: on the one hand reprieving a significant number of defendants convicted of non-clergyable felonies, especially women, *before* pronouncing the death sentence and then ordering them to be transported as a condition of the royal pardon that would follow; and, secondly, using the reading test and the rule that restricted the right to clergy to the first offence, to deny defendants convicted of clergyable felonies—and in this case mainly men—the right to claim benefit of clergy, thus threatening them with capital punishment, but in fact immediately reprieving many of them on condition of transportation. This back-door way of creating transportation as a punishment for clergyable offences in place of the branding and discharge that followed a successful plea of clergy was not simply a matter of the vindictiveness of a few individual judges or magistrates, but rather a conscious policy of the king and his ministers.[89]

The idea of transportation had taken such root in the early years of the Restoration that it was widely assumed there were considerable profits to be derived

[86] *JHC*, 8, 613 (1665).

[87] CSPD 1665–6, p. 138 (undated, but assigned to 1665 by the editors).

[88] In October 1667 a committee of the House of Commons was appointed 'to consider of the former Laws, and such Propositions as shall be tendered; and propose what they shall think fit to be done for guarding and securing the Countries and Highways against Thieves and Robbers; and in particular, consider of the Law touching their Transportation'. The bill was presented, read twice, sent to committee, and the amendments made there debated and the bill finally engrossed. By this point—at the end of March 1668—the session was drawing to an end and the bill was lost. It does not seem to have been reintroduced: perhaps the particular anxieties about highway robbery dissipated (*JHC*, 9 (1667–87), 5, 8, 16, 27, 28, 64, 72).

[89] Kelyng's account of the way he forced some of those convicted before him of clergyable crimes in 1666 to prove their literacy by giving them randomly chosen passages from the Bible gives the impression that that was entirely his idea of how some offenders should be treated (Beattie, *Crime and the Courts*, 474). But in a royal warrant of 1662 giving the sheriffs of London licence to transport convicts it was said that Newgate was crowded because it contained numbers of 'prisoners condemned for crimes within clergy, who usually beg and obtain our gracious pardon under limitation of being transported into foreign plantations'. This strongly suggests that the denial of clergy followed by pardon on condition of transportation was a matter of conscious policy (SP 44/14, fo. 1). For the numbers of offenders sentenced to be transported in this way, see below, pp. 302–3.

from carrying convicts to the colonies and selling them into a form of servitude for the term of their sentences. Indeed, it was also promoted for that reason as a solution not only to more minor forms of property crime, but to vagrancy as well. In a 'Proposal' addressed to the king and Council in 1664, an anonymous projector envisaged 'an office for transporting to the plantations all rogues, beggars and felons convicted of petty larcenies' who would be sent from all parts of the country to the nearest seaport where they would be registered and transported. They would be taken by 'merchants, mariners or planters' who, the petitioner assumed, would be willing to pay to take such people to the colonies. The anticipated profits were proposed to be divided between the king and the proprietors of the office.[90] This was fanciful. But the fact that it occurred to someone in 1664 as a possible money-maker does suggest the high level of optimism in some circles about the possibilities offered by transportation as a solution to a range of domestic social problems.

Whether legislated or not, however, transportation was unlikely ever to have flourished in the late seventeenth century because the conditions that had given rise to the optimism of the 1660s changed significantly over the following decades. Colonies that might have been expected to take convicts—Jamaica and Barbados, Maryland and Virginia—were in the process of establishing slave economies by the 1670s and became much less receptive to cargoes of English convicts.[91] In these circumstances merchants became careful and selective about who among the convicts they would take and where. They were no doubt always reluctant to take the elderly and the infirm—a consideration suggested by a list among the State Papers of convicts to be transported in 1664 that includes their ages.[92] But they became even more selective by the late 1670s and the 1680s, making it far from certain that a sentence of transportation would actually be carried out. As a pamphleteer said in 1677—in the course of arguing in favour of the establishment of county workhouses for the manufacture of linen cloth in which convicted felons would be sentenced to work for life or a term of years—transportation was no longer working because 'Foreign Plantations have now so little occasions [*sic*] for them [convicted offenders], that Merchants refuse to take them off the Sheriffes hands, without being paid for their Passage'.[93] The result was that while young, able-bodied, skilled males might be scooped from the gaols and taken, elderly, infirm, and unskilled men and large numbers of women were left to languish.[94] By the late 1670s the government occasionally paid the gaol fees

[90] CSPD 1664–5, p. 147.

[91] Maryland and Virginia indeed both passed ordinances in the 1670s forbidding the landing of convicts (CSPC: America and the West Indies, 1669–74, 63–4); the Virginia prohibition was confirmed by the Privy Council, *Acts of the Privy Council: Colonial*, i. 553. And see Smith, *Colonists in Bondage*, 104.

[92] SP 29/92, fo. 125.

[93] *Proposals for Building in every County a Working-Alms-House or Hospital* . . . (1677), 8. I owe this reference to Roger Ekirch.

[94] In a warrant to sheriffs of London and Middlesex in 1684 it is revealed that the agent for transporting offenders to St Christopher's refused to take convicts unless 'he may choose the most able and valuable of them and leave the others in prison', and that 'no merchants can be found who will transport them, when the choice men are carried away . . .' (CSPD 1684–5, pp. 111–12).

of convicts languishing in London gaols in order to get them transported to the West Indies.[95] But a government increasingly beset by domestic enemies in the decade following the so-called Popish Plot in 1678 had neither the resources nor the political muscle to confront the difficulties inherent in a system of transportation that relied on the private interest of merchants.

A growing acknowledgement of the problems surrounding transportation is apparent in the increase in the number of free, or absolute, pardons granted to condemned felons by the late 1670s—that is, pardons issued without conditions and that simply released the offender back into the community. Absolute pardons were always likely to be granted to a few convicted offenders, even in the most punitive of regimes. Some prisoners were too ill or too elderly to be transported or to be punished in any way. But as transportation ran into difficulties, the number of such pardons increased strikingly. Whereas, between 1662 and 1676 something in the order of 13 per cent of pardons granted to convicted felons in London and Middlesex—to men and women convicted of all capital offences, not simply crimes against property—were free and unconditional, by the 1680s that figure had risen close to 40 per cent.[96]

A similar recognition of the difficulties that had overtaken transportation is apparent in the government's increasing willingness to allow those so sentenced in effect to banish themselves. That had always been an option for convicts who could mobilize powerful support, or those who could present a plausible reason (a physical infirmity, for example) why they should not be sent to the colonies where they would be sold into some form of service.[97] But it is a measure of the difficulties facing gaolers and sheriffs that self-transportation became more common by the late 1670s, when significant numbers of convicts were allowed to enter into recognizances to take themselves out of the country. This scheme failed for the same reasons that undermined the merchant-driven system—a failure confirmed by the judges at the Old Bailey in 1681 who noted

> that the convicted prisoners in Newgate for some years past whoe have given Recognizance for transporting themselves upon his Majesty's gracious Letters of pardon have not departed this Kingdom according to the provisoe in the same expressed. . . . It is therefore ordered by this Court That the provisoe in such like pardons for Convicts be drawne and made as formerly. And that the prisoners be transported by Merchants bound by obligation to his Majesty with good suretyes in a penalty with a condition made according to the same provisoe.[98]

[95] Grant *et al.* (eds.), *Acts of the Privy Council: Colonial*, i. 708–9, 713.

[96] Based on pardon documents in Public Record Office (PRO), C 82 and C 231. General pardons issued for condemned prisoners in Newgate are also to be found in the CLRO in several boxes dated 1660–84, 1685–94, 1702–60, and post-1760, along with a box of royal warrants dating from 1719 requiring named offenders to be included in the next Old Bailey general pardon. Pardons are also noted in the sessions minute books (CLRO: SM).

[97] As in the case, for example, of a prisoner in Newgate who asked for liberty to transport himself to some plantation, 'being unable to perform the labour of those who are sold as slaves . . .' (CSPD 1670, p. 624).

[98] CLRO: SM 52, July 1681.

Business as usual in fact meant little business at all. It had become abundantly clear that to remove every offender pardoned by the king on condition of transportation would require government intervention and public money. Late Stuart governments gave no sign of contemplating either.

The problems surrounding transportation ensure that we can never be certain that offenders pardoned from capital punishment in the thirty years after the Restoration and ordered to be transported actually left the country. On the other hand, we can be reasonably sure that whether they were transported or not their pardon was not likely to have been revoked, and that the court records and the pardon documents together provide a reasonably accurate guide to the numbers of offenders from the City who were executed and the offences for which they had been condemned. The data set out in Table 6.3, derived from our Sample of sixty-nine sessions over the twenty-six years 1663–89, show that a total of 74 men and 116 women pleaded guilty or were convicted of non-clergyable property offences and were thus in danger of being hanged. What was their fate? As we have seen, a significant number were pardoned and subjected to an alternative punishment or simply allowed to go free. One of the

TABLE 6.3. *Sentences in non-clergyable property offences: City of London cases at the Old Bailey, 1663–1689*

Convicted[a]		Reprieved before sentence	Sentenced to death	Pardoned	Hanged	Conditions of reprieves/pardons	
						Transportation	Other[b]
Men	74	11	63	30	33	29	12
%	100.0				44.6	39.2	16.2
Women	116	54	62	48	14	83	19
%	100.1				12.1	71.6	16.4

Notes:
[a] Including three men and ten women who pleaded guilty
[b] Includes absolute/free pardon; 'held in gaol' and probably pardoned and discharged; unknown sentences
Source: Sample

striking consequences of the belief in the possibilities and the value of transportation was the practice of the judges in the years after 1660 of interrupting and foreshortening the ordinary procedure of the court by awarding 'pardons' *before* they had sentenced convicted felons to death, and ordering that they be held in gaol in order to be transported or, in a few cases, discharged. The judges seized on the possibility of transportation as a way of dealing with the large number of women convicted of offences that were non-clergyable for them but not for men—that is, simple thefts of more than ten shillings in value. As we can see in Table 6.3, a significant number of women who pleaded guilty or who were convicted of non-clergyable property crimes were reprieved in this way: over 70 per cent of them were ordered to be transported as a condition of pardon. These

were not necessarily intended as benevolent gestures. Indeed, since it was likely that a woman convicted of non-clergyable theft and sentenced to death would be pardoned by the king and—in the absence of an alternative punishment—released, the interruption of the process in court and imposition of transportation was almost certainly intended as a way of imposing stiffer and more deterrent sentences on women who committed thefts of more than ten shillings in value. That supposition seems to be confirmed by the falling away of that practice when transportation ran into difficulties by the late 1670s. Almost all of those pre-sentence reprieves with transportation as a condition were awarded before 1675, when enthusiasm about sending convicted criminals to the West Indies or the American plantations was at its height. Most of the women whose sentences were interrupted by the judges in the following fifteen years were granted a free pardon and released, and—clearly as a consequence of that—many fewer such reprieves were granted then.

Whether, in taking to themselves the power to reprieve and to name an alternative punishment, the judges had intended to correct an unfairness in the treatment of men and women convicted of simple theft or, as seems more likely, they had had more punitive intentions, this pattern of sentencing is an illuminating reminder of the way in which discretionary powers made it possible for juries and judges to manipulate the outcomes of trials. It is also a reminder of the importance of resources and opportunity in the history of punishment: several hundred women in the metropolis of London (if the indication of our Sample can be trusted) were almost certainly punished more severely over the fifteen years following the Restoration than they would have been if transportation had not seemed so attractive and had not been momentarily available to the courts; indeed, it is possible that fewer women would have been prosecuted. On the other hand, whatever intentions had lain behind this exercise in discretion, it is clear that opinion shifted in this period against the centuries-long denial of clergy to women on the same basis as men. It comes as no surprise, in consequence, that the privileges of clergy were fully extended to women soon after the Revolution of 1689, when parliament was sitting regularly and, as we will see, a spate of legislation dealing with criminal law matters was enacted.[99]

Most of the men and women convicted of capital offences were brought into court at the conclusion of the session to hear the recorder pronounce the words that threatened them with the terrifying prospect of being hanged at Tyburn. Some, however, were immediately reprieved and told that they would be recommended for a royal pardon. Reprieves would also be ultimately granted to women who claimed to be pregnant and whose claim was confirmed by the 'jury of matrons'.[100] The rest were left to be executed. After sentence was passed,

[99] See Ch. 7.

[100] James C. Oldham, 'On Pleading the Belly: A History of the Jury of Matrons', *Criminal Justice History*, 6 (1985), 1–64. By this period at least, a reprieve until the child was born was likely to be followed by a pardon (ibid., 19–21).

the condemned were returned to Newgate, some to await the deadly summons to be taken on the 3-mile journey to Tyburn,[101] the reprieved with every expectation that at some point in the months ahead they would be pardoned and then released from gaol entirely or transported to America or made to undergo some alternative punishment. As we have seen, those condemned to await the executioner's call, could petition the king for a pardon, and gather what support they could from their relatives and friends, from those who had known them in their communities, or, even more advantageously, from those with influence at court. Those petitions would normally be sent to the recorder, and his recommendation or that of the chief justice of the court of King's Bench, appears to have been generally influential in the decision to pardon or not to pardon made by the king and the secretaries of state and others who acted in his name.

Given the degree of discretion available to the juries and the judges, it is not surprising that the men and women who were in the end hanged for property crimes in London were either judged to be habitual offenders or they had committed offences that were thought to be particularly heinous, because, like burglary, housebreaking, and robbery, they threatened physical harm to victims. The language of the pardon correspondence and pardon warrants, of the trials and the Ordinary's *Accounts*, makes it clear that the character of the offender and of the offence were the major considerations in the decision to grant or withhold mercy. Pardons were most readily extended to those who appeared to offer less of a threat to the community because of their age and previous record, or because they had not committed an offence that threatened violence—an attitude summed up in the condition attached to a pardon granted to a horse-thief in 1663: he was to be pardoned so long as he had not been previously convicted of murder, burglary, or highway robbery; and, in another order that distinguished among eight men condemned to death at the summer assizes at Norwich, and specified that only those convicted of burglary were to be executed.[102] In the exercise of the pardoning power the combination of persistent offending and the nature of the offence were the crucial determinants—considerations that almost certainly explain why a smaller proportion of women charged with nominally capital offences were executed than of men so charged. They were not treated more leniently; they had committed fewer threatening offences.

In our Sample of City of London cases in the late seventeenth century,

[101] Or, as occasionally happened in the late seventeenth century, to some other place in the metropolis, for executions were still then occasionally carried out at sites around the City to drive home a lesson and enlarge the terror of the hanging for a particular population. That was said of the hanging of two men in Fleet Street in 1676 near the spot where they had murdered a gentlemen (Sir Richard Sandford). The execution was carried out there at the king's express command, for 'the exemplarity of the thing and the terror' of their accomplices (CSPD 1675–6, p. 352). Two years later a man was hanged for murder at the spot of the killing in Covent Garden 'as a particular mark of the King's justice on so foul a fact and as a terror to others'. Also in 1678 a soldier was hanged for desertion on Hounslow Heath for the same reason (CSPD 1678, pp. 182, 279).

[102] CSPD 1661–2, pp. 461–2; CSPD 1663–4, p. 77.

larceny—simple theft—accounted for a large number of executions, in part because of the number of women condemned for an offence for which they could not claim benefit of clergy (Table 6.4). Men were also hanged in significant numbers for simple larceny, often on the grounds that they had been granted

TABLE 6.4. *Property offences for which offenders were hanged: City of London cases at the Old Bailey, 1663–1689*

	Men		Women		Total	
	Number	%	Number	%	Number	%
Grand larceny	13	28.3	9	64.3	22	36.7
Burglary	19	41.3	3	21.4	22	36.7
Picking pockets	5	10.9	2	14.3	7	11.7
Housebreaking	4	8.7	—		4	6.7
Horse-theft	3	6.5	—		3	5.0
Robbery	2	6.5	—		2	3.3
Total	46	100.1	14	100.0	60	100.1

Source: Sample

clergy at least once before or because the judge went out of his way to insist on a reading test for a man he considered a dangerous old offender, a test that the defendant had not been able to pass to the bench's satisfaction. The reasons why some men were condemned and others spared are rarely clear. The nature of the offence clearly played a large part. But other, more personal, considerations influenced pardon decisions in particular cases. Such factors are hinted at in royal warrants that in increasing numbers in the 1680s allowed free, or absolute, pardons—pardons without a conditional punishment—as the difficulties of transportation mounted. Free pardons became necessary because merchants would not take transportees, the government would not pay to send them, and in any case America would not accept them. But none of that could be said in the pardon warrant to the recorder. Rather, something plausible needed to be advanced to justify a pardon that simply allowed an offender to go free. The reasons offered strike notes that are entirely to be expected. For the most part justifications rest on the character or the circumstances of the offenders: they had been ensnared by evil companions; they were young; it was their first offence; they had shown signs of remorse and penitence and had demonstrated it by giving information about other offenders; in the case of married men, they had wives and children who would suffer if they were left without their help.[103]

The outcome of the Old Bailey trials in the decades following the Restoration confirms the evidence assembled by Sharpe and Jenkins of a striking decline in the number of offenders executed in England in the seventeenth century. Our

[103] See, for example, CSPD 1679–80, p. 555; CSPD 1680–1, pp. 527, 627; CSPD 1684–5, p. 91.

data suggest that about sixty men and women from the City were executed in the sessions sampled in the three decades after 1660, that is to say, almost one each session on average, or about seven a year. In judging the significance of that level of capital punishment, we must remember that we are concerned here only with property offences and that significant numbers of men and women were executed in the late seventeenth century for murder, infanticide, coining and clipping, and several other forms of treason and felony. In addition, we must also bear in mind that our data concern only property offences from the City of London and that the Middlesex cases at the same sessions of the Old Bailey would have resulted in the execution of an even larger group of men and women at Tyburn than arose from the City.[104] An estimate of somewhere in the order of twenty-five executions a year on average for all offences would seem to be a reasonable minimum. Such a level of execution in the metropolis was a considerable reduction from the experience of a century earlier. Jenkins' reconstruction of the available evidence suggests that the watershed decade may have been the 1630s, or at least that the exceptionally high levels of executions that had taken place all over the country, including London, under the Tudors and into the seventeenth century, had been sharply reduced before the civil war.[105]

By sixteenth-century standards, capital punishment may have been imposed with a good deal of circumspection in the decades after the Restoration. Execution none the less remained the principal penal response to property crime and the procession to Tyburn, and the public hanging of men and women chosen as examples remained regular events on the metropolitan calendar. And from time to time, when the state of crime or public opinion or political circumstances required it, the numbers executed in the public interest could rise sharply. Average figures conceal some large variations in verdicts and sentences from session to session. Jurors and judges and the king could combine to condemn very few accused at one session, many more at the next. This is revealed even more clearly when one takes the full Old Bailey calendar into account—including, that is, Middlesex cases as well as those from the City. At the April 1680 Old Bailey session, twenty-four convicted men and women were sentenced to death—'the number being so great', the Proceedings reported, 'the common bar could not contain them when they were brought back into court for sentencing'.[106] This session occurred in the midst of the political crisis surrounding the effort to exclude the Duke of York from the succession to the throne, a period in which public order in London was a source of major concern for the court. The twenty-four convicted offenders who faced the death penalty had not committed public order offences, and there was thus no direct connection

[104] See above, Ch. 1, Table 1.1, where I have estimated that City cases made up about 40% of the full calendar at the Old Bailey in the late seventeenth century.

[105] Jenkins, 'From Gallows to Prison?', 555–7, 60–1; see also Sharpe, *Crime in Early Modern England*, 142–4.

[106] *The True Narrative of the Proceedings at . . . the Old Baily . . .* (April 1680), p. 4.

between the threat of hanging and the government's anxiety about the level of crowd disturbances on the streets of the capital. But it is none the less likely that judges would have been encouraged to display the power of the law and the terror of the gallows as a general deterrent to violent expressions of opposition to the court. And with Jeffreys acting then as recorder of the City and playing a major role at the Old Bailey, the bench was likely to have exerted as much influence as possible on the jury to find acceptable verdicts. At the following session in July 1680 more than forty defendants from Middlesex and the City together were convicted and sentenced to death, though most of them were subsequently pardoned.[107] The impact and importance of capital punishment in London is more nearly captured not by averages, but by the occasional years in which very large numbers of men and women were hanged at the Tyburn triple tree. Narcissus Luttrell, who recorded convictions and executions in London, reports several years in which fewer than twenty-five men and women were condemned, but also many in which the numbers were much higher than that—in 1697, for example, as many as sixty-eight.[108]

There was thus no loss of faith in the power of the gallows and the usefulness of its terror when the occasion required it—when serious crime seemed in danger of escalating or social or political unrest threatened the stability of the regime. But the ordinary run of verdicts and sentences passed at the Old Bailey after the Restoration none the less speaks to a reluctance to see the criminal law enforced to its fullest rigour. We might ask what that circumspection signifies. Why had the artisans, craftsmen, shopkeepers, and merchants who sat on the juries, and the judges and officials who were the gatekeepers of the pardon process, come to the view that capital punishment would be most effective if it were applied only selectively, as an example and a warning? It seems to me most likely that the practice of the courts sprang from a recognition that the range and numbers of offences in the metropolis could not be stemmed simply by displays of the state's violence. This was a recognition not of the illegitimacy of the terror that capital punishment was expected to create but of its limits; and evidence of a gradual, parallel, recognition that supplementary penal measures were needed. The enthusiasm for transportation after the Restoration was but one sign of that, and it inaugurated a sixty-year effort to make it work or, failing that, to find an alternative.

Transportation was valued both as a condition of pardon from capital punishment and as an acceptable punishment that would help to fill the wide gap between execution and the branding and discharge of benefit of clergy—introducing a sanction for offences that had gone virtually unpunished. It was particularly valued in the metropolis in which petty thefts were pervasive, many of

[107] CSPD 1679–80, p. 561.

[108] Narcissus Luttrell, *A Brief Historical Relation of State Affairs from September 1678 to April 1714*, 6 vols. (Oxford, 1857), iv. 175, 194, 215, 231, 254, 278, 302, 322.

them charged against women who had limited access to clergy and yet whose offences were such that they were not likely to be hanged in large numbers. Indeed, the inadequacy of the criminal law was most clearly apparent in the treatment of petty theft, and one can see in the practice of the Old Bailey efforts to construct more effective responses to such offences than those provided by the law.

Altogether 272 men and 49 women in our Sample from the City of London came before the judges at the end of the sessions, having been convicted of or pleaded guilty to an offence against property to which benefit of clergy (or in the case of women, 'benefit of the statute' of 1623) applied. Almost two-thirds of the men and three-quarters of the women were granted clergy, burned on the thumb and released (Table 6.5). A significant number of men and a few women in our Sample were, however, declared to have failed the literacy test or were

TABLE 6.5. *Sentences of defendants convicted of clergyable property offences and petty larceny: City of London cases at the Old Bailey, 1663–1689*

	Convicted[a]	Clergy	Denied Clergy		Whipped	Unknown/ discharged[b]
			Transported	Hanged		
Grand larceny						
Men	272	179	74	13		6
%	100.0	65.8	27.2	4.8		2.2
Women	49	38	5			6
%	100.0	77.6	10.2			12.2
Petty larceny						
Men	62				62	
%	100.0				100.0	
Women	34				34	
%	100.0				100.0	

Notes:

[a] Convictions for grand larceny include 54 men who pleaded guilty to clergyable felonies, those charged with and convicted of clergyable felonies, those charged with non-clergyable felonies but convicted of a clergyable felony. Petty larceny convictions include those who pleaded guilty or were convicted of petty larceny, those charged with grand larceny or non-clergyable felonies who were convicted of petty larceny.

[b] Absolute/free pardon; unknown sentence.

Source: Sample

found to have been branded earlier and were thus denied clergy and threatened with the death penalty. As we have seen, this followed a decision taken at the highest levels of the central government to force the transportation of some of those who would otherwise be eligible for a clergyable discharge. The intention in choosing to put some clergyable offenders to a strenuous literacy test—forcing convicted men to show that they could actually read from the Bible,

rather than just mumble their way through the familiar 'neck-verse' in a charade that must so often have served as the reading test—or to insist on the rule that clergy could be granted once only, was not necessarily to condemn them to death, but rather to make it possible to sentence them to the more serious punishment by way of a conditional pardon. The few women eligible to plead clergy were not required to prove their literacy. But they, as well as men, could be denied clergy if they had been branded earlier. For the most part, the judges sought to deny clergy to men: eighty-seven in our Sample failed the reading test or were found to have been clergied earlier and were thus faced with the possibility of being condemned to death. In fact thirteen men were so sentenced. Seventy-four were in effect pardoned ahead of time by agreeing to opt for transportation. This was clearly the outcome desired by the judges—the imposition of a punishment that removed these men from the community. As was said about eight offenders dealt with in this way at the Old Bailey in 1693, they were 'held to strict reading in order to Transportation, if their Majesties so please, to prevent the danger of further mischief to their Majesties Subjects, in case they could have been set at large'.[109] Five women were similarly sentenced in the sessions sampled between 1663 and 1689.[110]

The men and women who found themselves manipulated into transportation in the decades after 1660 were perhaps grateful to opt for this lesser evil since the alternative they faced was the death penalty. But manipulated they were, and their agreement to be transported—an agreement that was essential if their removal was to be legal—was in effect extorted from them.[111] The court record speaks of their having 'petitioned' or 'asked for' transportation. But they petitioned in the face of a more serious alternative, a message clearly conveyed before sentence was passed. An Old Bailey case in 1674 gives some sense of the negotiation that might surround a denial of clergy. William Taylor, charged with murder, was convicted of manslaughter, but only because the presiding judge, the lord mayor, insisted that the jury reconsider their initial verdict of not guilty. The mayor was obviously persuaded of Taylor's guilt, for when it came time for sentencing he asked him 'if he would take transportation'. His entirely inappropriate answer was that 'he would be tried by God and his country', perhaps

[109] *An Account of the Malefactors that Received the Benefit of Their Majesties . . . Pardon at . . . the Old Bailey . . . 11 December 1693* (1693). It is notable that that formulation makes pardon and transportation seem entirely routine and essentially in the hands of the judges at that point.

[110] For further evidence on the uses of the reading test to create the punishment of transportation in this period, see Beattie, *Crime and the Courts*, 474–5.

[111] This is the significance of the clause in a royal warrant to the sheriffs of London in 1667 authorizing them to deliver Charles Lawrence and six other convicts in Newgate to a merchant to be transported 'with their full consent' (CSPD 1667, p. 250). When Jane Jones refused to leave the country after being convicted and sentenced to death in 1663, and was then pardoned upon condition of transportation, she would have been hanged if she had not made good her claim to be pregnant (SP 29/97, fo. 188). The requirement that the prisoner's approval was necessary was confirmed by the Habeas Corpus Act (31 Chas II, c. 2 (1678), s. 12).

making the point (unless he was, understandably, confused by the procedure) that the jury—his 'country'—had wanted to acquit him. According to a subsequent petition by Taylor's father, the lord mayor had then said to him:

> You have no mind to part from your country? Then he had the benefit of his clergy [that is, was allowed to prove his literacy]. The Bench asked: Does he read? and the minister answered: He does. Then the Lord Mayor called for the book, and pricked a pin in another place in it, for him to read again. Then he, not reading in that place, is to be transported.[112]

Another form of manipulation in the interest of creating an alternative to the branding of clergy led to sixty-two men and thirty-four women being whipped on the bare back for offences against property. In this case, it was a manipulation that was available only to the jury, though they no doubt had advice from the bench about the appropriateness of applying it in particular cases. Whipping was the established punishment for petty larceny, the theft of goods under a shilling in value, and the only form of theft not subject to capital punishment at common law. As we have seen, unlike justices of the peace in the rest of the country, the magistrates of London and Middlesex did not send charges of petty larceny to either their sessions of the peace or the sessions of gaol delivery at the Old Bailey. On the other hand, they clearly expected that juries would be inclined to use their discretion to convict a number of those charged with more serious offences by reducing in their verdicts the value of the goods stolen to something under a shilling—ten pence being a favoured sum.

Whether this verdict was a favour to the defendant depended on the alternative punishment he or she would have otherwise faced. Thirty-eight of the men and six of the women who were whipped for petty larceny had been originally charged with a form of grand larceny for which they might have been granted clergy, branded in court, and released; had that been their punishment they may have preferred it to being returned to gaol and subsequently whipped. That some juries regarded a reduction to petty larceny and the whipping that would follow as a more severe outcome than the branding of clergy is made clear by the case of two women charged with theft to the value of ten shillings in 1694. One confessed and was granted clergy, burnt in the hand and discharged; the other 'would not' confess, the Sessions Paper reported, and she was tried, convicted of the theft to the value of ten pence rather than ten shillings, and sentenced to be whipped.[113] Similar intentions seemed to be at work in the case of John Snape, who was charged with stealing linen valued at twenty-four shillings from a shop, made a poor defence, and 'appearing to be an Old Offender, and well known in Court, being branded in the Hand, was found Guilty' but to the

[112] CSPD 1673–5, p. 388. William Briscoe, a yeoman convicted of manslaughter and sentenced to transportation, said in his petition for a free pardon that 'being unable to read an old print [he had been] forced to a willingness to be transported' (CSPD 1665–6, p. 307).

[113] OBSP, April 1694, p. 2 (January and Stephens).

value of ten pence for which he was sentenced to be whipped rather than branded.[114]

On the other hand, juries also clearly believed that whipping was only appropriate for those who stole relatively small amounts: it is striking that they rarely reduced grand larceny charges to petty larceny when the goods stolen were valued at more than two pounds. Of fifty-one men and women charged with grand larceny but convicted of petty larceny and whipped in our sample sessions between 1663 and 1689, only five had stolen goods worth more than forty shillings, though such offences accounted for 60 per cent of all grand larceny charges. There was a broad relationship between guilty verdicts and the value of goods stolen in a property offence (Table 6.6). The value of the theft had

TABLE 6.6. *Jury verdicts at the Old Bailey in property offences in the City of London, 1663–1689, by value of the goods stolen*

Value	Guilty	Guilty reduced	Not guilty	Total
Less than 10*s.*	32	32	42	106
%	30.2	30.2	39.6	100.0
10*s.*–39*s.*	79	59	64	202
%	39.1	29.2	31.7	100.0
40*s.*–99*s.*	86	22	89	197
%	43.7	11.2	45.2	100.1
More than 100*s.*	199	44	193	436
%	45.6	10.1	44.3	100.0

Source: Sample

little apparent influence on juries' decision to acquit. But with respect to guilty verdicts the relationship is clear: the greater the value of the goods, the more likely juries were to convict defendants of the offence stated in the indictment; the reverse was true with respect to partial verdicts that reduced non-clergyable offences to grand or petty larceny, or that reduced grand larceny to petty larceny.[115] Apart from what appears to have been the jurors' view that whipping was not an appropriate punishment for more serious thefts, they may also have thought that the branding of clergy retained some deterrent power, aware as they must have been that the 'F' burned into the brawn of the thumb was still potentially perilous in this period for those facing a second felony conviction. The judges occasionally denied clergy to prisoners who had been previously allowed clergy in order to manœvre them into a position of requiring a pardon, a situation in which they could be sentenced to be transported.[116]

[114] OBSP, May 1686, p. 2 (Snape).
[115] We shall explore this subject at greater length in the following chapter (see Ch. 7, text at Table 7.4).
[116] See above, text at n. 89.

In the case of fifteen men and twenty-seven women in our Sample who had been found guilty of petty larceny after being charged with an offence for which they might have been hanged, the jury's partial verdict (and the whipping sentence that followed) was more obviously merciful. Their conviction for petty larceny reduced the charge by two steps, as it were. No doubt they were glad to escape the threat of the gallows, though they too may have preferred to have had a less-generous reduction to the clergyable form of larceny and to have endured the private pain of a branding (and the threat for the future that it carried) rather than the humiliation and greater pain of whipping.[117] Three men charged directly with petty larceny and convicted were also whipped.

The court record does not disclose where and when whippings were to be carried out in London. They were almost certainly administered in public and with the offender tied to the back of a cart and whipped on his or her naked back until blood was drawn. The French traveller Misson, who was particularly interested in the English system of criminal justice, said that offenders convicted of petty larceny were 'to be whipp'd thro' the Streets'.[118] The unusually full account of the December 1678 Old Bailey session, at which Jeffreys delivered the sentences as recorder, makes that clear. He sentenced three men and seven women convicted of petty larceny to 'be carried from hence to the place from whence you came, and from thence be dragg'd ti'd to a Carts-tail through the streets, your Bodies being stripped from the Girdle upwards, and be Whipt till your Bodies bleed'. He singled out Mary Hipkins for particular chastisement. She was well known to the Old Bailey bench, having been convicted, sentenced to death, pardoned, and released the previous year for the theft of goods worth eighteen pounds from the Duke of Buckingham. Having been convicted yet again, on this occasion of petty larceny, Jeffreys ordered the man who was to whip her to be sure to 'scourge her soundly'.[119]

That several offenders at every session of the Old Bailey were convicted of petty larceny and ordered to be whipped reminds us of the quite remarkable circumstance—remarkable in terms of the practice in every other criminal court

[117] Leniency was no doubt genuinely intended in some of the cases in which convicted offenders were in danger of being hanged. The Sessions Paper reporter clearly thought that that was the point of the verdict in the case of a woman charged in 1687 with the theft of linen and clothing well over the clergyable limit of 10*s*. and who confessed in the course of her trial: 'the jury brought her in guilty', he reported, 'yet in consideration it was her first fact, only to the value of 10*d*.' And, of another woman tried at the same session, that the jury found her guilty of the reduced charge 'in consideration the things [stolen] were of small concern' (OBSP, May, 1687, pp. 2, 3 (Wright, Rooks)).

[118] Misson, *Memoirs and Observations*, 359. Plates 8 and 9 show two forms of whipping in public. In one a vagrant is being scourged at a whipping post by the beadle of the ward; the other illustrates 'The manner of Whipping at the Carts Tayle for petty Larceny and other Offences'. They are taken from *A Book of Punishments of the Common Laws of England* (London, ?1678; copy in the Guildhall Library at AN.18.3.25). I am grateful to John Langbein for my knowledge of this volume and for providing me with copies of the illustrations.

[119] *An Exact Account of the Trials . . . Decemb. 1678*, p. 35. For Mary Hipkins's pardon in 1677, see PRO, C 82/2504.

in the country—that is, how few charges of petty larceny were sent on to the court by either London or Middlesex magistrates. Does this perhaps suggest some anxiety to limit the number of offenders sentenced to be whipped in public at the end of every session of the Old Bailey? There is no reason to think that whipping was regarded as too brutal or shocking for the sensibilities of the population, or thought likely to encourage violence in others. These were all sentiments of the future. But gathering large crowds together, as we might assume public whippings did, particularly the sexually charged performance of whipping women, who were naked from the waist up, had a different meaning and consequence in London than in a small town. At the very least, public whippings would have blocked the streets for some considerable time and may have been coming to seem too disruptive in the urban and commercial world at the end of the seventeenth century. That may have acted as a restraint on the wider use of public chastisement as a penal weapon. Certainly, had petty larceny been charged as it might have been, there would have been dozens (at the very least) of public whippings to be carried out at the end of every court session. Limiting whipping to the number of defendants chosen for this treatment by juries provided a means of keeping it within tolerable limits.

I know of no evidence to support such a view, but it would not be surprising if there had been concern about the disruptions to street traffic that public displays of violence would have caused. There were to be complaints throughout the eighteenth century about the disruptive consequences of the Tyburn procession—the drunkenness it encouraged, the loss of work time it entailed, the opportunities it provided for pickpockets.[120] It is possible that some of the apparent reluctance on the part of the court and the government to hang or to whip large numbers of offenders in the late seventeenth century reflected such concerns. A similar reluctance may have influenced the way the City magistrates administered a third form of public punishment, the pillory. This was typically imposed on men and women convicted of a variety of misdemeanours, including seditious libel, forgery, and forms of fraud or cheating, rather than the convicted felons with whom we are mainly concerned. But it seems significant in the context of public punishment in the City in general that the pillory, too, came under some restrictions in this period. Until the end of the seventeenth century the court often sentenced offenders to three separate exposures on the pillory at the most public places in the City—the Exchange, Cheapside, Fleet Street at the end of Chancery Lane—quite often for two hours each, and at a time that would guarantee the largest crowd.[121] By the early decades of the eighteenth century sentences were more likely to be restricted to one session and for one hour. Again, that does not suggest that the essential character of the

[120] Bernard Mandeville, *An Enquiry into the Causes of the Frequent Executions at Tyburn* (1725), ed. by Malvin R. Zirker, Jun., The Augustan Reprint Society (Los Angeles, 1964), 16–25; Henry Fielding, *An Enquiry into the Causes of the Late Increase of Robbers*, 1751, ed. by Malvin R. Zirker (Oxford, 1988), 167–72.

[121] For several such sentences in 1693–5, see the Sessions Minute Book (CLRO: SM 64–6).

punishment was coming into question but rather that its effects in the City were perhaps raising doubts about the way it had hitherto been administered and the amount of time that crowds were encouraged to gather. My speculation—for that is what it is at the moment—is that similar doubts may explain a reluctance to administer public whippings too frequently, and were already raising questions about the numbers of condemned men and women taken across the metropolis in the procession to Tyburn.

The discretionary manipulation of verdicts and sentences at the Old Bailey in the thirty years after the Restoration resulted in a pattern of punishments considerably different from those imposed on convicted property felons a century earlier—most notably a change in the level of executions. How might such a change be explained—in particular the lower execution rate and the anxiety to find a substitute? In his explanation of the sharp reduction in capital punishment in England, which he dates from the second quarter of the seventeenth century, Philip Jenkins considered a variety of factors, including the effects of changing crime and conviction rates and the importance of royal pardons, and concluded that the crucial new element in the criminal justice arena was the punishment made available by the possibility of transportation to the new colonies in America. The sharp fall in executions had resulted, in Jenkins's view, from the colonial enterprise across the Atlantic and its demand for labour. Transporting convicts rather than executing them served the national interest.[122] Jenkins's emphasis on the importance of transportation is well placed. It does not, however, answer the prior question of why alternatives to capital punishment were wanted in the first place. The usefulness of transportation and its apparent affordability were no doubt crucial considerations. But the fundamental point is that there was clearly a felt need for a new form of punishment.

The evidence to be read in the practice of the courts is that transportation was taken up when it became a possibility because it offered a form of punishment that particularly suited the unique crime problem emerging in the urban world of London—a world in which too much violence in punishment could be seen as disruptive and counter-productive and in which there were virtually no usable penal responses to petty offences against property. Transportation was valued because it was becoming clear that the terror of the gallows was no longer on its own a sufficient penal weapon that might control violent offenders and at the same time frighten petty thieves into obedience, especially perhaps the large numbers of women who from time to time found themselves in difficulties in their struggle to scratch a living in the metropolis. Nor did the branding of felons pleading benefit of clergy provide an adequate substitute, particularly since it did not extend to the largest number of women and and seemed to hold little fear or threat for men. The practice of the courts—notably the threatened execution of large numbers of offenders in order to manipulate them into

[122] Jenkins, 'From Gallows to Prison?', 64–7.

transportation—suggests that there was a widespread conviction that a more effective alternative to hanging was required for petty thieves, a need for a punishment to deal with offenders like the three men and seven women condemned to be whipped at the December 1678 sessions whom Jeffreys as recorder addressed as follows:

> You the Prisoners at the Bar, I have observed in the time that I have attended here, that your Pick-pockets, Shop-lifters, and you other Artists, which I am not so well acquainted with, which fill up this place, throng it most with Women, and generally such as she there, Mary Hipkins, with whom no admonitions will prevail. They are . . . [a] parcel of Sluts, who make it their continual study to know how far they may steal, and yet save their necks from the Halter, and are as perfect in that, as if they had never been doing any thing else. But take notice of it, you that will take no warning, I pass my word for it; if e'er I catch you here again, I shall take care you shall not easily escape.[123]

That threat, which could only have meant hanging, was largely an empty gesture. Women like Mary Hipkins revealed the weakness of the courts. Jane Jones was another: she was arrested three times for shoplifting in as many years soon after the Restoration, yet evaded punishment by jumping bail on one occasion, being acquitted by the jury the next year ('against the evidence', it was of course claimed), and being pardoned for pregnancy on the third occasion after refusing to be transported. The recorder complained at the time that she had never been burned in the hand, and that too many thieves like her were escaping through the wide mesh of the law's net because shopkeepers found the courts so ineffective in dealing with them they thought it best to compound rather than prosecute them.[124]

It was the need for a punishment more moderate than hanging and more effective than clergy that explains the enthusiasm with which transportation was embraced in the 1660s. It also no doubt had the advantage for some observers of getting rid of offenders with some hope that they would be reformed and contribute to the imperial state. Transportation could in this way be conceived as a form of punishment through labour, an idea that, as we have seen, had an appeal in England as on the Continent.[125] Certainly, other versions of punishments through work were floated from time to time for dealing with petty as well as serious offenders. A form of labour discipline was already being employed in London to deal with the most minor offenders since the magistrates in the City and in Middlesex diverted a large number of those who might have been charged with petty forms of theft from the courts and into the houses of correction, where they would be subject to some form of work discipline for a few days or weeks as well as to physical correction. But that was more a matter of opportunism than planning, and there are no signs in this period that the houses of correction might have been developed as a possible site of systematic

[123] *An Exact Account of the Trials . . . Decemb. 1678*, p. 35.
[124] SP 29/97, fo. 188.
[125] Above, p. 281.

work-discipline to be imposed on minor offenders who had been convicted by juries. A clause in the statute of 1623 that extended benefit of clergy to women who stole goods worth less than ten shillings authorized the judges to imprison such women in a house of correction for up to six months as well as ordering them to be burned in the hand, but no use was being made of it at the Restoration.[126] The reason seems clear enough: local communities were left to shoulder the charge. A similar statute that was to be passed in 1706 was also put into practice in some places and not others, suggesting that legislation that imposed discretionary burdens without providing resources to support them would likely be ignored unless local authorities found it to their benefit to make use of the powers they granted.[127]

Two other penal possibilities were regularly canvassed in the Restoration. One was some form of labour in a workhouse of the kind suggested in 1677 as an alternative to transportation. Similar ideas were put forward by other proponents of workhouses in this period, connected with ideas about ways of managing the poor and the Poor Law and at the same time harnessing labour in the national interest.[128] Among a number of possible amendments of the criminal law sketched by Francis North, lord keeper in the last six years of Charles II's reign, was the suggestion that 'poor prisoners after conviction to be set on work at the judges' pleas[ure] or may be sent to the house of correction, if no stock raised [in a parish workhouse or similar institution] and have such correction as the judges shall think fit'.[129] Other kinds of hard labour schemes had been proposed in the 1650s involving the harshest forms of discipline, and they surfaced from time to time thereafter.

An anonymous document among the papers of the secretaries of state that may date from the late 1670s as the weaknesses of transportation were becoming apparent urged the need for alternative punishments, principally punishments involving work. The anonymous writer reiterated many of the radical arguments of the interregnum—indeed, it is possible that the document drew heavily on an earlier tract. He made two main points. First, that property crime was caused by 'Necessity or Luxurious Prodigality' and (because 'mischiefs are easier and better prevented than redressed') required that strict controls be

[126] 21 James I, c. 6, s. 3 (1623). [127] See below, p. 334.

[128] The possibility was raised in the Court of Aldermen in 1686 of building a workhouse in the press yard in Newgate gaol 'for setting and keeping at work the prisoners'. The sheriffs and the keeper were ordered to bring in an estimate of the costs involved, and a committee of four aldermen were asked to consider it, but nothing came of the proposal (Rep 91, fos. 78, 186).

[129] BL, Add. MS 32518, fo. 127. North here anticipted a statute of 1706, as we shall see. He also suggested that the courts be given authority to order rewards for the apprehending of felons to be paid out of the accused's goods, and 'To take away Clergy wch is Now a mere formality and abused, and the privilidg to be ousted in burglary in shops and houses empty or furnished, tho no Inhabitant [inside] and for felonys to ye value of 10*s.* or more.' Shoplifting and the forms of theft from houses that he seems to have in mind were both to be removed from clergy in the expansion of the range of capital punishment after the Revolution. For those enactments, see below, Ch. 7.

exercised over the lives of the poor by the provision of workhouses for the needy, and by sumptuary laws and 'strict Inspection into the Lives of such as live vitiously and extravagantly, and have neither Estate, nor Employment to support it'. His second point concerned the inadequacy of capital punishment as a response to minor crime—a punishment he thought that was 'better layd aside, and something more effectual substituted in its Room'. Execution was wrong, he argued, because it reduced consumption and procreation, and—in arguments that echoed those of the 1650s—because it endangered the souls of the offenders by not allowing them time to repent, was disproportionate to the crime, and, as a result, discouraged prosecution. Nor did it work as a deterrent because 'few [offenders were] sensible of Death 'till under the Sentence'. The heart of his proposal then followed. He wanted a penal regime in which 'the least Crime went not unpunished, but that sometime [those who committed petty offences] were Condemned to Work'. The writer anticipated the reformers of the late eighteenth century in expressing the view that minor offenders—pickpockets, 'lifters', cheaters, and receivers—'should all undergoe a Punishment according to the Nature of their Offences'. For those who committed more serious crimes, short of murder, or who persisted in offending, his view was that they ought to be set to work for a long term, even 'perpetuall Slavery', drawing dung carts about the streets 'or to be transported to Turkey, for to exchange Christian Slaves'. This, he concluded, would be a greater terror than mere hanging.[130]

No such alternatives to capital punishment—or to transportation and whipping—emerged in English practice in the seventeenth century.[131] Nor were there any signs that alternatives might be forthcoming from parliament in the decades after the Restoration.[132] Indeed, apart from the efforts to establish transportation, Restoration parliaments engaged in only the most limited way with the problems being dealt with by the criminal courts. The experience of the civil war and Interregnum perhaps discouraged tampering with institutions as fundamental to social order as the criminal law—at least without the explicit leadership of the king. And those attitudes may well have hardened as conflict deepened between the king and the growing opposition to his regime, in parliament and beyond, in the second decade of his restored monarchy. In the struggle between the Stuart kings and their whig opponents the law and the courts became crucial battlegrounds; and the nature of trial, the roles of judges and jurors, and the rights of the prisoner were all thrust forward as matters of urgent

[130] SP 29/443, fos. 104–6.

[131] For interesting suggestions about why hard labour schemes were not taken up in England, see Innes, 'Role of Transportation', 10–11. And for the relationship between the English practice of transportation, on the one hand, and galley service and labour regimes on the Continent, on the other, see Langbein, *Torture and the Law of Proof*, 29–44.

[132] The following discussion owes a great deal to work of Julian Hoppit and Joanna Innes and the team they directed in their investigation of the legislation of the period 1660–1800. See, for example, Julian Hoppit (ed.), *Failed Legislation, 1660–1800: Extracted from the Commons and Lords Journals* (1997), with an introduction by Hoppit and Innes. For other work drawn from this study, see below, Ch. 7, n. 3.

concern to the king's whig opponents. Even if there had been some interest in strengthening the courts in their management of ordinary felony cases—a matter in calmer times not likely to have carried much partisan political significance—the tensions of the decade between the Popish Plot in 1678 and the flight of James II removed the possibility of its being acted upon. Apart from that, one outcome of the conflict was that parliament met in any case only rarely and irregularly in that decade. In the event, the only piece of legislation of major consequence for the criminal courts was a statute designed to protect the rights of the accused against the power of the state—the Habeas Corpus Act of 1679.[133]

The criminal law on the books thus remained largely unchanged in the generation after the Restoration. When James II left England the practice of the courts and the consequences of conviction for property offences remained as they had been re-established under his brother, almost thirty years earlier. That was to change in the following thirty years. It is as though the new political climate released energy and ideas that had not found a means of expression since the 1650s. New political circumstances encouraged solutions to widely recognized problems. But the problems themselves also became more visible in the last decade of the century, when there was to be a heightened awareness of crime as a social problem and even less confidence in the weapons available to fight it. All of this combined to encourage a burst of legislative activity that made the generation following the Revolution very different indeed with respect to the criminal law and its administration from that following the Restoration. The Revolution of 1689 produced both a crisis and an opportunity.

[133] 31 Chas II, c. 2 (1678).

CHAPTER SEVEN

The Revolution, Crime, and Punishment in London, 1690–1713

The system of criminal administration in late seventeenth-century London had been shaped by changes in the law and in the practice of the courts over the previous two centuries in what might be regarded as a first phase of an early modern response to the problems of urban crime. With respect to serious violence against the person, or property offences accompanied by the threat of violence, the criminal law had been altered in the sixteenth century by the powerful idea that benefit of clergy could be controlled and limited by statute. In a stream of Tudor enactments the saving power of clerical privilege was sharply restricted by being granted only to men who could prove their literacy in court (adapting its ecclesiastical origins to a social purpose) and, even more tellingly, by being removed altogether from the most heinous and feared crimes. Tudor parliaments thereby put in place the core of the 'bloody code' that was to be massively extended after 1689 and enforced into the early decades of the nineteenth century.[1]

The gallows did their deadly work in every part of England and Wales, but the consequences of the regime of deterrence-through-terror were always more visible in London than in the rest of the country. Several times a year in the late seventeenth century men and women were hanged at Tyburn for what were regarded as the most serious offences: treason, murder, infanticide, robbery, burglary, housebreaking, pocket-picking, horse-theft, coining, some forms of larceny, and occasionally for rape and sodomy. With respect to lesser felonies and minor property crime in general, the administration of the criminal law had developed in an altogether distinctive way in the capital. As we have seen, petty offences were simply not prosecuted in the London courts in the late seventeenth century as they were elsewhere at county quarter sessions and assizes. In the decades after the Restoration a few men and women accused of such minor offences were punished without trial by being treated as vagrants and sent off for a brief spell in the Bridewell—a practice that may well have been of long standing

[1] Radzinowicz, *History*, i; Douglas Hay, Peter Linebaugh, John Rule, E. P. Thompson, and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (1975); E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (1975); James Fitzjames Stephen, *A History of the Criminal Law of England* (3 vols., 1883), i. ch. 13; Beattie, *Crime and the Courts*, ch. 4.

by then.[2] Petty larceny and even grand larcenies of small value only rarely appeared on the calendars of the London sessions of the peace or the sessions of gaol delivery at the Old Bailey.

The availability of the Bridewell might explain why the London magistrates developed the habit of diverting petty offenders away from the courts. It cannot, however, explain why *no* charges of petty larceny or very few grand larcenies under five or even ten shillings in value were brought to trial before juries in London as they were routinely in other parts of the country. That distinctive London practice was to have profound consequences, particularly as the population of the metropolis and the number of petty thefts and other minor crimes against property increased in the seventeenth century. Most crucially, it meant that in London there were two persistent sources of dissatisfaction with the law after the Restoration. One was the obvious failure of capital punishment as a deterrent to serious crimes. The other was the absence of any official response to more minor and more common offences. It was the poverty of this regime of criminal law, along with the principled opposition to capital punishment during the civil war and interregnum, that had encouraged speculation about the advantages of new punishments in the middle decades of the century and that had supported the efforts we saw in the last chapter to establish transportation to the colonies as both an alternative to execution and a possible punishment for clergyable felonies.

The fundamental weaknesses of criminal administration in London had been exposed well before major crime problems arose in the capital in the last decade of the seventeenth century. But there is no doubt that those problems encouraged further speculation about the need for better policing methods—better surveillance and encouragements to prosecution—and alternative penal options that might together repair some of the weaknesses of the criminal regime in the metropolis. A variety of responses took shape to the problems posed by crime in the 1690s and in the early eighteenth century. They emanated from several sources, but particularly from parliament. Together, they brought significant alterations and additions to the system of criminal administration in the generation following the Revolution of 1689 that mark the onset of a second phase in the early modern response to urban crime. This is our present subject. We will begin our exploration of the complexities of these responses to crime in post-Revolution London by setting out very briefly the variety of parliamentary initiatives and the more important criminal statutes that were passed in the reigns of William and Mary and of Anne. We will see what difference they made to the administration of the law in practice by extending our analysis of the work of juries and of sentencing into this period; and we will conclude with a study of another major alteration in the penal system that had fundamental implications for the way the law was put into effect in post-Revolution London—the creation of an entirely new way of deciding who among the men and women condemned at the Old Bailey would be executed at Tyburn, and who would be spared by being granted a royal pardon.

[2] See above, pp. 24–30.

PARLIAMENT AND THE CRIMINAL LAW: IDEAS AND EXPERIMENTS

Something in the order of forty bills concerned with central matters of criminal administration were introduced into parliament in the quarter century after 1689.[3] An even larger number focused on matters outside the immediate purview of the criminal law but carried significant implications for the way the law was administered—bills concerning the makeup of juries, for example, the problem of vagrancy, the control of servants, and what was widely agreed to be an increasing and dangerous level of immorality and vice. Such legislative activity presents a strikingly different picture of parliamentary concern for social issues of this kind from that evident in the parliaments of the Restoration. A simple count of bills has only limited value as an indicator of changing activity, since some proposals were introduced once and got nowhere at all while others were introduced into several parliamentary sessions before finally being successful or being dropped. Perhaps more revealing of the importance of this period in broadening the ambit and strengthening the powers of the criminal law is the legislation that reached the statute books. We have had occasion in earlier chapters on crime and policing to notice most of these enactments in their appropriate contexts. What I intend here is to characterize the central intentions at work behind some of the key pieces of criminal legislation passed in the reigns of William III and Anne, and to ask who introduced and supported them; what interests these statutes represented; and what intentions they expressed? I will emphasize the engagement and influence of the City of London in this legislative process, though the discussion ought also to reveal some of the general impulses behind the options being taken up in this period, and the broader issues surrounding the promotion of legislation.

The statutes enacted in the generation after the Revolution of 1689 made substantial changes in several aspects of the criminal law and its administration. There was no programme, no planned campaign, no co-ordination, no sustained public discussion of ideas. But the broad intentions and consequences of the legislation went all in one direction: towards strengthening policing, prosecution, and the consequences of conviction. Most of the statutes can be seen as

[3] For an important study of parliamentary legislation carried out by Joanna Innes, Julian Hoppit, with the assistance of Edmund Green, Nyani Samarasinghe, and John Styles, which has produced an invaluable list of 'failed bills' in the period 1660–1800, see Julian Hoppit (ed.), *Failed Legislation, 1660–1800: Extracted from the Commons and Lords Journals* (1997), with an introduction by Hoppit and Innes. See also, Julian Hoppit, 'Patterns of Parliamentary Legislation, 1660–1800', *Historical Journal*, 39 (1996), 109–31; Julian Hoppit, Joanna Innes, and John Styles, 'Towards a History of Parliamentary Legislation, 1660–1800', *Parliamentary History*, 13 (1994), 312–21; Paul Slack, *From Reformation to Improvement: Public Welfare in Early Modern England* (Oxford, 1999), ch. 5. For two masterly articles that illuminate the shape of legislation in the eighteenth century and provide a helpful discussion of the range and nature of proposals bearing on social issues, see Joanna Innes, 'Parliament and the Shaping of Eighteenth-Century English Social Policy', *Transactions of the Royal Historical Society*, 5th ser., 40 (1990), 63–92, and *idem*, 'The Domestic Face of the Military-Fiscal State: Government and Society in Eighteenth-Century Britain', in Lawrence Stone (ed.), *An Imperial State at War: Britain from 1689 to 1815* (1994), 96–127.

TABLE 7.1. *Selected parliamentary bills and statutes, 1690–1713*[a]

A: Failed bills

Title/purpose	Reference
Bill for the better securing the highways from robbers	JHC, 10, 455 (1690)
Bill to change the punishment of highway robbery from capital punishment to hard labour	JHC, 10, 806 (1693)
Committee to prepare bill for apprehending highwaymen and punishing them and for making hues and cries more effectual	JHC, 11, 5 (1693)
Same purpose	JHC, 11, 47 (1694)
Select committee to consider all the laws touching highway robbery and hues and cries how to make them more effectual	JHC, 11, 218 (1695)
Bill for regulating and emending the laws concerning robberies on the highways and hues and cries	JHC, 12, 47 (1698)
Committee to consider methods for preventing felonies and robberies	JHC, 12, 74 (1698)
Bill to substitute transportation for capital punishment for convicted felons	JHC, 13, 777 (1702)
Bill to establish hard labour for clergied offenders	JHC, 14, 463 (1704)
Same purpose	JHL, 18, 184 (1706)

B: Statutes

Title/purpose	Number
Robbery or house-breaking in daytime excluded from clergy (s.1); receivers to be accessories to felony (s.4); theft from lodgings a felony (s.5); clergy extended to women on same terms as men (s.6)	3 & 4 Wm & Mary, c 9 (1691)
To encourage the apprehending of highwaymen: £40 reward for conviction of highwayman (s.2); robbers convicting two or more accomplices to be pardoned (s.7)	4 & 5 Wm & Mary, c 8 (1692)
To prevent counterfeiting and clipping the coin: £40 reward for conviction of a coiner (s.9); clippers or conterfeiters convicting two accomplices to be pardoned (s.12)	6 Wm III, c 17 (1695)
Treason act: accused to be tried only on the oath of two witnesses (s.4), to have a copy of the indictment before trial, to make full defence by counsel (s.1), and to have right to compel witnesses (s.7)	7 & 8 Wm III, c 3 (1696)
To prevent counterfeiting. Making coining instruments (s.1), marking edges of counterfeit coin (s.3), colouring or gilding counterfeit coin (s.4) all to be high treason	8 & 9 Wm III, c 26 (1697)

Shoplifting act: theft from shops, stables & warehouses over 5*s.*0*d.* removed from clergy (s.1); prosecutor of those offences, burglary, and horse-theft to have 'Tyburn Ticket' (s.2); offenders who convict two or more accomplices to be pardoned (s.5); branding of clergy to be on the left cheek (s.6)	10 & 11 Wm III, c 23 (1699)
To punish accessories and receivers: accessory to felony to be tried as a felon (s.1); receivers to be tried for a misdemeanor if principal offender acquitted (s.2); witnesses for defendant to give evidence on oath (s.3)	1 Anne, stat 2, c 9 (1702)
Branding of clergy returned to thumb (s.1); clergied felons could be committed to house of correction or workhouse for six months to two years at hard labour (s.2); defendants claiming benefit of clergy no longer required to read (s.6)	5 Anne, c 6 (1706)
To encourage the discovery and apprehending of housebreakers: £40 reward for conviction of a burglar (s.1); housebreaker convicting two or more accomplices to be pardoned (s.4); receivers to be tried as accessories (s.5); if principal not convicted, receiver could be tried for misdemeanor (s.6)	5 Anne, c 31 (1706)
To punish theft from houses: benefit of clergy removed from theft from houses of goods valued more that 40*s.*0*d.*	12 Anne, c 7 (1713)

Note:

[a] In the case of bills, the reference to the journal of the House of Commons (JHC) and the journal of the House of Lords (JHL) is to the first mention of the proposed legislation; further references can be found in the indexes to the journals.

responses not only to particular alarms in this period but also to underlying weaknesses of the criminal law that had been revealed over many years in the practice of the courts. They embodied well-established convictions about crime control, but also introduced new ideas and practices into the law and its administration. Some of the newer strategies focused on ways of getting more offenders prosecuted, convicted, and punished—the usefulness and necessity of which was no less clear to men in this period (though none wrote about it systematically or at length) than it was to be to Beccaria.[4] The most direct proposals

[4] Anxiety about the unwillingness of victims to prosecute was expressed in a variety of ways in this period. In 1692 and 1694, for example, several judges spoke against bills in the House of Lords that sought to make perjury a capital offence in cases in which the life of a defendant was at risk, mainly on the ground that such a threat would discourage prosecutors. The target of the legislation (in response to the climate of legal terror in the previous decade) was malicious prosecution in political and religious cases. The bills failed for a variety of reasons, but the opposition of the judges was decisive, and their principal anxiety about the legislation was the effect it would have on victims of property offences. Chief Justices Holt and Treby, Mr Justice Eyre, and Baron Powell all agreed that such legislation would be a 'discouragement to prosecution' and decrease the chances of conviction. Instead 'of curing evils', Treby said, 'it may enlarge them. It is very hard to convict persons. If this Bill pass, it will be harder. We have much ado to bring on persons to prosecute.' 'We find it difficult to find prosecutors in housebreaking and

involved the introduction of substantial rewards, guaranteed by statute, for evidence that would result in the conviction of particularly dangerous offenders. They were aimed at getting victims to report crimes to magistrates and to undertake prosecutions, but the reward statutes also included inducements to offenders to turn king's evidence and provide the testimony in court that would convict their accomplices. Rewards to encourage prosecution were not new. Not even parliamentary rewards were without precedent, since they had been enacted under Cromwell. But rewards paid by the state for the conviction of whole classes of offenders had not been reinstated when the interregnum legislation was nullified at the Restoration.[5]

Other statutes after 1689 also sought to encourage prosecutions and convictions, though not so obviously or directly as by the offer of rewards and pardons. On the face of it, the granting of benefit of clergy to women on the same basis as men, in 1691,[6] looks more like a concession to defendants; after all, women who stole goods over ten shillings in value were in danger of being hanged, whereas men convicted of the same offence could plead their clergy, be branded on the thumb, and go free, if it were their first offence and the court accepted their proof of literacy. To grant women the same right to clergy looks like simple justice. But the statute of 1691 was almost certainly intended not so much to save women from the gallows as to encourage prosecutions and convictions as a way of increasing deterrence. As we have seen, women were blamed for much of the property crime in London in the late seventeenth century. Removing the threat of the gallows from women charged with theft over ten shillings seems most likely to have been an effort to encourage prosecutions by their victims and to make it more likely that juries would be willing to convict them. It is impossible to estimate the extent to which this alteration in the law contributed to the considerable increase in prosecutions of women in the decade that followed. What *is* clear is that the removal of hanging from all simple larcenies committed by women encouraged juries to convict: in the two years before the act of 1692 was passed, close to a third of women charged with theft over ten shillings had been acquitted; in the five sessions that followed its passage acquittals fell to 14 per cent. And whereas over the previous two years, twenty women had been convicted and sentenced to death (of whom seven had actually been hanged), no woman was hanged in the five sessions immediately after the passage of the act. Over two-thirds of women convicted of grand larceny were allowed their clergy and discharged under the new statute.[7]

felony', Eyre added; and Powell said the same in the case of 'housebreakers, robbers and clippers' (HMC: Manuscripts of the House of Lords, 1693–5 (1900), 410–11). For the parliamentary process on both bills, see *JHC*, 10 (1688–93), pp. 706, 734, 747, 759, 764, 768, 783; *JHL*, 15 (1691–6), pp. 443, 445, 448, 449–59, 456, 465–6.

[5] See above, p. 230. [6] By 3 & 4 Wm & Mary, c. 9, s. 6 (1691).

[7] Based on the data in the sessions Minute Book: CLRO: SM 60–2, 1690–2: a total of 65 cases January 1690–April 1692, and 29 cases May–December 1692.

Another apparent concession to defendants—the right to have their witnesses sworn in court, included in a statute of 1702—was similarly intended to encouraged prosecutions and convictions. Defence witnesses had not been required to give their evidence under oath for the same reason that accused defendants were not required to swear to the truth of the statements they gave to magistrates at the preliminary hearing: out of fear that they might be tempted to lie and thus commit such perjury as would jeopardize their chances of salvation. The move to put defence witnesses under oath in 1702 was not the result of a changing sense of the consequences of lying under oath, but of a compelling anxiety to increase the chances of convicting offenders.

There was a strong persuasion in this period that thieves were becoming well organized, at least to the extent that they were getting the help of 'solicitors' to arrange defences for them before trial and to give them alibis.[8] There was a further fear in the difficult decade of the 1690s that some of that help was coming from receivers who were thought not only to be managing the disposal of stolen goods but encouraging thieves to commit offences, and supporting them afterwards—including arranging for the perjured evidence that would save them at their trials. Certainly the lack of control over receivers, especially pawnbrokers, had long been seen as a fundamental source of crime in the city.[9] By the end of the decade hostility to receivers was so intense that when a group of London shopkeepers petitioned parliament in 1699 to protect them against thieves, they blamed many of their problems on what they called 'receiving networks' and the support that such networks were giving to shoplifters under indictment. The statute that made shoplifting a capital offence originally included a clause that required defence witnesses to give their evidence on oath, clearly to create the possibility of prosecuting receivers and their hired agents who gave perjured testimony in court. That clause was removed by amendment, but the requirement that defence witnesses 'take an oath to depose the truth, the whole truth, and nothing but the truth, in such manner, as the witnesses for the Queen are by law obliged to do; and if convicted of any wilful perjury' shall suffer the consequences, passed into law two years later as part of 'An Act for punishing of accessories to felonies, and receivers of stolen goods'. Putting defence witnesses on oath was intended to strengthen the prosecution, not to ensure a safe verdict, as might first appear.[10]

Legislation after 1689 thus introduced some new encouragements to prosecution and strengthened prosecutors' efforts to convict those they accused in court. On the penal side, the picture is distinctly mixed. New approaches and practices were to be tried, but in conjunction with a continuing reliance on established sanctions—indeed, with a return to the Tudor belief in the threat of capital punishment as a way to discourage property offences. After more than a

[8] As we shall see, this was one of the complaints of a group of shopkeepers who petitioned parliament in 1699 for tougher laws (see below, p. 329).

[9] For receivers, see above, p. 39.

[10] 1 Anne, stat. 2, c. 9, s. 3 (1702).

century in which only the theft of cloth in the process of manufacture had been excluded from benefit of clergy (in 1670), a number of statutes passed in the generation after 1689 extended the list of non-clergyable, that is in essence, capital, felonies. All forms of robbery and housebreaking, shoplifting to the value of five shillings or more, and theft from a house of goods worth more than forty shillings, even without breaking in, put offenders in danger of being hanged upon conviction. There was clearly a continuing commitment in this period to the old conviction that the threat of hanging was an effective deterrent—indeed, the only possible deterrent—against offences that seemed to be increasing dangerously.

Not all the capital statutes of this period, however, were enacted with the same intentions and expectations. In view of the way that robbery was regarded by juries and judges, there is no reason to doubt that MPs who voted in favour of removing clergy from all forms of theft accompanied by violence expected to see the law applied to significant numbers of convicted offenders. On the other hand, it is not clear what the supporters of the bills that made shoplifting and servants' theft capital offences expected the outcome of that legislation to be in court. Since many MPs would have had first-hand knowledge of the discretionary way the law was actually put into effect at the county assizes and the Old Bailey, it seems unlikely that even the strongest proponents of these measures would have expected large numbers of such petty thieves to be hanged. The statutes were gestures towards solutions to a problem that became increasingly troubling in the 1690s when the gaols were often crowded, the resources of the courts were strained, large numbers of convicted offenders were executed, and unusually large numbers of women were charged who could not be easily dealt with—the problem, that is, of the lack of an effective and acceptable punishment for minor property offenders. The search for such a punishment, taken up once again in this period and forming a powerful counter-current to the reliance on capital punishment, resurrected themes and ideas formulated in the interregnum but given expression only intermittently over the previous half century.

There are hints from time to time in the post-Revolution parliament that some MPs would have favoured a reduction rather than an expansion of the scope of capital punishment. It is difficult to assess the seriousness of those ideas. Proposals introduced into parliament that seem to carry this message are known only from the titles of bills that do not survive, or from stray comments in diaries. None of these initiatives got very far, evidence in itself of their limited appeal. They none the less underline the strength of feeling in the 1690s that the punishments available to the courts were entirely inadequate. The first such bill of importance was introduced by John Brewer, a backbench lawyer and recorder of New Romney, who had chaired the committee on the 1692 legislation that established the forty-pound statutory reward for the successful prosecution of robbers. Two years later Brewer chaired a select committee of the Commons that

proposed legislation that, on the surface, would have supplemented this encouragement to the prosecution of highwaymen 'by changing the present punishment of death; and, instead thereof, to confine [convicted offenders] to hard labour, with marks of ignominy'.[11] The scope of the alteration proposed is unclear and the arguments justifying it unknown.

About this bill a contemporary observed that 'The Commons have fallen on many excellent points lately, whereof one is, that there bee a middle punishment for highway men, betwixt hanging and acquitting [i.e. clergy], viz: exposed to labour and that workhouses be set up for that purpose . . .'.[12] A middle punishment—between hanging and the ineffective branding of clergy which seemed to this man, as to so many others, as tantamount to acquittal—is clearly what many contemporaries sought, whatever their ideas about capital punishment itself. And, as in this 1694 bill, the punishment that seemed to some MPs likely to be most effective both as a deterrent and as a means of training and rehabilitating offenders was hard labour. This bill got no further than leave to submit; nor did another attempt to introduce a non-capital punishment in place of hanging for serious property offences get very far when, in 1698, in a bill to grant a ten-pound reward for the conviction of housebreakers, a motion to instruct the committee to which the bill was sent after second reading to 'consider of some other Punishment than Death for Burglars and Highwaymen' was rejected.[13]

A search for a substitute for hanging does not perhaps signal a principled opposition to capital punishment, of which there is little overt evidence in the late seventeenth and early eighteenth centuries.[14] But the advocacy of labour-based punishments carries at least an implicit challenge to reliance on terror and expresses the strong sense one finds in this period—a sense felt perhaps particularly keenly by some men in the City—that the criminal law was too narrow and too rigid: on the one hand, that the gallows could be expected to play only

[11] *JHC*, 11 (1693–7), pp. 95–6.

[12] Russell J. Kerr and Ida Coffin Duncan (eds.), *The Portledge Papers, being Extracts from the Letters of Richard Lapthorne, Gent, of Hatton Garden London, to Richard Coffin Esq. of Portledge, Bideford, Devon* (1928), 170.

[13] *JHC*, 12 (1697–9), p. 196.

[14] There were signs of dissatisfaction with the way capital punishment was administered, of the kind that Mandeville, Henry Fielding, and others were to voice in the eighteenth century—including the notion that the terror of the law was diminished by delays between sentence and execution. A draft proposal among the papers of William Brockman, the Kent MP, entitled 'An Effectual way to Ridd the kingdom of Theives Robbers Murderers and all other pernicious Malefactors', written in 1694, put forward the notions that those convicted of capital offences should be executed the following day, and that highwaymen be executed near the place of the robbery and to be left hanging in chains on the gibbet 'for a Terrour'. It included the further suggestion that every three months an account of all persons executed (throughout the country) be published—again, 'for a Terror to Malefactors and an Admonition to all Persons'. Several other ideas advanced in that document anticipated the future by more than a century: that new gaols should be built in every county (and in London) that would provide separate accommodation in cells for each accused, and that gaolers should be salaried. No suggestions were made as to how the resources for such a project would be raised, nor for one further proposal—that special 'criminal judges' should deliver these gaols so regularly that no prisoner would wait more than ten days for his or her trial (BL, Add. MSS 42593, fos. 4–5).

a limited role when minor property crimes increased sharply; and, on the other, that the alternatives, particularly clergy and its consequences, were inadequate. It is that narrowness of penal choice available to the courts, including the long-recognized weaknesses of benefit of clergy, that explains the variety of efforts made in this period to introduce new forms of punishment for convicted felons.

In broad terms, the legislative efforts to reshape the administration of the criminal law after 1689 derived from convictions about the threat of immorality in society released by the events of the Revolution. The sense that crime was a deep and increasingly serious problem helped to feed those anxieties, along with the alarming numbers of women caught up in the criminal justice system. Over the longer term, and as a consequence of the foreign and financial policies that the Revolution gave rise to, the criminal law was to be shaped in important ways by the growth of a more powerful state.[15] But most directly, in the 1690s and in Anne's reign, the legislation we are considering was encouraged and made possible by the regularity of parliamentary sessions after 1689. As it became clear that parliament would no longer meet sporadically, but that there would have to be at least a brief session every year to deal with the financing of the war and other essential business—as parliament in fact became for the first time essential to the government of the country—it became even more available than ever before to local interests and lobbying groups who sought legislative resolutions to domestic problems of all kinds.

In large part, the initiative for virtually all the measures proposed came from private members. Ministers might give advice, and almost certainly they could help a bill over the many hurdles between its introduction and the royal assent that concluded the process of statute-making. But the king's ministers themselves initiated very little legislation bearing on domestic social policy, even on matters as significant as the criminal law and its administration. Backbench MPs were the main proponents in this period of the dozens of proposals with a bearing on the criminal law. Success required time and persistence—time to manage the bill through both houses in a session that might be cut short by the administration without thought to pending legislation, and persistence to introduce bills in a subsequent session when (for whatever reason) they failed initially to pass. In those circumstances, the regularity of parliamentary meetings provided the essential condition for success for MPs interested in pushing a piece of legislation.[16]

If one takes as the main supporters of crime bills in the House of Commons those members who brought in bills, chaired committees, served as tellers, or carried proposals to the Lords, a central group of about fifty MPs can be seen to

[15] John Brewer, *The Sinews of Power: War, Money and the English State, 1688–1783* (1989); Stone (ed.), *An Imperial State at War*.

[16] For the subjects touched on in this paragraph—including the process of legislation, the high level of failure of bills to become law, the dates and patterns of parliamentary sessions, and the importance of their regularity—see the sources cited above in n. 3.

have been active in the parliaments of William III's reign. Many of them were the kinds of backbenchers Joanna Innes has identified as promoters of general domestic legislation dealing with a variety of social problems like poverty or vagrancy, the imprisonment of debtors, as well as the criminal law and its administration.[17] Not surprisingly, at least sixteen of the MPs with a particular interest in one or other aspects of the criminal law in William's reign were lawyers, some of whom were particularly well qualified to speak to such matters—men like John Brewer, who was an important promoter of half a dozen criminal bills in the early 1690s, as he was of much other legislation over a long career in the house.[18] Brewer spoke with authority on legal matters since he was also recorder of New Romney. Of course, many MPs besides lawyers would have had experience, as magistrates, of the administration of the criminal law.

An even larger number of members of William III's parliaments with an interest in criminal legislation, perhaps as many as nineteen (five of whom were among the lawyers noted above), can be identified as supporters of some aspects of the moral reform campaigns against blasphemy, drunkenness, gambling, and other forms of vice and immorality that the Societies for the Reformation of Manners promoted so actively in the reigns of William and Anne.[19] The connections between moral reform ambitions and changes in the criminal law provide clues to the anxieties that encouraged the search in this period for punishments that might be thought to attack the roots of crime rather than simply trying to frighten potential offenders into obedience by the terror of the gallows. Vice and immorality were widely agreed to be the breeding grounds of crime: what began as blasphemy or breaking the sabbath or gambling or drunkenness, it was frequently said, would almost certainly lead, if unchecked, to pilfering and theft and then on and on inexorably to the most serious offences. Punishments that might interrupt this downward moral spiral, that might reform and restore, had an increasingly strong and natural appeal for those who saw moral failing as the principal cause of crime.

Such ideas had a particular appeal in London, where petty crime was so pervasive, and it is not surprising that the City actively promoted some of the more

[17] Innes, 'Parliament and English Social Policy', and *idem*, 'Domestic Face of the Military-Fiscal State'. For parliament and social legislation in this period, see also L. Davison, T. Hitchcock, T. Keirn, and R. B. Shoemaker (eds.), *Stilling the Grumbling Hive*, particularly the introduction by Davison and Tim Keirn, pp. xi–liv; T. K. Moore and H. Horwitz, 'Who Runs the House? Aspects of Parliamentary Organization in the Later Seventeenth Century', *Journal of Modern History*, 43 (1971), 205–27; and, for a slightly later period, Richard Connors, '"The Grand Inquest of the Nation": Parliamentary Committees and Social Policy in Mid-Eighteenth-Century England', *Parliamentary History*, 14 (1995), 285–313. I am grateful to David Hayton, editor of the forthcoming volume of the *History of Parliament: The House of Commons, 1690–1715*, and to his colleagues at the History of Parliament Trust, for their help in identifying members of parliament with interests in criminal legislation.

[18] See his entry in Hayton (ed.), *History of Parliament: The House of Commons, 1690–1715* (forthcoming).

[19] For work on the Societies for the Reformation of Manners, see above, Ch. 1, n. 156. I owe to David Hayton the identification of moral reformers among MPs; see his 'Moral Reform and Country Politics in the Late Seventeenth-Century House of Commons', *Past and Present*, 128 (August 1990), 48–91 (esp. appendix, pp. 89–91).

important pieces of legislation enacted in the reigns of William and Mary and of Anne. The aldermen were well informed about parliamentary business since they employed an officer, the remembrancer, to attend the house and report on matters that had implications for the City's affairs.[20] The keeper of Guildhall, another City official, was also instructed to provide the aldermen with bound copies of the public acts passed in each session of parliament.[21] The aldermen were sensitive to legislative initiatives that threatened to encroach upon their ancient privileges, and they were ever ready to intervene when their interests were engaged. And while it is clear that legislation touching on the criminal law was never simply available to anyone for the asking,[22] the City had both influence and resources to bring to bear if the aldermen were interested in supporting a particular bill. The aldermen became engaged in criminal issues at Westminster as it became increasingly clear in the generation after the Revolution that parliament was becoming an important forum for the regulation of social policy, and as crime became perceived as an increasingly serious problem in London. The City was to play a leading role in the passage of some of the most significant criminal statutes in this period.

The City's most direct contact with parliament was through its four elected members. A number of London men sat for other constituencies in every parliament, and their efforts and support were commonly solicited when matters of importance were before the house. But the four City members were clearly expected to act as spokesmen for the City and to accept the instructions of the Court of Aldermen on issues of importance. They were regularly called upon to forward or to obstruct pending legislation, to present petitions, and in general, as was said on one such occasion, to use their 'interest and endeavors' on the City's behalf.[23] So important was their presence in parliament at one point in 1696 that the Court of Aldermen resolved to meet by 9 a.m. to enable the four City members (who were invariably aldermen) to attend to the City's business at Westminster.[24] If they decided that it was in their interest to promote criminal legislation in parliament, the City authorities had the means at hand—certainly the means to get it introduced.

In explaining the City's engagement with some of the major pieces of legislation in the reigns of William and Anne, two further characteristics of the political structure of the City of London are of importance. The fact that many

[20] The remembrancer was given an allowance of 6*s*.8*d*. per day to keep the aldermen abreast of parliamentary developments and was likely to be chastised if he let important matters go unreported (Rep 97, p. 346; Rep 100, fo. 68). In a typical instruction, the aldermen ordered the Remembrancer in 1701–2 to provide them with information about a proposal in parliament to regulate the King's Bench and Fleet prisons, both of which were within their jurisdiction (Rep 105, p. 223; Rep 106, p. 85). The Remembrancer's duties continued into the nineteenth century to require him to attend parliament daily, to report all bills of likely interest to the City, and to facilitate the presentation of the Corporation's petitions and resolutions to parliament and the monarch (CLRO: P.A.R. 12, fos. 301–9).

[21] Rep 97, p. 180; Rep 98, p. 312.

[22] The level of failed bills makes this abundantly clear; see Hoppit (ed.), *Failed Legislation, 1660–1800*, 10.

[23] See, for example, Jor 51, fo. 238; Jor 52, fo. 34; and Rep 102, p. 203.

[24] Rep 100, fo. 5.

of the aldermen were also magistrates and that the more senior of them had served as lord mayor meant that a sizeable proportion of the Court of Aldermen and also most of the men who sat for the City in parliament had had first-hand experience of dealing with crime, and of that large grey world where crime and poverty and vagrancy overlapped. Such men knew all too well the weaknesses of the law in dealing with the kinds of offenders they met with most commonly in London. Those who served through William's reign also knew the problems that the levels of offending and the weakness of the penal regime had created for Newgate and other City gaols within their responsibility.

A second element of London's governance also helps to explain the City's interest in promoting criminal legislation: the active political life at precinct, parish, and ward level, which made it possible for men of modest property who served as constables and churchwardens and jurors to make their views known to the City's political élite on the aldermanic bench. The City's constitution and political practice encouraged the discussion of matters of public interest within the square mile. Informal channels of influence may have grown increasingly important in the eighteenth century, particularly as the deputy aldermen and one or two of the leading common councillors came to dominate the administration of the City's twenty-six wards with the withdrawal of the aldermen from day-to-day concerns and the diminishing role of the wardmote inquest as an active governing body. The grand jury was also to lose some of its importance by the middle decades of the eighteenth century as these newer centres of opinion and administrative energy took further hold. But in the generation after the Revolution the grand jury retained its vigour as a voice of communal opinion. The seventeen-member body concluded each of the eight annual sessions at the Old Bailey with a presentment to the bench—in effect to the City magistrates and thus to the Court of Aldermen—containing recommendations for action to deal with pressing problems. As we have seen, their presentments in the late seventeenth and early eighteenth centuries returned frequently to the issues of crime and immorality in the City. Some juries were content to urge the magistrates to see the laws put into effect. But on occasion the City grand jury recommended that the aldermen seek new powers through legislation and proposed new devices for fighting crime. Some of those recommendations were acted on.[25]

The City was not of course the only source of ideas and energy behind the criminal legislation proposed in the parliaments of William and Anne. Nor is it likely that there was always unanimity in the City itself on the right approach to this or any other social problem. There were sharp political divisions in London throughout this period, as Gary de Krey has revealed, and it would be surprising if the attitudes and interests underlying these divisions had not been reflected in views about crime, or at least what should be done about it.[26] I have

[25] For grand jury presentments, see above, pp. 51–3.
[26] De Krey, *A Fractured Society*, esp. chs 5–6.

insufficient evidence to allow me to take this subject very far. It is likely that even the most violent political opponents among the aldermen were in broad agreement about the scourge of property crime and about most matters concerning the law and its administration. But there was scope in the seventeenth century for disagreement about the effectiveness of various forms of punishment, and there is evidence that in the generation after the Revolution whig aldermen, particularly those sympathetic towards nonconformity, were more inclined to favour penal measures that sought to reform and train petty offenders than the committed tories on the aldermanic bench. A number of whigs certainly came to favour the kinds of proposals that had been floated in the 1640s and 1650s, and very occasionally in the intervening years, that saw in hard labour a more effective sanction in the case of some offences than either capital punishment or the branding of clergy.

It is difficult to discover how widespread such views were in the City, but there was clearly support in London in the post-Revolution years for a greater use of hard labour in some form or other. Had transportation become established, that in itself might have been satisfactory. In the wake of its failure, there were men in the City willing to innovate more freely by pressing for penal practices that had long been familiar in Europe and that had been suggested earlier in England: hard labour as a punishment at least for clergyable felonies. Men of whig and nonconformist temperament promoted punishments that departed from established practices, and that sought to inculcate attitudes and behaviours that might keep the labouring poor at work and out of the way of temptation. Two aldermen and members of parliament, Sir William Ashhurst and Sir Robert Clayton, for example, made several efforts early in Anne's reign to introduce some form of hard labour as a punishment for felonies—failing on one occasion to establish transportation, succeeding on another in getting legislation that gave judges the right to sentence convicted felons to a term of hard labour.[27] Whether, on the other hand, tories in the City and in parliament were more likely to defend the established penal mechanisms, I cannot say with

[27] Sir William Ashhurst (1647–1720): alderman from 1687; lord mayor, 1693–4; MP for London 1695–1702, 1705–10. A wealthy Turkey merchant, son of a Presbyterian woollen draper, a whig, sympathetic towards dissenters, and with 'a reputation for radicalism' (De Krey, *A Fractured Society*, 52, 89–90). Sir Robert Clayton (1629–1707): alderman, 1670–83, 1688–1707; lord mayor, 1679–80. An exclusionist MP and 'the City's pre-eminent private banker' who in the 1690s 'moved in free-thinking circles and was a friend and patron of the political and religious radical John Toland' (De Krey, ibid., 52). Clayton was a leader among reform-minded whigs in the City, particularly with respect to poor relief. He successfully led the campaign to resurrect the London Corporation of the Poor in 1698 and to found the Bishopsgate Street workhouse in which children were given vocational training and adults committed for their failure to work were put to hard labour. For Ashhurst and Clayton, see Stephen M. Macfarlane, 'Studies in Poverty and Poor Relief in London at the end of the Seventeenth Century', D.Phil. thesis (Oxford University, 1982), chs 6–7; *idem*, 'Social Policy and the Poor in the Later Seventeenth Century', in A. L. Beier and Roger Finlay (eds.), *London, 1500–1700: The Making of the Metropolis* (1986), 263–70; and, generally, De Krey, *A Fractured Society*. For the London Corporation of the Poor, see Slack, *From Reformation to Improvement*, 103, 106, 108, 112–13. On Clayton's importance in the history of banking, see Frank Melton, *Sir Robert Clayton and the Origins of English Deposit Banking, 1658–1685* (Cambridge, 1986).

certainty.[28] But on matters of penal policy, if not on other central matters of day-to-day criminal administration, whig aldermen were more active than tories in supporting the tempering of capital punishment and of clergy with sanctions that involved work and incarceration.

Offences against property that carried a threat of violence were particularly feared in an urban environment, and the propertied interests in the City were always likely to favour efforts to reduce robbery, burglary, and housebreaking. More minor offences that merely involved the taking of goods or money without threat to the victim did not induce the same levels of anxiety as a wave of muggings. But they were seriously aggravating in the metropolis, in which widening circles of consumption and commerce made objects increasingly available to be stolen and supported an active market for second-hand goods. And since the law was so weak in this area, it is hardly surprising that City members were among the MPs who showed the greatest interest in establishing punishments for more petty offences. The thrust of the City's efforts within the broader campaigns to make the criminal law more effective after the Revolution centred on petty crime and the weaknesses of the policing forces and of the courts in dealing with it.

The need for a more vigorous response to crimes of all kinds was expressed in several grand jury presentments urging the aldermen/magistrates to seek parliamentary solutions. The grand jury that sat at the January sessions in 1694 warned, for example, that there had been a great recent influx into London of 'loose, idle and ill disposed persons', who, 'having noe visible estates or honest way to mainteyne themselves doe turn Robbers on the highway, Burglarers, pickpockets and Gamesters that follow other unlawful wayes to support themselves'. They went on to suggest that the Court of Aldermen should 'endeavour the obtaining an effectual Law to compell' young men who came to London and were not working to join the army. This would be 'a greate meanes', they suggested, 'to prevent Robberies, Fellonies, Burglaries, and other Crimes and misdemeanors which doe daily abound in and neere this City', and which, they concluded, 'bring many Young and able persons to untimely ends by the hands of Justice'.[29] Another jury suggested that magistrates needed additional powers, so that after examining men who lived on pilfering and begging they could send them to the army, and send women and 'black guard' boys to the plantations.[30] That same grand jury also called for new laws against clipping.

[28] While interesting and suggestive, it may be unwise to ascribe too much significance to the fact that the two statutes that extended capital punishment to forms of larceny in this period (statutes of 1699 and 1713 that we shall discuss presently) were passed in parliaments dominated by tories and when the four City members were also tories, and that the statute that imposed hard labour on clergied offenders was passed in a whiggish parliament and was pushed by whig members for the City. We would need to know a great deal more than can be learned from the journals of the two houses about who spoke and voted for each, who proposed, opposed, and supported which amendments, and so on.

[29] CLRO: London Sess. Papers, January 1694.

[30] CLRO: London Sess. Papers, February 1695. There is a strong suggestion in this recommendation

Not all suggestions emanating from the City for new legislation depended on the grand jury or the Court of Aldermen. There were interest groups in London well organized and influential enough to act effectively outside official structures. The clause of the act of 1699 that extended capital punishment to the offence of stealing from shops over the value of five shillings (10 & 11 Wm III, c. 23) can be traced to a petition submitted directly to the House of Commons from a group of shopkeepers in the City. This legislation originated in a bill to establish rewards 'for the encouraging the apprehending of housebreakers, horse-stealers, and other felons', a response to the perception in the years following the end of the war in 1697 that serious crimes against property were increasing dangerously around the country. Having been introduced as a measure to promote prosecutions on well-established lines, the bill provided an opportunity for those concerned with other kinds of crimes to move amendments that in fact changed the thrust of the original proposal. It was in this way that the bill became the vehicle for the extension of capital punishment to a large class of property offences—the first for more than a century. Indeed, the bill that began as a proposal to encourage the prosecution of burglary and housebreaking became an entirely formless statute as additional concerns, boiling up because of the heightened alarm about crime in 1699, were tacked on in the course of a long period of debate and amendment in both houses. The text of the original bill does not survive. But it is clear that amendments were proposed on at least five occasions as the bill became a catch-all for members with ideas about how crime problems should be dealt with. As we have seen, one of the amendments that failed would have required that witnesses for the defendant in a criminal trial give their evidence on oath.[31] But other initiatives were successful, and they changed the character of the bill considerably. It was by way of amendment that it came to include two very important clauses: one that moved the branding of clergy from the thumb to 'the most visible part of the left cheek nearest the nose' (s. 6); and a second that turned out to be the central matter of the statute as it was finally passed, to make shoplifting a capital offence.[32]

These additions were in line with a tough attitude towards crime in these post-war years, exemplified by the 1701 pamphlet *Hanging Not Punishment*

that the magistrates were not using their discretionary powers in this period to send young men suspected of petty offences to the army as an alternative to prosecution, as they seem to have been doing a century later (King, *Crime, Justice and Discretion. Law and Social Relations in England, 1740–1820* (Oxford, 2000), 153–61.) For this subject, and its possible effects on the pattern of indictments for property offences during wars, see the sources referred to in Ch. 1, note 111.

[31] See above, p. 319.

[32] For the parliamentary history of this statute, see *JHC*, 12 (1697–9), pp. 497, 525, 540, 541, 556, 607, 625, 659, 669, 671, 675, 681. The House of Commons was occupied with this bill on and off for three months; on the other hand, despite its inclusion of capital provisions, the Lords approved it in three days, though it was in the Lords that the words 'nearest to the nose' were added to the branding clause, and the further instruction that the branding be inflicted in open court in the presence of the judge, 'who is hereby directed and required to see the same strictly and effectually executed'. The judges do not appear to have been specifically consulted on the bill; see *JHL*, 16 (1696–1701), pp. 455, 456, 460, 465.

Enough.[33] They were inspired directly by an intervention from the City of London, following the addition of several members to the original committee after second reading, including City members and men with London connections. The publication of a broadside addressed to members of parliament, entitled 'The Case of Traders, relating to Shoplifters, for the Bill against Housebreakers, Shop-lifters etc. now depending in the Honourable House of Commons', seems to have had a decisive influence since it called for the kinds of measures subsequently added to the bill in committee.[34] Shoplifters deserved much severer punishment, the authors of this 'case' argued, because shoplifting in London had increased to such an extent that it exceeded in value 'all other Robberies within this Kingdom'. It was also well organized, backed by receiving networks, by bullies to rescue thieves if they were apprehended, and solicitors to help them if that failed. Theft from shops was also common, they thought—anticipating in this, as in other aspects of their argument, the views of later law reformers—because victims failed to prosecute, preferring often to compound for the return of their goods rather than bringing charges. But what was particularly to be blamed, the authors argued, was the lightness of the punishment suffered by the few who *were* caught and convicted. Some offenders, they said, were merely confined briefly in the house of correction without being indicted.[35] Even if they were sent to trial at the Old Bailey and convicted of felony, shoplifters were granted clergy, merely branded in the hand and then discharged from the court to go back to their business with impunity. The authors of the broadside left the solution to parliament. But it was surely criticism of this kind that inspired the harsh additions to the bill as it made its way through the House of Commons: the shifting of the brand of clergy from the thumb to the cheek; and the removal of benefit of clergy altogether from the offence of theft from shops over the value of five shillings.

The harshness of this statute is testimony to the sense of desperation in some quarters about the extent of shoplifting and similar forms of theft. The threat of hanging that it introduced was clearly real enough. But the statute was also intended to pressure accused thieves into naming the receivers who disposed of their stolen goods—the source and stimulus, the petitioning shopkeepers believed, of so many property offences. The capital provisions of the statute also provided the authorities with another weapon. Section five laid it down that anyone accused of shoplifting—or burglary, housebreaking, or horse-theft—

[33] Beattie, *Crime and the Courts*, 487–90.

[34] The full title at the head of the one-page broadside is 'The Great Grievance of Traders and Shopkeepers, by the Notorious Practice of Stealing the Goods out of their Shops and Warehouses, by Persons commonly called Shoplifters; Humbly represented to the Consideration of the Honourable House of Commons'. The title quoted in the text is on the reverse. The broadside is undated. The British Library dates one copy 1700 and a second ?1720; internal evidence would place it in the spring of 1699.

[35] This was a reference to the London magistrates' practice of labelling men and women accused of minor property offenses as 'pilferers' and sending them to a term in the house of correction rather than committing them to gaol to stand trial for larceny. See above, pp. 24–30.

who revealed the identity of two or more of their accomplices and gave the evidence that convicted them would be entitled to the king's pardon. That was clearly aimed against the imagined gangs of shoplifters. To earn such a pardon, the evidence had to be given before the accused was actually committed to trial; that is, the accused would have to confess to the examining magistrate and divulge the names of his or her accomplices.[36] The statute included a further inducement: a reward to the prosecutor of a convicted shoplifter of what came to be known as a Tyburn Ticket, a certificate that freed the holder from the obligation to serve in parish and ward offices for life. Such a reward might appear a laughable curiosity until one remembers that this legislation was inspired and shaped by London interests, and by men who, precisely at this time, were becoming increasingly reluctant to serve as constables and perhaps in other parish and ward offices. The simplest way to avoid office was to pay a fine when first nominated. But that was also the most expensive, and the device of the Tyburn Ticket was well judged to induce shopkeepers to overcome their reluctance to undertake prosecutions. Far from being a oddity in 1699, it was deliberately crafted to have a maximum impact on a particular form of crime in London.[37]

With respect to clergyable offences, the 1699 statute attempted to answer what was recognized as the weakness of branding on the thumb by moving the branding to the cheek to heighten its shaming power. It was a proposal that speaks both to the anxiety to find a solution to the problem of petty crime in the metropolis and to the callous indifference of the consequences of such a permanent stigma for the individual offender. Within a few years this new form of clergy was seen to have had disastrous results, and, again at the instigation of the City of London, another attempt was made to find an alternative punishment, indeed to broaden the array of punishments available to the courts. A new campaign to strengthen the penal law began with a petition to the aldermen at the October 1704 session of the Old Bailey from the magistrates of Westminster and

[36] For the importance of such pardons in eighteenth century criminal procedure, see John H. Langbein, 'Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources', *University of Chicago Law Review*, 50 (1983), 84–105; and Beattie, *Crime and the Courts*, 430–49.

[37] Tyburn Tickets freed the recipient from parish and ward offices in the parish and ward within which the offence had taken place. Inevitably, they were of little direct value to many prosecutors, particularly thief-takers. They could, however, be 'assigned' to another person. For two Tyburn Tickets signed by the recorder of London and assigned by their recipients (in the case of one, in 1719, Jonathan Wild) for £11 and £8.8*s.*0*d.*, respectively, see GLMD, MS 20844, MS 14845). Radzinowicz expressed understandable puzzlement about the use of immunity from parish office as a reward, calling it 'a curious method of furthering the ends of criminal justice . . .' (*History*, ii. 155–6). The idea for such a reward may also owe something to the resistance of the London sheriffs to the expansion of statutory rewards which they had to pay to successful prosecutors and their witnesses. When a bill was sent from the House of Commons to the Lords in May 1698 'for the better discovery and suppression of house-breakers' that included the payment of a £10 reward, the sheriffs of London and Middlesex petitioned to be heard against the bill by counsel. Their complaint was that they already paid rewards that were 'very considerable, owing to the large number of convictions', and laid out 'in other disbursements for his Majesty's service more money than the profits of the County [of Middlesex] will defray . . . so that the Sheriffs have been forced to satisfy such rewards out of their own money' (HMC: The Manuscripts of the House of Lords, 1697–1699, p. 243).

it was furthered by a presentment from the City grand jury at the following session in December. In their presentment, the jurors returned to the issue of the weaknesses of the available secondary punishments: the inadequacy of clergy, the counterproductive character of burning on the cheek, and the failures of transportation as it was then established. They did so, they said, following complaints 'by many Eminent Tradesmen' in the City that the laws in force did not sufficiently discourage crime against property.[38] Although this grand jury was willing to leave it to the aldermen to take such action as they 'thought most proper and expedient', it was clear they favoured more effective ways of punishing thieves short of death.

The grand jury presentment was followed by a petition to the House of Commons from 'the Grand Jury, Citizens, and Shopkeepers of the City of London' arguing that branding felons on the cheek 'hath been found by Experience not to have the intended Effect' since the permanent and visible brand made it impossible for them to find employment and thus 'made them desperate' and confirmed them as thieves. The way the courts had administered branding on the cheek suggests that that view would have been widely supported. But the petitioners went on to propose not simply that the branding be returned to the thumb of the convicted offender, but that in addition, at the judges' discretion, clergied felons should be 'kept to hard labour' for a year for the first offence, for two years for the second, and put to death if they were convicted for a third time.[39]

The timing of this initiative not only to revert the branding of clergy from the cheek to the thumb but to introduce an entirely new set of punishments for clergyable felonies is puzzling at first sight since earlier efforts to change the criminal law had generally arisen in periods in which there was clear anxiety about the numbers of offences. This was no such period. Indeed, grand juries in 1703 and again in 1706 went out of their way to comment on the low levels of crime in the City. Why then was such an undertaking successful in this period? One answer must be that the failure of branding on the cheek made some form of legislation essential. In addition, and paradoxically, the apparently low level of crime after more than a decade of very high and worrying levels made a hard labour argument persuasive because the sharp falling away of prosecutions was attributed by some to the recent establishment of the London Corporation of the Poor and the opening of the Bishopsgate Street workhouse. A campaign to create these institutions, led by alderman Sir Robert Clayton, had come to fruition at a time in the late 1690s when the streets of London were filled with beggars and the gaols were crowded with suspected thieves and robbers.[40] To its supporters, the workhouse had been an immense success, not only in

[38] CLRO: London Sess. Papers, December 1704. [39] *JHL*, 14 (1702–4), p. 463.

[40] Joanna Innes, 'Prisons for the Poor: English Bridewells, 1555–1800', in Francis Snyder and Douglas Hay (eds.), *Labour, Law and Crime: An Historical Perspective* (1987), 88–90; Macfarlane, 'Social Policy and the Poor in the Later Seventeenth Century', in Beier and Finlay (eds.), *London, 1500–1700*, 263–70; and for Clayton, above, n. 27.

clearing the streets of beggars and vagrants but also in reducing crime, since the numbers of prosecutions for crimes against property had gone down noticeably in the years following its establishment.

It is likely that the reduction in prosecutions, the easing of the crowding in Newgate and the shorter calendars dealt with by the grand juries had at least as much to do with the onset of the War of Spanish Succession, in 1702, as the work of the Bishopsgate Street workhouse. But that was not the conclusion that those who believed in the social value of hard labour as a means of correction and training were inclined to draw. The grand jurors who remarked on the reduction of crime in their presentments congratulated the magistrates on their efforts to improve the morals and manners of the poor, and particularly on the success of the workhouse which they thought in 1706 had been mainly responsible for the low levels of criminal prosecutions over the previous several years.[41] The apparent success of the new institution as a training ground for vagrant and 'blackguard' youth emboldened those who had long favoured penal hard labour and encouraged some of the City's whig aldermen and MPs to establish a hard labour regime for criminal offenders, at least for those who persisted in committing minor felonies.[42]

Suggestions had been made before 1700—without eliciting much support—that some form of labour might be a more effective punishment for some offences than hanging. Clayton and Sir William Ashhurst, a whig member for the City sympathetic to the nonconformist community and, like Clayton, an alderman and former mayor, were among those who believed in the usefulness of labour as a punishment for felonies, even for some of the offences currently subject to capital punishment. Indeed, they had made an unsuccessful effort in 1702 to persuade the House of Commons to substitute transportation for some offences subject to the gallows.[43] The disastrous failure of cheek-branding

[41] CLRO: London Sess. Papers, May 1703, July 1703, May 1706.

[42] The larger context of the belief in the usefulness of hard labour as a form of punishment and training was the conviction, widely expressed by writers on the economy in the late seventeenth century, of the need to harness labour in general in the national interest. A fully employed labour force and low wages were seen as essential to increasing England's share of overseas trade and thus to underpinning national security. The need to recruit and discipline the labouring power of the country in the interest of expanding manufacturing and overseas trade in support of national security in an increasingly competitive world fitted neatly with narrower beliefs in work and training in workhouses and other institutions as a solution to the social indiscipline that was widely believed to be leading to crime and vagrancy and other forms of unacceptable behaviour by the poor. See Joyce Oldham Appleby, *Economic Thought and Ideology in Seventeenth-Century England* (Princeton, NJ, 1978), ch. 6; Daniel A. Baugh, 'Poverty, Protestantism, and Political Economy: English Attitudes toward the Poor, 1660–1800' in Stephen B. Baxter (ed.), *England's Rise to Greatness, 1660–1763* (Berkeley, Calif., 1983), 76–9; and Innes, 'Prisons for the Poor', 79–84.

[43] The Clayton–Ashhurst bill was 'for the more effectual punishment of felons and their accessories' (*JHC*, 13 (1699–1702), pp. 777, 781, 783). It was rejected at second reading. The bill's main provision is revealed in a brief entry in the diary of Sir Richard Cocks, who noted under the date on which it was turned back: 'some bills were read and amongst the rest the alteration of the law as to felons, viz. to transport them to our plantations instead of hanging them . . .'. The bill attracted a good deal of interest: 217 members voted in the division in which it was narrowly defeated (113 to 104), a relatively high turnout for legislation of this kind. On the other hand, Cocks thought that 'half of the house did not know what

provided an opportunity for the resurrection of these ideas, but applied now to the more minor forms of property crime subject to clergy. A campaign was launched in parliament, led by the City members, to replace branding on the cheek for clergied defendants with a work-based punishment for the reasons that were to make the penitentiary such a promising instrument of social order at the end of the eighteenth century. Such a punishment, it was said in 1706 in correspondence between the lord mayor and Sir Charles Hedges, the secretary of state, would be 'a proper meanes to breake [offenders] of their idle and wicked Course of life. As also by the Example thereof to deterr others from the like Courses and ill practices.'[44] There is evidence that the grand jury presentment of December 1704 and the subsequent petition had been inspired by Sir Robert Clayton; before the petition had been presented he reported its existence and its contents to the governors of the London workhouse at their meeting of 13 December 1704.[45]

The London petition to parliament signed by the 'Grand Jury, Citizens, and Shopkeepers' was followed by the introduction of a bill by Sir Gilbert Heathcote, a whig member for London, who was not only an alderman but the serving lord mayor. This bill, which sought to establish the punishment of hard labour for clergied offenders, got no further than second reading for reasons that are unclear, though it is not inconceivable that some members of parliament objected in principle to such a fundamental shift in penal policy and that others with magisterial experience foresaw the problems that long-term incarceration might produce for the county benches.[46] Another bill to the same effect was introduced in the House of Lords early in 1706, and again was turned back, only to be passed at the third attempt in the 1706–7 session, having again been

they divided about' (David Hayton (ed.), *The Parliamentary Diary of Richard Cocks, 1698–1702* (Oxford, 1996), 243).

[44] These revealing intentions or hopes were expressed in the course of an exchange of correspondence about the difficulties being experienced in 1706 in transporting a group of women who had been pardoned from capital sentences on condition they be sent to the colonies, but who remained in Newgate because no colony would agree to receive them and no merchant would take them. Early in 1706 Hedges proposed that the mayor and aldermen find an alternative, and particularly that they consider sending these women to houses of correction to be kept at hard labour. The city authorities, particularly the whig aldermen, were only too willing, since they had for some time been pressing parliament to enact a hard labour bill, not just for women pardoned from hanging but for clergied felons. Their suggestion was that London women who were pardoned should be sent to Bridewell, and women from Middlesex to the county house of correction. It was in the course of this correspondence that their intentions in pressing for hard labour in the house of correction as a sanction for convicted felons was revealed (Rep 110, fos. 68–9, 75–6). It is thus possible that the Hard Labour Act was eventually passed in 1706 because the administration gave it some support. The Act was not passed only with women in mind, but it is clear that the large number of women convicted of property offences in this period continued to raise serious problems for the London authorities and ultimately for the government. We will examine the problems surrounding transportation in the reigns of William and Anne in the following section of this chapter.

[45] CLRO: Minutes of the Court of the President and Governors for the Poor of London, 1702–5, fo. 179.

[46] *JHC*, 14 (1702–4), pp. 463, 487–8, 526, 992.

introduced in the first place in the Lords—perhaps to seek the endorsement and support of the judges for an innovation, the consequences of which may have been raising anxieties. That possibility is suggested by the Lords' order, when the bill was introduced, that the judges be asked to attend at second reading.[47] The statute that received the royal assent did not include the penalties for second and third offences originally contemplated, but it did include the central suggestions in the City of London petition, and indeed the petition was quoted verbatim in the preamble. As a result, the branding of clergy was returned to the hand, and the judges were authorized at their discretion to sentence clergied felons to a period of six months to two years at hard labour in a house of correction or workhouse.[48]

The provisions of the act were immediately employed in a significant number of cases in several jurisdictions,[49] including London. But its implementation did not run smoothly, for the same reasons that bedeviled transportation. Both required resources. The Hard Labour Bill increased the population of the houses of correction with relatively long-term inmates, yet the statute was silent on the issue of who would pay the additional costs. Complaints from those responsible for running the houses of correction were not long in coming, and the policy initiative embodied in the bill was stifled from the beginning. As we will see, it was to be overtaken in London for half a century by the revival of transportation.[50] But the 1706 act made an important gesture towards filling a crucial gap in the penal structure. It pushed out the boundaries of the possible and acceptable

[47] *JHL*, 18 (1705–9), pp. 184, 194, 202, 203, 232, 236; *JHC*, 15 (1705–8), pp. 252, 270, 273, 281, 282. The high court judges, who sat in the House of Lords, were frequently consulted when the Lords considered important criminal bills. That was not as firmly established a practice in the late seventeenth century as it was to be a hundred years later (Innes, 'Parliament and Eighteenth-Century Social Policy', 78–9), but it was certainly common, especially when capital punishment was involved. When the housebreaking bill of 1691 (3 Wm & Mary, c. 9) was under consideration by the House of Lords, the lord chief justice and another judge were specifically named to a committee to draw a clause that would deny benefit of clergy to servants who stole their masters' goods; and the judges were consulted later in the debate on an amendment relating to theft from lodgings (*JHL*, 14 (1685–91), pp. 638–9; HMC, 13th Report (appendix): The Manuscripts of the House of Lords, 1690–1, p. 284). A copy of the bill that made theft by servants a capital offence in 1713 (12 Anne, c. 7)—for which see below, pp. 335–7—was sent to the judges after second reading and they were asked to attend the committee of the whole house that would take it into consideration (*JHL*, 19 (1709–14), p. 574). The judges would also be sent a copy of the Transportation Bill in 1718 when it received first reading in the House of Lords and were asked to attend at second reading (*JHL*, 20 (1714–18), p. 593). That such consultation was not yet considered essential is suggested by the fact that the judges were not apparently consulted on the bill that made shoplifting a capital offence in 1699 (see below, n. 32), which received very rapid passage through the lords (*JHL*, 16 (1696–1701), pp. 455, 456, 460).

[48] 5 Anne, c. 6 (1706).

[49] Beattie, *Crime and the Courts*, 491–2.

[50] This was true in London (in which the costs of transportation were met by the central government), but not everywhere in the country. In the north-east, Morgan and Rushton have shown that while the assize judges sentenced no convicted thieves to imprisonment between 1720 and 1750, the magistrates at quarter sessions in Newcastle and Northumberland (though not in Durham) continued to use the provisions of the 1706 act. A quarter of men and women convicted of larceny at the sessions were sentenced to prison between 1720 and 1750 and the pattern of punishments in those jurisdictions is thus very different from that prevailing at the Old Bailey in that period (*Rogues, Thieves and the Rule of Law*, 71–6).

forms of punishment, even though the innovation it embodied was not successfully established because there was as yet no engagement with the financial and material consequences of new schemes. When that issue was confronted, as it was to be after 1714 when the state took over the costs of transportation to the colonies—the labour-related penal policy that remained the preferred option—a significant conceptual breakthrough was achieved and a decisive break with the penal structures of the past was effected.[51]

Before that was to happen, however, there was to be another turn in the penal cycle that returned to older ways of dealing with crime. The immediate occasion was the increasing level of prosecutions for theft as the War of Spanish Succession came to an end, and a persuasion in London that the hard labour option for clergied offenders was not serving to prevent property crime. It was also driven by an old anxiety that came to the forefront now as an explanation of the level of property crime in London: the view that much of the theft in the capital was being perpetrated by servants, and took the form not merely of minor pilfering, but of major assaults on the household goods and valuables of their employers by servants in league with receivers and gangs of burglars. An additional element made this the more plausible, as it had the argument that supported the making of shoplifting a capital offence a decade earlier: that is, that many of the perpetrators were women who were assumed to have been drawn by men into the plunder of houses. Since the softness of the punishment awaiting convicted shoplifters could no longer be blamed for the high levels of theft in the city and for the involvement of so many women, anxieties about servants intensified in Anne's reign, and came to be a favoured explanation of the numbers of offences being perpetrated in the years after the Peace of Utrecht was signed, in 1713.

There had long been a 'servant problem' in London in the sense that domestic servants had been blamed in the past for high levels of theft and had indeed been prominent among the offenders charged at the Old Bailey. Grand juries on occasion blamed domestic servants for a good deal of the crime in the City.[52] As we saw in Chapter I, there had been a sustained effort in parliament in the reigns of William III and Anne to give employers some protection against servants who, it was widely believed (and this was the nub of the charge against them), all too often sought employment in order to steal or, even worse, to open the house at night to their thieving and dangerous male accomplices. Four projectors had sought government support in 1691, for example, for a scheme 'for preventing the general complaint of the unfaithfulness of servants . . . to set up a register by means whereof the cheats and vagabonds may be discovered', and several similar proposals were made thereafter.[53] It is hardly surprising, given the number of servants in London, the frequency with which they changed

[51] See Ch. 8. [52] CLRO: London Sess. Papers, October 1694, February 1695.

[53] CSPD 1691–2, p. 14; for registry offices as labour exchanges, see M. Dorothy George, 'The Early History of Registry Offices', *Economic History: A Supplement to the Economic Journal*, I (1926–9), 570–90.

posts,[54] and the pervasiveness of theft, that the aldermen and common councillors of the City had played a leading role in these efforts to create a system that might provide potential employers with reliable information about servants seeking employment. In 1704 the aldermen ordered the preparation of a bill to be introduced into the next session of parliament—'at the humble Petition of the Lord Mayor and Commonaltie of the City of London'—to establish a registry of servants. One great cause of crime, the bill asserted, was

> the ill Conduct of unwary housekeepers in the hireing and Reteining Men Servants and Maid Servants into their Services having no knowledge or good Account of them and who oftentimes prove persons of evil dispositions and shift from place to place 'till they have opportunity to put into practice their wicked designs . . .

To prevent such dangerous practices in the future the proposed bill called for the creation of a public office at which all servants within the Bills of Mortality (except those of the nobility) would have to be registered and from which they would require a testimonial before being hired.[55] A broadside printed in London in 1708 in support of another such bill spoke of the special need for such controls in London where, it claimed, employers 'are frequently robbed by Servants who belong to the Gang of House-Breakers . . . who oblige them to rob the House, or let some of the Gang in to do it . . .'.[56]

As in the case of the Shoplifting Act, the introduction of legislation in 1713 was almost certainly related to the recent rise of prosecutions for property crime at the conclusion of the War of Spanish Succession. If the City magistrates needed persuading that female servants were potentially dangerous and treacherous, they clearly found evidence in the depositions they were taking in 1711 and 1712 as they heard the complaints of victims of theft and their accusations against those they held responsible. An unusually high proportion of the depositions taken in the City in these years accused servants of theft, most especially women.[57] Whether such crimes were in fact very common or employers were choosing for some reason to prosecute their servants more readily than they might have earlier hardly matters. The evidence was sufficient to persuade the London magistrates, the grand jurors, and the broader propertied public that

[54] J. Jean Hecht, *The Domestic Servant Class in Eighteenth-Century England* (1956); D. A. Kent, 'Ubiquitous but Invisible: Female Domestic Servants in Mid-Eighteenth Century London', *History Workshop Journal*, 27 (1989), 111–27; Timothy Meldrum, 'Domestic Service in London, 1660–1750: Gender, Life Cycle, Work and Household Relations', Ph.D. thesis (London, 1996).

[55] CLRO: Papers of the Court of Aldermen, 1704 (18 September 1704, 16 November 1704). The bill was prepared, but not presented, having been examined by a committee of three of their number who in the end found it 'not serviceable'.

[56] *A Proposal for the Due Regulating Servants, which will be Beneficial for the Kingdom in General, and to Private Families in Particular, and no ways Obstructive to honest Servants* . . . (?1708). Another broadside from the same period made the point that many servants turned to theft because they were free to leave posts whenever they chose. A statute to compel all servants to be registered, the author believed, would impose some control over servants' movements and 'keep many from Tyburn' (*The Usefulness of, and Reasons for, a Publick Office, for Registering of Servants* (?1700)).

[57] See Ch. 1.

the courts were failing to prevent a serious crime problem. The depositions being taken by City magistrates make it plain that one source of anxiety was the imagined connection between servants and receivers, and, as in shoplifting accusations in the late 1690s, the magistrates were clearly intent on getting suspected servants to name the receiver to whom they had sold stolen goods.

Apart from the simple number of cases, then, the attack on servants' theft in 1713 grew from the assumption that women could be dangerous intruders in a household because they could be easily manipulated by receivers into stealing to order, and even worse could be associated with a gang—lovers, it was a common fear, of gang members—and so be willing to open the house at night to a group of ruffians. Shoplifting aroused some of those concerns, but without the same threat of being attacked in their beds that untrustworthy servants raised in the minds not merely of the rich but in the broad middling ranks of metropolitan society accustomed to having servants living in. Although it would apply to a range of offences, including the theft of silver tankards from public houses, the statute that removed benefit of clergy from the offence of stealing goods from a house was aimed explicitly at servants, as the preamble revealed.[58] It was also aimed at particular kinds of servants. The threshold that triggered the capital provisions of the statute was set much higher than in the case of shoplifting, in which the nature of the offence itself was the target of the legislation. In the 1713 statute clergy was removed from the stealing of goods of more than forty shillings in value (as opposed to the five shillings of shoplifting), making it clear that the offence made subject to capital punishment was not petty pilfering, but thefts of significant value and those that could be conceived as involving accomplices outside the household. It was also a much more straightforward statute than the Shoplifting Act in that it was narrowly and specifically framed. It was introduced into the House of Commons by three tory MPs, two of whom sat for constituencies in or touching on the metropolis of London—Westminster (Thomas Medlycot) and Surrey (Sir Francis Vincent)—and the third, Sir Gilbert Dolben, who was a lawyer and a judge of the court of common pleas of Ireland. The bill passed quickly through both houses with only minor amendments.[59]

A variety of initiatives had thus been pursued in the generation after 1689 to find more effective ways to prosecute and punish offenders. They had included efforts to bring more women offenders to account, to encourage the arrest and conviction of violent offenders, to protect the coinage, to improve policing, and in particular to deter property crime of all kinds by making the penalties for conviction more serious and more effective. Several of the most significant campaigns had been led by the City of London, and were almost certainly inspired

[58] 12 Anne, c. 7 (1713).

[59] *JHC*, 17 (1711–14), pp. 313, 358, 368, 383, 385, 432, 433; *JHL*, 19 (1709–14), pp. 561, 564, 574, 578–9, 599.

by that combination of violent and more petty but pervasive offences that increasingly typified the crime problem of the large urban and commercial environment. The question now arises: how were these new initiatives received by the courts? How did the Old Bailey juries and judges deal with the new encouragements to prosecution, the extension of hanging, and the new forms of punishment? What was the result of all this legislative activity for those who had been its central target—the men and women who found themselves before the Old Bailey?

THE OLD BAILEY, 1690–1713

There was a striking fluctuating pattern in prosecutions for property offences at the Old Bailey between the Revolution and the end of the War of Spanish Succession.[60] The 1690s saw the strongest rise and the highest levels of offences of any decade over the ninety years we are studying; conversely, the reign of Queen Anne saw its reverse image in that prosecutions fell to some of this period's lowest levels. The quarter century after the Revolution of 1689 was also almost certainly unique in the history of crime in London in that more women than men were charged with crimes against property at the Old Bailey in that period. The unusually high levels of prosecutions in the 1690s, and the prominence of women among the defendants, together help to explain some of the sense of panic in those years about the levels and character of property crime and the anxiety to improve policing, encourage prosecutions, and find more effective punishments. Such attitudes were inevitably reflected in the way defendants were dealt with in the courtroom.

We might note first that, as in the thirty years after 1660, a number of defendants in our Sample pleaded guilty at their arraignment and abandoned their right to a trial. Three men who faced capital charges did so (two in burglary and one housebreaking); one was pardoned on condition of transportation, but the two burglars were in the end hanged, no doubt regretting their plea. One of the sixteen men who pleaded guilty to a clergyable offence in the sessions sampled between 1690 and 1713 was denied his request for benefit of clergy on the ground that he had been already burned in the hand, and he too was sentenced to death, though he was subsequently pardoned and transported. The striking change registered in this period in the pattern of guilty pleas compared to the years before the Revolution was in the behaviour of women. Where no women confessed in court to a charge of clergyable theft in the previous period, thirty-four women did so in the sessions sampled—a result no doubt of the extension of the privilege of clergy to women on the same basis as men in 1691. All the women who pleaded guilty were granted clergy, and all but one were branded and discharged.

[60] See Ch. 1, figure 1.1.

The fate of those defendants who pleaded not guilty and took their trial is set out for our Sample of cases (one in three of the trials for property offences from the City of London) in Tables 7.2–7.7. To consider first the juries' propensity to acquit defendants outright, there is a noticeable difference between the cases we examined in the Restoration and those from the years after the Revolution. Between 1660 and 1689, juries acquitted about 45 per cent of all defendants (men 43 per cent and women 48 per cent). In the years examined after the Revolution those levels of acquittal had fallen to 31 per cent overall—34 per cent in the case of men and 28 per cent for women (Table 7.2)—suggesting that juries had adopted a noticeably tougher attitude towards defendants by the 1690s, and towards women in particular. It would hardly be surprising if juries were less generous in this period, given the sharp increase in prosecutions in William's reign and the general mood of anxiety about crime. The apparent advance of vice and immorality spawned an active campaign in favour of a 'reformation of manners', as well as determined efforts in parliament to find more effective ways of enforcing the criminal law, and in particular to impose controls over women, who made up an unusually large proportion of the defendants at the Old Bailey in these years.

It is impossible to discover how and why juries arrived at their decisions. But the pattern of verdicts in this period suggests strongly that the character of the offence was an important consideration as they deliberated. Let us begin with the way the Old Bailey juries and judges dealt with offenders on trial after the Revolution for non-clergyable felonies, conviction for which meant the threat of a death sentence (Table 7.2). In the case of both men and women there was a decided change in the pattern of jury verdicts with respect to these offences after the Revolution, a change that reflected a concern for more effective prosecution and punishment. This can be seen in the increase in the conviction rate for men to nearly 40 per cent of those facing a death sentence in the post-Revolution years as against about a third of those charged in the years before 1689. Not all seventy men convicted of non-clergyable offences were executed; just about half were pardoned in a procedure that came to be significantly altered after the Revolution. None the less, the juries' intentions were to impose some form of punishment on more of the men charged with these serious, non-clergyable, offences.

A determination to seek more effective punishments may also explain the juries' decisions to convict a further 33 per cent of men accused of non-clergyable offences under a partial verdict that acquitted them of the original charge but found them guilty of either grand or petty larceny (Table 7.2). As we will see, some of those men were hanged, despite that verdict, but most were granted clergy and discharged—though with the pain and humiliation of a branded thumb, or more seriously, during the seven years after 1699 in which this was on the books, with the brand burned into their cheeks. After the passage of the 1706 statute that gave judges the authority to punish clergied offenders with up to two

TABLE 7.2. *Jury verdicts at the Old Bailey in property offences in the City of London, 1690–1713*

	Not guilty	Guilty	Partial verdicts: offence reduced to		Unknown	Total	Pleaded guilty	Total accused
			Grand larceny	Petty larceny				
Non-clergyable offences								
Men	49	70	37	22	1	179	3	182
%	27.4	39.1	20.7	12.3	0.6	100.1		
Women	51	61	55	30	—	197	—	197
%	25.9	31.0	27.9	15.2	—	100.0		
Clergyable offences								
Men	97	115	—	33	2	247	16	263
%	39.3	46.6	—	13.4	0.8	100.0		
Women	86	124	5	73	3	291	34	325
%	29.6	42.6	1.7	25.1	1.0	100.0		
Total offences								
Men	146	185	37	55	3	426	19	445
%	34.3	43.4	8.7	12.9	0.7	100.0		
Women	137	185	60	103	3	488	34	582
%	28.1	37.9	12.3	21.1	0.6	100.0		
Grand total	283	370	97	158	6	914	53	967
%	31.0	40.5	10.6	17.3	0.7	100.1		

Source: Sample

years' incarceration, a few of these men saved from the gallows by the juries' verdicts were sentenced to a term in the house of correction. Those convicted of petty larceny were invariably sentenced to be whipped.

With respect to the trial of men accused of the offences for which men and (after 1692) women could plead benefit of clergy, the patterns of verdicts and sentences did not change as noticeably after the Revolution (Table 7.2). The judges continued to take advantage of the discretion created by the rules surrounding clergy to threaten some of these men with capital punishment, as they had on occasion before the Revolution—denying them clergy on the ground that they had been granted it once before or by insisting on the letter of the law when it came to a test of their literacy. That is why fifteen men in this period, having been convicted of an offence that brought a clergyable discharge for most defendants, found themselves threatened with the gallows (Table 7.3). Five

TABLE 7.3. *Sentences in non-capital property offences: City of London cases at the Old Bailey, 1690–1713*

A. Clergyable offences:

	Convicted	Clergy	Denied Clergy		Hard Labour	Known Sentences	Other/ Unknown
			Transported	Hanged			
Men	169	115	5	10	18	148	21
%		77.7	3.4	6.8	12.2	100.1	
Women	210	159	—	4	36	199	11
%		79.9	—	2.0	18.1	100.0	

B. Petty larceny:

	Convicted[a]	Sentence unknown	Whipped
Men	57	4	53
Women	104	3	101

Note:

[a] Charged with petty larceny and convicted; charged with clergyable and non-clergyable felonies and convicted of petty larceny

Source: Sample

were reprieved by the judges before passing sentence and ordered to be held for transportation; the others were sentenced to death, some of whom were in fact hanged, the rest pardoned by the king, as we shall see. The judges were able to take advantage of the introduction of hard labour in 1706 to sentence eighteen of the men who were allowed clergy to a term in the house of correction. But for the most part, the men convicted of the clergyable offences continued to be allowed their clergy and to be discharged from the court with a branded thumb or (for a few years) cheek.

For women defendants, there were much bigger changes after the Revolution in both capital and non-capital cases, the result of two of the major alterations in the law we have discussed: the extension of clergy to women on the same basis as men; and the statute of 1699 making shoplifting a capital offence. The former perhaps helped to increase the number of women charged in the 1690s, as was surely its intention. The latter ensured that many women continued to face a capital charge. The change in the numbers of women prosecuted for clergyable offences was especially marked: more than three hundred were brought to court charged with simple larceny in our sample years after the Revolution as against forty-five in a similarly constructed sample over the years 1663–89. The extension of clergy to women, in 1692, no doubt helps to explain the increased willingness of victims to prosecute female offenders, though, as we saw in Chapter 1, there are other reasons to think that the more active prosecution of women in this period was not simply a matter of the redefinition of crime.

Whatever the reason for the numbers of women charged with theft after 1689, the influence on the juries of so many women crowding the Old Bailey dock was clear. In the case of non-clergyable—that is, potentially capital—offences, acquittals of women fell from close to 48 per cent in the pre-1689 sample to 26 per cent in the years after the Revolution, a lower acquittal rate than for men in this period, unlike the years before 1690 and, as we will see, the years after 1714. The increase in the number of women charged with clergyable offences in the reigns of William III and Anne also brought a lower acquittal rate for women than for men—30 per cent as against 39 per cent (Table 7.2).

As we have seen, until the statute of 1706 established hard labour as a possible punishment for clergyable larceny, the courts had but a narrow range of sanctions available in such cases. And, since women did not have to meet a literacy test to claim their clergy, the judges were not as able to manœuvre women, as they could some men, into a position in which they were threatened with the gallows. Nor were they as likely to think it necessary. The consequence was that more women than men were granted clergy once it was made available to them. This was not a matter of leniency. Women were also more likely than men to be sent to the house of correction for a term of hard labour when that possibility was made available to the bench. And they were more likely than men to be convicted of the reduced charge of petty larceny, whether they were charged with clergyable or non-clergyable felonies. While very few men or women were actually charged with petty larceny, as we have seen, more than a hundred women and fifty-five men were convicted of that offence by trial juries in the sessions we have sampled in this period, virtually all of whom were sentenced to be whipped.

The changes in the criminal law in the generation after 1689 carried serious implications for everyone who committed offences against property. But one statute—the act of 1699 that extended capital punishment to theft from shops, stables, and warehouses—had particular importance for women, who were its

main target. As part of our investigation into the making of post-Revolution legislation it is worth enquiring into the way the courts put the Shoplifting Act into effect. How the London juries and judges responded to this statute immediately after its passage should reveal the way they read the intentions behind the legislation. It seems clear that the courts thought the point of the act was to threaten rather than actually to hang large numbers of shoplifters. There is no reason to think that there was a massive failure to communicate here between legislators and judges, or that the refusal of the courts to administer the new statute to the letter would have surprised or dismayed the proponents of this legislation. Indeed, since the statute defined the offence to be removed from clergy by the value of the goods stolen (five shillings or more) and not merely by the character of the act, it seems clear that those who drafted the bill intended juries to impose the death penalty when they thought it appropriate and to remove it when they chose. They certainly must have anticipated that both judges and juries would interpret the five-shilling limit as an invitation to use such discretion.

The trial juries at the Old Bailey made it immediately clear that they would do so. As Table 7.4 reveals, even in the years immediately after its passage, the vast majority of men and women convicted under the new statute were saved from execution at Tyburn. Of the twenty men accused under the statute in our sample, two were convicted of the full charge, and two were acquitted. The remaining sixteen were convicted of a lesser charge which saved them from the

TABLE 7.4. *Verdicts and sentences at the Old Bailey in shoplifting cases in the City of London, 1699–1713*

A. Verdicts:

	Number of accused	Verdicts		Partial verdict: reduced to	
		Not guilty	Guilty	Grand larceny	Petty larceny
Men	20	2	2	10	6
%		10.0	10.0	50.0	30.0
Women	105	23	27	32	23
%		21.9	25.7	30.5	21.9

B. Sentences:

	Total guilty	To be hanged	Pardoned	Executed	Clergy	Hard labour	Whipped
Men	18	2	2	—	8	2	6
%			11.1	—	44.4	11.1	33.3
Women	82	27	22	5	21	11	23
%			26.8	6.1	25.6	13.4	28.1

Source: Sample

gallows, and they were either granted clergy or whipped (Table 7.4). Of the 105 women charged, a fifth were acquitted, more than half were convicted on a charge of simple larceny rather than the capital offence of shoplifting, and just over a quarter, twenty-seven altogether, were found guilty as charged and sentenced to death. In the end five were executed at Tyburn. Like the sixteen men convicted of a lesser charge, the fifty-five women saved from the gallows by their juries were either allowed clergy and immediately discharged or sentenced to a term of hard labour in the house of correction under the 1706 statute, or—in the case of the twenty-three women and six men who were convicted of petty larceny—they were ordered to be whipped.

We cannot assume that over the whole range of property offences the verdicts rendered by juries and the sentences imposed by the bench proceeded from a consistent set of intentions: indeed, it is clear that juries differed one from the other in their responses to similar sets of facts and circumstances. Why some men and women were chosen by juries and judges for one form of mitigated punishment rather than another cannot be discerned from the evidence we have. The patterns of verdicts suggest that some juries and judges favoured one outcome; those at the next or subsequent sessions another. They were all doubtless influenced by the age and apparent experience of the accused, by the evidence given by their victims as well as by witnesses to their character—testimony that cannot be recovered in a systematic way. But how they responded to those things depended on the accident of personality and the influence exercised by jury foremen or by the recorder and other judges. Verdicts and sentences were also likely to be influenced by the length of the calendar and the pressures produced by a run of particularly difficult and time-consuming cases. Such considerations may also explain why at some sessions, unusually large numbers of the accused pleaded guilty—encouraged perhaps, one might speculate, by the promise of favourable treatment at the sentencing stage, though how that might have been communicated to them is unclear. In an unusually busy session of the Old Bailey in September 1693, in which forty-three defendants were tried for felonies committed in the City of London, fifteen women and one man pleaded guilty to grand larceny. There is no evidence of this being part of a bargain struck with the bench, but it clearly helped the judges to get through a heavy calendar, and all the women who acknowledged their guilt in that session were allowed their clergy and were discharged.[61]

Given the meagre information available about most cases in this period—about the nature of the crime, the relationship and characters of the principals involved, and the evidence presented in court (even with the beginnings of trial reporting from the Old Bailey)—it is impossible to be certain why some accused

[61] CLRO: SM 64. In several sessions in the three years following the granting of clergy to women on the same basis as men in 1691 several other women pleaded guilty to simple grand larceny and were allowed their clergy: five in April 1694 (CLRO: SM 64), for example, and five more in the following session of the Old Bailey in July 1694 (CLRO: SM 65).

were acquitted, others convicted of the charge in the indictment, still others of a lesser charge and then either clergied or whipped. The one variable against which verdicts can be tested, apart from the gender of the accused, is the value of the property that was allegedly stolen. I have set this out in Table 7.5, in which the three possible verdicts are grouped against four categories of value for all the cases of property crime in our sample for which both the verdict and the value of the theft are known.

As we saw in Chaper 6, there was a striking relationship between the seriousness of a theft, as measured by the value of the stolen property, and the juries' willingness to convict defendants of the offence charged in the indictment.[62]

TABLE 7.5. *Jury verdicts at the Old Bailey in property offences in the City of London, 1690–1713, by value of the goods stolen*

Value	Guilty	Guilty reduced	Not guilty	Total
Less than 10*s.*	24	62	27	113
%	21.2	54.9	23.9	100.0
10*s.*–39*s.*	87	108	67	262
%	33.2	41.2	25.6	100.0
40*s.*–99*s.*	67	38	53	158
%	42.4	24.1	33.5	100.0
More than 100*s.*	161	32	101	294
%	54.8	10.9	34.4	100.1

Source: Sample

They were less inclined to convict as charged when the value of the goods was under ten shillings than in more expensive thefts, and their willingness to convict strengthened as the value of the goods increased. On the other hand, juries were much more willing to find a partial verdict—that is a conviction on a lower charge than that stated in the indictment—when the goods stolen were of little value. I have not separated clergyable and non-clergyable felonies in Table 7.5, but the same tendency was at work, whether the offence was punishable by hanging or not.[63] The relationships between verdicts and the value of the goods stolen was even clearer in the years after 1690 than they had been in the period of the Restoration, in part because the extension of capital punishment in the Shoplifting Act and the experimentation with non-capital punishments

[62] Chapter 6, text at n. 115.

[63] In the case of clergyable larceny, for example, 23% of the defendants who stole goods of less than 10*s.* in value were found guilty as charged and 51% were convicted of the reduced charge of petty larceny; of those who had stolen more than £5 60% were convicted outright and merely 3% were convicted of the reduced charge. In non-clergyable (effectively capital) offences, when the goods involved were less than 10*s.* 12% of defendants were convicted of the capital charge, 51% of the lower charge; when the goods were over £5, the figures were 48% and 21%, respectively.

encouraged jurors to find more partial verdicts than they had earlier. But the pattern of verdicts remained broadly the same: the more valuable the goods, the more likely the defendants were to be convicted as charged; and conversely the less likely to be granted a partial verdict. As in the earlier period, there was doubtless a sense that a partial verdict of petty larceny that brought a sentence of whipping was a harsher outcome for some of these men and women than conviction on the original charge might have been. But it seems equally to have been thought, as before 1689, that whipping was appropriate only in the most minor cases. And there was almost certainly a residual sense that the branding of clergy provided something of a deterrent—though it must have become increasingly clear after the Revolution that there was little chance of a second conviction for a clergyable offence resulting in a death sentence.

How the convicted would be punished was determined by decisions made by jurors, the judges, and the monarch, all of whom exercised discretionary powers that were important in shaping the outcome of the trial process. The final decisions about who would be hanged were, however, made in the course of the pardon process. And as the number of offences removed from clergy increased in this period—and continued to grow throughout the eighteenth century—pardon decisions became more important than ever in the management of capital punishment. It was thus very significant for the public face of criminal justice in London that the process by which pardons were decided in the case of defendants sentenced to death at the Old Bailey changed in William III's reign in a way that put the decisions more immediately in the hands of the king's ministers. In this respect as in others, the Revolution of 1689 made for a decisive alteration in the administration of the criminal law.

THE CABINET AND THE MANAGEMENT OF DEATH AT TYBURN

Pardons had always been a crucial aspect of the royal prerogative, the means by which a benevolent monarch could temper justice with mercy. But by the seventeenth century, despite the way in which the pardoning power continued to be deployed in royalist rhetoric to reflect on the personal virtues of the reigning king or queen, monarchs do not seem to have been personally involved in many aspects of pardon decision-making. In the reigns of Charles II and James II the Old Bailey judges routinely reprieved a number of offenders after condemning them to death and sent in their names for inclusion in the next general pardon for Newgate gaol. The king might become personally involved if those left to be hanged petitioned for their lives, but that might equally simply have required discussions between the attorney-general or a secretary of state and the recorder of London.

Changes in the processes by which pardons were granted or withheld, at least with respect to London cases, were introduced after the Revolution and had the effect of regularizing and perhaps tightening up the ways in which pardon

decisions about Old Bailey defendants were made. In effect, the final decisions about the punishment of men and women condemned for capital offences were removed from the purview of the bench. The judges at the Old Bailey continued to pronounce death sentences against offenders convicted by the London and Middlesex trial juries, but without going on to reprieve some and leaving others to be hanged. Those decisions were turned over early in the reign of William and Mary to a committee of the Privy Council, or, when the king was out of the country, to the lords justices appointed to govern in his name. Soon after the accession of the new monarchs, the recorder of London, the court's sentencing officer, was given the responsibility of presenting the list of men and women condemned to death at the Old Bailey to the body that was emerging as the cabinet, or cabinet council, at which William was invariably present when he was not out of the country. At these meetings of ministers and other officials, and as an item among other matters of state business, the cases of the condemned men and women were discussed and decisions made about who among them would be left to be hanged and who pardoned. The results were conveyed to Newgate by means of a document that came to be known as the 'dead warrant'. From early in the reign of William and Mary, and well into the nineteenth century, the fate of every convict condemned and sentenced to death at the Old Bailey was decided at a meeting of ministers and other officials in the presence of the king—a procedure that, paradoxically, may have involved monarchs more closely in the exercise of the royal mercy in ordinary felony cases after the Revolution than before.[64]

The council's involvement in decisions about the ultimate punishment to be imposed on men and women convicted of non-clergyable offences at the Old Bailey was not, as has been surmised, 'a relic of the direct rule which the medieval monarch claimed in his capital'.[65] Nor was it simply an indirect and

[64] J. M. Beattie, 'The Cabinet and the Management of Death at Tyburn after the Revolution of 1688–1689', in Lois G. Schwoerer (ed.), *The Revolution of 1688–1689: Changing Perspectives* (Cambridge, 1992), 218–33. The body that began to deal with Old Bailey capital cases after 1689 was made up of the king's leading ministers, as well as household officers and other advisers, the inner group of the Privy Council that emerged in William's and Anne's reigns as the Cabinet Council and that came to meet weekly with the sovereign, following a meeting of the more formal Privy Council, to deal with a wide range of government business. See Stephen B. Baxter, *William III* (1966), ch. 20; Jennifer Carter, 'The Revolution and the Constitution', in Geoffrey Holmes (ed.), *Britain after the Glorious Revolution, 1689–1714* (1969), 49–52; and Henry Horwitz, *Parliament, Policy, and Politics in the Reign of William III* (Manchester, 1977), 88–93.

[65] V. A. C. Gatrell, *The Hanging Tree: Execution and the English People, 1770–1868* (Oxford, 1994), 544, following A. Aspinall, 'The Grand Cabinet, 1800–1837', *Politica*, 3 (1938), 333–44. The origins of the cabinet's decision-making powers in Old Bailey capital cases have not been noticed by constitutional or legal historians. Nor, in the early nineteenth century, did the men then running the pardoning process have any knowledge of the origins of the system. When Robert Peel enquired of his officials in 1830 about 'the origins of the King's practice of receiving personally the reports of the Recorder of London', an undersecretary reported that Lord Chancellor Eldon thought it 'one of the early Privileges of the City of London, of which the origin is lost in obscure Antiquity' (BL, Add. MS 40400, fos. 200–1; I am grateful to Simon Devereaux for this reference).

unintended by-product of William III's involvement in European affairs and of Queen Mary's reluctance to take on the gruesome business of deciding these life and death issues, in effect an accident of the Revolution. William's absences were clearly implicated in the creation of the new pardoning process for London cases. The king was frequently out of the country, and when he first left to direct the Irish campaign in 1690 he set up a committee of nine privy councillors to take on the main burdens of government, Mary having made it clear she was not anxious to have the sole direction of affairs.[66] Among its many other tasks, this committee of the council was given the job of making pardon decisions, especially with respect to the offenders condemned at the Old Bailey. This pattern was followed in subsequent years when William went to the Continent to direct the war effort against Louis XIV.

The king's absences made some such arrangement necessary especially when Mary died, in 1694. But something much deeper than that was involved in a development that changed the way the death penalty was managed at the Old Bailey since London capital cases continued to be considered by the council even when the king was in England. There is evidence of their doing so in January 1693, for example, before William left for the campaigning season on the Continent; and again in October 1695, when a secretary of state can be found organizing a meeting of members of the council on the king's order. With the king present, the council heard the recorder's report on the offenders condemned at the Old Bailey, and decided who among them 'might be fit objects of his mercy'.[67]

What may have begun as a practical response to the problems caused by William's regular and prolonged absences thus very quickly took on a more permanent form. It seems reasonable to think that it did so because it was found to be a more effective way of dealing with an issue that—if the number of proclamations and legislative interventions are any guide—much preoccupied the government and members of parliament in the early 1690s: the problem of crime in London. It was after all on London cases that the new pardon system focused.[68] If William's absences and Queen Mary's reluctance had been the fundamental explanation, why would not the pardon business of the whole country have been given to the lords justices and cabinet council? Of course, Old Bailey cases accounted for a significant proportion of the capital offences tried in the

[66] Beattie, 'Cabinet and the Management of Death', 223. For Mary's attitude towards pardon matters, see R. Doebner (ed.), *Memoirs of Mary, Queen of England, 1689–1693* (Leipzig and London, 1886), 22–33; Baxter, *William III*, 262–3. Early in their reign Mary wrote to William in Ireland about her discomfort at being 'importuned' on behalf of condemned offenders (CSPD 1690–1, p. 36).

[67] SP 44/99, p. 225; Rep 97, p. 100.

[68] The judges occasionally gave accounts of assize sessions to the lords justices in William's reign, especially those on the Home Circuit (see, for example, CSPD 1695, p. 32; CSPD 1696, p. 335). But there was to be no change over the long term in the way pardon decisions were made on the provincial assizes. The judges continued to send in reports at the conclusion of their circuits listing the condemned prisoners they thought deserved the royal mercy.

country and, in addition, decisions about whether to pardon men and women condemned in London had to be made regularly since the court sat roughly every six weeks. It was also easier for ministers to deal with London cases than those tried on the provincial assizes because the recorder could be called to meetings at short notice and could speak authoritatively about the cases tried in the capital. Most of the trials were probably heard by one of the high court judges, the remainder by the recorder himself, or, occasionally, the lord mayor or one of the London magistrates present. But the recorder pronounced all the sentences at the conclusion of the session. It is possible that this duty meant that the recorder was in fact present on the bench for most of the trials; at the least it meant that he had some knowledge of the capital cases, however that knowledge had been acquired.

The availability of a key official like the recorder helps to explain the ease with which the new system could be organized in the 1690s. But the usefulness of this scrutiny of the work of the Old Bailey, and the king's and his ministers' interest in doing so at a time when London crime was thought to be a serious social problem, surely explains why the cabinet came to play a permanent and crucial role in the administration of the criminal law. It is no doubt important that such domestic issues did not command the king's attention as did those high matters of state—war, finance, and foreign policy—about which he preferred to deal with individual ministers. But the way the system of cabinet management of the death penalty in London took root in the 1690s suggests that it was something more than an accidental by-product of William's preoccupations and governing style. However reluctantly, he did meet the cabinet council and the larger Privy Council weekly when he was in England,[69] and his decision to consult his ministers about pardons and to leave pardoning decisions in their hands when he was out of the country (though in both cases without relinquishing his ultimate control) elevated the problem of crime in London as a serious issue for the national government and was by implication a recognition that the pardon procedure had been slack and ineffective in the reigns of his two predecessors. William, or his advisers, must have known, for example, that in the decade before the Revolution a very large number of men and women had been allowed absolute pardons and had been discharged without suffering any punishment at all. The new system, under which the fate of the convicts at the Old Bailey became an item of cabinet business several times a year, also had the effect of putting the government more in touch with the state of crime in London.

There is no suggestion that this alteration in the pardon process represented a limitation on the royal prerogative of pardon, an unspoken addition to the Bill of Rights.[70] It brought the cabinet into the decision-making process without

[69] Baxter, *William III*, 273.

[70] While the king's power of pardon was related in a broad sense to Charles II's and James II's much-disputed claim to be able to suspend particular statutes and to dispense individuals from the requirements of the law, the distinction between these forms of royal power was none the less clear: pardons

limiting the king's ultimate authority. William continued to be consulted on difficult cases when he was out of the country, and he was present at the ministerial meetings at which the pardon business was discussed when he returned. Subsequent monarchs continued to preside over such meetings, continued to make decisions about individual pardons issued under the Great Seal, and continued to be involved, if they chose, in the consideration of appeals for pardons from felons in Newgate, as well as those around the country condemned to be hanged. None the less, a system was put in place that gave the king's ministers considerable influence over the decisions that determined the level of executions at Tyburn, and that thus determined the public face of criminal justice in the capital.

It is unclear when the City recorder first attended a meeting of ministers and became the link between the cabinet and the Old Bailey, but he was certainly doing so by 1693. He was called before the council to report on Old Bailey cases in January of that year, when the Court of Aldermen first took cognizance of this new procedure and saw in it a threat to their rights and privileges, or at least to the influence that the lord mayor and the other City magistrates might expect to exercise as members of the bench over the sentencing of London convicts.[71] It is also possible that their resentment had more to do with the character of the man who was the recipient of this new influence—Salathiel Lovell, who had become recorder in 1692. Several times in his career Lovell was suspected of influence-peddling and other corrupt activities, and it may well have been thought by his enemies (and as a strong whig he certainly had many tory enemies in the City) that he should not be supplied with such a golden opportunity to feather his nest.[72] At any event the aldermen attempted to preserve a role for themselves in this new process. 'It is the opinion of this Court and so ordered', they declared in January 1693,

> That after every Sessions of Gaole delivery of Newgate, Mr Recorder doe before he attend his Matie with his Report Come unto this Court and take the Sence and Judgment of the same in what Character and Circumstance he shall Represent to his Majesty the severall Condemned persons.[73]

Such prior consultation was clearly not workable, if only because the recorder could be called to a cabinet meeting at short notice and could hardly fail to attend because the aldermen had not yet had their say. Strong feelings were obviously being expressed through the summer of 1693: Lovell himself

relieved a convicted person from the consequences of his or her actions, whereas the dispensing and suspending powers attacked the basis of law by removing the illegal character of the action itself. The latter were to all intents abolished by the Bill of Rights (Lois G. Schwoerer, *The Declaration of Rights, 1689* (Baltimore, Md., 1981), 59–64). The monarch's right to grant pardons in criminal cases remained unquestioned, indeed indispensable, to the working of the judicial system. Lord Chancellor Finch was not alone in valuing the monarch as 'the fountain of mercy, as well as of justice' (BL, Add. MSS 36088, fo. 6).

[71] Rep 97, p. 95.

[72] For Lovell's greed and corruption, see Ch. 5, n. 68.

[73] Rep 97, p. 100.

complained that 'the present Method of reporting to their Majesties after every Sessions' had given rise to 'great and intollerable troubles and many unjust Jealousies and Reflections'. And he agreed with the resolution of an aldermanic committee that in the future he would at least consult the king's judges present at the Old Bailey about the advice he would give the council.[74] A further element was introduced into the discussion in October of 1693 when 'Severall Citizens' complained that too many criminals were being pardoned and the aldermen resolved that the recorder should not only consult the judges before attending the king in council but that he should make it clear that his recommendations carried the Old Bailey judges' approval—presumably to discourage the cabinet from being too generous with the royal pardon.[75] On at least one occasion thereafter (in December 1693) the recorder got the town clerk, who kept the Old Bailey records, to note which of the offenders on the list he would take to the cabinet had been convicted of previous offences; the resulting report was approved by the Court of Aldermen and the recorder was 'ordered' to take it when he met the king and council.[76]

The introduction of the procedure by which the cabinet came to make the decisions concerning the level of executions in London was thus attended with a good deal of uncertainty and perhaps anxiety in the City. In 1696 the lords justices left it to the City authorities to decide whether the recorder would simply report his own views on the capital cases or come instructed by the judges or the aldermen.[77] The aldermen made it clear that—out of a continuing suspicion of Lovell in the late 1690s—they wanted him to consult the court about the recommendations he would carry to the council.[78] As it developed in practice, however, the recorder did little consulting when the call came to attend the council. In the course of William's reign his leading role in the new system was firmly established, a point made abundantly clear in the lords justices' minutes in which the simple summoning of the recorder 'to give an account of the sessions' was regularly recorded.[79] Queen Anne maintained the procedure. Within a month of her coming to the throne, the recorder was summoned to a cabinet council at St James's to 'give her Majesty an account of the last sessions', and the process became entirely routinized in her reign.[80] The recorder was generally informed by an under-secretary a day or two ahead of time that the cabinet council would receive his report. He took with him the list of offenders condemned to death at the previous session of the Old Bailey, with a brief note of

[74] Rep 97, pp. 448, 454, 465. [75] Rep 97, p. 465. [76] Rep 98, pp. 68, 72.
[77] CSPD 1696, p. 212. [78] Rep 104, pp. 251–2, 290, 296; and see CSPD 1696, p. 212.
[79] The minutes of the meetings of the lords justices in William's reign are at SP 44/274–5 (Regencies). They are calendared in CSPD 1694–5, CSPD 1695, CSPD 1696, and CSPD 1697.
[80] CSPD 1702–3, p. 21. There are suggestions in a letter from Secretary Nottingham to the recorder in July 1702, four months after Anne came to the throne, that at least some of the pardon decisions were being made by the queen on the basis of written reports and explicit advice from the recorder and the judges who had taken the trials at the previous Old Bailey session (CSPD 1702–3, 188–9). The usual practice in the reign, however, was for the recorder to report in person to the cabinet, with the queen present.

their offences. The extant copies of these lists in the State Papers show little evidence that he had consulted the judges or anyone else. When he met the cabinet, the recorder stood at the end of the table, reported on each case in turn, and received an immediate decision—that is, whether the offender was to be hanged or pardoned, and if pardoned whether he or she was to be punished in some alternative way or simply allowed to go free.

An under-secretary of state was to say in the 1760s that this reporting of the cases of condemned offenders to the king gave these men and women 'a kind of double Chance', compared to provincial offenders who had to petition to have their cases reviewed if they were passed over for a reprieve in court.[81] Perhaps so; but it was a chance that probably occupied the members of the cabinet for even less time than the trial juries had taken to find the original verdicts. Petitions may have been sent in by some of the condemned prisoners or from their relatives and friends.[82] But there was precious little time in which to organize a petitioning campaign. In the 1680s—before the recorder was required to make a report to the cabinet council—there was most often no more than a week or ten days between the passing of the death sentence at the Old Bailey and the carrying out of that sentence at Tyburn. The recorder's report had the effect of lengthening that period slightly—by something in the order of two days in the mid-1690s, perhaps four days on average in Anne's reign.[83] But even two weeks gave little opportunity for a condemned prisoner to employ someone to write up a petition in proper form and to solicit support.

In the absence of petitions, the ministers who met to decide who would be hanged and who pardoned consulted no written evidence. They depended entirely on the recorder's brief oral account of each trial, any information he had gathered about the offenders that he chose to report, and no doubt his hints or recommendations as to appropriate outcomes—either to let the law take its course and the defendant be executed, or to grant a pardon and order an alternative punishment as a condition. Most of the cases were no doubt passed over very quickly since the recorder's report was fitted into a meeting at which a wide range of subjects would be on the agenda. The fate of a group of convicted felons was not likely to be allowed to take a great deal of time if affairs of state pressed for attention. None the less, there is some evidence that the council did not simply rubber stamp all the recorder's recommendations: some cases were discussed. What, then, were these ministers and courtiers looking for as they heard the recorder describe the cases before them? Some sense of the considerations that shaped pardon decisions can be found in the recorders' reports,

[81] William L. Clements Library (Ann Arbor, Michigan), Shelburne Papers 168, fo. 146. I am grateful to Simon Devereaux for this reference.

[82] For petitions sent in to be 'read in Council', see SP 34/5, fo. 6; and SP 34/35, fo. 49.

[83] Based on Luttrell's dating of the sessions and of the subsequent hanging days. In 1682–5 he reports a range of 4–14 days between the sentence and the carrying out of executions and an average of 7.6; in 1695–8 the range was 5–20 days and the average 9.6; in 1702–3 and 1708–9 together the range was 6–19 days and the average 11.2 (*Brief Historical Relation*, vols. 1–4, *passim*).

occasionally in the minutes of the cabinet and lords justices' meetings, and in the wording of pardon petitions.

For the most part, the recorders' reports of William's and Anne's reigns simply note the decisions taken at the council and lords justices' meetings—whether defendants were to be pardoned or executed. Occasionally, as in the case of the December 1704 Old Bailey session, the marginal notes appended at the council meeting provide some hints about the issues that preoccupied the ministers and court officials present as they listened to the recorder's account of the facts in each case and his summary of what was known about the offenders. In the transcription that follows of the recorder's report of that session, the words in italics were scrawled in the margin against the names of the defendants—added, I surmise, by the secretary of state in attendance as the decisions were rendered.

London & Middx: Goale [*sic*] Delivery of Newgate the 6th of December Ano Dni 1704: [Convicted offenders] Condemned to Dye

Sarah Smith: For privately Stealing goods val 40s. out of the Shopp of William Halewood: *an old offender to suffer*

Elizabeth Harrow: for the same: *pregnant, move again when del[ivered]*

Mary White: For privately stealing goods val 52s. out of the Shopp of Benjamin Shute and Joseph Caryl: *an old offender to suffer*

Anne Allen: for the same: *to be transported*

William Bond: For a Fellony in acknowledgeing a Recognizance before Mr Justice Powell in the name of William Benson: *reprieved; the judges to certify ye Law*

Elizabeth Price: For a Fellony in Stealeing the goods of William Betts but haveing beene formerly convicted of Fellony and the Record thereof brought against her and it appeareing upon Tryall that she was the same person; received Judgment: *to suffer* [struck out] *enquire further*

Stephen Swift: For a Felony in Stealeing the goods of Menhem Levi, but haveing been formerly convicted of Fellony and the record thereof brought against him and it appeareing upon Tryall that he was the same person; received Judgment: *a notorious housebreaker, but young. To be transported.*

Francis Spencer: For privately Stealeing goods val. 40s. out the Shopp of Joane Copeland: *respite*

John Smith: For a Robery on the highway and Stealeing goods val 7 [pounds] from the person of Thomas Woodcock: *to suffer*
For another Robery and Stealeing goods val 3s. from Anne Mountague
And for another Robery and Stealeing a Mare val 8 [pounds] from William Birch

Patience Cooper: For a Robery on the highway and Stealeing goods val 10s. of John Seale from the person of Anne Seale: *pregnant; to suffer afterwards*[84]

There are several untypical entries in this report—and indeed their untypicality may account for the marginal explanations of decisions, which, brief as they

[84] SP 34/5, fo. 12.

are, are fuller than most in Anne's reign. In the first place, two of the offences were uncommon. William Bond's was so distinctly unusual (entering into a recognizance under a false name), and the sentence of death so startling, that the council reprieved him in order to ask the judges about the law he had broken. The death sentence imposed on a women for highway robbery was also uncommon. It is true that Patience Cooper attacked a female victim, but very few women were accused of highway robbery at the Old Bailey. Further, two offenders who had been convicted of the clergyable offence of simple grand larceny had been denied benefit of clergy by the Old Bailey judges on the ground that they had been allowed it at an earlier session. This was rare by the early eighteenth century. Normally the courts and the judges overlooked the evidence of previous convictions and the brand on the thumb that had been their consequence: once clergy had been fully extended to women in 1692, clergyable larceny was most commonly punished with a non-capital sanction. The difference in 1704 may be that Stephen Swift and Elizabeth Price had been branded in the *face* and not the thumb—as laid down by the clause of the 1699 statute that was to be repealed 1706. It is possible that judges found it more difficult to overlook previous convictions for clergyable offences when the evidence was so vividly obvious, and especially when the prisoner was thought to be 'notorious'.

Altogether, the recorder reported that ten felons had been convicted and sentenced to death at the Old Bailey in December 1704. (Sixteen others had been convicted of clergyable felonies and five of petty larceny.) The cabinet's recommendations, whether to confirm those sentences or to grant pardons, provide some clues as to how such offences and offenders were viewed. As the cases of the ten condemned felons were discussed by the council, the recorder almost certainly shaped his accounts to achieve particular outcomes. The marginal notes make it clear that he reported on the offenders as well as the offences and that his evidence about their previous conduct led to the choice of three to be executed—not so much John Smith, for by being convicted of three highway robberies he had done enough on his own, but certainly the two women shoplifters. They were selected to be hanged, the scrawled marginal note makes clear, because they were 'old offenders' who had been previously charged with or suspected of such offences. Two other women were saved from execution because they had pleaded pregnancy in court. The council agreed that Patience Cooper, the robber, would be reprieved until her baby was born, but that she would then be executed. The fate of the other, a shoplifting accomplice of one of the 'old offenders', was to be reconsidered when she had given birth.[85] Elizabeth Price

[85] It is unclear what happened to Cooper and Elizabeth Harrow. They do not appear in the list of transported convicts in Peter Wilson Coldham, *The Complete Book of Emigrants in Bondage, 1614–1775* (Baltimore, 1988). The council took a hard line on respites for pregnancy in Anne's reign. In the thirteen other extant recorder's reports from this period seven women came before the council after having being delivered of children for which their execution was respited. Five were ordered to be executed—four of whom had been convicted of burglary and one of shoplifting—and two (originally convicted of picking pockets) were pardoned and ordered for transportation.

had been denied clergy and her death sentence was initially confirmed by the cabinet. But someone evidently thought better of it, and her case was ordered to be looked into further: almost certainly what was meant was that her character and record would be investigated. Stephen Swift was in a similar position, having been denied clergy following his trial. His punishment was shaped, on the one hand, by the recorder's report that he was 'a notorious housebreaker', but on the other, that he was 'young'—by which he almost certainly meant he was in his teenage years. He was pardoned for transportation, as was Anne Allen, another of the women shoplifters, who was also saved from hanging even though she was the accomplice of one of the women selected to be hanged, presumably because she was not a known 'old offender'.

I know of no evidence that would enable us to reconstruct the atmosphere in which these decisions were made—or to discover whether in this period the queen and her ministers were as careless of life as Gatrell portrays George IV and his advisers to have been in the 1820s.[86] Nor is it clear how decisions that were always described as proceeding from the monarch's pleasure were actually reached. I can only assume that the recorder's lead was generally decisive. Certainly, the decisions were based on the evidence the recorder presented orally. Apart from petitions, there would be no written evidence on the table—no depositions or accounts of the trial. The council was not looking to make fine distinctions. But occasional marginal notes and other evidence suggest that some discussion took place. Richard Lapthorne reported in May 1693, for example, that after the lord mayor and several aldermen of London had lobbied Queen Mary against a pardon being granted to a man who killed someone in a riot in Whitefriars, 'the business being debated in Councell Its sayd Hee wilbe executed neer the place where the fact was comitted'.[87] That was merely a rumour, but there are strong suggestions in the minutes of the lords justices that they did more than simply endorse decisions made by the recorder and perhaps others of the Old Bailey judges. In May 1695, for example, they decided that a condemned man should be pardoned and transported on the ground that the facts of the case showed him to be no more culpable than an accomplice already sentenced to be sent to America. Another man, convicted of burglary, was also saved from the gallows at this meeting and transported, 'the evidence being that he did not make the bettey [the iron tool] wherewith the house was broken open, but only procured it, and the smith who made it has run away'. The lords justices also considered petitions from his neighbours that he was a 'quiet, industrious man'.[88] At another meeting two months later the lords justices received a series of petitions and the recorder's report on a murder case, reprieved the condemned offender for a week while they sought the views of the judges

[86] Gatrell, *The Hanging Tree*, ch. 20. [87] Kerr and Duncan (eds.), *The Portledge Papers*, 161.

[88] CSPD 1694–5, p. 474. A 'bettey' (or 'betty') was 'an instrument made about half a yard long, and almost as long over . . . which being chopt under a door, with a little help, it will make it fly off the hinges' (*A Warning for House-Keepers, or, A Discovery of all sorts of Thieves and Robbers* . . . (1676), 3–4).

who had heard the case, and discussed the issues again at a second meeting before deciding to let the law take its course.[89]

The council and the lords justices drew distinctions among the convicted men and women in accordance with certain guidelines, if not principles. To judge by the decisions they made, the decisive issues were the gravity of the offence and the character of the offender, though what was thought to be the current level of crime was always likely to be an important consideration, as indeed were personal and political influences: the cabinet council and the lords justices were after all highly partisan bodies. Few of those considerations are revealed in the terse notes of cabinet decisions. They do not disclose all the evidence that the recorder might have presented about the ages of the prisoners, or their previous character and disposition, or other testimony that might have emerged at the trial. But the cabinet's decisions do suggest that such evidence was on the table—or as much of it as the recorder disclosed.

In our Sample of sessions in the reigns of William and Anne, seventy-three men and sixty-one women were convicted of non-clergyable offences against property and were sentenced to death. Thirty-seven of the men were pardoned and thirty-four executed (two sentences are unknown); in the case of the convicted women, forty-five were pardoned, thirteen were executed, and the outcomes of three cases are unknown. In selecting offenders to be saved or to be hanged, particularly in the case of male defendans, the recorder and the cabinet seem clearly to have had the character of the offence very much in mind. Early in his reign William III resolved not to pardon convicted burglars[90]—a resolution that he or his ministers on his behalf could not absolutely adhere to, but that none the less expressed a view widely held among those who administered the criminal law, that offences that endangered life deserved the death penalty. In the event, more than 80 per cent of the men executed at Tyburn for property offences in our Sample of sessions in the reigns of William and Anne had committed burglary, housebreaking, or robbery (Table 7.6). The remainder—six men in our sample—suffered death for horse-theft, picking pockets, and simple larceny.[91]

Women accounted for more than a quarter of the property offenders hanged in our Sample from 1690–1713—a slightly higher proportion than in the previous period and higher than would be found at other times, in part because, as we have seen, more women were prosecuted in this period than in previous or later decades. Like men, women were executed in this period for burglary and housebreaking, but more women than men were hanged for forms of non-threatening theft—four for shoplifting and three for simple grand larceny, two

[89] CSPD 1695, pp. 12, 19. [90] CSPD 1690–1, p. 36.

[91] Twelve men and a woman were also executed in our Sample sessions for the treasonable offences of coining and clipping as a result of the massive effort to prosecute such offences at the time of the Great Recoinage. Almost all of the executions of coiners and clippers came in the years 1694–7, when they accounted for almost half of the offenders put to death at Tyburn.

TABLE 7.6. *Capital punishment in property offences, City of London, 1690–1713*

A. Pardons and executions

	Convicted	Pardoned	Other/unknown	Executed
Men	73	37	2	34
%	100.0	50.7	2.7	46.6
Women	61	45[a]	3	13
%	100.0	73.8	4.9	21.3

B. Offences against property punished by hanging

	Men		Women	
	No.	%	No.	%
Burglary	20	58.8	2	15.4
Housebreaking	6	17.7	2	15.4
Robbery	2	5.9	—	
Horse-theft	2	5.9	—	
Picking pockets	2	5.9	—	
Shoplifting	—		5	38.5
Simple grand larceny	2	5.9	4	30.8
Total	34	100.1	13	100.1

Note:
[a] At least seven initially reprieved for pregnancy

Source: Sample

of whom were condemned in 1690 and 1691 for stealing goods of over ten shillings in value, for which (unlike men) they were still then unable to plead benefit of clergy. That was to be changed in 1691, when clergy was made available to all defendants. The one woman condemned to death for simple larceny after that, and the two men who suffered for similar offences, had been denied clergy on the ground that they had already received its benefit once before.

The seriousness of the offence was a crucial consideration in the life-and-death decisions being made in the cabinet council or by the lords justices in William's reign. But the perceived character of the offender was also influential. A condemned man's or woman's best chance of being saved from the gallows was to persuade the recorder and the council that they were not dealing with a dangerous old offender who would return to crime if given another chance. Some of this evidence would have come out in the trial and would have formed part of the recorder's report, as we saw in the December 1704 example. But an additional source of evidence was provided by petitions to the monarch from defendants themselves and from their relatives and friends—petitions that were sent in both before and after the council made its decisions. Support from an influential patron or from someone whose rank demanded that their intervention be taken seriously would be an advantage if only because such patronage would

ensure the case was taken seriously.[92] But over the whole range of pardon decisions that had to be made every year with respect to London cases, the more important petitions were those from the 'respectable' inhabitants of a parish who could testify that the defendant had been an honest and settled member of the community and that he or she deserved another chance.

Such petitions as were received make it clear how widely understood were the considerations that shaped the pardon decisions and the imposition of the death penalty. Petitions favouring defendants emphasized their *naïveté*, their inexperience in crime, their good reputation among their neighbours, their penitence and determination to live honestly from now on. Age was clearly thought by petitioners to be worth mentioning and likely to have a favourable effect when the defendant was in his or her teen-years ('not above eighteen'; 'about fifteen'); or when a young man's age could be linked to his fitness for service in the army or navy as the condition of a pardon.[93] Age was not an automatic barrier to execution, however. The 11-year-old James Wilson was convicted and sentenced to death for 'privately stealing' at the December 1704 session of the Old Bailey and, though there is no indication in the recorder's report that his case was discussed, his execution was apparently confirmed at the council. He was in danger of being hanged on 23 December, when a petition from his mother, alleging that he had been drawn into street crime by a soldier and that her husband had received some of the spoils, prompted Lord Nottingham, the secretary of state, to push recorder Lovell to investigate. The outcome was a pardon on condition of transportation, though it is likely he was in fact allowed to go free since there is no evidence he was ever transported.[94]

Like other aspects of character, age worked best in petitions for mercy when it helped to paint a picture of a defendant who had been momentarily deflected from a basically honest course of life. Petitioners might also link their appeal for clemency to an issue that was important to juries and the council by emphasizing the triviality of the offence or the fact that stolen goods had been returned.[95] Occasionally petitions pointed to the dire 'necessity' that had tempted a defendant into theft.[96] But perhaps the most important evidence that petitioners could provide was some assurance, particularly those who were settled and respectable citizens, about the previous good character of defendants, of their penitence and resolve to stay away from bad company and become 'new creatures'—in short, to provide some guarantee of their future good behaviour.[97] William Hopley (or whoever helped him to compose and write his petition in

[92] For evidence of the natural influence that rank could bring to bear on pardon decisions, but also the limits of such influence, see CSPD 1696, p. 285; SP 34/19, fo. 72, 138–9; SP 35/22/98; and SP 35/23/5, 34, 41, 98.

[93] CSPD 1696, p. 472; SP 34/5, fo. 75; SP 34/28, fo. 42.

[94] CSPD 1702–3, pp. 347, 349–51.

[95] CSPD 1689–90, p. 295; SP 34/5, fo. 75; SP 34/6, fo. 117.

[96] SP 34/7, fo. 13.

[97] SP 34/6, fos. 117–18; SP 34/7, fos. 131, 133; SP 34/28, fo. 42.

1706) managed to touch on the important issues in one brief paragraph. He had been convicted of a robbery and sentenced to death and asked for mercy on the grounds that

> he was never before Guilty of any such Crime, untill he was unhappily Seduced by ill Company, to be concern'd in this Fact; For which he is truely Penitent, and firmly resolves (if he may now be Spared) never more to Committ the like for the future: And in regard the Prosecutor had all his Goods restored to him; And that your Petr is but 22 years of age, and very willing to Spend the remainder of his Life in your Majties Service, in any part of the World.[98]

The petition sent in on behalf of Laurence Waterman, a bricklayer of the parish of St Giles, Cripplegate, who had also been convicted of highway robbery, made the same points as Hopley's, but it carried additional weight by being signed by seventy-four inhabitants of the parish, including the minister, churchwardens, deputy alderman, members of the ward inquest, and captains of the trained bands. The seventy-four petitioners could all sign their names, and the clerk of the vestry added the certification that they had all 'fined for or served All the Offices belonging to the same Parish'—a form of guarantee that they were all well-established and respectable members of the community.[99]

Apart from choosing offenders to be hanged from among those convicted at the Old Bailey, the cabinet council must have been to some extent conscious of how many defendants they were sending to be executed at Tyburn, and the effect this was likely to have. There is little evidence that such considerations were uppermost in the minds of the ministers who listened to the recorders' reports. But they were almost certainly prepared to manage that number—to increase the terror of the gallows when the times demanded it, and to show more mercy when anxiety about crime in London was at a lower ebb. In his first response to Lord Nottingham's enquiry about the young James Wilson, Salathiel Lovell was obviously inclined to allow the execution to go forward on the ground that, at that moment, street crime was perceived to have reached dangerous levels. Despite the fact that Wilson was 11 and that, like other boys on the street, he was 'managed by others', Lovell none the less argued that ''Tis grown a very common offence and requires some examples to prevent the growth of it', before undertaking the fuller investigation that led to the pardon.[100] Such sentiments as yet caused no embarrassment: it was the function of the law and those who administered it to discourage crime in part by manipulating its deterrent capacities, and thus to manage the number of executions carried out at Tyburn. The comparison between the 1690s and the first decade of Anne's reign is instructive in this regard. Between 1690 and 1701—a period of major concern about crime—about 45 per cent of those condemned to death for property crime were executed; in the twelve years 1702–13, on the other hand, a period in which for

[98] SP 34/8, fo. 10. [99] SP 34/34, fos. 191–2. [100] CSPD 1702–3, pp. 349–50.

the most part crime in the capital was at a much lower level, pardon decisions resulted in 24 per cent of the men and women sentenced to be hanged actually being executed at Tyburn.

Extrapolation from our Sample, and the evidence of contemporaries, suggests that on average about three executions took place in the metropolis of London in this period after the eight annual sessions of the Old Bailey—roughly the level we found in the decades after the Restoration.[101] But averages do not accurately represent the public impact of executions in London or convey the experiences that made the Tyburn hanging day a fixture in the calendar of London life. In the first place, execution days did not invariably follow each session of the court; men and women condemned at two and sometimes three sessions of the Old Bailey were occasionally executed together.[102] When one adds to that the typically sharp fluctuations in the numbers of offenders tried and condemned, the result could be some very heavy execution days. Richard Lapthorne, who acted as the London agent of a Devon country gentleman, frequently remarked on such days as part of his roundup of crime news from the capital for his patron. He reported the December 1690 Old Bailey session as 'greater than usuall', with twenty-two men and women condemned to death and eighteen of them being executed at Tyburn over two days.[103] Again, in July 1694, he reported the sessions at the Old Bailey as 'great': twenty-five had been condemned, of whom fifteen were executed. But apart from sharp fluctuations in the kinds of property offences with which we have been concerned, there was a particular reason why there were some especially bloody execution days that struck observers like Lapthorne as distinctly unusual: clipping and coining became increasingly common in the 1680s and 1690s—or at least commonly prosecuted when informers were encouraged by a parliamentary reward to turn in those they suspected, and thief-takers became active in hunting down

[101] See above, Ch. 6, text at n. 105. The figure of 47 men and women executed over the twenty-four years 1690–1713 derives from a one-third sample of City cases. As we saw in Ch. 6, the City accounted for about 40% of the cases at the Old Bailey from the larger metropolis in this period. My estimate is that something in the order of 600–700 men and women suffered at Tyburn between 1690 and 1713 for all offences—perhaps 25–9 a year on average. Such a figure accords broadly with two contemporary accounts: with Narcissus Luttrell's records of London convictions and executions between 1678 and 1714, and with evidence for much of Anne's reign published by the ordinary of Newgate. Narcissus Luttrell's account of convictions and executions in London is included in his *Brief Historical Relation*. Luttrell's figures are more accurate with respect to the number of defendants condemned at the conclusion of the Old Bailey sessions than the number executed at Tyburn. In the twelve years 1690–1701 he failed to include at least ten Tyburn hanging days. The second source is more trustworthy for the first two decades of the eighteenth century, during which Paul Lorrain, the ordinary of Newgate, published cumulative annual totals from time to time of men and women condemned to death and executed in his Ordinary's *Accounts*. (See, the pamphlets of December 1710 and October 1712, for example). In October 1718 he published totals for the period 1700–18, which reveal that 494 men and women were executed over those years for all offences in both the City and Middlesex—that is, just over 27 a year. I owe my account of Lorrain's figures to Andrea McKenzie, 'Lives of the Most Notorious Offenders: Popular Literature of Crime in England, 1675–1775', Ph.D. thesis (Toronto, 1999), 498, Table 1.

[102] Evidence from Luttrell, *Brief Historical Relation*, and the Ordinary's *Account*.

[103] Kerr and Duncan (eds.), *The Portledge Papers*, 95.

offenders.[104] By the middle years of the 1690s, before the Great Recoinage in 1697 reduced the number of prosecutions and executions sharply, Lapthorne several times remarked on how crowded Newgate was becoming, how full the Old Bailey courtroom, and how many of the condemned were being executed. In August 1695, he remarked that 'never were there more clippers in custody than now'; in October, he reported that ten offenders had been executed at Tyburn in one day; and in December that 'near thirty condemned' and within a few weeks many executed, including ten drawn to Tyburn on hurdles (as traitors) and hanged for clipping and coining.[105] Narcissus Luttrell similarly recorded many 'execution days' on which an unusually large number of offenders were put to death at Tyburn. His figures, incomplete as they are, suggest that at least forty-eight offenders a year on average were executed at Tyburn in William's reign.[106]

It was in the midst of this carnage that the search for an alternative punishment for serious as well as minor offences was pressed by men in the City and in parliament in the last years of the decade and the opening years of the new century.[107] The extent to which this represented an implicit criticism of the bloodiness of the Tyburn scene, as well as a belief in the need for a more effective response to petty offences than clergy and public whipping, is unclear. It does suggest a resurfacing of the ideas expressed so vigorously in the interregnum about the value of hard labour as a reformative punishment (if not so obviously the opposition to capital punishment that was also advocated then). And it is at the least suggestive of the sensibilities underlying the support for labour-based punishments that some of the strong proponents of alternative penal practices were men sympathetic to the movement for the reformation of manners and, as we have seen, men like Alderman Ashhurst who was in touch with the nonconformist community in London, and Sir Robert Clayton, the main proponent of the Corporation of the Poor and the Bishopsgate workhouse it established.

As one would expect from the sharp fall in prosecutions in the war years that occupied most of Anne's reign, the bloody displays over the last years of the seventeenth century and the first year of the eighteenth gave way to relatively

[104] For the problems in the coinage in the 1690s, see above, Ch. 1, text at nn. 114–17.

[105] Kerr and Duncan (eds.), *The Portledge Papers*, 183, 210–11, 241, 246–7. Coining and clipping were both species of treason, and thus conviction could lead to a sentence of being dragged to the place of execution on a hurdle, and there to be subjected to hanging, drawing and quartering (in the case of men), or burning (for women). But judicial discretion interposed. Of the fourteen men convicted in the sample sessions in this period, all were sentenced to be dragged on a hurdle to the place of execution, but only one (a coiner) was to be subjected to the full traitor's punishment. Women were treated more harshly at the sentencing stage. Of the seven convicted, six were condemned to be dragged to Tyburn and there burned to death, including one woman who had been convicted with her husband, who was sentenced to be hanged. On the other hand, all the women were pardoned, whereas the sentences were carried out on twelve of the fourteen men. Perhaps that was the point: that the judges knew the women would be pardoned and the men not, and so increased the terror and anxiety for the women. (Data from the Sample, for which see above, p. ix).

[106] Luttrell, *Brief Historical Relation*. For the accuracy of Luttrell's figures, see above n. 101.

[107] See above, pp. 326–7.

modest levels between 1702 and 1713, when the war came to an end: in those twelve years, according to Lorrain, an average of fifteen men and women suffered at Tyburn each year—including but five in 1706 and eight in 1710. The relatively low levels of the first decade of the century were to be once again sharply reversed in the first five years of the peace (1714–18), when, according to Lorrain, the annual average of condemned offenders executed at Tyburn rose to fifty, and, as in the 1690s, the execution of ten or more men and women in a day again became a common sight in London.[108]

Yet even in years in which the terror of the law was on frequent display at Tyburn, the cabinet pardoned a significant number of those sentenced to death by the judges at the Old Bailey: over the whole period from the Revolution to the end of Anne's reign, more than 60 per cent of the men and women convicted at the Old Bailey were pardoned. Clearly, the cabinet drew limits around the uses of the gallows. But in doing so, particularly in years in which there were large numbers of defendants before the court, those cabinet decisions also raised the unresolved problem of what alternative punishment might be imposed upon them—of what acceptable conditions of pardon might be devised.

PARDONS AND THE PENAL CRISIS

These difficult questions had arisen, as we have seen, between the Restoration and the Revolution of 1689, when the failure of transportation removed the only usable alternative punishment for offenders pardoned by the monarch. The nature of the problem was vividly expressed by the number of free, or absolute, pardons that had to be granted in the last years of Charles II's reign and in James II's, essentially releasing from Newgate large numbers of men and women who had been tried at the Old Bailey and pardoned from the death sentence, but who could not be transported. It is unclear how that was regarded by the authorities in the 1680s. The patterns of punishment—or attempted punishment—after the Revolution make it certain that such an outcome was not acceptable then. The intention of parliament, the government, and the courts after 1689 was to deal harshly with crime. In part, this meant catching more offenders and ensuring their prosecution and conviction; but, above all, it meant punishing them effectively. Therein lay the problem, for the weaknesses that had undermined transportation in the 1680s as an alternative to execution, if anything, intensified in the last decade of the century. What had been a penal problem became more of a crisis and encouraged further efforts in the courts, in parliament, and in the government to find ways to deal with convicted men and women who could neither be hanged nor transported.

The simple increase in prosecutions and of convictions by trial juries in the 1690s contributed directly to that crisis. But the increase was especially trouble-

[108] Ordinary's *Account*, 31 October 1718.

some because of the higher proportion of capital crimes among the offences charged, a situation created not only by the prosecution of more burglars and robbers but in particular by a strong increase in the number of coining offences, and by the changes in the criminal law that transformed some of the most common clergyable felonies (most notably, shoplifting) into capital crimes. While that in itself significantly enlarged the number of offenders in danger of being hanged, there was the added difficulty that, as coining, clipping, and shoplifting formed a larger proportion of the capital punishments coming to the Old Bailey, an increasing number of the convicted capital offenders were women. More capital offences meant, it is true, that more offenders would be hanged. But it also meant—particularly because so many were women—that even more offenders would be pardoned and returned to gaol to serve some alternative punishment.

That was one side of the crisis: a large number of men and women awaiting trial or awaiting punishment, which meant that Newgate and the other London gaols were unusually crowded by the mid-1690s. The pressure of numbers was made worse by delays in a significant number of trials—delays that meant that some accused offenders were being held in gaol much longer than had normally been the case. One can see this in petitions to the aldermen asking to be tried or released at the ensuing session, a right of petition granted by the Habeas Corpus Act of 1679, which had clarified the scope and powers of the writ of habeas corpus to prevent wrongful imprisonment. Among its provisions was the requirement that persons committed on charges of felony or treason were to be put to their trial at the next session of the relevant court or at the next session but one. Failing that, they had a right to be bailed.[109] Defendants had to activate their right by petitioning the justices on the opening day of the court session. Several dozen such petitions were received in 1695 and 1696, and many others in later years, continuing more sporadically through Anne's reign, most of them submitted by accused coiners and clippers whose trials were almost certainly being delayed because the Mint wanted to collect as much evidence against them as possible and to prepare effective cases for the prosecution.[110] But petitions were also received from thieves and pickpockets whose trials were delayed by the overcrowded court calendars. One can see the effects of delay in the

[109] 31 Chas II, c. 2. The petitions themselves are interesting: the fact that so many prisoners knew their rights under this act suggests that men with knowledge of the law were making themselves available to give advice and more practical help by the late seventeenth century (as they may have for some time) to men and women caught up in the criminal law and who could afford to pay to have a petition drawn or to seek advice on assembling witnesses and constructing a defence. Such men, known scathingly as Newgate solicitors, were being criticized in the 1690s; they were to be increasingly active in the eighteenth century, offering help to both defendants and prosecutors. See above, p. 329, and Ch. 8, pp. 395–401.

[110] This was Richard Lapthorne's explanation of the delayed trials of several accused clippers in August 1695 (Kerr and Duncan (eds.), *The Portledge Papers*, 210–11). If cases were being prepared by solicitors on behalf of the Mint, that in itself would be likely to require a longer period of preparation.

Minute Book of the court which regularly in the 1690s registered the finding of a true bill by the grand jury in one session and the outcome of a trial on a later occasion.[111]

Whatever the reason for the postponement of trials, the effect was to exacerbate the crowding of the gaols and to increase the sense of breakdown that the failure of transportation created. For there is no doubt that the major contributor to the crowding in Newgate was the absence of an alternative to the death penalty that could be imposed on pardoned capital convicts as a condition of their pardon, and an unwillingness of the government—for the decisions were now securely in the hands of the council—either to order more men and women to be hanged at Tyburn or to do what had so often been done in the 1680s: to let them go with a free pardon. Such pardons continued to be granted: about a quarter of the pardons awarded to Middlesex and London offenders were without conditions. But they were not issued as readily as they had been in the 1680s; in William's reign, three-quarters of the pardons awarded—to well over 500 convicted felons—were given under the expectation that the recipients would be transported to the colonies in America or the West Indies.[112]

The penal problem that such an expectation created was real and pressing. Transportation was all but unworkable in the 1690s. Not only were the colonies even less willing to take England's convicts than they had been before the Revolution (and the imperial state was as yet too weak to force them to do so), and not only were merchants unwilling to take anyone but men whose services would be valued across the Atlantic—those problems were compounded after 1689 by the war and the serious disruption of shipping by French raiders' attacks on English merchantmen. The result was that while large numbers of convicted offenders were pardoned by the council on condition of transportation, many of them were destined to wait a long time in gaol before that sentence could be carried out. Men were much more likely to be taken than women, whose low-level skills were not sufficiently valued either in the West Indies or the mainland colonies to encourage merchants to take them.[113]

The evidence that a serious problem existed was particularly clear in the second half of the 1690s, when offences increased strongly in London, resulting in severe overcrowding in all the City's gaols.[114] But the problem was made especially difficult by the presence among the prisoners awaiting punishment of

[111] Another sign that Newgate was thought to be dangerously crowded in the middle years of the decade was the willingness of the recorder and London magistrates to grant bail in the summer of 1697 in cases in which it was distinctly unusual—to a woman accused of the significant theft of goods worth £60 that had been found in her possession, and to another woman accused of robbery, assault, and theft and thought to be an old offender (CLRO: SF 420: gaol calendar (Rebecca Harris; Ann Burk)).

[112] Figures derived from seventeen general pardons for the prisoners in Newgate (PRO, C 82: warrants for the Great Seal).

[113] For the problems surrounding transportation in this period, see Beattie, *Crime and the Courts*, 478–83.

[114] This no doubt explains why the aldermen called for an account of the number of offenders being held in all the gaols in the City in July 1696 (CLRO: London Sess. Papers, July 1696).

sixty or seventy women by the middle years of the decade.[115] While a few of those women who could provide reasonable bail to support their promise to transport themselves were released by the lord mayor in 1695, that hardly relieved the pressure.[116] According to Luttrell, Newgate was so crowded in 1697 that a large number of prisoners died of gaol fever.[117] The evidence of overcrowding was provided by the best witnesses—the prisoners who had been pardoned months or even years earlier and who were now trapped and awaiting transportation in what had become a seriously dangerous place. A group of women convicts petitioned the lord mayor and the justices at the Old Bailey in 1696 that they had

> pleaded to a Pardon of Transportation last December and the Ships being gon there is no hopes of being sent away a great while so that your petitioners must inevitably perish in the Gaole many of them being sick and in a Languishing Condition. Neither indeed have your petitioners any hopes of being sent away at all, the Merchants Refusing to take them without the men.

They went on to ask to be allowed bail to transport themselves.[118]

By 1697 the situation was so dire that the City aldermen and the two sheriffs attended the lords justices on several occasions that year to ask them to make provision for the speedy transportation of convicts from Newgate.[119] In response, these men in charge of the government in William's absence ordered the council of trade and plantations to discover which colonies might be persuaded to take convicts. They got some dusty answers. Merchants trading to Jamaica reported that they would gladly take men young and fit enough to be helpful in the defence of the island, but no women. The agents for Barbados also refused to take women. The Massachusetts agent took the line that New England had always been excused from taking convicts of all sorts. In the course of this enquiry, the cabinet discovered that Maryland and Virginia had actually passed laws against receiving convicted offenders from England, and expressed its surprise. By the summer of 1697 the only possible destination for women convicts was the Leeward Islands, and it was clear that if women were going to be sent there the government would have to pay the costs of their transportation. The cabinet agreed to do so, and the London authorities were ordered to make the arrangements for fifty women to be sent to the Leewards.[120]

[115] Estimates derived from the (imperfect) calendars of City and Middlesex prisoners being held in Newgate in 1696 and 1697 in the sessions files in CLRO and LMA.

[116] CLRO: London Sess. Papers, 1695 undated papers: petition of Elizabeth Edwards, with Sir Thomas Lane's instruction to the town clerk to take bond for the self-transportation of Edwards and another woman.

[117] Luttrell, *Brief Historical Relation*, iv. 241.

[118] CLRO: London Sess. Papers, 1696 (undated petitions). Similar concerns were expressed two years later because of the number of convicts crowded into Newgate and the heat of the summer (Rep 101, p. 205).

[119] Rep 101, pp. 156, 205, 226.

[120] CSPC: America and the West Indies, 1696–7, 271, 341, 530–1, 541, 543, 559–60; CSPD 1697, pp. 160, 167, 221, 322. Even though the government agreed to pay, the transportation of these fifty

Women continued to be pardoned on condition of transportation over the next few years, though not in large numbers. The overcrowding in Newgate and in other London gaols was not to be relieved until the new century, when the beginning of the War of Spanish Succession and several years of good harvests and lower bread prices together helped to bring a substantial decrease in the number of prosecutions. In addition, two alternative pardon conditions were mobilized in Anne's reign that further drew off many offenders who might well have been stuck in Newgate had they continued to be pardoned on condition of transportation. The possibility that an alternative punishment might be imposed on pardoned offenders was raised by the cabinet when they discovered the hostility in the colonies towards transportation in 1697. Their response was to ask the Board of Trade in November not only to report on possible destinations for transports, but 'what punishment might be more proper for such convicts in lieu of transportation'.[121] It is unclear whether an answer was forthcoming. But two alternatives were indeed turned to when further difficulties with transportation arose during the War of Spanish Succession that began in 1702: service in the armed forces, in the case of men; incarceration in the house of correction or the workhouse, in the case of women and of men for whom military service was inappropriate because of age or illness.

Service in the armed forces had been imposed on some convicted men in the 1690s, but not directly as an alternative to hanging. Doubt about its legality is suggested by an order of May 1692 at the Old Bailey by which five men, convicted of felonies and allowed clergy, had the burning on the thumb respited and (presumably as a condition of that respite) were ordered to be 'transported into Flanders' to serve in the army—an order that underlines the problematic character of penal law and practice by the end of the seventeenth century.[122] Service in the armed forces as an alternative to hanging was first authorized in the Mutiny Act of 1704[123] and men were regularly pardoned thereafter, on condition that they would serve in an active regiment and not return to England without permission.[124] About seventy men, more than half the male convicts

women did not go smoothly. Many were still in Newgate some months later, and there is a strong suggestion that the recorder and two magistrates simply released twenty-five of them from the gaol on a promise to arrange their own banishment—released, as the cabinet complained in November, 'upon pretence only of transportation' (CSPD 1697, p. 458). Lovell's letter to the lord mayor expresses the sense of hopelessness and resignation that attended efforts to make transportation work in this period. The recorder wrote: 'I have enquired into the condicon of these convicts and finde it necessary to let them out upon the best security they can give to transport themselves according to the condicon of their pardon' (CLRO: London Sess. Papers, March–April 1699).

[121] CSPC: America and the West indies, 1696–7, 36.

[122] CLRO: SF 386 (May 1692): gaol calendar. Two men were similarly forced into the army in the April 1693, having been convicted of simple grand larceny and pleaded their clergy: they were granted clergy but had the branding respited on condition of serving in the army (CLRO: SM 63: William Butler and Robert Wayte).

[123] 3 & 4 Anne, c. 5.

[124] PRO, C 82/2842. There is no evidence that efforts were ever made to insist on that condition

pardoned in London between 1704 and 1712, from Middlesex as well as the City, were saved from the gallows on that condition.[125] The disbandment of the army at the end of the war removed that option.[126]

The army had served as a useful place to dump convicts during the war, but of course men only. In the case of women, and men who could not be sent to a regiment because of age or infirmity, an alternative punishment became available in 1706, when the composite criminal statute passed in that year made it legal for the judges to sentence clergied offenders to a period of six months to two years at hard labour in a house of correction or a workhouse. That statute clearly suggested the possibility that such a sentence could also serve as a condition of pardon for those who could neither be transported nor sent to the army, for beginning in that year the cabinet began to impose such a condition on women pardoned from hanging, and by 1709 on a few men. Over the next six years, two-thirds of the women pardoned from London and Middlesex were sentenced to terms of hard labour for periods ranging from six months to three years.[127] In short, Bridewell and the workhouse functioned for women as the army did for men: the institutions were available; the sentence seemed appropriate and was authorized by statute in a broad if not specific way; incarceration was better than simply letting pardoned offenders go unpunished; and there was no realistic possibility of insisting on transportation.

Our Sample of City of London cases over the period reveals the effects of these innovations: ten men were forced into the army and ten women and two men were sent to the London workhouse in Anne's reign as a condition of pardon from capital punishment for property offences (Table 7.7). Such conditional punishments, however, fell away as the war ended, almost certainly because those who ran the houses of correction and workhouses objected to having men and women who had been convicted of capital offences dumped into their care without any compensation being offered. By 1713 only two men and two women were punished in this way following their pardon, and in the following year none.[128]

The end of the war brought an end to the two stop-gap punishments that had been imposed as pardon conditions. The cabinet reverted to transportation as the main condition imposed on men pardoned from hanging, thereby returning to the penal confusion that had existed a decade earlier. Since those ordered to be transported could not easily be found ships, the London gaols once again filled up, and once again the City authorities had to snatch at *ad hoc* solutions.

being fully carried out. Service in the forces until disbandment was in itself apparently sufficient to satisfy the pardon condition.

[125] PRO, C 82/2842, 2865, 2875, 2909, 2927, 2948.

[126] In a pardon issued for Newgate in June 1712, when the option of service in Europe had all but disappeared, sixteen men were pardoned on condition that they serve in the army in the West Indies. That was altered in the following year, and most of them were granted an absolute discharge (PRO, C 82/2948).

[127] PRO, C 82/2865, 2875, 2909, 2927, 2948, 2963.

[128] PRO, C 82/2963.

TABLE 7.7. *Conditions of pardon granted in City of London cases at the Old Bailey, 1690–1713*

	Total pardoned	Free pardon	Transported	To serve in forces	Committed to workhouse
Men	43	6	25	10	2
%	100.0	14.0	58.1	23.3	4.7
Women	48	13	25	—	10
%	100.0	27.1	52.1	—	20.8

Source: Sample

After some months of the new policy, in July 1713, the deputy recorder submitted a plan to the cabinet to deal with the pardoned offenders being held in Newgate. It was necessary, he said, to make a speedy arrangement for their disposition 'considering the season of the year & the Number of the criminals'—expressing the fear that overcrowding and the summer's heat would produce an outbreak of gaol fever. Wanting to clear the gaol, what did he propose? In the first place, that twenty-two convicts (fifteen men and seven women) previously pardoned for transportation, now be pardoned absolutely and released. Secondly, that twenty-two men and five women ordered to be transported now be allowed to enter into bonds to transport themselves, and thus be released from Newgate. And finally, that three men and a woman be sent to the workhouse for a year each.[129] All but four of these pardoned capital offenders were essentially to be released without punishment being imposed upon them by the state. It was as clear a confession of a bankrupt penal system as could be imagined. And at the very moment at which that low point was reached, the problems to be dealt with by the criminal justice system only got worse, as the War of Spanish Succession came to an end. The peace brought a renewed increase of prosecutions after a decade of generally moderate levels. But that was made much more serious by the passage in 1713 of the statute that removed clergy from thefts of more than forty shillings from houses. That put a significant number of servants in danger of being hanged, and increased the number of pardoned offenders to be dealt with in some way other than execution.

The peace and the increase in crime in London also coincided, however, with the accession to the throne of the new Hanoverian regime, a regime (as in the years after the Revolution of 1689) that was sufficiently insecure to regard excessive levels of serious and especially violent crime as a threat to its stability. It was also a regime sufficiently in control of the political arena to respond powerfully to those internal threats, and willing to use the state's resources to do so. Property crime was not at the top of the agenda for the whig ministers who bent their energies to defending the Hanoverian settlement. But it soon found a place

[129] SP 34/34, fos. 86–9.

on that agenda, and in particular the issue that had been clear for two generations at least: the weaknesses in the array of available punishments, especially the absence of an effective punishment for minor offences and of an alternative to execution for pardoned offenders.

The whig governments after 1714 showed themselves willing to confront those problems directly, and to seek more lasting solutions than the short-term and rather desperate remedies snatched at since the Revolution—perhaps because ministerial involvement in the pardon process for London brought those problems home to the men at the centre of government. Solving the problems that had enfeebled transportation in the past required political will and the commitment of resources. The government formed by George I had the one and acquired the other, and its determination to tackle the crime problem set the administration of the English criminal law on a new course. A century after the first convicts had been sent to America, and at a point at which it seemed unlikely ever to be a workable element in English penal practice, the punishment of transportation to the American colonies was suddenly put on a new footing and the administration of the criminal law was entirely transformed as a consequence.

CHAPTER EIGHT

Crime and the State, 1714–1750

CRIME AND THE HANOVERIAN SUCCESSION

In 1701 the author of that gloomy treatise on the state of crime in London *Hanging Not Punishment Enough* had no doubt that there had been a sharp increase in crime in the capital over the previous few years, particularly robberies and burglaries—a 'Lamentable Increase', as he put it, 'of High-way-Men, and House-breakers . . .'. Nor had he any doubt about the causes: 'We need not go far for Reasons of the great numbers and increase of these Vermin: for tho' no times have been without them, yet we may now reasonably believe, that after so many Thousands of Soldiers disbanded, and Mariners discharged, many of them are driven upon necessity, and care not to work, and many (I fear) cannot, if they would.'[1] It might not be entirely their fault, he conceded, but these ex-soldiers and sailors had been corrupted by the irregular life they had led in the forces, and when they were discharged some of them turned inevitably to take by plunder what they could not or would not earn by working.

This notion that the disbandment of the forces would lead to a sharp increase in crime, and especially in violent crime, was to become a commonplace at the conclusions of wars over the next century. Certainly, that expectation was plain at the end of the War of Spanish Succession, in 1713.[2] As peace with France approached, anxiety grew about its consequences at home. The timing and manner of the making of peace after a decade of bloody and expensive European war was passionately contested between the whig and tory parties since it seemed to many to involve serious implications for the national interest. But for those with a concern for domestic tranquillity, anxiety about the coming of peace was more narrowly focused on the effects of the demobilization of the large army that had fought in Europe under Marlborough and the discharge of thousands of seamen. Anticipation of trouble on the streets of the capital may explain the panic that appears to have seized London in 1712 over the violence of the so-called 'Mohocks', who were rumoured to be a gang of ruffians—possibly young aristocrats—who went around at night getting their sport by attacking people randomly, and in particular dealing harshly with the watch and other

[1] *Hanging, not Punishment enough for Murtherers, High-way Men, and House-breakers* (1701), 1, 21.

[2] For the patterns of prosecutions during and after wars in the eighteenth century see above, Ch. 1.

officials. Such rumours turned out to be seriously exaggerated, but the episode speaks to the fear of what the peace was likely to bring.[3]

Anxieties about robberies and other violence may have been better founded after 1712. The generally low levels of prosecutions for crimes against property in the City that had characterized the war years in the first decade of the eighteenth century rose sharply at the peace. Within a year so many accused offenders were being arrested in Middlesex that the magistrates were contemplating the need to build 'a strong house for convicts' at Tothill Bridewell.[4] In the immediate post-war years between 1713 and 1720 total prosecutions for property offences did not reach the heights of the last years of the 1690s, but that was because an unusually large number of women had been prosecuted in the late seventeenth century. The number of men indicted in the early years of George I's reign exceeded that of the 1690s. And when one looks more closely at the offences charged against them, it becomes clear why there might have been something of a panic in those post-war years, and why the perception formed that (as Charles Hitchen said) London had become a 'Den of Thieves and Robbers'.[5] The simple number of indictments does not sufficiently reveal the underlying character of prosecuted crime in London after 1713—particularly the high level of violent offences. A clearer indicator of that is the proportion of capital offences among the property crimes charged at the Old Bailey. In both the 1690s and in the war years in Anne's reign 40 per cent of the men indicted for property offences faced non-clergyable (that is, in effect, capital) charges, and 60 per cent clergyable. In the eight years after 1712, however, those proportions were reversed. Between 1713 and 1720 six out of ten men brought to trial for crimes against property were charged with an offence for which they could have been executed on conviction.[6]

The fact that the most common of the capital offences committed by men in these post-war years and in both the City and Middlesex were robbery and burglary helps to explain why there was such intense concern in George I's reign about the way violence had 'risen to so great a heith [*sic*]', as one man said in 1720, 'that it is a matter of astonishment as well as grief to the inhabitants [of London]'.[7] Street robbery was thought to be particularly common. Evidence collected by Jeremy Pocklington for the whole metropolis north of the river—for Middlesex as well as the City—reveals a strong rise in prosecutions for highway

[3] See Daniel Statt, 'The Case of the Mohocks: Rake Violence in Augustan London', *Social History*, 20 (1995), 179–99; and Neil Guthrie, '"No Truth or very little in the whole Story"? A Reassessment of the Mohock Scare of 1712', *Eighteenth-Century Life*, new ser. 20/2 (May 1996), 33–56, who both discuss the evidence thoroughly. As one example of the anxiety that can be found expressed in a variety of sources, William Nicolson, the Bishop of Carlisle, reported on his visit to London in March of 1712 his sister 'in great fear of the Mohocks' (Clyve Jones and Geoffrey Holmes (eds.), *The London Diaries of William Nicolson, 1702–1718* (Oxford, 1985), 595).

[4] LMA: MJ/SP/October 1714.

[5] Charles Hitchin, *A True Discovery of the Conduct of Receivers and Thief-Takers in and about the City of London* (1718), 7.

[6] Based on the Sample, for which see above, p. ix.

[7] SP 35/22/58.

robbery after the war that ended in 1713, with the largest increase by far coming in Middlesex.[8] Pocklington shows that indictments for robbery at the Old Bailey, having never exceeded eighteen a year over the half-century, 1662–1712, and being most often well below that level, increased after the war to over forty by 1722. They formed a higher proportion of all property indictments in the metropolis as a whole in 1715–16 and especially in 1721–2 than in six previous two-year sample periods going back to 1661–2.[9] Not only were larger numbers of robberies prosecuted by the 1720s, they also took on a threatening character when large numbers were reported as being committed by groups of men who, as often as not, used violence to make their escape. Such gangs were not tightly organized, and not so bound by loyalty or longevity or fear that they were proof against betrayal by one of their members who was apprehended and who could save his own skin and possibly benefit from a reward by giving evidence against his companions. But if only for short periods the activities on the streets of gangs like Carrick's or Spiggot's or Dalton's could give rise to a good deal of alarm, particularly since offences were increasingly widely reported in the press by the second quarter of the century.[10]

The intense interest in the crime problem helps to explain several notable developments in the literature of crime in the decades after the Hanoverian succession in 1714.[11] For one thing, the accounts of trials at the Old Bailey, the so-called Sessions Papers, became much fuller over the ensuing quarter century, providing more in the way of direct testimony and giving a more substantial account of at least some of the offences tried. When the Sessions Papers achieved quasi-official status in the 1680s, the printed Old Bailey trial accounts settled into a single folded-sheet format—in effect a four-page pamphlet. Over the first three decades of the eighteenth century, they were a little longer than that, but rarely more than six or eight pages. But in December 1729 they expanded strikingly—to more than twenty pages. The Ordinary's *Accounts* of the lives and deeds of those hanged at Tyburn also became increasingly substantial in the second quarter of the century, until by the 1740s, the ordinary and the publisher were combining to provide extensive essays on many of the men and women executed at Tyburn.[12] There was, in addition, a notable increase in the number of pamphlet accounts of individual offenders and of gangs in the 1720s, when the exploits of the robber and gaol-breaker Jack Sheppard, or of the more sinister Jonathan Wild, generated batches of accounts that kept crime at the forefront of public attention.

[8] Jeremy Pocklington, 'Highway Robbery, 1660–1720: Practice, Policies and Perceptions', M.Phil. thesis (Oxford, 1997), 41–6. I am grateful to Mr Pocklington for providing me with a copy of his excellent thesis and allowing me to cite his findings.

[9] Pocklington, 'Highway Robbery', 42 (figure 2.1), 46.

[10] For gangs in the 1720s, see Gerald Howson, *The Thief-Taker General: The Rise and Fall of Jonathan Wild* (1970), ch. 17, App. III.

[11] For the literature of crime in this period, see Ch. 1, text at nn. 3–10.

[12] Andrea McKenzie, 'Lives of the Most Notorious Criminals: Popular Literature of Crime in England 1675–1775', Ph.D. thesis, University of Toronto, 1999, ch. 4.

The printed literature of crime expanded to such an extent that, while it is almost certainly true that it made its way in the market by striving to entertain as much as to instruct, it is also likely to have found an audience after 1714 because of the interest and concern generated by the sense that crime was at dangerous levels and threatened the lives and property of large numbers of people. It was an audience that seems to have been made up not of the very poorest in society, but very largely of people of the middling ranks in London—those who were most likely to have been victims of property crime, or at least to have been prominent among prosecutors.[13] The Grub Street producers of so much of this criminal literature inevitably emphasized its dramatic and prurient sides in their search for profits. One can see this in the compilations of lives and trials that were so notable a development in the printed crime literature in this period—a development that took advantage of the amount of material being published in the Sessions Papers and the Ordinaries' *Accounts* in response to what appears to have been an insatiable appetite for accounts of crimes, the lives of condemned offenders, trials, and executions at Tyburn. Hardly surprisingly, in a period in which violent crime was at the forefront of concern, the first such collection, produced by a man calling himself Captain Alexander Smith, was *A Compleat History of the Lives and Robberies of the Most Notorious Highway-Men*, which expanded to three volumes and went through five editions between 1713 and 1719. It was followed by similar compilations by Captain Charles Johnson.[14] These collections both drew on an older tradition of rogue literature and were heavily fictionalized. But subsequent compilations of criminal lives and of trials were based more directly on the Sessions Papers and Ordinaries' *Accounts* and introduced more authentic reports of offenders and trials.[15] Information about crime and criminals became a staple of some of the London newspapers that became so common by the 1720s. They too fed the appetite for crime news in the capital.

The publisher of the Sessions Papers also responded to the concern about crime by making the accounts of the Old Bailey trials much longer and more accessible and interesting to the public. The December 1729 issue of the Sessions Papers was very different indeed from its predecessors. It was reduced slightly in size, but increased from eight to twenty-four pages, printed on better paper, with larger type and a much more generous layout that made it easier to read and more attractive to collect. In making these changes, the publisher may have

[13] On the audience for the printed literature of crime, see McKenzie, 'Lives of the Most Notorious Criminals', 7–13.

[14] *A General History of the Robberies and Murders of the most notorious Pyrates* ... (1724) and *A General History of the Lives and Adventures of the Most Famous Highwaymen, Murderers, Street Robbers, etc.* .... (1734, 2nd edn. 1742).

[15] B.N. *A Compleat Collection of Remarkable Tryals of the most Notorious Malefactors, at the Sessions-House in the Old Baily, for near Fifty Years past* ... (4 vols., 1718–20); *The Lives of the Most Remarkable Criminals who have been condemn'd and Executed ... From the Year 1720 to the Present Time* ... (3 vols., 1735). Further collections of 'lives' were published in 1742 and later; and of trials in 1734–5, 1742, and later. See McKenzie, 'Lives of the Most Notorious Criminals', Pts I and II.

been responding to concerns expressed by the mayor and aldermen a few years earlier about the tone and character of the trial reports.[16] But his principal reason was almost certainly to increase the readership in the face of competition from the collected trials series. The editor/publisher made this clear in a note introducing and justifying the new format. The new Sessions Papers would not only be fuller and more attractive, he said; it would also have an annual index so that readers would be encouraged to bind the eight yearly issues to produce 'a Complete Annual Register of these Proceedings, and thereby make it not worth any ones while to Reprint them in Volumes, which has been done at extraordinary Rates'.[17]

That the new format of the Sessions Papers was a response to the competition of the collected (and selected) trials, as well as a recognition of the opportunities provided by the concern about violent crime in the late 1720s, is also suggested by the way the new space was used. The intention, the printer announced, was 'to enlarge upon Trials . . . with respect to the Crime, the Evidence, and the Prisoner's Defence'. In practice, this meant that murder, sexual assaults, robbery, and other serious violence that interested, appalled, and titillated the reading public were given more space than ever before. They were also reported in a way that heightened their human and dramatic qualities by the much greater use of verbatim testimony taken by a shorthand writer.[18] The Sessions Papers continued to include all the trials in each session and to that extent it remained a complete record of the Old Bailey proceedings. But a very large number of trials were reduced to their barest bones in a few lines that merely noted the names of the accused and victim, the offence, and the jury's verdict. Indeed, to judge by the first four Sessions Papers of 1732 virtually all simple larcenies and many other kinds of cases were reduced in the new format to such squib reports, as Langbein has called them. More than 60 per cent of the cases reported were in that form. The much larger space available for fuller accounts of trials in the first half of 1732 was principally devoted to much lengthier accounts than ever before of cases involving violence, other capital offences, and one or two unusual cases or those that had some entertainment value. Murder and robbery together accounted for 70 per cent of the space devoted to non-squib reports, and other capital felonies, a further 16 per cent.[19]

The public concern about robbery and gangs in London, about receivers and thief-takers, thieving and untrustworthy servants, that helps to explain these developments of the Sessions Papers also helps to explain Daniel Defoe's interest

[16] McKenzie, 'Lives of the Most Notorious Criminals', 236–7.

[17] OBSP, December 1729. The usefulness of the annual index was increased further when, in January 1732, the cases began to be numbered and the Sessions Papers were given continuous pagination through each mayoral year, from the first session in December to the eighth in the following October.

[18] On the shorthand reporters, see Langbein, 'Structuring the Eighteenth-Century Criminal Trial', 12–14; McKenzie, 'Lives of the Most Notorious Criminals', 239–40.

[19] Based on the OBSP for January, February, April, and May 1732.

in such matters in several of his social pamphlets in the late 1720s,[20] as well as John Gay's use of highwaymen and thief-takers as vehicles of political satire in his immensely successful music-drama *The Beggar's Opera* in 1728. The anxiety created by the fear of gangs and reports of violence gave rise to other attempts to grasp the nature of the crime problem and to think about ways in which it might be tackled. There had been nothing earlier to match Mandeville's *Enquiry into the Causes of the Frequent Executions at Tyburn* (1725), apart from the pamphlet inspired by the post-war crime wave at the end of the seventeenth century, *Hanging Not Punishment Enough.*[21] No doubt much of the attraction of crime writing remained its entertainment value—and that could be served by heavily fictionalized stories of danger and adventure on the highways from an earlier time or accounts of prostitutes stealing from their clients. But the volume of material being published by the third decade of the eighteenth century also suggests that at least part of the audience was interested in authentic accounts of more recent offences and offenders, accounts that underlined the seriousness of crime as a social problem.

The concern with which the City authorities and, increasingly after 1714, the central government regarded crime in the capital can be seen in the variety of efforts they both made to combat it. The government in particular made several important interventions. On the one hand, the administration's willingness to put resources into the criminal justice system led to renewed efforts to find a satisfactory substitute for the branding that followed benefit of clergy and a punishment that could be imposed on men and women pardoned from hanging. As a consequence, although capital punishment was by no means displaced, there was to be a fundamental change in the way property offences were dealt with in London after 1714, when transportation to America was established as a punishment available to the courts in felony cases.

The central government also committed resources to deter crime by encouraging the arrest, prosecution, and conviction of dangerous offenders. In so doing they fostered developments in policing in the second quarter of the eighteenth century. They also set in train fundamental changes in the nature of the criminal trial in that same period. As we have seen, one of the characteristics of trials for felonies in England had been that they were conducted essentially as direct confrontations between a private prosecutor and the accused. That remained true in the majority of cases well into the nineteenth century. But a

[20] *A Brief Historical Account of the Lives of the Six Notorious Street Robbers, Executed at Kingston* (1726), *Parochial Tyranny* (1727), *Augusta Triumphans* (1728), *Street-Robberies Consider'd: The Reason of Their Being so Frequent* (1728), *Second Thoughts are Best: Or, a Further Improvement of a Late Scheme to Prevent Street Robberies* (1729), *An Effectual Scheme for the Immediate Preventing of Street Robberies* (1731). For Defoe's writings on crime, see Lincoln B. Faller, *Crime and Defoe. A New Kind of Writing* (Cambridge, 1993); Ian A. Bell, *Literature and Crime in Augustan England* (1991); Philip Rawlings, 'Defoe and Street Robberies: An Undiscovered Text', *Notes and Queries* (February 1983), 23–6.

[21] Bernard Mandeville, *An Enquiry into the Causes of the Frequent Executions at Tyburn* (1725), The Augustan Reprint Society, introduction by Malvin R. Zirker (Los Angeles, 1964).

fundamental turning point in the history of the trial occurred in the second quarter of the eighteenth century, when lawyers began to take part in trials at both the Old Bailey and in the assize courts. They did so in small numbers, but their presence in the courts and their influence on criminal procedure was such as to nudge the trial into a course that was to transform it in essential ways over the next century. The arrival of the lawyers was directly a consequence of the changes we will be concerned with in this chapter, in particular, the encouragements to effective policing and prosecution emanating from the central government in the 1720s. The large rewards that the government began to offer for the conviction of robbers in the metropolis and the resources they made available to improve the preparation of prosecution cases and their presentation in court encouraged some prosecutors to seek the help of lawyers. That did not in itself breach the rules governing trial, since prosecutors always had had the right to have their cases presented by counsel. Few, however, had done so previously. Even more important perhaps than the presence of prosecuting counsel is the evidence that John Langbein has uncovered of the increasing use of solicitors in the pre-trial stage. Of course, the two are linked. Counsel would almost certainly have been briefed, and that implies the investigative and organizational work of a solicitor. But even without counsel to carry on prosecutions in court, a case presented by the victim of the offence would have been strengthened if supplementary evidence was gathered and organized by someone with experience and if witnesses were prepared. Langbein has found evidence that solicitors were at work in these ways by the 1720s. This in itself shifted the advantage towards the prosecution in a trial that was expected to be a confrontation between two equally unprepared amateurs. The balance was even more obviously undermined when the prosecution was presented by counsel who had been carefully briefed. It was to restore that balance, out of a sense of fairness one might presume, that the judges by the 1730s were allowing defendants who could afford it to engage counsel themselves, breaking what had always been an inviolable rule of court that men and women on trial had to conduct their own defences.[22] That was one of several consequences that flowed from the interventions of the central government in the administration of the criminal law in the second quarter of the century—consequences that we shall examine in this and the following chapter.

THE POLICY OF MASSIVE REWARDS

The government established by the Hanoverian monarchs after 1714 made conscious efforts to improve the administration of the criminal law, largely in the interest of defending the new regime from its enemies, internal and external,

[22] For work on the history of the trial, see Ch. 6, n. 1. The fullest and most persuasive explanation of why the judges allowed defendants to engage counsel in the 1730s, emphasizing the importance of solicitors, is John H. Langbein, 'The Prosecutorial Origins of Defense Counsel in the Eighteenth Century: The Appearance of Solicitors', *Cambridge Law Review*, 58 (1999), 314–65.

real and imagined.[23] Three lines of attack on violent crime emerged in London after 1714 which together anticipated in their practice Beccarian ideas about the need to persuade potential offenders that if they broke the law they would be caught, if caught they would be brought to trial and convicted, and if convicted, punished. Perhaps the most immediately important innovation was a successful transportation policy that addressed the third of these ambitions, and that we will examine in the following chapter. Here we will take up changes in the criminal justice system after 1714 aimed at encouraging the arrest and prosecution of offenders and ensuring their conviction. These included an expanded rewards policy that had important consequences for the policing of the metropolis; and connected with that, government support for the effective prosecution of those whose offences were thought to threaten the security of the regime. These interventions in the criminal process grew from the government's willingness to commit resources to the short-term project of ensuring the stability of the regime. They had immense long-term consequences for the future working of the system of criminal administration—for the policing of the metropolis, for the way felony trials would be conducted, and for the penal consequences faced by the convicted.

We might begin with the rewards policy. As we have seen, a series of statutes between 1692 and 1706 had established forty-pound rewards for the conviction of robbers, burglars, and coiners. A significant number of payments under those statutes were made in the years after 1713, when prosecutions for robbery and burglary increased in London; indeed, claims for rewards increased to such an extent in the country that sheriffs complained about the burden this imposed on them. Reward payments were expected to be made from the funds that sheriffs amassed during their year in office from fines and other sources. The problem was that when the demands for rewards outstripped the money they collected—as clearly was the case in London after 1713—the sheriffs would have to meet those demands from their own resources and then wait for reimbursement when their accounts were cleared some years later. They were given some relief from that by the passage of a statute in 1716 that allowed them to apply directly to the treasury for the immediate repayment of the reward money they expended—a statute that underlines the pressures caused by violence in the streets of the capital in those years.[24]

The statute is a further reminder of the belief in the value of rewards as a means of encouraging the arrest and prosecution of offenders, and of the need for convictions if the law was to have any deterrent effect. These years were to see other efforts to encourage policing and effective prosecution—other ways of encouraging the apprehension of serious offenders, and of helping to ensure

[23] J. H. Plumb, *Sir Robert Walpole: The Making of a Statesman* (1956), ch. 6; J. M. Beattie, *The English Court in the Reign of George I* (Cambridge, 1967), ch. 7; Paul S. Fritz, *The English Ministers and Jacobitism between the Rebellions of 1715 and 1745* (Toronto, 1975); Ragnhild Hatton, *George I, Elector and King* (1978), ch. 7.

[24] 3 Geo. I, c. 15 (1716), s. 4.

that once in court they would be convicted and punished. Legislation passed in 1720 to supplement and support the Transportation Act passed two years earlier was directly related to the efforts being made to reduce violent offences in the capital.[25] For one thing, the statute of 1720 declared that all streets in London and in other cities were to be considered as highways under the statute of 1692 that had introduced the forty-pound reward for highway robbery—the intention being clearly to encourage victims of robberies in the lanes and courts and secondary streets of the metropolis to make an effort to arrest and prosecute their assailants and to encourage offenders who had been caught to give evidence against their accomplices.

At the same time, the act committed the government to paying for the transportation of offenders from the metropolis and the home counties. This was very much at the urging of William Thomson, the recorder of London, who was also the solicitor-general, and a very strong proponent of stern measures against crime.[26] In making the case for treasury intervention, Thomson argued that an effective transportation system would save the government money in the long run by reducing the number of reward payments that would have to be met. The lords of the treasury to whom he made this suggestion must have accepted that argument since they deferred their decision about funding transportation until they had received 'an account of the charge the Crown hath been at for apprehending felons'. In the event, they agreed to support transportation as Thomson proposed and the statute was passed.[27]

The transportation policy had several targets in view. One was undoubtedly serious crime. But the government's most direct and striking response to the concern about street violence in London was devised at the same time that the second Transportation Act was being passed and makes it clear just how anxious, even panicked, the authorities were becoming by 1720. This was the offer of an enormous supplementary inducement on top of the already handsome payment offered under statute. It was announced in a royal proclamation in January 1720 that offered the princely sum of one hundred pounds over and above the statutory forty pounds for the conviction of robbers who committed offences within a 5-mile radius of Charing Cross (and for murderers, the offence with which robbery was so closely associated by contemporaries). Rewards had been offered by royal proclamation after the Restoration: indeed, on no fewer than eleven occasions between 1660 and 1692 the Crown had promised ten pounds or twenty pounds to those who apprehended highwaymen who offended within a stated period, generally six months, occasionally a year.[28] Proclamation rewards appeared to have been made redundant by the parliamentary interventions in the 1690s and in Anne's reign; apart from anything

[25] 6 Geo. I, c. 23 (1720). [26] For Thomson, see below, Ch. 9.

[27] 6 Geo. I, c. 23 (1720); PRO, T 1/214/50.

[28] These proclamations have been helpfully traced by Jeremy Pocklington, 'Highway Robbery', 64–5.

else the statutory rewards for the conviction of robbers, coiners, and burglars were more certain, since they were permanent and were to be paid by the sheriff of the county, and at the same time more generous, since, at forty pounds, they doubled the largest amount previously offered. But the policy established by the 1720 proclamation was something entirely new. It offered rewards on an entirely different scale than anything seen in the past. The combined reward for the conviction of one robber in London would now be one hundred and forty pounds—the equivalent of about three years' income of a London journeyman, much more than that for a labourer.[29] Indeed, it was so large a sum that it is likely to be explained not as a means of getting ordinary victims of robberies to prosecute—forty pounds would do that—but to encourage members of gangs to take on the risk of impeaching their colleagues and to persuade private thief-takers like Jonathan Wild to take up the prosecution of offenders rather than mediating between them and their victims for the return of stolen goods for a fee. That certainly seems a likely explanation of so extravagant a gesture. In practice, the effect was a little watered down by the 1730s since the judges were inclined to divide each reward among large numbers of claimants. Still, even when divided several ways, one hundred and forty pounds was a significant sum.

The possibility that the proclamation rewards were designed to encourage the prosecuting enterprise of thief-takers is further suggested by a clause in the Transportation Act of 1720 that promised a reward of forty pounds for the prosecution and conviction of anyone who mediated between thieves and victims to arrange the return of stolen goods for a fee. Acting as a go-between had been made a felony by the first Transportation Act; the second added the reward to encourage some of the parties to these arrangements to turn informer.[30] This attack on middlemen has been seen as aimed simply at Jonathan Wild.[31] But it is better regarded as part of a broader policing strategy than that—as a way of encouraging thief-takers to engage more actively in prosecution while discouraging the kind of mediation between victims and offenders that could only make street and other crime more attractive. Making mediation between thieves and their victims potentially a capital offence was a much more broadly conceived policy than something designed to trap one man.

Unlike the various options taken up in the 1690s, the one-hundred pound reward was part of a programme devised not in parliament, but in the administration, and (to the extent that recorder Thomson had a hand in it) the City. And indeed, it required the government's leadership. It is true that the clause of the Transportation Act making the middleman role between thieves and their

[29] Schwarz, *London in the Age of Industrialisation*, 166–7.

[30] 4 Geo. I, c 11, s. 4 (1718); 6 Geo. I, c 23, s. 9 (1720). The penalty for acting as a go-between under the first Transportation Act was to be the same as that for the offence involved: thus, mediating in a non-clergyable offence like robbery was a non-clergyable offence.

[31] Howson, *Thief-Taker General*, 92.

victims a potential capital offence required the authority of statute. But the driving force, the engine, of the policy was provided by the royal proclamation that offered a massive reward and that was entirely in the hands of the king's ministers to administer as they chose. They could make the proclamation reward open-ended or give it a limited term; they could increase the amount offered or decrease it; they could decide how the one hundred pounds would be distributed.

It is thus important to emphasize that the offer made in January 1720 had no terminal date. It was to apply, the proclamation announced, to offences committed over the previous three months and to those that might be committed 'hereafter'. This is a crucially important point. Unlike previous proclamations which were always in force for a limited period—six months, occasionally a year—the offer of a hundred-pound reward as a supplement to the parliamentary forty pounds was in fact to run continuously until 1745, except for a few months following the death of George I, in 1727. It was to have significant consequences for policing and prosecution practices and the way trials were conducted at the Old Bailey.[32]

It is impossible to gauge the success of these efforts to encourage prosecutions and to diminish the unlawful return of stolen goods for a fee and no questions asked. Judging by the activities of Jonathan Wild, the initial effect of the proclamation initiative may have been to embolden some men to engage even more actively than before in prosecution. This might help to explain why Wild became so prominent a figure in the first half of the 1720s and the best-known thief-taker of the century. He had begun his career early in George I's reign as a rival to Charles Hitchen in the business of mediating the return stolen goods for a fee. Unlike Hitchen, he was willing to prosecute some offenders even then. But the reward system may have encouraged him to combine prosecution even more actively with receiving. Certainly, the all too plausible threat of prosecution may

[32] Radzinowicz very helpfully lists seven proclamations issued between 1720 and 1750, but does not stress the differences among them (Radzinowicz, *History*, ii. 96, n. 63). They were dated 20 January 1719/20, 12 February 1725/6, 29 February 1727/8, 9 July 1735, 7 November 1744, 1 February 1748/9, and 20 December 1750. They were printed in the *London Gazette* of the appropriate dates, and are included in a list of proclamations at SP 37/15/497. The proclamations of 1720 and 1728 (the second renewing the first, following the death of George I) established and maintained the policy of the £100 reward without term. Those of 1726 and 1735 were issued for particular purposes: the proclamation of 1726 included a reminder of the £100 reward for prosecutors of London robbers, but its more specific purpose was to offer rewards of £300 for the arrest and conviction of William Blewet, Edward Burnworth, two other named men, and four others unknown for the murder of Thomas Ball, a Southwark thief-taker (*London Gazette*, 12–15 February 1725/6); the proclamation of 1735 was issued because of the 'frequent murders and robberies in the streets of London and Westminster' and more specifically because a statute of the previous year (7 Geo. II, c. 21) had established assault with an offensive weapon with intent to rob as a felony liable to transportation for seven years, and the purpose of the proclamation was to include convictions under this act within the terms of the £100 and £40 rewards. In 1744, as we shall see, the reward was renewed by proclamation with the purpose of terminating it, since it was given a term of six months. The proclamations of 1749 and 1750 renewed the offer of £100, but in each case for one year only. The proclamation of 1728 is reprinted by Radzinowicz, *History*, ii. 444–5.

have enhanced his influence over the activities of robbers and thieves, and helped to establish him in the early 1720s, by his own assessment, as the 'thief-taker general'.[33] He and his agents were well-informed detectives precisely because they had acted effectively as receivers for so many robbers and burglars. Some members of gangs refused to deal with him for just this reason. But the existence of gangs in fact played into the hands of someone who could take advantage of their inherent weaknesses. In particular, gangs were vulnerable to betrayal when one of their members was arrested, since he would be strongly tempted to save his own skin by giving the evidence that would lead to the arrest and conviction of his colleagues—and such convictions could also mean massive pay-offs in reward money. Wild developed knowledge of the haunts of the gangs and of their activities, and he had a sufficiently strong organization of his own to pick them off and profit from the powerful weapons—the pardon and the reward—that the law now provided in the support of policing and prosecution. Wild almost certainly arranged perjured evidence to save some men when it served his purposes, and invented evidence to convict others. One of the men he prosecuted complained at his trial that Wild 'makes it his Business to swear away honest Men's Lives for the sake of the Reward, and that is what he gets his Livelihood by'.[34] That cut little ice with the authorities. He was doing their work.

In the end, it was not his use of perjured evidence in the conduct of these prosecutions that brought him down, but the second element in his corrupt career: arranging too boldly the return of stolen goods for a reward. When Bernard Mandeville addressed the problem of crime in the metropolis in 1725 in six essays in the *British Journal*, subsequently slightly reworked in his *Enquiry into the Causes of the Frequent Executions at Tyburn*, he devoted his first two essays to 'the destructive Consequences . . . and the Damage the Publick sustains from the Trade that is drove by Thiefcatchers', in which Wild was the central figure.[35] '[N]othing is more common among us', Mandeville wrote—in a passage composed before Wild was arrested, though published afterwards—'As soon as any Thing is missing, suspected to be stolen, the first Course we steer is directly to the Office of Mr. *Jonathan Wild* . . . and offer more for it than Mr. *Thief* can make of it . . .'.[36] And he said of Wild that

> It is certain, that the Correspondence he kept up with Highway-Men, House-breakers, and Rogues of all Sorts, was, for some Years, beyond Example; and that none of his Predecessors or Contemporaries, enjoy'd the Superintendency over Thieves with such an absolute Sway, or so long and successfully as himself. No Person was ever more universally known in his Occupation, or had the hundredth Part of the Addresses made to them for the Recovery of stolen Goods.[37]

[33] Howson, *Thief-Taker General*, 71–3.

[34] *Select Trials at the Sessions-House in the Old-Bailey* . . . (4 vols, 1742) I, 360–1 (William Duce).

[35] Mandeville, *An Enquiry*, preface. [36] Ibid., 3.

[37] *The British Journal*, 24 April 1725. For Mandeville's authorship of this letter, see Thomas A. Horne, *The Social Thought of Bernard Mandeville: Virtue and Commerce in Early Eighteenth-Century England* (1978), 110.

Whether or not he was its target, Wild was to be the most celebrated victim of the clause in the Transportation Act making mediation between robbers and their victims a capital crime when the offence by which the goods had been obtained was itself capital.[38] In 1725, by which time the business of his 'lost property office' had grown hugely, he was charged, convicted at the Old Bailey, and executed.[39]

Wild did not have successors who combined the two strands of thief-taking as he had. No doubt, stolen goods continued to be returned to their owners for a fee and no questions asked. But none of the thief-takers operating in London in the second quarter of the century sought to profit by linking thieves and victims on as large a scale and as a main activity.[40] The decision to put the clause of the first Transportation Act into effect, and the publicity that Wild's trial and execution generated, seems in this case to have had the effect that the terror of capital punishment was expected to achieve, and to have cast something of a chill, at least over large-scale receiving and mediation between thieves and their victims.

The other element of the thief-takers' business, the detection and prosecution of valuable offenders, was not likely to cease so long as rewards were offered by the state, and particularly the one-hundred pound supplement offered under the royal proclamation of 1720. Certainly, large number of robbers were convicted in the metropolis in the early 1720s and the amounts being paid in rewards brought the lords of the treasury by 1726 to wonder about the generosity and open-endedness of the policy. They asked the attorney-general and solicitor-general to look into the way the proclamation reward had been administered, and discovered that Anthony Cracherode, the solicitor of the treasury who authorized payments under the proclamation, had not only paid out about five thousand pounds, but that 'great sums' were owed for offenders already convicted, and that 'the offenders increase'. The treasury lords suspected that the sums involved must have included illegal payments for the prosecution of pickpockets and other offenders not covered by the proclamation, but they were assured by the report of the attorney-general and solicitor-general that Cracherode approved payments of the one-hundred pound reward only when the judge before whom the criminal had been convicted certified that the offence was indeed a robbery upon the highway, and the sheriff of the appropriate jurisdiction had been ordered to pay the statutory forty-pounds reward.[41]

[38] 4 Geo. I, c. 11 (1718), s. 4.

[39] For his trial and conviction, see Howson, *Thief-Taker General*, ch. 22. The trial was managed by Nicholas Paxton, the deputy solicitor to the treasury (SP 44/81, fos. 390–1).

[40] A statute of 1752—25 Geo. II, c. 36—established a fine of £50 for anyone advertising a reward with no questions asked for return of stolen goods, and a similar fine for the printer or publisher, but Blackstone wrote about the offence of taking a reward under pretence of helping the owner to recover stolen goods in a way that suggests it was no longer as common as it had been earlier in century. It was, he said, 'a contrivance carried to a great length of villainy in the beginning of the reign of George the first . . .' (*Commentaries on the Laws of England* (Oxford, 1765–9), iv. 132).

[41] T 1/255/55 (1 August 1726). The 'judge' was generally speaking the recorder. See William Thomson's letter to Walpole in 1722 in which he mentions the burden of this work in 1722, below, pp. 433–4.

The report from the two law officers also confirmed that the proclamation had not established a time limit for the payment of these rewards, but that the king could terminate the offer and ease the 'burden' on the treasury by issuing a new proclamation cancelling the reward entirely or restricting payments in some way. They did, however, add this warning—suggesting that they at least believed that the existence of large rewards was discouraging robbers in the metropolis: 'whether such Repeal or Restriction may be advisable, or may not rather be taken as an Encouragement to the committing of such Crimes, seems to deserve great consideration'.[42]

The supplementary reward had thus been continuously in effect for six years; indeed it was confirmed in February 1726 in a royal proclamation issued to encourage the arrest of four men for the murder of a Southwark thief-taker, and for subsequently appearing armed in public and 'menacing several peace officers to deter them from doing their duty'.[43] If the government had intended to terminate the offer of the general one-hundred pound reward for the prosecutors of London robbers they could have done so simply by failing to renew it at the death of George I in June 1727, when the order and regulations he had promulgated came to an end. Indeed, the new king and his ministers did not immediately reissue the proclamation. But they were persuaded to do so some months on, presumably by anxiety about street crime in the following winter. A new proclamation was published in the *Gazette* in February 1728, reinstating the one-hundred pound reward on the same terms as before, and again without terminal date.[44] Any hesitancy that may have been felt in the cabinet or elsewhere in the administration about renewing the large reward may have been simply a matter of concern for the king's finances. But it may also have included some growing doubts about the wisdom of the policy more generally—and in particular, anxiety about the corrupting effects of these hugely tempting rewards and the possibility that some defendants had been trapped into committing offences by the men who brought them to trial, and that perjured evidence was being manufactured to fit the needs of those bringing charges. Certainly, there appears to have been a growing concern about some of the consequences of large rewards soon after the proclamation was reissued—a concern that merged in the late 1720s and the early years of the 1730s with disquiet about other aspects of the government's growing involvement in criminal prosecutions.

[42] T 1/255/55; summarized at CTP 1720–8, pp. 410–11.

[43] *London Gazette*, 12–15 February 1725/6. It also included this description of the four wanted men: 'William Blewet is above Six Foot high, with black Eye-brows, his Teeth broke before, a hoarse Voice, and about Twenty eight Years of Age; Edward Burnworth, a well set Man, of a middle Stature, fair Complexion, and about Twenty five Years of Age; Emanuel Dickenson, a thin Man, about Five Foot Ten Inches high, with a large Scar under his Chin, about Twenty two Years of Age; And Thomas Berry, commonly called Teague, a short Man with dark brown Cloaths, and a natural Wig.'

[44] See above, n. 32.

THE STATE AND PROSECUTION

In the seventeenth century, the central government intervened from time to time through the Privy Council to encourage criminal prosecutions, though mainly when the charges amounted to allegations of serious treasonable activity. As the Privy Council's role in domestic oversight diminished after 1660 the secretaries of state—and most commonly the secretary for the Northern Department—became increasingly the government's link with such local officials as mayors and justices, to whom they can be found writing from time to time about dangers in their neighbourhoods and encouraging them to do their duty.[45] The engagement of the secretaries' office in peace-keeping and criminal administration was to expand notably in the eighteenth century.

A hint of this is provided by the swearing of two under-secretaries of state as magistrates of the county of Middlesex in October 1714—'the business in My Lord Townshend's Office frequently requiring us to act as Justices of the Peace', as one of them said in arranging it.[46] What this business involved was made clear in the following months and years, as the secretary for the Northern Department and the under-secretaries became involved in the prosecution of suspected enemies of the new regime. What was to be even more important, the under-secretaries were not only involved in taking depositions and overseeing prosecutions: the government also paid the costs of a number of cases. Such financial support of prosecutions originated in 1696, when a solicitor to the treasury had been appointed to help organize cases in which the government had an interest—treasonable activities in general, including offences against the coinage.[47] After 1714, when the enemies of the regime proliferated, and the rebellion in 1715 and the plotting that followed in its wake made the threat of a violent overthrow of the government entirely plausible, the under-secretaries of state became even more heavily engaged in uncovering and prosecuting rioters, the printers and publishers of pamphlets they thought seditious, editors of newspapers, ballad singers, and a host of others whose activities seemed to threaten the Hanoverian regime and the succession put in place by the Act of Settlement. On orders from the secretaries or under-secretaries of state, the solicitor to the treasury paid the costs of many such cases from the money advanced to him every year as a fund 'for carrying on Publick Prosecutions', as it was called in 1715.[48] It was by such means that the central government became involved in the administration of at least some aspects of the criminal law after 1714.

In the early years of George I's reign, the government's support of prosecutions remained focused, as in the past, on matters of state. The under-secretaries

[45] Joanna Innes, 'The Domestic Face of the Military–Fiscal State: Government and Society in Eighteenth-Century Britain', in Lawrence Stone (ed.), *An Imperial State at War: Britain from 1689 to 1815* (1994), 98–9.

[46] SP 44/147, 27 October 1714.

[47] J. C. Sainty, *Treasury Officials, 1660–1870* (1972), 97–8.

[48] SP 44/147, 30 November 1715; SP 44/118, p. 207.

who organized and co-ordinated prosecutions in numerous courts, and the secretary of the treasury who paid the bills, concentrated on efforts to convict those who were overheard speaking treasonable words, or the authors, printers, and sellers of what they took to be seditious publications. For example, in 1718, Secretary Stanhope sent the treasury solicitor, Anthony Cracherode, 'Copys of two Informations concerning John Yeems, against whom an Indictment [for speaking seditious words] has been preferred at the Assizes at Norwich, which Indictments I desire you will get and attend Mr Attorney General therewith for his Opinion whether it be in proper and due Form, and his direction how further to proceed thereupon.' Stanhope went on to instruct Cracherode to pay certain sums of money to a Norwich attorney to carry on the prosecution. This man had clearly been employed earlier in similar work, for Cracherode was also told to reimburse him for his prosecution of several rioters 'at the direction of the Justices of Assize in that Circuit'. In addition, Cracherode was asked to pay the expenses of a number of witnesses—and to give them money for their time and trouble—in still other cases of riot, sedition, and high treason.[49] Such payments became very common indeed in the years after 1714. 'Having occasion to employ John Smith a printer in detecting Printers and Publishers of Seditious Libels', Secretary Craggs told Cracherode with respect to one case in 1719, 'and his family being thereby deprived of the benefit of his Labour . . . I desire that till he can return to his business you allow his wife half a crown a day for the Maintenance of herself and her children . . .'.[50]

The records of the secretaries' office contain dozens of examples of Charles Delafaye, an under-secretary of state who was included in the Middlesex commission of the peace, acting as an investigative magistrate. He took depositions and issued warrants, and, along with his fellow under-secretaries and the secretaries themselves, became heavily involved in the prosecution of authors, printers, and booksellers of allegedly seditious publications, and of individuals for speaking seditious words in public—toasts to the Pretender, for example, or gibes about George I.[51] The government also organized and paid for the prosecution of smugglers and other offenders against the customs, and of rioters whose protests threatened the public peace. As Edward Thompson revealed,

[49] SP 44/79A, pp. 232–3. [50] SP 44/79A, p. 303.

[51] On this subject, see Nicholas Rogers, *Crowds, Culture, and Politics in Georgian Britain* (Oxford, 1998), ch. 1. And for examples of a large number of such cases, see secretary Stanhope's orders to the attorney-general in 1718 to organize prosecutions of people accused of speaking seditious and treasonable words, as well as his warrants to the messengers of the chamber to seize printers and publishers of pamphlets; see also the activities of Charles Delafaye, one of the under-secretaries, who had been put into the Middlesex commission of the peace, and who was at the same time busily engaged in taking depositions and corresponding with both the attorney-general and Anthony Cracherode, the secretary of the treasury, about similar matters (SP 44/79A, pp. 235–50, 322–3, 334–6, 340–7, 350, 356–62). There are many examples of such activities in this and subsequent volumes of the so-called 'Criminal Entry Books' among the State Papers, for which see below, n. 53. Delafaye was in the office of the secretaries of state as a clerk before 1700; he was an under-secretary April 1717–34 (J. C. Sainty, *Officials of the Secretaries of State, 1660–1782* (1973), 29–30, 34, 74–5).

the under-secretaries and their agents managed the major effort to apprehend and prosecute the large numbers of 'Blacks' who protested against the loss of their customary rights in forest communities in Hampshire and Berkshire in the early 1720s.[52] The private interests of whig ministers and their supporters may have been engaged in some of these prosecutions, as Thompson argued was the case with respect to the 'Blacks'. But, if so, that was a very small part of the explanation for the government's long and fervent commitment to the prosecution of its enemies. The administration saw its targets in a much broader context. The State Papers are so dense with complaints from all over the country that it is clear Delafaye and his fellow under-secretaries were principally engaged in responding to what they took to be threats to the Hanoverian settlement itself, not merely to the private interests of its supporters. Their records also suggest that they recognized they were engaged if not in a new order of business, at least at a new level of activity.

This is most clearly revealed in a series of 'Entry Books', in which the under-secretaries kept copies of warrants, correspondence with judges and magistrates about pardons, as well as orders relating to prosecutions and related matters. These books were begun early in Anne's reign, presumably as a consequence of the increase in the under-secretaries' work after the Revolution of 1689 and as a way of managing the heavier flow of business. They may not initially have conceived of this series of volumes as dealing with a separate order of business, but rather a way of keeping a better account of their work—a bureaucratic rationalization. But at the beginning of George I's reign the secretaries' office was so deeply engaged in helping to organize prosecutions that they labelled this series of records as 'Criminal Entry Books'.[53] The volumes after 1715 provide graphic evidence of the way the criminal work of the office increased during the reign of George I, as did the work of the solicitor to the treasury who was also involved in the administration's efforts to invigorate the prosecution of riotous protest and seditious talk and writing.[54] Administration officials were particularly busy in the early 1720s, dealing with the alarms surrounding the Layer and Atterbury Plots. These incidents caused so much work for the treasury solicitor that Cracherode was given an assistant in 1722—Nicholas Paxton, who was

[52] E. P. Thomson, *Whigs and Hunters: The Origin of the Black Act* (1975).

[53] When these records were rebound in the nineteenth century they were all classified as 'Criminal Entry Books' by the Public Record Office. That was entirely understandable since they deal broadly with same kind of business and form a continuous series. But internal evidence suggests that it was only with the volume beginning 1715 that they were given the name 'Criminal'. These volumes came to be regarded as an official repository of the documents surrounding the pardon process. When he was sent a petition to comment on without the usual formal reference to him signed by a secretary of state, William Thomson wrote to the secretaries' office to ensure that the reference be added before the case was concluded because, he said, 'all these matters are entred in books in ye office' and with the addition 'it will appeare then in a regular manner' (SP 36/26/186).

[54] In a report to the lords of the treasury in 1719, Cracherode listed twenty-eight cases then current in which he had paid various sums for attorney's and other fees from the money imprested to him for 'public prosecutions'. They all involved suspected treason or seditious or riotous activities (SP 35/17/61).

to conduct several of the trials of the Blacks, and who succeeded Cracherode in 1730.[55]

The work of the under-secretaries of state themselves had so increased by 1724 that a more streamlined procedure for dealing with requests for prosecution help was put in place. Until then it had been common for the information about suspicious activities that came to the secretaries' office to be sent to the attorney-general with a request that he undertake a prosecution, or at least make a judgment whether the evidence provided sufficient grounds for an indictment. By 1724, however, there were so many cases to be pursued around the country that that procedure had become cumbersome, and Delafaye informed Cracherode of a change in policy. In sending the treasury solicitor a group of depositions accusing a man in Surrey of speaking treasonable words and seeking advice about the likelihood of mounting a successful prosecution, Delafaye wrote (as a way of confirming that a change of policy had occurred):

> Formerly when any such Informations were brought to the Office they were sometimes sent to the Attorney General with Orders to prosecute if he found Cause and sometimes they were transmitted to him in the Way of a Referrence for his Opinion whether there was sufficient ground for a prosecution. Both these Methods proving tedious and expensive another has of late been followed which is to reimburse to the partys who bring such Informations the Expences they shall have been at in carrying on such prosecutions. This has been much less chargeable . . .[56]

The new practice, cutting back on the direct involvement of the administration, had been followed for some time, Delafaye acknowledged. Instead, private prosecutions had been encouraged by providing financial support for public-spirited citizens who prosecuted the seditious words and deeds of their neighbours. The danger, Delafaye recognized, was that people would 'get into the Way of putting their own private Quarrels to the Account of the Government and . . . get into the hands of Attorneys who learn to make large Bills when they know the Government is to pay them, of which I believe you may have met with several Instances'. None the less, despite the risk, Delafaye emphasized the need to encourage prosecutors whose reasonable expences could be supported by the government.[57]

[55] For Paxton, the trials, and the involvement of other administration officials in the pursuit, apprehension and trial of the Blacks, see Thompson, *Whigs and Hunters*. For an argument—against Thompson's—that the government was mainly concerned about the Blacks because they thought they were Jacobites, see Eveline Cruikshanks and Howard Erskine-Hill, 'The Waltham Black Act and Jacobitism', *Journal of British Studies*, 24 (1985), 358–65. And for the complexity of the Jacobite challenge, see Paul Monod, *Jacobitism and the English People 1688–1788* (Cambridge, 1989), esp. chs 4–7; and Rogers, *Crowds, Culture, and Politics*, ch. 1. The torrent of material in the State Papers suggests that, whatever the reality, the Walpole administration was genuinely concerned about the threat Jacobitism presented to the regime.

[56] SP 44/147, 25 April 1724.

[57] Ibid. There is evidence of Cracherode reimbursing several men who had prosecuted 'in his Majesty's behalf' as early as 1718 (SP 44/79A, p. 217).

This had been an important decision. It confirmed and reinforced the private character of criminal prosecution while advancing the government's interests—yet another example of the overlapping of private and public concerns in the administration of the criminal law. Even more, it encouraged and supported a fundamental shift in criminal practice by providing financial support for the engagement of lawyers in trials. Some of the payments made by the treasury solicitor for cases organized under the direction of the attorney-general had gone for the services of solicitors to collect evidence and manage prosecutions, or at least to analyse depositions and confessions of witnesses, and to prepare briefs to guide the effective prosecution of the case in court.[58] The new system that Delafaye described in 1724—that is, one in which the administration simply provided money for private citizens willing to take on the business of prosecuting seditious and riotous behaviour—seems even more likely to have encouraged such prosecutors to engage solicitors, as Delafaye acknowledged in his letter to Cracherode.[59]

If the government's interest had remained entirely focused on treasonable activities and similar public order offences, their encouragement of prosecutions in the 1720s might not have had implications for the trial of felonies—trials in which defendants had not hitherto been allowed to engage counsel and in which prosecutors rarely did. But their view of what constituted a threat to the state and to public order widened beyond sedition and riot in the course of the reign of George I to take in forms of violence involving private citizens. In 1721 Secretary Townshend instructed the attorney-general to prosecute at the government's expense a servant who had been accused of breaking into the bedroom of his master's daughter and of attempting to rape her.[60] A few months later he wrote to him again about a case that had raised a great deal of public interest: the attempt to murder his brother-in-law in a particularly vicious way by one Arundel Coke, Esq. The king, he said, was anxious that Coke 'should not escape unpunished', and that 'His Majesty has commanded me to signify to you his Pleasure that you take care that he be prosecuted at his Maj[es]ty's Expence and that able Council [*sic*] and a proper Solicitor be employed to attend that prosecution'.[61] In the event, the assistant treasury solicitor, Nicholas Paxton,

[58] For the increasing engagement of solicitors in the preparation of criminal cases by government departments and private prosecutors, see Langbein, 'Prosecutorial Origins of Defence Counsel', 325–56.

[59] When Lord Coningsby wrote to the lords justices in 1719, for example, about an innkeeper drinking the Pretender's health, the under-secretary ordered that the man be punished by having his licence removed and that this be accomplished by a prosecution undertaken by an attorney hired by Coningsby who would be reimbursed (SP 44/279, p. 28).

[60] SP 44/81, pp. 5–6.

[61] Ibid., p. 24. The case was reported in the *State Trials* (vol. 16, 53) and is discussed by Langbein, 'Prosecutorial Origins of Defence Counsel', 332–3. It is not impossible that the king was in fact responsible for this decision. It is known that George I's alleged lack of interest in England is entirely unjustified. He kept himself well informed on English affairs through his ministers, his Hanoverian servants, and his engagement in the cabinet discussions of capital punishment in London (Beattie, *English Court of George I*, 138–52,

went to Bury to organize the case, and the Treasury paid his bill of eighty-five pounds.[62] Coke was convicted and hanged.

The rape case and this attempted murder were clearly unusual: servants did not often break into bedrooms, armed with a sword and pistol, and rape their employers or their children, as Arthur Gray was charged with doing on this occasion; nor were gentlemen often accused of such vicious crimes as Coke's. In the latter case, the king's interest—engaged perhaps by his experience and knowledge of the criminal process of Hanover in which trained state officials took the lead in prosecuting crime—may have been crucial in getting the government to act. A year later Townshend again wrote to the attorney-general about another murder that had raised a public storm, in this case the rape and murder of a woman by four watermen. He again conveyed the king's personal interest and outrage, in virtually the same words as in the Coke case, and instructed the attorney-general to prosecute the case himself at the Old Bailey, and to order the treasury solicitor to 'take care to procure the necessary Proofs' and to prepare the brief.[63] Nor were these the only prosecutions of felonies that were supported by the government or apparently encouraged by George I's personal support. A 'barbarous murder' in Pembroke was prosecuted at the government's expense in 1723; and the trial of the most famous criminal of the period, Jonathan Wild, was managed by Paxton on Secretary Townshend's orders.[64] Even more revealing of the concern of ministers about violent mainstream felonies, perhaps, was the decision in March 1726 that the treasury solicitor should take over the prosecution of Edward Burnworth, William Blewit, and four other members of a well-known gang of street robbers for the murder of Thomas Ball, a thief-taker, so that, Delafaye told Cracherode, they 'may not escape the hands of justice thro neglect or mismanagement'.[65] The government paid the costs of the trial of another London street robber in the following month, it being 'His Ma[jes]ty's pleasure', Secretary Townshend said, 'that he should be prosecuted at his Expence'.[66]

By the mid-1720s, the under-secretaries seem to have been expecting to pay for the prosecution of at least some felonies at the Old Bailey. That is the

217–24; Hatton, *George I*, 130–2, 289–98). He was almost certainly in touch with contemporary concerns about crime and about particularly horrendous cases like Coke's and the four watermen's attack on a lone woman. Coming from a state in which the investigation and prosecution would have been in the hands of trained magistrates, he may well have been appalled by a criminal justice system that was left virtually entirely in the hands of amateurs, and in which there was little state involvement in the maintenance of order.

[62] SP 44/81, p. 69; *The Weekly Journal or British Gazette*, 24 March 1722, reported that 'As the King was wholly at the Expence of the Tryal, His majesty's Council were there to argue on the Tryal, as was likewise Mr Paxton, Deputy Solicitor of the Crown, to manage the Indictment.'

[63] SP 44/81, p. 189. [64] Ibid., pp. 169, 176, 224, 228, 390–1.

[65] SP 44/80, 3 March 1726. The government had offered rewards of £300 for the arrest and conviction of four of these men (above, n. 32). The case, tried at the Kingston assizes, was managed by counsel for the Crown; all six defendants were convicted and hanged. *Select Trials*, II, 345–62.

[66] SP 44/81, p. 431.

implication at least of a note among the State Papers of 1726 of the charges at Hicks' Hall (where the Middlesex grand jury met to scrutinize bills of indictment) for 'Drawing the Indictment for Felony & Robbery' (3*s.* 4*d.*), of the fees for swearing witnesses, and for a 'Subpena' and a 'Ticket' for witnesses (2*s.* 6*d.* and 4*d.*, respectively—a ticket being most likely an entry fee to the court). Their informant also reported that at the Old Bailey a bill of indictment for a 'single felony' (that is, a clergyable felony) or a burglary cost 2*s.*, which suggests that a robbery indictment would cost 3*s.* 4*d.*, as in Middlesex.[67] The government intervened with financial or other support in only a few felony cases, but often enough by the mid-1720s that the secretaries began to speak of the money advanced to the treasury solicitor as a fund for 'criminal prosecutions'.[68] The payments made by the treasury solicitor increased from an average of about four thousand five hundred pounds in the five years 1718–23 to six thousand pounds in 1723–7.[69] A significant change of outlook and practice was thus underway in the administration in this period and it was to have profound effects on the criminal courts and the conduct of trials.

The whig government's willingness to help to pay the costs of prosecutions of violent offenders was yet another indication, along with the massive rewards offered by proclamation, that robbery and the threat of serious violence were thought to constitute a considerable problem in London; and in particular that the number of gangs that were believed to infest the streets of the capital posed a threat to order and to the property and the safety of its citizens. Most important in capturing the government's attention may have been the sense that there had been a significant increase of violent crime in Westminster. Certainly, the lords justices who governed in George I's absence in Hanover in the summer of 1720 thought there had been such an increase when they called Westminster and Middlesex magistrates before them to urge an improvement of the night watch and to take other measures 'to prevent robberies and disorders that happen in the streets'.[70] An unusual level of danger in Westminster no doubt drew their attention because of its high concentration of upper-class residences, as well as its being the site of the court and parliament. The threat to life posed by street gangs so close to home may not have seemed far removed from matters of state.

At any event, the secretaries of state turned their attention to Middlesex in the 1720s, and developed contacts with the county and Westminster benches in ways that seem entirely new. This connection did not mean that the City became less important as a centre of judicial administration. The City had always had close ties to the court, the Privy Council, and the secretaries of state through

[67] SP 35/63/97. [68] See, for example, SP 44/81, p. 444.

[69] His accounts show payments of more than £10,000 by the end of the decade, though by then his annual accounts also included the payment of the large proclamation rewards which he had taken over. These data are derived from the treasury solicitor's Declared Accounts (PRO, AO 1/2320/45–53).

[70] SP 44/283, 30 August 1720.

the lord mayor and the recorder. Middlesex and Westminster had not in the past had such a prominent leading magistrate. The emergence in the second quarter of the eighteenth century of a justice to whom the government could turn in a crisis is a measure of the way the centre of crime was shifting. In the 1720s Townshend and Delafaye corresponded frequently with the Westminster magistrate Nathaniel Blackerby about criminal and public order matters. Blackerby was active in the prosecution of highwaymen and receivers in the early years of the decade, as well as people suspected of Jacobite activities and the ballad singers who were accused of spreading seditious songs and publications.[71] Delafaye received advice from him about preventing street robbery and burglary and (in 1725) how to deal with the problem of transported felons who were returning to England before the expiration of their seven- or fourteen-year term.[72] Blackerby also played a leading role in the examination of Edward Burnworth in Newgate when that gang leader had been arrested on a charge of killing a thief-taker and made it clear he was willing to implicate other members of his gang in about fifty burglaries and robberies, along with the five female receivers who had helped to dispose of the goods.[73] Blackerby did not establish the kind of relationship with the central government that Thomas De Veil and particularly Henry and John Fielding were to construct by the middle of the century. He did not establish an institutional base, or become known, as they did, as the 'court justice', the man to whom the government could turn for advice and who could be relied upon to act vigorously when magisterial initiative was required.[74] But one can sense in the correspondence that grew in the 1720s between the secretaries' office and the Westminster and Middlesex benches, and with Blackerby most prominently, the recognition that the centre of the crime problem in the metropolis had clearly shifted outside the City.[75]

Serious levels of violence in the metropolis in the 1720s help to explain why the national government was drawn into supporting the improvement of night policing and the more effective prosecution of felonies. It is worth underlining one of the consequences of this public support of prosecutions—both prosecutions of crimes against the state and of those, like murder, rape, and robbery, that involved violence of a more private kind: that is, the likelihood that some of the money made available by the government would support the engagement of lawyers. In some cases that was made explicit; in others, it was understood to be

[71] SP 44/79A, 414–15, 463. Blackerby was also asked to investigate possible Jacobite threats in Middlesex. He was able to assure the secretary's office, for example, that 'the unusual number of strangers' at Hendon were 'people of business' who had gone out of town to take advantage of the 'pleasantness of the Season'. SP 35/33/117.

[72] SP 35/61/121–2. [73] SP 35/61/46.

[74] For the 'court justice', see John H. Langbein, 'Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources', *University of Chicago Law Review*, 50 (1983), 60.

[75] Other correspondence between the secretaries' office and Blackerby and/or the Middlesex and Westminster magistrates can be found at SP 44/79A, pp. 42, 414–15, 463; SP 44/81, pp. 77, 530–3, 540, 545; SP 44/283, 30 August, 3 September, 20 September 1720.

among the expenses that the administration would defray. Efforts to improve the effectiveness of prosecutions in particular cases meant an expanded role for pre-trial work by attorneys—for lawyers to gather evidence, interview witnesses, and construct a brief that would organize the way a case should be laid out in court and specify who should be put on the witness stand to prove what point. A brief among the State Papers in 1735 in the prosecution of John Blackbourne, an accused robber and thief, lays out the evidence deposed by one of Blackbourne's accomplices before the examining magistrate and sets out how the various elements of the charge can be proved by evidence to be given by several witnesses.[76] Professional help of that kind was exactly what the administration intended to provide in order to eliminate some of the weaknesses of a prosecution system that depended entirely on the amateur and hit-and-miss efforts of private individuals, and thus to improve the chances of winning convictions.

The engagement of lawyers in the preparation of briefs can also be seen in the work of the City solicitor, whose duty it was to prepare cases in which the mayor and Corporation had an interest. Only a few of the briefs he prepared in this period remain among the Sessions Papers, and for the most part they pertain to the kinds of civil suits or misdemeanours in which the City's authority or its officials were challenged and that would long have been his responsibility. His briefs in the 1740s, for example, include cases in which he organized the prosecution of chairmen who persisted in obstructing the streets and footpaths, another involving a dispute between parish and ward authorities over the fees collected when a man refused to act as a constable, and one concerning the prosecution of a man for keeping a bawdy house—all of them forms of litigation in which lawyers had customarily been involved.[77] But it was a recent extension of his duty that required him to prepare a brief for the prosecution of William Meneer for a felony—the theft of five iron weights from Newgate market, the goods of the mayor and citizens of London, and valued at ten shillings—which was tried at the Old Bailey in June 1738. The City solicitor either examined the depositions or the witnesses themselves; he wrote a brief that set out who should be called to prove the City's ownership of the weights and to prove that they were found in the defendant's ironmonger's shop in Fleet Street; and he drafted the indictment. The solicitor included in his brief the information that similar market weights had been found in the defendant's shop once before, some of which (along with those recently lost) were to be produced in court. This was information that was no doubt to be disclosed to the jury. It also surely explains why the City authorities were sufficiently anxious to convict Meneer that they paid the City solicitor to draw up this brief.[78]

[76] SP 36/35/105. For a more extensive discussion of solicitors' briefs in this period, see Langbein, 'Prosecutorial Origins of Defense Counsel', 325–56.

[77] CLRO: London Sess. Papers, September 1740, February 1742, September 1742.

[78] CLRO: London Sess. Papers, June 1738.

The engagement of solicitors in ordinary criminal cases almost certainly remained unusual in this period. But the government's payment of costs had perhaps established a pattern, and demonstrated the usefulness of case preparation. This had immense implications for the trial process itself. The more effective preparation of prosecution cases by solicitors made it more likely that victims would also be encouraged to engage lawyers to represent them in court. And as John Langbein has shown, it is precisely in the 1720s and 1730s that barristers began to prosecute in a few cases at the Old Bailey—mainly for government departments and trading companies, but in a few private cases too.[79] In several of the cases we have noted being managed and paid for by the treasury solicitor in the 1720s the government also hired counsel to conduct the prosecution in court. In the Coke murder trial, as we have seen, Townshend ordered the prosecution to be conducted 'by able Council and a proper Solicitor'; and, in the case of the murder in Pembroke, the treasury paid an attorney to prosecute.[80] That may have been the case, too, in the trials of London robbers supported by the government. In the prosecution of William Meneer for stealing the City's weights, the aldermen also paid a guinea to engage William Whitaker, a barrister, to present the case at the Old Bailey.[81]

Barristers were not common at the Old Bailey in the 1730s. But their importance does not lie in their numbers. Their appearance had a crucial effect on the form of the common law criminal trial because the engagement of prosecuting counsel was countered in a number of cases by counsel acting for defendants. And whereas the first was unusual, the latter was, or had been, forbidden by rule of court. The 1720s and especially the 1730s thus saw a change of immense significance for the future. Solicitors could act in felony cases as easily—though perhaps less profitably—for the defendant as the prosecutor; and counsel could argue one brief, if they were allowed to do so by the judges, as readily as the other. The push may thus have come from lawyers themselves—from both solicitors or barristers, stirred into action in the first place by prosecutors of various kinds.

There is no certain evidence why the judges allowed the admission of defence counsel. We might presume that the appearance of lawyers acting for the prosecution, if only in a few cases, told so heavily against defendants in the courtroom that judges were persuaded to restore some balance by giving prisoners the right to the protections a trained lawyer might afford them. The established form of the criminal trial presumed that two untrained and essentially unprepared amateurs—the victim and the accused—would confront one another and that the trial would be conducted under the judge's lead. Prosecutions

[79] John H. Langbein, 'The Criminal Trial before the Lawyers', *University of Chicago Law Review*, 44 (1977–8), 311–13; *idem*, 'Prosecutorial Origins of Defense Counsel', 325–56.

[80] SP 44/81, p. 228.

[81] The brief is marked 'For the King. The King agt Meneer. Brief. Wm Whitaker 1 Gn.' (CLRO: London Sess. Papers, June 1738).

prepared by solicitors, especially those conducted by lawyers arguing from well-prepared briefs, confronting prisoners who had little knowledge of the evidence to be presented against them until they heard it in court and who had to defend themselves may well have created the sense of imbalance and unfairness that a generation earlier had led to the passing of the Treason Act. That statute had given the defendant in cases of high treason the right to be represented by counsel, a right that some had argued then should be extended to all prisoners, including accused felons.[82] There was to be no similar statute in the 1730s; nor was there a move to change the rules that prohibited felons from engaging counsel. But the rules were overlooked in practice, presumably because some defendants sought counsel and some judges allowed it. It was no doubt important that lawyers engaged to prosecute a number of cases would have been physically present and available to be hired by defendants. Perhaps it was the lawyers themselves, out of a sense of the unseemliness of their confronting an untutored and unskilled defendant, or simply because they saw a new source of fees, who suggested to the first defendants to engage counsel that the judges might look more tolerantly on their being represented by a lawyer now that the prosecution side sometimes was. At any event, by the late 1730s judges had allowed a few accused felons at the Old Bailey and at the assizes to be represented by counsel.[83]

What those lawyers could do was limited, and was to remain limited for another hundred years. Even so, barristers used to a court setting could do a great deal more for defendants than they could do for themselves. Defence counsel remained few in number until the last decades of the century, when they quite suddenly in the 1780s became familiar figures in the criminal courtroom and began to act in ways that in time transformed the trial by putting it entirely in the hands of lawyers.[84] That was far in the future, but it had its roots in the second quarter of the eighteenth century, at least in part as an inadvertent by-product of the whig administration's determination to defend the Revolution and the Hanoverian succession by their active engagement in the administration of the criminal law.

There is little reason to doubt that the government's commitment of resources to effective prosecution helped to produce the unusual appearance of counsel in a handful of felony cases at the Old Bailey in the 1720s and 1730s. But this may not have been the only encouragement in this period to the engagement of solicitors in the preparation of prosecution briefs and of barristers to argue them in court. There were other reasons for men becoming involved in

[82] Above, Ch. 6, text at n. 12.

[83] Langbein, 'Criminal Trial before the Lawyers', 311–13; Stephan Landsman, 'The Rise of the Contentious Spirit: Adversary Procedure in Eighteenth-Century England', *Cornell Law Review*, 75 (1989–90), 534–9, 572–80; J. M. Beattie, 'Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries', *Law and History Review*, 9 (1991), 221–67; *idem*, *Crime and the Courts*, 356–62.

[84] Beattie, 'Scales of Justice', 226–9.

the prosecution of crime in this period—not least the very large rewards offered through the 1720s and 1730s for the conviction of street and highway robbers in London. With one hundred and forty pounds for one or two hundred and eighty pounds for a pair on offer, even an ordinary victim might be tempted to help ensure the convictions that alone brought the prize by turning to lawyers to prepare and argue the case, especially if they were taking advice from someone experienced in the ways of the criminal justice system, a thief-taker, perhaps. Such prosecutors had the same end in view as the government; that is, to get their cases presented as effectively as possible. Both the size of the rewards available in London in that period under the royal proclamation and the fact that convictions were by no means automatic—indeed Old Bailey juries did not convict more than half the capital offenders they tried, as we will see—must have made the hiring of professional help seem an investment worth making, especially when the government led the way.

It is unclear how much the move towards the more effective preparation of prosecution cases was due in the late 1720s and early years of the 1730s to the activities of the proto-policemen known to contemporaries as thief-takers or thief-catchers. There is good reason to think that the opportunities (legitimate and corrupt) to profit from the prosecution of crime did encourage thief-taking then. That at least was the view of critics of criminal administration in London in this period, troubled by changes in prosecution practices—some of which could be ascribed to the intrusion of lawyers; others that seem more directly the result of the self-interest of other agents of various kinds offering their services to private prosecutors.[85]

The shopkeepers who petitioned the House of Commons at the end of the seventeenth century for more effective means of preventing shoplifting complained that not only were the penal sanctions attached to clergyable felonies inadequate, but that accused men and women often escaped conviction altogether because they had the help of 'solicitors'.[86] The nature of the involvement of these solicitors was not elaborated in this one-page broadside, but similar concerns about the intrusion of such men into the prosecution process were to be made more explicitly in the coming decades. The earliest extensive criticism of their work was made in an anonymous pamphlet published in 1728 under the title *Directions for Prosecuting Thieves*.[87] The author sets out to give advice

[85] John Langbein offers a similar and more fully worked out explanation of the judges' willingness to allow defendants to engage counsel to cross-examine and test the prosecution evidence—that is, that they sought to restore a balance in the courtroom that had been displaced by the engagement of lawyers on the prosecution side and by large rewards that threatened the conviction of innocent men with perjured evidence ('Prosecutorial Origins of Defense Counsel', 317–21).

[86] *The Great Grievance of Traders and Shopkeepers, by the Notorious Practice of Stealing the Goods out of their Shops* . . . (?1699).

[87] *Directions for Prosecuting Thieves without the Help of those False Guides, the Newgate Sollicitors, with a great deal of Ease, and little Expence: wherein is laid down The Manner of Indicting a FELON at Guild-Hall, Hicks's-Hall, or the Old Bailey* (1728). It was dedicated to Sir William Thomson, the recorder of the City of London, in tribute

to victims of offences about the prosecution system in London and to save them from 'the oppressive and dishonest Practices of the Tribe of Sollicitors, in prosecutions of Felony about this City'.[88] Though not a lawyer, as he said, the author had clearly had some experience of the courts. He had also read William Hawkins' *Pleas of the Crown*, the first volume of which had been published ten years earlier, for his notion of how trials ought to be conducted repeats Hawkins' arguments, and the second half of the pamphlet consists very largely of long passages on the rights and powers of juries quoted directly from Hawkins's work.[89] The author's overriding concern was with the level of robbery and other serious offences in London, and one of the sources of his anxiety about the intrusion of the men he called 'sollicitors' into the early stages of the criminal process was that they would drive up the costs of prosecution and so make victims of property crimes even more reluctant than they already were to bring charges against those who stole their goods. In line with the slippery-slope view of crime, he believed that robbers abounded because minor offenders were not dealt with properly. It was, he said,

> frequently a matter of Complaint, that the Prosecution of a Thief costs more Money than the Value of the Goods stolen amounts to; which makes People chuse rather to sit down with the first Loss, than be at the extravagant Expence which attends a Prosecution. By this means a Villain often escapes Justice, and is thereby encourag'd to persevere in his wicked Practices, till, from Trifles, and little pilfering Tricks, the Wretch audaciously takes to the Highway, or robbing in the Streets: Which Violences might have been prevented and the Villain's Life saved, if his Villainy had been nipp'd in the Bud, and he sent abroad for his petty Larcenies, according to Act of Parliament. And let a thousand plodding Heads be laid together in drawing up Schemes to prevent Street Robberies, in my humble Opinion, the most effectual Method will be, to prosecute the Law vigorously against all Offenses whatsoever.[90]

Who these solicitors were who were driving up the costs of prosecution, he does not say, other than they were 'several very active Gentlemen, if the Newgate Sollicitors deserve that Application [*sic*]'.[91] At one point he uses language that conjures up thief-taking: they were a 'Sharping Troop', he said, and complained about the 'Tricks and Abuses they live by'.[92] Further, they got the names of their clients (especially the victims of robberies) from the newspapers—like thief-takers who mediated between thieves and victims and negotiated the return of stolen goods. They were ready to act that part too, he thought, if given the opportunity, or to act for the defendant if there was profit to be made. As for helping the victim to prepare for trial, they did little in his view that was useful or necessary. They might gather the prosecution witnesses together to arrange

to his 'Integrity, Reputation, and Abilities' and his 'Zeal for the due Execution of the Laws' (p. i). This pamphlet, and other criticisms of the changing nature of prosecution are analysed in Langbein, 'Prosecutorial Origins of Defense Counsel', 335–8, 340–2.

[88] *Directions for Prosecuting Thieves*, ii. [89] Ibid., 15–27. [90] Ibid., 1–2.
[91] Ibid., 2. [92] Ibid., ii.

the order in which they would testify, and to give them instructions as to how to behave in court. On such occasions, he thought, these solicitors were likely to exaggerate the seriousness of the crime in order to impress upon the witnesses that sizeable rewards would accrue if they won a conviction. This was not because they themselves expected to share in such bounty; indeed, they wanted their bills settled before the trial took place.[93]

One of the author's complaints about the solicitors was the effort they made to persuade prosecutors that 'they cannot be brought into Court, without being introduced by a Sollicitor, nor be heard if they do not speak his Language', by which I take it he means if they do not have command of legal terminology.[94] What solicitors might have done in the courtroom, however, he does not say—and indeed was not likely to say since his main point was to defend trial procedure that had no need for such men.

The author's unhappiness with the involvement of solicitors in the pre-trial process derived in part from what he considered to be their exorbitant charges (always 'more unreasonable than a Taylor's' bill).[95] But his central concern was the effect they would have on the established form of trial. Here his ideas were derived from the second volume of William Hawkins's treatise on criminal law, published in 1721.[96] His intention in writing, he said, was to explain to victims of property crimes in London the steps they needed to take to get their cases into court, and in particular to make it clear that there was no need for elaborate preparation. The courts did not expect prosecutors to be lawyers, he said, 'nor is their Wisdom or Strength of Judgment the Case, but their Truth and Honesty, which, when they make appear, they are sure of Justice'.[97] This echoes Hawkins' view of the advantage he thought the innocent defendant enjoyed by appearing in court entirely unprepared and unaided: their innocence would be clear when the jury saw their immediate, natural response to the evidence.[98] Honest prosecutors had the same advantage when they told their stories plainly in court.

Having said there was no need for elaborate preparation, the author seriously compromises this optimistic picture of the courtroom by complaining about the 'Errors and Mistakes' too commonly made by prosecutors and the way that most of them are only saved from 'Confusion, Circumlocution, and Tautology' by the patience of the judges who take it upon themselves to draw out the facts of the case.[99] It was precisely this off-hand, incoherent, and ineffectual presentation of evidence that had encouraged the government to engage solicitors in the first place; and, if this interesting, if frustratingly vague, polemic is any guide, a number of ordinary prosecutors must have been doing so too by the late 1720s. But this critic hints at other problems developing in the administration of the law besides the complexities being introduced by lawyers. These seem to be

[93] Ibid., 3–4. [94] Ibid., 5. [95] Ibid., 4.
[96] William Hawkins, *A Treatise of the Pleas of the Crown*, 2 vols. (1716–21). See above, pp. 263–4.
[97] *Directions for Prosecuting Thieves*, 5–13. [98] Hawkins, *Treatise*, ii. 400.
[99] *Directions for Prosecuting Thieves*, 13.

more likely the work of thief-takers, who, as we have seen, engaged in a variety of ways of profiting from crime. That would explain some of the reflections by the author of *Directions for Prosecuting Thieves* on the 'tricks' he complained about. It also explains the pointed criticisms by a body that was well placed to observe the prosecution process: the City grand jury.

At the sessions of September 1733 the London grand jury devoted its presentment entirely to the corruption they thought had infected criminal administration. In particular, they charged that many of the bills of indictment brought to them in the grand jury room were frivolous or malicious and that they had been concocted by men in league with magistrates' clerks as a way of generating fees, and—though they made this charge orally and not in their presentment—as a way of profiting from the rewards on offer for the conviction of certain kinds of offenders. The grand jury accused the clerks, 'Newgate Sollicitors' of the kind the 1728 pamphleteer chastized, and 'informing Constables' of engaging in what amounted to a conspiracy. The presentment reads:

> Wee the Grand Jury of the City of London having with great Concern observed That many Vexatious and litigious Prosecutions have appeared before us in the Course of this our Duty and Service against many of the Inhabitants of this great City humbly Conceive it becomes us to Enquire how and in what manner such Prosecutions are fomented and Stirred up and by whom Prosecuted and Carryed on.
>
> And first it Appears to us that Divers Persons Clerks or Servants to many of his Majesty's Justices of the Peace within this City, do under Colour and in the Execution of their Office Exact and Take from all Persons Accused and others bound to Prosecute Several Sums of Money under Pretence for Warrants Commitments Recognizances, Discharges and other Matters Incident to the Duty and Office of a Justice of Peace contrary to the known Laws of this Realm In Violation of publick Justice and to the great oppression of his Majesty's Subjects.
>
> Wee further observe that many such Clerks and Sollicitors in Confederacy with a Set of People calling themselves informing Constables Newgate Sollicitors and others Do not only Excite and Stirr up Ignorant and unwary People to enter into such Prosecutions but are Actually Concerned as Solicitors and Agents for them thereby encouraging and Abetting ignorant and weak People to Strife and Envy and getting that Money from them which they stand in Need of for the Support of themselves and poor Familys.
>
> These Things we humbly beg Leave to present as tending to the Subvertion of the Laws, The Hindrance of Justice, The Litigating Strife, and Contrary to the good Order and Government of this great City. . . .[100]

Unlike the anonymous author of the 1728 pamphlet, the men who made these charges are known to us, and known to be well informed. As we have seen, a majority of grand jurors had had experience on both grand and trial juries in

[100] CLRO: London Sess. Papers, September 1733 (grand jury presentment, original and copy). A contemporary printed version is bound in with the Chicago Law School set of the OBSP, immediately following the September 1733 OBSP pamphlet (see Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 109, n. 441). For Langbein's discussion of the presentment, see ibid., 351–6.

previous City sessions. Any complaint they made—particularly one as fundamental as this—was likely to be based on their experience of more than one session and on something approaching common knowledge among grand jurymen. In addition, the issue they complained about in September 1733 arose from the duty they had just performed of listening to the evidence presented before them by prosecutors in support of bills of indictment, when, it is clear from their verdicts, they had acted on their suspicions by throwing out almost 28 per cent of the bills they heard.[101] Several points are worth making about their presentment and the aldermen's response to it.

Perhaps the most interesting, in light of our previous discussion of the engagement of lawyers in the preliminaries to criminal trials in this period and in the courtroom itself, is the jury's reference to 'Newgate Sollicitors', or rather what the aldermen made of that term, with the aid quite possibly of a verbal gloss provided by the jurymen when they read their presentment at the conclusion of the court session. The aldermen inscribed a copy of the presentment with this revealing order: that

> no person or persons whatsoever shall practice as Attorneys or Sollicitors in the Courts of Sessions either at the Guildhall or Old Baily by carrying on Prosecuting or Defending any Cause or Causes either for Prosecutors or Defendants except such persons that have been admitted Sworne Attorneys in Some of the Courts at Westminster and are Ameniable to Justice for such their practice.

In making this order the aldermen were drawing on the distinction established in a statute of 1729 for the regulation of the lower ranks of attorneys.[102] And by insisting that only barristers who had been admitted to practice in the high courts be allowed to address the sessions of the peace or of gaol delivery, they seem to confirm the assertion made by the author of the 1728 pamphlet that attorneys were accompanying prosecutors into the Old Bailey. The grand jury had clearly made a distinction between 'solicitors' who acted before trial, and 'Newgate solicitors' who (attorneys or not) had pushed their way into the courtroom itself. The aldermanic order that followed was designed to bring some regulation to what was developing in a chaotic way. For our purposes, perhaps its greatest significance is that the aldermen had clearly accepted the possibility of lawyers appearing on behalf of defendants as well as prosecutors, and in felony trials at the Old Bailey as well as the misdemeanours in which lawyers had played a part routinely at the Guildhall sessions of the peace. They would have been within their rights to forbid defendants engaging lawyers to act for them in court, other than to speak to the narrowest points of law. They did not, but allowed the continuation under the conditions they laid down of a practice that must have been of some years' duration by 1733.

[101] This compares to an average for the London grand juries over the two years 1732–3 of about 18% (CLRO: SF704–719).

[102] 2 Geo. II, c. 23 (1728).

It is a revealing comment on grand jury practice that they made general charges in their presentment and named names in the course of presenting it, as is confirmed by the response of the Court of Aldermen. In ordering that a copy of the presentment be sent to aldermen Billers and Brocas, the court disclosed that they did so because 'the Grand Jury declared Several instances of the Complaints within the presentment . . . appeared to them to be fomented and encouraged' by their clerks, 'who were named on the back of the presentment as Mr Bird and Mr Bayly', and charged along with 'Mr Bretland of Long Lane' and 'Mr Ferris of Half Moon Ally'.[103]

The grand jury did not include thief-taking among the practices they complained about. But in naming 'a Set of People calling themselves informing constables' as part of the problem, they surely intended to condemn the corrupt activities of men who prosecuted for money, perhaps especially constables who associated with thief-takers. The grand jury included them in a 'confederacy' of clerks and solicitors who encouraged poor people to enter into prosecutions in order to extract fees—'getting that Money from them which they stand in Need of for the Support of themselves and poor Familys'. More ominously, what the grand jury was complaining about was that this confederacy of actors, including thief-takers, had concocted charges, and maliciously prosecuted innocent men and women for the sake of rewards. This certainly was the view of the September 1733 session presented to the public by the *Gentleman's Magazine*. In its brief account it reported that

When the Trials were over, the Grand Jury presented 4 noted Solicitors for infamous Practices, in fomenting and carrying on Prosecutions against innocent Persons for the sake of Rewards, &c, whereupon the Court returned Thanks to the Grand Jury, and assured them that the Offenders should be rigorously prosecuted.[104]

The first thought of the aldermen was to keep an eye on them as much as possible. On the outside of the presentment, following the names of the four men named by the jury, the following was at first inscribed, but afterwards crossed out:

That for the future whatever Sollicitors and Informing Constables should come to the Clerk of the peace's office to give any Instructions for or on the behalf of any poor People to indict, or otherwise sollicit, carry on, prosecute or Defend in any People's Affairs; the Clerk of the peace to represent those Persons to my Lord Mayor [i.e. point them out] at the next Ensuing Sessions.[105]

[103] Appended to a copy of the presentment (CLRO: London Sess. Papers, September 1733).

[104] *Gentleman's Magazine*, 3 (1733), 493 (discussed in Langbein, 'Prosecutorial Origins of Defense Counsel', 352, n. 193). The grand jury turned back more than a quarter of the bills they dealt with at that September 1733 session (SF 717). The bills thrown out were not, however, for offences that promised large rewards for successful prosecution. All but one were for simple larceny, in which no state reward was available; and the exception was a case of shoplifting for which the reward—a Tyburn Ticket—was hardly worth organizing a prosecution conspiracy.

[105] CLRO: London Sess. Papers, September 1733.

There was clearly a sense by the early 1730s among those most closely involved in the administration of the criminal law in the City that the various encouragements to the effective prosecution and management of cases pursued by the central government over the previous decade—the large rewards and the involvement of lawyers—had had a significant downside. Some of the negative effects were perhaps more irritating than deeply serious—the intrusion of lawyers into various aspects of trial procedure was almost certainly perceived in that way, for example. But the more direct effects of the large proclamation rewards were recognized by the early 1730s as much more damaging and corrosive because of the encouragement they gave to false, malicious, and corrupt prosecutions. That raises for us the issue of thief-taking in the years following the downfall of Jonathan Wild, and—with the emphasis given to the enigmatic figure of the 'informing constable'—the possible influence of the massive proclamation rewards on some elements of the policing forces of the City.

REWARDS AND THIEF-TAKING, 1730–1750

Anxieties about the deleterious effects of large rewards surfaced soon after the renewal of the proclamation, in 1728. Within a year of its reissue the lords of the treasury ordered that rewards be distributed by the judges in court—the intention almost certainly being to discourage malicious and corrupt prosecutions by making payments public. At the same time the treasury solicitor was authorized to pay rewards directly to each claimant from the money issued to him for public prosecutions without further reference to the treasury—a more simplified process than that developed under the original proclamation, and one designed presumably to reduce delays in the payment of rewards and thus to encourage prosecutions.[106]

That practice had the incidental advantage for us of producing evidence in the treasury solicitor's accounts and in the court records of the number of rewards paid out and the names of the recipients. Payments reverted to the treasury within a few years, but sufficient evidence remains from the early 1730s to reveal the level of payments and the way the one-hundred pound supplementary reward was being distributed then. The treasury solicitor's declared accounts, for example, show that he paid a total of ten thousand two hundred pounds in proclamation rewards over the four and a half years following the treasury order of February 1729.[107] With the addition of the parliamentary reward of forty pounds for each convicted offender, the government paid more than fourteen thousand pounds over these years for the successful prosecution of London robbers. Those accounts give us the total paid, but do not identify all the recipients, since for accounting purposes only one of those sharing each

[106] PRO, T 1/279/66.

[107] Based on the treasury solicitor's declared account in the Audit Office records: PRO, AO 1/2322–3.

award needed to be identified. The recipients were, however, named in the gaol books in Middlesex for a few years and even longer in the sessions' instruction and minute books in the City, and that evidence allows us to examine the reward system in practice, particularly in the early 1730s.[108]

As one would expect from the patterns of prosecution, rewards were unevenly distributed: several sessions could go by with very few orders being made; others included a very large number, as in December 1730, when the judges authorized the solicitor to pay the prosecutors of no fewer than thirteen robbers convicted at the Old Bailey. It may, indeed, have been the thirteen hundred pounds awarded at that session (and the suspicion that some of the prosecutions were not entirely above-board) that persuaded the judges to order a record to be kept of those in receipt of rewards. That was done over the next three years until another change of policy apparently made it seem superfluous to the clerks who kept the Middlesex gaol books. But for three years—between December 1730 and December 1733—the names of the recipients and the amounts they received were recorded. This evidence reveals that 449 payments were made in those three years to 320 individuals in 56 Middlesex cases. As this suggests, a striking aspect of the pattern of rewards was the number of claimants who came forward in each case. In the majority of trials in which rewards were paid, indeed in 60 per cent of them, groups of between six and ten recipients shared the one hundred pounds (and the forty-pound statutory reward which was divided in the same proportion). The remainder were divided between roughly equal numbers of smaller groups—two-to-five recipients—and others that were very much larger—between eleven and seventeen (Table 8.1). Only seventeen

TABLE 8.1. *Proclamation rewards in Middlesex cases, 1730–1733*

A. Share of each £100 reward received per recipient:

£5 or less	Over £5 to £10	Over £10 to £20	Over £20	Total no. of shares
141	148	106	54	449
31.4%	33.0%	23.6%	12.0%	100.0%

B. Number of Recipients per case:

2–5	6–10	11–17	Total number of cases
10	34	12	56
17.9%	60.7%	21.4%	100.0%

Average number of recipients per case: 8.0
Median number per case: 7

Source: LMA: MJ/GBB/312–13.

[108] LMA: MJ/GBB/312–13 (gaol books of the Middlesex cases at the Old Bailey); CLRO, Sessions Instruction Book, vols. 4, 6 (1730s *passim*); CLRO: SM 107–18 (1740–51 *passim*).

(4 per cent) of those named as having received part of a reward between 1730 and 1733 were women, of whom seven had been the victim in the case or were named as the prosecutor.

It remains something of a mystery how these distributions were arrived at, but it is very clear that the judges went out of their way to spread the money as widely as possible. Indeed, they most often awarded a portion of the proclamation reward (and of the forty-pound statutory reward) to many more men and women than were named as having played some part in the apprehension of the offenders in the printed accounts of the trials or who were listed on the indictments as witnesses.[109] The judges may have learned about individuals whose silent contributions were worthy of recognition from those who did appear at the trial; indeed, some of the distributions of rewards are so elaborate that it is hard to avoid the conclusion that the judges may often simply have accepted lists of people to be compensated submitted by prosecutors or someone close to them. There seems little doubt, at any event, that rewards were spread widely as a matter of policy.

With an average of eight recipients sharing each reward, many shares were no more than a few pounds. A third of the claimants in Middlesex in 1730–3 received five pounds or less; another third between five and ten pounds; and only 12 per cent more than twenty pounds (Table 8.1). Only seven of the 449 payments were forty pounds or more. The prosecutor—usually the victim in these property cases—often got the largest share, but not invariably, and only rarely was his or her award significantly larger than others. Whatever the initial intention behind the decision to encourage prosecutions by the promise of a very large sum of money to those willing to bring prosecutions and carry them through to conviction, in practice the tendency was for the judges to increase the number of recipients rather than to award individuals very large prizes.[110]

None the less, the average award of twelve pounds ten shillings was still a great deal of money for the vast majority of the population. Many claimants also profited more handsomely than the average amount suggests by receiving more than one share—close to half the rewards distributed between 1730 and 1733 were for the conviction of robbers who had committed more than one offence or for offences in which more than one robber had taken part. Robert Chambers

[109] It is possible that not all the names of witnesses sworn to give evidence in a particular case were recorded on the indictment, though Ruth Paley has observed that the clerks on the Middlesex side of the Old Bailey were more attentive to this aspect of their work than those in the City (Ruth Paley, 'Thief-takers in London in the Age of the McDaniel Gang, *c.*1745–54', in Douglas Hay and Francis Snyder (eds.), *Policing and Prosecution in Britain, 1750–1850* (Oxford, 1989), 321). For the procedure by which the £40 statutory rewards were distributed in the 1740s, see ibid., 319–21.

[110] The same pattern of reward distribution was repeated with respect to the statutory rewards of £40 for the conviction of robbers and burglars. Eight surviving judges' certificates in the City in 1732 show the rewards being shared among witnesses and others who had presumably played some part in the arrest and conviction of the offenders. The number of recipients sharing each reward ranged between five and seventeen and averaged nine. The largest portion in each case was paid to the victim of the offence with the remainder distributed in a variety of small awards (CLRO, Misc. MSS 152.5).

was typical in being named with about a dozen others in the reward payments in December 1730 for having played some role in the apprehension and conviction of three men charged together for a series of robberies. His shares of the three proclamation rewards were six, ten, and five pounds respectively. In addition, if the three statutory rewards of forty pounds each were shared in the same proportion, as they usually were, he would have received over eight pounds from the sheriff. His total of close to thirty pounds would have doubled the income that year of a London labourer and even many skilled workmen.[111]

The largest number of claimants for shares of the reward payments appeared at one session only, apparently caught up in a robbery entirely by chance as a victim or witness or as someone who helped bring the offender to court. But the pattern of payments reveals other men who claimed portions of rewards so often that they were clearly involved in thief-taking, and who, while no doubt profiting in a variety of other ways from their knowledge of the world of crime and criminals, were taking advantage of the one hundred and forty pounds available for the conviction of a single robber. They were among the largest earners of reward money, despite its wide distribution. More than a dozen such men can be found claiming more than one portion in a session, and returning again and again in subsequent sessions to take further payments between 1730 and 1733. Like gangs of offenders (and like the thief-takers of the 1690s) they typically worked together in small groups, though they might also have had some association with other clusters of thief-takers. Henry Atkins, for example, received portions of eight reward payments in a two-year period, amounting in total to about one hundred and fifty pounds. He appeared most often with William Atley and Francis Waker, each of whom made close to one hundred and sixty pounds for their part in the prosecution of nine robbers over these years. As in the 1690s some of the most active men in this period were constables—most often, again as in the earlier period, hired constables who held the post for several years. They included Atkins, who was a deputy constable for the ward of Castle Baynard, and John Cathery, whom we have seen earlier as active in several aspects of the constables' business.[112]

On one level, thief-taking served the purposes the administration had in mind in issuing the 1720 proclamation. But such large rewards also (perhaps inevitably) encouraged some men to engage in activity that went well beyond using their knowledge of criminal networks to seek out and prosecute robbers. The perjury and corruption that had fuelled many of Wild's prosecutions were clearly evident in the late 1720s and the early years of the next decade. Without corroborating evidence, it is impossible to be certain that prosecutions that seem suspicious on their face were in fact corrupt. But several of the cases that drew

[111] LMA: MJ/GBB/312.

[112] For whom, see above, p. 153. Being an experienced deputy constable presumably added weight and plausibility to his evidence when Atkins testified at the trial of three men for robbery in 1731, that he knew the prisoners 'by sight, he being Constable' (OBSP, July 1731, p. 19 (Yates, Armstrong, Lampree).

the largest rewards for thief-takers in 1730–3 have every appearance of being the prosecutions carried on 'against innocent Persons for the sake of Rewards' that the *Gentleman's Magazine* complained about in 1733. That seems the likely explanation of the prosecution and conviction of five robbers in July 1732, in which each was indicted separately for robbing Samuel Atkins. Perhaps Samuel was not related to Henry Atkins, the constable/thief-taker; perhaps their common surname was the merest coincidence. But the fact that Samuel and Henry, along with Henry's thief-taking associates, Francis Waker and William Atley, and three other men, shared reward money of seven hundred pounds (one hundred and forty pounds for each of the five men convicted) at least raises the suspicion that the Atkins' were related, and that these five men had been trapped into committing robberies for which they could be immediately arrested by the thief-takers, and convicted with the help of an accomplice's evidence.

The fear that weak or false charges were being brought against the innocent or against offenders who had been manœuvred into committing robberies—in general the sense that rewards were encouraging entrapment—merged in the early 1730s with the parallel concern about the intrusion of solicitors and various other agents into the criminal process. They both gave rise to a good deal of disquiet among some of those most closely involved in the administration of the criminal law in London within a few years of the renewal of the proclamation in 1728. We have seen the anxieties expressed by an anonymous pamphleteer in 1728, and by the City grand jury in 1733. In the previous year, William Thomson, the recorder of London and now also a baron of the exchequer, had suggested a change in policy aimed at reducing the possibility of men being trapped into robberies and then immediately arrested by corrupt thief-takers. Thomson had almost certainly favoured the institution of the proclamation rewards in 1720, and possibly had a hand in devising them. As recorder and judge he was as well acquainted as anyone with the problems they had given rise to by the early 1730s. His solution—he told Walpole in October 1732—was not to abolish massive rewards, but to increase the judges' discretionary powers over their distribution. The judges should be required, he thought, to draw a distinction between cases in which the prosecutors had gone to some trouble and put themselves at risk to make an arrest following a robbery, and those that had required no particular bravery and had involved no danger. In Thomson's view, the one hundred pounds should continue to be paid in the first case, but not the second—though prosecutors and witnesses would continue to earn shares of the parliamentary forty pounds, which the judges had no discretionary authority to withhold. The main aim—apart from saving money—was almost certainly to discourage thief-takers from profiting by setting up young and naïve men to commit a robbery on members of their gang so they could be plucked and turned to account. Where there had been no 'hazard or danger or any other merit' in the apprehension and conviction of the offender, Thomson suggested, it should be left to the bench to decide whether the prosecutors

deserved any part of the proclamation reward. No danger, no pay, was Thomson's simple solution to the problem of entrapment.[113]

Thomson made his suggestion public—at least it was reported in the press—perhaps as a way of countering the criticism of a crime-fighting policy he continued to support. The treasury board adopted it.[114] But any effect it might have had was clearly short-lived. Complaints continued about the evil effects of large rewards—particularly that they encouraged malicious prosecution and made juries reluctant to convict because of their suspicions about the motives of prosecutors and their witnesses.[115] An anonymous writer complained about rewards in general as '*modern Methods* of detecting and punishing *Vice*, which have come *into Use* in Proportion as the *old constitutional ones* have grown *out of Date!*' They seemed to this writer to reveal the decay of public virtue and public service, and the private interests they served and encouraged would create, he warned, 'no little Danger even to the *innocent*'.[116]

Anxieties of this kind no doubt help to explain why the policy of large supplementary rewards was eventually abandoned—though an interest on the part of the treasury in saving money in the middle of a war should not be discounted. The change in policy came at the end of 1744, when the proclamation was again reissued to encourage prosecutions because of a sudden and serious panic about violent attacks being committed by a group of young men known as the Black Boy Alley gang from their base off Chick Lane in the ward of Farringdon Without, a notoriously dangerous part of the City. Despite a broad and continuing fall in prosecutions for offences in London during the war that had begun in 1739,[117] the London press in the autumn of 1744 was full of accounts of robberies and of attacks in the streets carried out by a group of armed men (and a few women) who were all too ready to wound and maim their victims. They went about in the streets, in the words of the proclamation, 'armed with fire-arms, cutlasses, bludgeons and other offensive weapons . . . and in a daring and insolent Manner, and in open Defiance of the Laws, attacked, robbed, and wounded many of our Subjects . . .'.[118] They appeared to be beyond the reach of the peace-keeping forces: at least they dealt violently with the constables and other peace officers who tried to arrest them. Alexander Forfar—a headborough of St James, Clerkenwell, and as we will see an active thief-taker as well as peace officer—took a party of constables and assistants to a public house in Black Boy Alley to arrest some of the gang at the end of September and was repulsed violently and slashed several times with a cutlass.[119] The *Gentleman's Magazine*

[113] PRO, T 29/27/162. [114] *Read's Weekly Journal*, 14 October 1732; PRO, T 1/279/66.

[115] *Gentleman's Magazine*, 2 (1732), 1029.

[116] *An Enquiry into the Causes of the Encrease and Miseries of the Poor of England; . . . by the Author of the Dissuasive from Party and Religious Animosities* (1738), 49; quoted in Radzinowicz, *History*, ii. 88.

[117] See Chapter 1, Figure 1.1. [118] *London Gazette*, 6–10 November 1744.

[119] OBSP, October 1744, pp. 229–31 (Nos. 431–5). Forfar prosecuted four men and a woman for robbery (on the grounds that having attacked him they then took his powder horn and pistol). The jury resisted that obviously exaggerated charge, but urged the court to indict 'such dangerous persons . . . in

reported that at the end of September Edward Jones, the City marshal, returning from a meeting with Colonel De Veil to co-ordinate the City's and the Westminster bench's responses to the violence, spotted a member of the gang and attempted to arrest him. The marshal was repulsed, it was reported, when he and those with him were attacked by 'twelve Villains, arm'd with Cutlasses, and two with Pistols, [who] came up, crying, *We know what you have been about; but defy all Power*, and directly attacked Mr Thomas, a Constable . . .'.[120]

The Court of Aldermen in the City discussed this street violence at virtually every meeting in September and October 1744. In the face of the threats posed by what they called the 'Confederacies and Combinations' of offenders, they ordered that the relevant clauses of the 1692 statute that offered a pardon and reward to any of them who came forward to confess and turn king's evidence be posted in public places throughout the City. They also ordered that notice be published in the 'publick daily papers' that not only would anyone who helped to arrest and convict a street robber be entitled to a share of the one-hundred pound proclamation reward, but that in addition the City would itself immediately pay five pounds on the arrest of a suspect—meeting the immediate costs of prosecution, and in so doing repairing one of the weaknesses of rewards that were paid only upon conviction—and a similar sum in the event of a guilty verdict.[121]

Early in October, the lord mayor and aldermen of the City went in a body to St James's Palace to ask the king to intervene, at least to the extent of promising that those convicted of such offences could not expect to receive royal pardons so that 'a Speedy, rigorous and Exemplary Execution of the Laws . . . [might] conduce greatly to the Supressing these Enormities by striking Terror into the Wicked and Preventing others from entering into such like evil Courses'.[122] For their part, the secretaries of state instructed the magistrates of Westminster and Middlesex to organize privy searches by their constables to uncover the night houses and cellars and in particular the gaming-houses that were widely believed to shelter robbers and encourage their offending. The magistrates were ordered to hold frequent petty sessions and to arm their constables with

another manner'. They were then charged with assault when a constable claimed that they had come to his house with twelve companions, all of whom had cutlasses or pistols, and said 'Damn their Eyes and Blood, we will have him out of his house, for we will have his Head, and this Night his Brains shall be broiled in Black-Boy-Alley'. The four men were convicted and imprisoned for a year. Ann Duck, the woman, was not so charged because she had also been indicted for another robbery, of which she was convicted and sentenced to be hanged (ibid., 231–2, 248: No. 436–9, No. 459–60). For the Black Boy Alley gang, see Paley, 'Thief-takers in London', 318–19; and Peter Linebaugh, *The London Hanged. Crime and Civil Society in the Eighteenth Century* (1991), 149–50.

[120] *London Evening Post*, 25–7 September 1744; *Gentleman's Magazine*, 14 (1744), 505. The latter report added that secretary of state Carteret had written to the magistrates of Westminster to encourage their constables to be vigilant, but that the robbers had gone to 'the Houses of Peace Officers, making them beg Pardon for endeavouring to do their Duty, and promise not to molest them'.

[121] Rep 148, pp. 411, 419–20, 425, 446–9.

[122] Rep 148, pp. 470–6; *London Evening Post*, 13–16 October 1744.

warrants that would enable them more easily to arrest those who could be punished as rogues and vagabonds or idle and disorderly persons under the recent vagrancy legislation that had been passed in order to increase the penalties for anyone who could be so labelled.[123]

Virtually every edition in September and October of the thrice-weekly *London Evening Post* included accounts of groups of men, armed most often with cutlasses, occasionally pistols, beating and robbing in several parts of the metropolis and acting with apparent impunity, as though they had no fear of arrest.[124] That the Black Boy Alley gang was responsible for many of these was to be confirmed when one of them—William Harper, alias Old Daddy or Old Man (a reference apparently not to his age but to his grave demeanour)—was arrested by Alexander Forfar. Within days he was saving his neck (and lining his pocket) by providing the evidence that led to the capture of several of his colleagues. In two long examinations in Newgate and Guildhall, he implicated ten members of the 'gang' (as he called it) in robberies in the City—in Aldersgate, Bishopsgate, Fenchurch, and Threadneedle Streets, in Smithfield market and further west, in Drury Lane and the Covent Garden area. On several occasions, he confessed, they committed six or more robberies in an evening, roaming the streets armed with sticks and cutlasses, stopping men and taking their watches. If their victims resisted or called for help, they beat them. Harper also described burglaries and other offences, and named several receivers, principally one in Sharps Alley, near Cow Cross Street.[125]

The persistence over several months of what appeared to be a serious menace in the streets helps to explain why, as a reminder to the public, the government reissued the proclamation that offered a hundred pound reward for the conviction of anyone committing robbery or attempting to rob with an offensive weapon. It was published early in November,[126] though many of its immediate targets—the members of the Black Boy Alley gang—had in fact been arrested a few days earlier following the capture of William Harper.[127] But apart from the encouragement it was expected to give to those who might be able to apprehend the dangerous men terrorizing the streets at that moment, the proclamation had another purpose. It also introduced a new policy by including a terminal date for the payment of the supplementary one-hundred pound reward: it was to apply only to offences committed since 1 October and until the end of the following April. The intention behind that may have been simply to reduce the

[123] SP 36/64/310–11. For the vagrancy legislation of 1740 and 1744, see Nicholas Rogers, 'Policing the Poor in Eighteenth-Century London: The Vagrancy Laws and their Administration', *Histoire sociale/Social History*, no. 47 (May 1991), 127–47; *idem*, 'Vagrancy, Impressment and the Regulation of Labour in Eighteenth-Century Britain', *Slavery and Abolition*, 15/2 (August 1994), 102–13; J. Ribton-Turner, *A History of Vagrants and Vagrancy, and Beggars and Begging* (1887), 198–203; Sydney and Beatrice Webb, *English Local Government: English Poor Law History: Part I, The Old Poor Law* (1927), 351–6.

[124] See, for example, the ten successive editions from 18–20 September to 11–13 October 1744.

[125] CLRO: London Sess. Papers, December 1744 (examinations dated 30 October and 4 December).

[126] *London Gazette*, 6–10 November 1744.

[127] CLRO: SF 807 (calendar).

treasury's obligations during the war, a time of heavy expenditure. But (since it was never again to be instituted for an open-ended term) it also had a deeper and longer term purpose. It seems clearly to have been a response to long-standing complaints about the ill effects of large rewards, and in particular about conspiracies among thief-takers to draw men into committing offences for which they could easily be prosecuted and convicted. Such anxieties—and the related issue that the rewards were not as effectively administered as they might be—were repeated by the Westminster and Middlesex benches and in communications to the secretary of state from several individual justices in the midst of the panic created by the Black Boy Alley gang.

Three magistrates wrote to the Duke of Newcastle in October, for example, to recommend a change in the levels of rewards and the way they were administered. They were concerned about two problems: not only the way large rewards had drawn some thief-takers into corrupt and malicious prosecutions, a problem they seemed to blame on the way the distribution of shares among the claimants was being decided in the privacy of the judges' chambers; but also the discouraging effects of delays in payment. They offered two solutions. The first paralleled the offer of a five-pound reward by the City for the apprehension of someone accused of street robbery. The Middlesex magistrates suggested that a similar payment be made immediately to the prosecutor by the magistrate who committed an accused robber to trial. That was a response to delays in the payment of large rewards by the treasury, but it also met the objection that rewards paid after conviction, even if timely, did not encourage prosecution by those with little ready money because of the fees and other costs they would have to cover immediately. These magistrates also offered a suggestion that was intended to curb some of the negative effects of the one-hundred pound reward. The Middlesex magistrates proposed that the large reward be reduced—to forty pounds, to match the statutory reward—and that payments once again be put in the hands of the solicitor of the treasury so they could be delivered 'immediately on Conviction of the above Offenders in Open Court without Fee or any Deduction, the proportions to be settled by the Judge trying the Cause'. These justices clearly wanted not only a speedier but a more transparent reward system—smaller payments made in open court to those with an immediate claim to the royal bounty. They did not state this as an aim, but the effect of their proposals would have been to prevent associations of thief-takers dominating the reward system by influencing distributions in the privacy of the judges' or the recorders' chambers.[128]

[128] SP 36/64/339. Two other men—Jacob Harvey and John Elliot—who wrote to Newcastle in the same week as these magistrates to offer their services as thief-takers also made a point about the discouraging effects of delayed payments of rewards. They claimed to know the houses the Black Boy Alley gang frequented, and they and several other persons were ready to apprehend them 'were they assured of ye Rewards being pay'd without any fees immediately upon Conviction by the direction of ye Judges' (SP 36/64/324).

It is very likely that concerns of this kind explain the change in the proclamation reward policy implemented in 1744—a widely-held conviction that the number of thief-takers had increased substantially in recent years and that, as a consequence, corrupt practices were more common than ever. And it does indeed appear from reward payments that the number of claimants who made regular appearances in the reward lists had increased by the mid-1740s. There are no complete records of payments made under the royal proclamations. As we have seen, the clerks of the Middlesex side of the Old Bailey kept an account of awards only over a three-year period in the early 1730s. After 1733 the only similar records are in the City sessions books. They are not as rich a cache as those in Middlesex, but they are full enough to suggest that there had been a significant increase by the 1740s in the number of men and women (though there were never many of the latter) engaging in some form of thief-taking in the second quarter of the century.[129]

Reward distributions are recorded in thirty-three cases in the City records between 1740 and 1751, and in fully two-thirds of them at least one of the recipients can be identified as an active thief-taker—a very much higher percentage of cases involving such men than we found in 1730–3. The twenty-seven thief-takers involved also form a much larger group than we found in the earlier period. The rewards generated by the conviction of the nine members of the Black Boy Alley gang in December 1744 provide a snapshot of the thief-takers of the 1740s, for many of them obtained some share of that blood money—an outcome that raises questions about the nature of thief-taking in this period.

Members of the Black Boy Alley gang had been arrested early in November 1744, following Harper's examinations by two City magistrates. Several escaped.[130] But nine young men—including the 14-year-old Henry Gadd, alias Scampy (a 'little boy', the ordinary said, though 'wicked and perverse'[131])—were captured and brought to trial at the December sessions. As Ruth Paley observes, while there is little doubt that they had committed numerous offences, the robberies for which they were actually indicted look suspiciously like charges constructed for the occasion.[132] On the strength of Harper's evidence, they were all convicted of several robberies and sentenced to death.[133]

[129] My measure of engagement in thief-taking in this period is quite crude. I have not searched all the possible court records and the London press for mentions of those who regularly arrested, testified against, or in other ways discovered, detained, and prosecuted offenders. I have simply assumed that those who appear in the reward list in more than one session of the Old Bailey were likely to be engaged to some degree in the practice. For the most part those who profited more than once did so many times. For Ruth Paley's more detailed examination of thief-taking at mid-century, see below.

[130] Six men were named in indictments as 'not yet taken', including Richard Morris, alias 'Irishman', who became a thief-taker after being tried and acquitted in 1748 (Paley, 'Thief-takers in London', 309).

[131] Ordinary's *Account*, 24 December 1744, pp. 5–6, 10.

[132] Paley, 'Thief-takers in London', 325.

[133] CLRO: SF 807 (December 1744: gaol calendar). The king's promise to the lord mayor and aldermen to withhold mercy from such offenders was carried out to full effect. The cabinet considered the cases of eighteen capital convicts reported by the recorder of London a few weeks after the

The printed accounts of their trials give no hints as to how they had been arrested, and suggest that, beyond Harper's testimony, few witnesses appeared against them. Despite the fact that, as we have seen, reward distributions often included many more men and women than those immediately concerned in giving evidence in court, it comes as something of a surprise to discover that the nine hundred pounds paid in proclamation rewards as a consequence of the conviction of the nine Black Boy Alley offenders was shared among forty-one men and a woman.[134] The separate one-hundred pound rewards were split into a bewildering (and perhaps intentionally confusing) number of shares. Despite the fact that some of these men were arrested together and convicted on essentially the same evidence, each one-hundred pound reward was divided in a different way from the rest. The reward paid for the conviction of Theophilus Watson, for example, was shared equally among five men; in the case of William Brister, convicted for the same offence as Watson, eight men received twelve pounds ten shillings each; in that of William Billingsley, also charged with the same offence, no fewer than twenty-three small shares were distributed. The one women who benefited from the Black Boy Alley rewards, Anne Wells, received five portions to a total of seventeen pounds ten shillings. Altogether, the nine hundred pounds was split into 115 shares (ranging between two pounds ten shillings and sixty-eight pounds) in a pattern of payments that was almost certainly worked out among the claimants and accepted by the lord mayor or the recorder or the judge who presided. Some of the recipients were given one payment. One man—John Randall—received two of the largest (twenty pounds and twenty-six pounds five shillings) for unexplained reasons. William Harper, the accomplice, was given a portion of six of the rewards and in total received the lion's share—about seventy-seven pounds—along with a royal pardon.[135]

The most striking aspect of the distribution of the Black Boy Alley gang reward money was that almost half the recipients were thief-takers or constables. Most of them were named in four or more of the reward payments, and each received a total of about twenty-two pounds, some a little more, some less. They included two men (Ralph Mitchell and George Holdernesse) whose centre of thief-taking tended to be south of the river, the soon-to-be-notorious Stephen McDaniel and John Berry, at least three men who were or who had been

conclusion of the session and pardoned none. On Christmas Eve 1744, on what must have been one of the bloodiest and most gruesome hanging days in London for a very long time, six carts carried the eighteen condemned men to Tyburn, where they were executed (OBSP, December 1744, p. 60; *London Evening Post*, 18–20 and 22–25 December 1744).

[134] Between 1730 and 1740, distributions of the £100 reward in the City are noted in the last pages of the so-called Instruction Book of the sessions, (CLRO, vols. 4–6). After that date and until they were finally abolished in 1751, they are set out in the Sessions Minute Books, beginning in CLRO: SM 107. For rewards paid on the conviction of members of the Black Boy Alley gang, see CLRO: SM 112.

[135] CLRO: SM 112. The prosecutors of the Black Boy Alley gang would also have received portions of the proclamation reward at the December 1744 Old Bailey session for a robbery committed on Joseph Underwood in Middlesex (OBSP, December 1744, pp. 22–6), as well as of the parliamentary reward of £40 for each conviction.

constables—Alexander Forfar, William Atley, and William Boomer—and another eleven whose presence on other reward lists in these years makes it clear that to a greater or lesser degree they were engaged in some aspects of thief-taking.[136]

Virtually all of these men appear on the list of about thirty thief-takers identified by Ruth Paley in what is by far the most detailed and illuminating account of thief-taking in the eighteenth century.[137] Paley has reconstructed the social world of the thief-takers and examined the larger implications of their work by studying the court records, trial accounts, and other evidence across the metropolis as a whole in the decade 1745–54. Although her analysis suggests that by the 1740s more men than ever before were engaged in the variety of activities that made up the thief-taking business and that they remained involved over a longer period, her account reminds us of the thief-takers we found at work in the 1690s. The world she describes included a group of about a dozen who were very active indeed, and who resemble Dunn and St Leger and other late seventeenth-century predecessors in several respects. Like some of the thief-takers of the 1690s, many of those uncovered by Paley had criminal records, and occupied, as they did, what she calls 'a somewhat ambiguous position in society'.[138] Again, like their predecessors, some had positions in the broader peace-keeping apparatus: two were turnkeys in London prisons, and several were constables—for the most part constables of the parish of Clerkenwell, in which the Middlesex house of correction and the new prison were located. As in the 1690s, the thief-takers of the mid-eighteenth century were far from being upstanding citizens; they exploited a variety of questionable money-making schemes growing out of their detection and prosecuting activities—bribery and intimidation not the least of them. Several of the thief-takers studied by Paley ran sponging houses and profited from the tribulations of debtors. As she makes clear, they also took advantage of the numerous opportunities that came their way to benefit corruptly from the administration of a criminal law that threatened convicted offenders with terrible penalties.

It remains as yet unclear how the thief-takers of the mid-century related to one another. Paley describes several groups with broadly geographical foundations centred on a nominal leader: one was based in the East End; another was led by one of the better known thief-takers of the second quarter of the century, Ralph Mitchell, from a base in Southwark.[139] The structure and internal

[136] Ruth Paley notes that two of the thief-takers who shared in these rewards (William Body and John Whittenbury) were each recommended by the Middlesex bench for a bonus of £50 to be paid by the treasury for their contribution to the breaking of the Black Boy Alley gang. Why this did not happen until February 1746—almost eighteenth months after the event—is unclear (Paley, 'Thief-takers in London', 324, n. 69).

[137] Paley, 'Thief-takers in London', 341, appendix.

[138] Ibid., 302.

[139] Ibid., 310. Like several of the thief-takers in the 1690s, Mitchell had taken up prosecuting after being forced to turn king's evidence to save his skin. He appeared frequently at the Old Bailey as well as the Surrey assizes over several decades, giving evidence against highwaymen and burglars, and, after

dynamics of these groups and their relationship to each other is still rather vague—just as indeed much remains to be learned about the nature of the criminal gangs they may in many ways have resembled. It does seem clear from the distribution of reward money that while these groups were almost certainly rivals,[140] they could also co-operate when it was to their mutual advantage. Paley identifies seven of the thief-takers who were given shares of the Black Boy Alley gang reward money as members of the Mitchell group; but more than half were not.

While acknowledging that thief-takers did prosecute genuine offenders, Ruth Paley is inclined to emphasize the importance to them of opportunities to profit from the *corrupt* manipulation of the law and the ease with which they could 'make' thieves in order to 'take' them. In part, she bases this judgement on the apparent inadequacy of the income that such men were likely to derive from rewards. As she points out, when large numbers of claimants shared even a sizeable reward, individual thief-takers would not be likely to earn enough to induce them to engage in the dangerous business of apprehending robbers and burglars. They could probably make more by blackmail than prosecution, and in any case, as she points out, they had no guarantee that after all their trouble and perhaps danger, the jury might not acquit the accused or at least (which was the same outcome for those looking for rewards) find them guilty of a lesser charge than robbery.[141]

It is difficult to come to a judgement about this. There is little evidence about how much reward money individual thief-takers were collecting in the 1740s. The City cases reveal that between 1740 and 1751 the highest-earning thief-takers—John Berry and Stephen McDaniel—received about one hundred and ten pounds each from proclamation rewards and thus perhaps another forty-five pounds from the sheriffs for the bounty available under statutes. That was not a great deal over more than a decade. And while they would have earned considerably more from prosecuting in other parts of the metropolis, especially in Westminster and Middlesex, the fact that for several years in the late 1740s the one-hundred pound supplementary rewards were not being paid, and that there seem to have been larger numbers than ever of competing thief-takers, the returns may not have been as rich as they might have expected.

Shrinking returns from thief-taking—and particularly the ending of the

1743, when parliament added a statutory reward for the prosecution of this offence, in cases involving offenders who returned prematurely from transportation. One man arrested in 1738 by Mitchell, along with William Rice and George Holdernesse, two of his associates, denounced him at his trial as an old thief who had 'hang'd many a man [and who] makes it his common practice to take people for the sake of the reward'—a sentiment that perhaps expressed some popular distaste for the thief-taker, but that could only have confirmed his usefulness to the authorities (Beattie, *Crime and the Courts*, 56–7). Mitchell was described two decades later as 'a man eminent in the thief-taking way' by the high constable of Blackheath, Joseph Cox, in *A faithful narrative of the most wicked and inhuman transactions of that bloody-minded gang of Thief-takers, alias Thiefmakers, McDaniel, Berry. Salman, Eagan, alias Gahagan* ... (1756), 9.

[140] Paley, 'Thief-takers in London', 320–5. [141] Ibid., 322–3.

one-hundred pound reward—may thus have encouraged the 'thief-making' conspiracies that resulted in a major scandal soon after 1750.[142] The scandal came to public attention in a major way only when Joseph Cox, the high constable of Blackheath, took it upon himself in 1754 to expose the conspiracies organized by Stephen McDaniel and his gang. Cox and his assistants arrested McDaniel and others at the conclusion of a case in which they had conspired to cause two young petty thieves to rob one of the conspirators in Kent in circumstances and in a location carefully chosen to enhance the reward they would earn. The two hapless young men had been tried and convicted, but before sentence could be passed Cox revealed the depth of the conspiracy—a conspiracy involving the so-called victim, the accomplice who gave evidence, the receiver of the stolen goods, and McDaniel who had made the arrest. Cox's determined detective work resulted in that conspiracy being exposed. In addition, he was able to show that the same conspirators had been responsible for the conviction of another innocent man in the previous year who had been hanged at Tyburn. Cox got several of these thief-takers charged with his murder.[143] From her examination of these and other cases, Paley concludes that the reward system had provided 'an incentive not to the detection of crime but to the organization of thief-making conspiracies'; and, further, that 'the everyday business of the London thief-taker amounted to nothing less that a systematic manipulation of the administration of the criminal law for personal gain'.[144]

It is possible that such conclusions apply more to the middle decades of the century, when the hundred-pound proclamation reward stuttered to an end, than to earlier decades. It is clear that the City grand jury and William Thomson, the recorder, suspected that fictitious charges were being laid in the early 1730s. Blatant cases of false prosecution for the sake of rewards came to light over the next twenty years. Looking back from the mid-century, Joseph Cox was

[142] The proclamation reward, terminated in May 1745, had been renewed in February 1749 and again in December 1750 in the midst of an even more serious and longer lasting crime wave in London—or at least of a panic about the extent of violent offences being committed in the streets (*London Gazette*, 1 February 1749, and 18–22 December 1750; Nicholas Rogers, 'Confronting the Crime Wave: The Debate Over Social Reform and Regulation, 1749–1753', in Lee Davison *et al.* (eds.), *Stilling the Grumbling Hive: The Response to Social and Economic Problems in England, 1689–1750* (Stroud, 1992), 77–81). In each case it ran for a year only, and the policy of large rewards was brought finally to an end with the expiration of the last proclamation in December 1752. It was replaced by a system of payments of some of the costs involved in the prosecution of felons, the intention of which was to encourage genuine victims to report offences and undertake prosecutions (25 Geo. II, c. 36 (1752), s. 11—a clause in the Disorderly Houses Act; see Beattie, *Crime and the Courts*, 42).

[143] They were convicted, but judgment against them was respited. Instead of being executed, they were sentenced to seven years' imprisonment and to stand twice in the pillory. McDaniel and Berry, the two leaders, were protected while they stood in the pillory—further evidence, Ruth Paley suggests, of their corrupt connections with the authorities. The two other, lesser, conspirators were not given the full protection of constables on their appearance on the pillory, and the onlookers treated them so harshly that one was killed in the frame and the other died the next day (Paley, 'Thief-takers in London', 334–5). For Cox's own account, see *A Faithful Narrative*; and see also Langbein, 'Shaping the Eighteenth-Century Criminal Trail', 105–14.

[144] Paley, 'Thief-takers in London', 323, 327.

able to point to several examples of young men being drawn into committing robberies for which they were then prosecuted by the 'thief-makers' who had set them up.[145] But most of the blatant cases of entrapment that came to light date from after 1751, and Cox wrote about the conspirators in 1754 as though they had engaged in such practices in a much more active and extensive way than had hitherto been common.[146]

Even if they had not acted as blatantly as the McDaniel gang, it is likely that many—perhaps most—of the men who had engaged in thief-taking over the previous half century had exploited numerous opportunities to blackmail, to seduce the gullible, to act as middlemen between thieves and their victims, and to profit in any number of other corrupt ways. But along with a proper emphasis on that, it seems to me necessary also to take account of the significance of the work of detection that at least some of them engaged in, some of the time. Cox himself did not think that all thief-takers were as 'dishonest' as the Berry–McDaniel group. And to the extent that the reward system had drawn men into the business of catching offenders and bringing them to trial, they began to define a role that was becoming accepted as necessary within the criminal justice system.

I suggest this not in order to celebrate the thief-takers but to take some account of what seems to have been an ambivalent attitude towards them and their activities in this period and to draw attention to the developing element of detection within policing. In his criticism of Jonathan Wild and the thief-takers of the mid-1720s, Bernard Mandeville seems to have been particularly harsh because he thought that thief-taking was an acceptable activity and that thief-takers had an obligation to the public to be more than merely self-interested private bounty hunters.

> It is [he wrote] highly criminal in any Man for Lucre, to connive at a Piece of Felony which he could have hinder'd: But a profess'd Thief-Catcher, above all, ought to be severly punish'd, if it can be proved that he has suffer'd a known Rogue to go on in his Villainy, tho' but one Day, after it was in his Power to apprehend and convict him, more especially if it appears that he was a Sharer in the Profit.[147]

It is unclear what Mandeville meant by this, but it suggests a view that men who regularly collected the state's rewards for prosecuting—'professed' thief-takers, not just the once-only victim—were in some senses public servants and had a duty to uphold the public interest. That was perhaps asking too much, but the passage does suggest that thief-taking was accepted at least among the propertied, and perhaps more than just the very wealthy, as a legitimate and useful activity that could be taken on as an occupation. That is also the sense one gets

[145] Cox, *A Faithful Narrative*, 56–67. And see Langbein, 'Prosecutorial Origins of Defense Counsel', 356–60, for cases in the 1730s.

[146] Cox, *A Faithful Narrative*, 1–3; Radzinowicz's tabulation of 'blood-money conspiracies' that came to light in the middle decades of the century (though far from complete) includes one case each from 1738, 1747, and 1750, and seven between 1751 and 1754 (*History*, ii. 339).

[147] Mandeville, *Enquiry*, 9.

when men are referred to apparently quite neutrally as 'Mr. So-and-So, the thief-taker'.[148] Or when one finds victims of offences enquiring for the services of a thief-taker, as in 1720, when a woman whose pocket had been picked as she crossed the Thames in a waterman's boat, enquired of another waterman when she discovered her loss 'if he knew any Thief Taker' living in the neighbourhood. He did, and took her to Mr Murrel's in Black and White Court in the Old Bailey. Hearing her story and her description of the man and woman she suspected of taking her purse, Murrel declared he knew who they were, and that as a result 'there was no Occasion for a Thief-Taker, he would be the Thief-Taker himself, for he would send for them to his House, whither he was sure they would come, and then have a Constable and secure them'.[149]

When Edward Sutton, describing at the Old Bailey how he had apprehended a street-robber, said that he was 'no Thief-Taker by Profession', he was making a distinction that he must have assumed the judges and jurors would have understood.[150] He was also almost certainly trying to shield himself from the disapproval of his neighbours or the spectators in the gallery. For while thief-takers may have been accepted by the authorities and perhaps more widely as men performing a necesary if distasteful job, they were hated by a large part of the population, perhaps especially those who took up thief-taking after having turned king's evidence and convicted their former companions. A man who said at the Old Bailey in 1729 that 'it having been his Practice for some Time to catch Thieves', added (as a way of explaining why he had been charged with shoplifting) that 'having been formerly an Evidence, and hang'd a great many Men, People had an ill Opinion of him'.[151] Another common view of such men was expressed by a witness in a burglary case who said of the prisoner that 'he was a scandalous person, a Thief-Taker, that his House was a common Receptacle for Thieves and Pick-pockets . . .'.[152]

Defendants often appealed to the popular distaste for the activity of thief-taking. Having been arrested by Samuel Unwin and charged with burglary, John Read attempted to cast doubt on Unwin's motives and thus on his claim that Read had confessed, by saying at his trial that 'I desire to know what he gets his Living by, whether it is not by Thief-taking, for the Sake of the Reward'. The owner of the public house in which Read had been arrested, and who clearly knew him well, confirmed the ambivalence of attitudes towards men like Unwin when he gave his own testimony. His main evidence was confirmation of Read's confession at his arrest. But having said that, the publican was very anxious to clear himself of the suspicion among his neighbours and customers that he had

[148] Ordinary's *Account*, 21 June 1704, p. 2, where a condemned man refers to 'Sommers [i.e. Robert Summers] the Thief-taker'.

[149] OBSP, October 1720, p. 2 (Thomas and Ann Thompson).

[150] OBSP, February 1733, p. 71 (No. 57, Chamberlain).

[151] OBSP, January 1729, p. 3 (Durham).

[152] OBSP, December 1717, p. 3 (Holmes).

tipped off Unwin that Read was in his house. He addressed the defendant and then the court, as though in explanation:

> Jack, you know I never went after Mr Unwin [he said]. I know this poor Creature thinks I went to this Man, and I swear I never was near him; if I would have had him taken, I could have done it several Times before now.[153]

However compromised it might have been, detection as an activity none the less became part of policing practices over the late seventeenth and first half of the eighteenth centuries. In both positive and negative ways it shaped attitudes towards police that were to be of decisive importance in the future. As Ruth Paley has said, thief-takers 'straddled the margins of the conventional and criminal worlds and formed, in effect, a sort of entrepreneurial police force . . .'.[154] They also straddled the private and the public worlds, in that, at least in some periods, close ties developed between thief-takers and constables and encouraged a fusion of private energy and self-interest on the one side, and public authority on the other. Such an alliance was the fundamental idea behind the work of Henry and Sir John Fielding, who made significant innovations in policing practices by creating an institutional setting that merged active detection with a more focused, more bureaucratic, system of magisterial work. This is not a subject we can deal with in detail, but it is a useful way to conclude our investigation into the changing forms of prosecution in the first half of the eighteenth century by examining the extent to which developments in the City had influenced developments in the rest of the metropolis.

POLICING AND PROSECUTION AT MID-CENTURY

As we saw in Chapter 2, there was a gradual concentration of magisterial criminal work in the City of London in the hands of a shrinking group of aldermen over the early decades of the eighteenth century. It is true that men named to the commissions of the peace all over the country were also becoming increasingly reluctant to act as magistrates.[155] But the situation that was to occur in the City was unprecedented, sudden, and drastic, for what had been a group of about half a dozen or more active magistrates as recently as Anne's reign had been reduced by 1733 to two: by then, much of the burden of the magistracy in criminal matters was being carried by Sir William Billers and Sir Richard Brocas.

Although Billers and Brocas were active magistrates, they do not appear to have done much to extend the work that justices had traditionally performed in the City. There is little evidence of their instigating investigations into crime or organizing prosecutions; nor do they seem to have had close ties to constables or

[153] OBSP, February 1743, pp. 130–1 (No. 195, Read).
[154] Paley, 'Thief-takers in London', 302.
[155] Landau, *Justices of the Peace*, 318–28.

thief-takers.[156] But the concentration of magisterial authority in few hands at a time when anxieties about crime in the metropolis were encouraging radical ideas about other aspects of policing—including the night watch and street lighting—may have suggested the usefulness and importance of an established and regular magisterial presence in the City. It is significant that Billers's and Brocas's monopoly of criminal work found echoes in other parts of the metropolis, particularly in the activity of Sir Thomas De Veil in Westminster, who created a form of magistrate's court in Bow Street in the 1730s and 1740s, and with it the notion of a more fully engaged justice of the peace with ties to the central government. This was to be the foundation of the system of police and prosecution more fully elaborated by Henry and John Fielding after 1748. De Veil and the Fieldings created a new kind of urban magistracy. They were more fully engaged in investigating crime and organizing prosecutions than had ever been imagined as being within the purview of a justice of the peace. They developed a magistrate's court that was a centre of policing activities and provided the model for the professionally staffed police courts that monopolized the early stages of criminal administration in the metropolis (outside the City) by the end of the century.[157]

The fact that concentrated magisterial activity arose in the two major centres of the metropolis in the second quarter of the century suggests that something beyond mere personal circumstances underlay the withdrawal of some magistrates from criminal work and the willingness of a few others to take up the burden. That is also underlined by the anxiety of some magistrates after 1750 to take advantage of the changes in the policing and prosecution environment—in the availability of rewards, the pardon process, the activities of thief-takers and more active constables, as well as a central government that was more able and more willing to put resources into the criminal justice system—to construct new mechanisms and new means of combatting violent criminals. Such innovations depended on the engagement of active men who saw in the challenge of crime an opportunity for personal fulfilment, professional advancement, or more simply a way to earn a living and perhaps of attracting the patronage of the powerful.

[156] They did take advantage of the discretionary powers at their disposal to carry out a policing strategy, using the offer of a royal pardon as a way of inducing accused felons to confess and give the evidence that would convict their accomplices. Virtually without exception, the statements taken from the accused in this period were confessions, not simply examinations, and confessions in which accused men typically owned up to multiple offences committed with a variety of accomplices and also named their receivers (CLRO: London Sess. Papers, 1733–7). One must presume the magistrates continued to take depositions from victims of offences and continued to examine individual suspects who denied any involvement in the offence in question. But such depositions and examinations were not retained. This seems unlikely to have been an accident of record survival, but rather a sign of the magistrates' determination to gather and keep information that would help to break up gangs of offenders (and to convict receivers), and of their determination to mount successful prosecutions.

[157] Anthony Babington, *A House in Bow Street: Crime and the Magistracy in London, 1740–1881* (1969), chs 1–13; Radzinowicz, *History*, iii. chs 1–2; Ruth Paley, 'The Middlesex Justices Act of 1792: Its Origins and Effects', Ph.D. thesis (Reading University, 1983).

There is no reason to think that the response in the City, and in particular the attitudes expressed by the recorder, William Thomson, and the work undertaken by Billers and Brocas in the 1730s, was fundamentally different from that in Middlesex. But in fact the City version of the magistrate's court was to develop in a different way from those in other parts of the metropolis by the end of the century. Following Brocas's death, as we have seen, no alderman came forward to take up the task of being *the* City magistrate that he had been fulfilling for some years—allowing the others to pay little attention to criminal business, as the emergence of the ward executive headed by the deputy aldermen and one or two active common councilmen had allowed the aldermen to opt out of the details of ward administration. Brocas's death created a crisis that could only be solved by the creation of a new institution. The aldermen agreed in November 1737 that they would take turns sitting as magistrates in the Matted Gallery in Guildhall—a space that was now developed more fully as a court for public business. The court was to be open daily except Saturday and Sunday, each alderman sitting alone for a day in turn, roughly once every five weeks, attended, as the lord mayor had been, by attorneys who kept the record of the court's business.[158]

The City's 'rotation' system was the first institutionalized magistrate's court, but it was to take a different form from those that developed elsewhere in the metropolis. The Guildhall court, at which the sitting alderman attended daily, and the Mansion House justice room, where the lord mayor conducted magisterial business from the 1750s, did not develop as 'police' courts, in which fully professional magistrates, leading a group of permanent constables, took up the investigation and prosecution of serious crime. The aldermen of the City were unwilling to devote such time themselves to that work, but they were also far too conscious of the Corporation's ancient privileges and liberties to cede authority to a body of stipendiary magistrates. The City courts none the less shared some of the characteristics of the rotation courts that were to develop in Westminster and Middlesex, staffed by paid magistrates. Like the institutions created in the rest of the metropolis after 1750, the Guildhall and the Mansion House provided courtrooms in which constables and the public had access at established times, and they helped to put the administration of the law on a new footing by making magistrates more regularly available to victims of crime in the capital. They also made preliminary hearings into criminal allegations much more open to the public, since they were now to be conducted entirely in a courtroom to which access could hardly be denied to interested parties. This was very different indeed from a form of criminal administration in which in many cases pretrial proceedings had been conducted in the privacy of the justice's parlour. Among the many consequences of a more public and transparent administration of the law was the opening of the magistrate's hearing to other voices besides the defendant and his accusers. That in turn surely encouraged the

[158] For a fuller account of the rotation court, see above, pp. 108–13.

fundamental change that was gradually coming over the preliminary hearing itself, turning it into more of a judicial procedure by the second quarter of the eighteenth century.[159]

The City aldermen did not make detection part of the ongoing public work of magistrates. Colonel De Veil and especially the Fieldings did this by associating thief-takers directly with the magistrate's court in Bow Street—binding them in by means of small retainers provided by the government. The small group of detective constables who formed the backbone of this detective force moved the shadowy figure of the thief-taker into the public arena from the margins of the system of criminal justice, and from the half-light (and occasional glare) in which their enterprises had been conducted. Thomas De Veil, who had been in the Middlesex commission of the peace for a decade, moved to Bow Street in 1739 and established an office for magisterial business with the government's support.[160] He was succeeded shortly after his death by Henry Fielding, who was appointed a justice of the peace for Westminster in December 1748, and who was himself to give way to his half-brother, John, who presided at Bow Street from 1754 to his death in 1780.

Henry Fielding came to Bow Street just as a post-war increase in criminal activity was taking hold in London, particularly violent street offences. His five years there coincided with a period of extreme anxiety about crime in the capital that rose to such a level of panic by 1750 and 1751 that the House of Commons was induced to establish the first committee ever appointed to examine in a general way the whole matter of crime and criminal administration, along with vagrancy and the workings of the Poor Laws.[161] It also induced Henry to write extensively on crime, in which—among many other matters—he offered a defence of thief-takers and of the engagement of private citizens in the tracking and arrest of offenders in opposition to what he thought was the foolish popular disapproval of those who made arrests or reported an offence. The 'Person of the Informer', Fielding said, 'is in Fact more odious than that of the Felon himself; and the Thief-catcher is in Danger of worse Treatment from the Populace than the Thief'.[162] He traced the root of these dangerous attitudes to

[159] Langbein, 'Structuring the Eighteenth-Century Criminal Trial', 55–84.

[160] For Sir Thomas De Veil, see R. Leslie-Melville, *The Life and Work of Sir John Fielding* (1934), 32–4; Radzinowicz, *History*, iii. 29–31; Babington, *A House in Bow Street*, chs 1–5. See also a contemporary account of De Veil's career, *Memoirs of the Life and Times of Sir Thomas Deveil, knight*... (1748), and his own brief reflections on the work of justices in Middlesex: Sir Thomas De Veil, *Observations on the Practice of a Justice of the Peace*... (1747). The latter is addressed to magistrates on their first taking up the office. Neither of these contemporary tracts provides much evidence of De Veil's involvement in prosecutions or of his possible dealing with thief-takers.

[161] Beattie, *Crime and the Courts*, 520–5; Rogers, 'Confronting the Crime Wave', pp. 88–91; Richard Connors, '"The Grand Inquest of the Nation": Parliamentary Committees and Social Policy in Mid-Eighteenth-Century England', *Parliamentary History*, 14/3 (1995), 285–313; Hugh Amory, 'Henry Fielding and the Criminal Legislation of 1751–2', *Philological Quarterly*, 50 (April 1971), 175–92.

[162] Henry Fielding, *An Enquiry into the Causes of the Late Increase of Robbers* (1751), ed. by Malvin R. Zirker (Oxford, 1988), 151.

Elizabethan laws that attempted to prevent corruption by informers. Even more damaging for society, he argued, was the odium attaching to thief-takers, to men who sought out and prosecuted serious criminals rather than simply informing on those who infringed economic regulations. And he could explain such attitudes only by thinking that they had been manufactured by the self-interest of offenders who took advantage of popular (and ignorant) opinion to amplify hostility to those who most effectively threatened them with arrest. Thief-takers had been thus confused with informers and their public service forgotten: 'the general Cry being once raised against Prosecutors on penal Laws, the Thieves themselves have . . . put their Prosecutors on the Footing of all the others: Nay I much question whether in the Acceptation of the Vulgar, a Thief-catcher be not a more odious and contemptible Name than even that of Informer'.[163] To this he opposed a view of the thief-taker as a man of honour. He worked for a reward, it was true, but in that he was like so many other public servants (soldiers, for example) who were doing 'Good to Society'. In fact, the thief-takers were 'among the most honourable Officers in Government', and they should be praised not despised.[164]

This says a good deal about Henry Fielding's work and intentions at Bow Street, intentions that were to be further developed by his half-brother. Apart from creating what was by far the most thorough and extensive source of information about offences and offenders ever devised,[165] they brought together and supported a group of thief-takers who acted under their orders to seek out and arrest wanted men in London and, if called upon, elsewhere. First brought together by Henry Fielding soon after he came to Bow Street in the winter of 1748–9, these so-called Bow Street Runners were given firmer institutional support in 1753, when the government, through the secretary of state, the Duke of Newcastle, provided six hundred pounds for their maintenance and asked Fielding to draw up a plan to deal with the violent crime that seemed to have grown by then to even greater heights in the metropolis.[166]

The establishment of a group of detective policemen, led by Saunders Welch, the high constable of Holborn, was later described by Sir John Fielding after he succeeded his half-brother. Fielding prefaced a tract published in 1755 that set out his ideas about extending the regular reporting and pursuit of highway robbers within 20 miles of the capital, with a defence of the Bow Street thief-takers—a defence required, as he acknowledged, by the recently disclosed McDaniel gang scandal. Unlike 'McDaniel and his crew', he set out to show, the

[163] Ibid., 153.

[164] Ibid., 154.

[165] On this aspect of the Fielding's work, see Radzinowicz, *History*, iii. 44–54, and particularly John Styles, 'Sir John Fielding and the Problem of Criminal Investigation in Eighteenth-Century England', *Transactions of the Royal Historical Society*, 5th ser., 33 (1983), 127–50.

[166] Radzinowicz, *History*, iii. 54–8; and see Martin C. Battestin with Ruthe Battestin, *Henry Fielding: A Life* (1988), 499–502; and Leslie-Melville, *Life and Work of Sir John Fielding*, ch. 4.

men employed at Bow Street were 'real and useful thieftakers'.[167] They had been drawn originally from the constables of Westminster, so that 'the real thief-takers must all have been housekeepers, and reputable ones too . . .'.[168] But, John Fielding argued, his brother had gone well beyond the organization of a strikeforce of constables to confront an immediate problem. What distinguished his work was his ability to persuade some of these constables to remain available for policing work when their year of office was over. They were given a retainer from the funds provided by the government, on top of which they gathered rewards—private as well as public—that the conviction of robbers and burglars would bring.

There was no direct link between the thief-takers whose activities we followed in the 1690s and the institutional arrangements under which the Fieldings gave detection and prosecution a quasi-official standing. In the interim, thief-taking had taken several forms and had changed over time as opportunities and incentives changed. It had also included corrupt and illegal activity—and perhaps a great deal of that. But straightforward detecting and prosecuting for profit had been at least part of the thief-taking business. It had not been unknown even before the state made it lucrative in the 1690s. But the prosecution of felons seems clearly to have expanded in that decade for reasons we have explored, and to have been carried on by some men thereafter. It was that aspect of thief-taking that Henry Fielding sought to legitimize and sanitize in the small group of detective constables he gathered around the Bow Street magistrate's court. Detection and prosecution by this quasi-official police force never acquired the degree of acceptance with the broader public that the Fieldings hoped for. The thief-taking constables dealt too much in blood-money for that. They none the less expanded in the second half of the century when two other 'public offices' were established in Westminster in the 1760s, and in particular when stipendiary magistrates and a permanent force of constables were established at seven such offices in the metropolis in 1792 under the Middlesex Justices Act.[169]

Detection was to have a fractured history thereafter, and was to be repudiated as a legitimate activity in the Metropolitan Police Act of 1829, which, though forward-looking in some ways, reached back to an older ideal of policing in its total dependence on the prevention of crime by surveillance. But the history of detection and prosecution is part of a full account of the making of the metropolitan police if only because of its influence in creating a negative view of policing in the late eighteenth and early nineteenth centuries. As the progressive version of police history is gradually replaced by an account that seeks to understand the changing nature of policing over a long period, thief-takers need to

[167] John Fielding, *A Plan for Preventing Robberies within Twenty Miles of London, with an Account of the Rise and Establishment of the real Thieftakers* (1755), preface.

[168] Ibid., 3.

[169] On public offices in 1760s and on the Middlesex Justices Act see Radzinowicz, *History*, ii. 188–94; iii. 29–41, 123–37; Paley, 'Middlesex Justices Act'.

be given their place. They were an important element in the array of options for dealing with crime and social disorder in the eighteenth century. They helped to shape the way policing ideas and practices changed over time. They influenced public attitudes towards policing, and helped to draw the authorities in London into the policing business. The connections between thief-takers and constables in particular brought their activities within an official world and expanded the reach of the state. They were a crucial element in the policing of Georgian London.

CHAPTER NINE

William Thomson and Transportation

THOMSON AS RECORDER OF LONDON

William Thomson was the son of a prominent London lawyer of the same name who had risen to the rank of serjeant at law and had been awarded a knighthood.[1] The young Thomson grew up in Essex, attended Brentwood school and Cambridge, and followed his father and brother to the Middle Temple and to the bar. He was early drawn into the factional politics of Ipswich, allied initially with a tory who was elected recorder and who appointed Thomson his deputy in 1705, but he soon switched allegiance to the main political manager in the borough who had begun to support whig candidates for office. It was by these self-serving means that Thomson was elected recorder of Ipswich in 1707, at the age of 31. Within a few months he was in touch with the leading whig forces in East Anglia: at least he can be found writing to Robert Walpole in March 1709, for example, about 'business in Ipswich'[2]—and it was presumably with the help of these allies and his Ipswich connections that he had been able to further his professional and political ambitions by being elected to parliament for Orford earlier that year.[3] Thomson had made his legal abilities and his commitment to the whig party sufficiently clear to be chosen soon after he entered parliament as one of the managers of the impeachment of Sacheverell, whose riotous supporters he also helped to prosecute. This public commitment to whiggism, and his association with Townshend and Walpole, was to further his career in the future. Although his prominent role in the Sacheverell trial led to his being overwhelmed by the tory tide in the election of 1710, he returned to the Commons in 1713 for Ipswich, where his recordership had enabled him to build an interest. He was unseated on petition in April 1714, but re-elected in 1715, and remained a member for the borough until he became a judge, in 1729.

At the Hanoverian succession Thomson was an established lawyer and a

[1] For Thomson's career, see Edward Foss, *A Biographical Dictionary of the Judges of England, 1066–1870* (1870), 654–5; Sir Leslie Stephenson and Sidney Lee (eds.), *The Dictionary of National Biography*, 21 vols. (Oxford, 1921–2), xix. 706–7; J. H. Baker, *The Order of Serjeants at Law* (1984), 208, 455, 540; Romney Sedgwick (ed.), *The History of Parliament: The House of Commons, 1715–1754*, 2 vols. (Oxford, 1970), ii. 467–8. Thomson is often spelled with a 'p'. He himself never included it.

[2] C(H)MSS: Correspondence, 592 (Thomson to [Walpole], 12 March 1708/9).

[3] I owe my knowledge of Thomson's early career in Ipswich to David Clemis, 'Government in a Provincial Town: the Corporation of Ipswich, 1720–95', Ph.D. thesis (University of Leicester, 1999), 220–32.

strong supporter of the new regime. It seems likely that it was with the support of Townshend and Walpole, two of the king's leading ministers in the early years of the reign, that he became recorder of London in March 1715—succeeding Sir Peter King, who resigned the post after being named lord chief justice of the court of common pleas. It was not an easy election. Thomson was well enough known to tory aldermen to arouse strenuous opposition. Indeed, the aldermanic bench was equally divided between him and another prominent lawyer, Serjeant Pengelly, and Thomson got the post only on the lord mayor's casting vote.[4]

This was an important appointment for the new administration. Thomson came to the City in a period of heightened concern about robbery and theft in the metropolis. Of even more immediate importance to the government, perhaps, he took up his post as the stability of the new regime was being threatened by violent street demonstrations in London. George I's accession had been greeted with riotous opposition in the capital that turned into serious pro-Jacobite protests by the spring of 1715 and foreshadowed the armed rebellion on behalf of the Pretender that began in Scotland and the north in September.[5] The government mobilized strongly against the riots by organizing counter-demonstrations and assaults on the strongholds of their enemies, and by passing a sanguinary Riot Act in 1715 that immensely increased the power of the authorities to control public assemblies and to disperse crowds.[6] And it raised an army of veterans that defeated the Jacobite forces by the spring of 1716 and brought the leaders of the rebellion to London to be put on trial for treason.

Thomson's election to the recordership almost certainly owed a great deal to the support of those who were anxious about the threat of violence in London. His views about crime and policing and the law were presumably known from his work as recorder of Ipswich. He certainly made it clear soon after coming to London that he was very much in favour of strengthening the policing of the City, even if this meant overriding some of the customary limits on the obligations of the citizenry. When he was asked by the Committee on City Lands in 1715 whether the City could force householders who had not hitherto been obliged to hang out lanterns to contribute to the support of street lights, he had no hesitation in asserting that 'The Common Council have power to redress all disorders and mischiefs by a proper and fitting remedy and to prevent Robberies, Theft, Murther, and other mischiefs which may happen in the Dark . . . they may require

[4] Rep 119, fos. 123, 134, 146. Thomas Pengelly was not a tory, but he was clearly more acceptable to half the aldermen than the man who had helped to prosecute Sacheverell (Sedgwick (ed.), *History of Parliament*, ii. 334–5). King had been appointed to the bench earlier, and there is some suggestion in the date of his resignation (1 March) and of the election (3 March) that Thomson's candidature was anticipated.

[5] For the anti-Hanoverian demonstrations, see Nicholas Rogers, 'Popular Protest in Early Hanoverian London', *Past and Present*, 79 (May 1978), 70–100; *idem*, 'Riot and Popular Jacobitism in Early Hanoverian England', in Eveline Cruickshanks (ed.), *Ideology and Conspiracy: Aspects of Jacobitism, 1689–1759* (Edinburgh, 1982), 70–88; *idem*, *Whigs and Cities*, ch. 10; *idem*, *Crowds, Culture, and Politics in Georgian Britain* (Oxford, 1998), 35–42; Paul Monod, *Jacobitism and the English People, 1688–1788* (Cambridge, 1989), ch. 7.

[6] 1 Geo. I, c. 5 (1715).

Lights to be hung out in these Courts or places tho no thorough fares . . .'.[7] That commitment to construct defences against crime in London characterizes Thomson's attitude towards his work as recorder. New problems required new solutions; if they required the intrusion of government and the raising of taxes, so be it. The public interest was to be the guide. On the subject of lighting, Thomson's view prevailed, as it did on a number of other fundamentally important issues over the next quarter century in which he held the recordership.

It was these ideas that almost certainly encouraged the king's ministers to support Thomson's election. Getting someone whose views they could trust as the principal legal adviser to the aldermen and as their link to the lord mayor was valuable to a government concerned about public disorder in the capital. In the long run Thomson became even more important to the central government as a man who might manage the problem of crime in London and act as an adviser on the law and how it might best be implemented. The recorder occupied a crucial position as the sentencing officer at the Old Bailey, and the man who reported to the cabinet on the capital offenders who had been convicted. His advice to the cabinet about the management of death at Tyburn would be critical if ministers had any thought of shaping the administration of the criminal law to the needs of the time. It seems likely—given the views he was to express and the initiatives he undertook—that Thomson's candidacy for the recordership in the spring of 1715 was welcomed, and may have been supported, by a government besieged on many fronts, and anxious to do what it could to deal with violent crime and the weaknesses of the penal regime.

Thomson provided the administration with a strong voice in the capital. His success as recorder (from their point of view, and presumably from that of a majority of the aldermen) surely explains why he was to remain in the post until his death, twenty-four years later. His connections with what became in the early 1720s a government dominated by Robert Walpole help to explain why he held on to the post even when he was made a high court judge, as a baron of the exchequer, in 1729—a post that in the past would normally have led to a recorder's resignation. That Thomson did not treat the post as a step to higher office, but insisted on remaining in it even as he advanced on other fronts, has naturally been seen as evidence of his greed.[8] This cannot be entirely ruled out. But there presumably had been greedy recorders before, and it seems to me more plausible to explain the unusual length of his tenure in the office, and his remaining actively involved in the administration of the criminal law in London (with the help of successive deputies), as evidence of the value placed on his advice and experience by the government and the Court of Aldermen. With respect to this area of public affairs, Thomson contributed to the uneasy stability the whig regime was ultimately to impose on the country.

[7] CLRO, Journal of the Committee on City Lands, vol. 13, fos. 289–90. And see above, Ch. 4.
[8] Foss, *Biographical Dictionary of the Judges*, 654.

Thomson's policy initiatives and his attitudes and ideas allow us to explore some of the major themes of the period after 1714 in London. Although none of his personal papers appears to have survived, he has left his mark—and a strong impression of his views on a number of subjects—in both the City's records and the State Papers, in which dozens of his letters to successive secretaries and under-secretaries of state are to be found over the quarter century in which he acted as recorder, and latterly, as a judge. These provide us with evidence of his importance in policy-making and in the day-to-day operation of the law, and of the lead he took in putting the work of the Old Bailey and the structure and practice of sanctions on a new foundation. Thomson was not engaged in every aspect of criminal administration, as we will see. My sense is that he would have approved of the way in which the central government moved towards more activist positions with respect to law enforcement in the second quarter of the century, but he rarely had the opportunity to express himself on such matters in his correspondence with the secretaries and under-secretaries of state. On the other hand, he had a great deal of opportunity to pronounce on and to shape the way in which convicted offenders were dealt with at the Old Bailey, and on other central issues that concerned the London authorities. Thomson's ideas and attitudes help us to understand the effects of a major change in the penal law at the outset of this period and the consequences for the work of the Old Bailey of the developments in policing and prosecution that we investigated in the first part of the book.

THE TRANSPORTATION ACTS

Developments in policing and prosecution practices after 1714 had significant consequences for the way that crime was dealt with in the City. But the most immediately striking changes in the law and in the practice of the courts concerned the old problem of what was to be done with offenders once they *were* caught and convicted. How were they to be punished? The need for a more effective punishment for offences of all kinds—petty as well as more serious offences—had been discussed from time to time in the seventeenth century, as we have seen. But attempts to find substitutes for the branding of clergy, or punishments that might be imposed as conditions on those pardoned from a death sentence, had failed for a variety of reasons. In the aftermath of the War of Spanish Succession those problems were once again exposed by the overcrowding in Newgate and other gaols in London. The lack of alternatives to the death penalty and to clergyable branding seemed as far from solution as ever. Certainly, transportation—which, after 1714, again became the favoured condition imposed on those pardoned from capital punishment—was as difficult as ever to carry out. The difference in this period was that a fundamental alteration in the penal law was not only proposed, but carried out. It was embodied in two parliamentary statutes which not only created transportation to the American colonies as a

punishment the courts could impose on clergied offenders, but also backed the system with sufficient resources to make it work.

I have elsewhere explored the making of this legislation and the decisive actions of the government to prevent the two American colonies to which the transported convicts would be sent, Maryland and Virginia, from impeding the work of the merchants who were now empowered to take those so sentenced across the Atlantic.[9] But several aspects of the working out of that policy need to be emphasized more than I understood in that earlier work—in particular, the crucial role of the City of London and of the recorder, William Thomson, in the making of the legislation, and Thomson's influence on the way transportation was to be implemented in practice.

The possibility of transporting convicted English convicts had had a patchy history since at least the 1670s. A combination of factors—resistance in America and the West Indies, merchants' unwillingness to take anyone without saleable skills, the interruptions of trade during wars—meant that while convicts might be sentenced to be transported as a condition of pardon, it had been far from certain that the order would be carried out. Alternatives had been found during the war in Anne's reign, but they provided no long-term solution to the fundamental weaknesses that had been all too apparent over the previous generation and more. The answer to those persistent problems was to be found in the early years of the new reign by an entirely new departure in criminal administration. In the first place the courts were given the power (by 4 Geo. I, c. 11) to impose transportation for a term of seven years on defendants convicted of clergyable felonies who had hitherto been subjected to branding on the thumb, and on those convicted of petty larceny, for which the established punishment had been public whipping. Both were now liable, at the judges' discretion, to be sent to the plantations in America. In addition, felons pardoned from a capital conviction were to be transported for fourteen years; and the offence of returning to British soil before the expiration of these stated terms was to be excluded from benefit of clergy and thus became a capital crime.

The Transportation Act dealt directly with the problem of what to do with men and women convicted of capital offences at the Old Bailey who were subsequently pardoned by the cabinet and who had hitherto so often been left in Newgate for months and years. That was important. But the new policy, and the new thinking, went well beyond that. It also tackled the issue of the effectiveness of punishments for property offences in general and responded to the recognized inadequacy of the consequences of clergy. In addition, by making petty larceny a transportable offence, the act created an alternative to public whipping as a punishment for the most minor property crimes. In its breadth and reach, the Transportation Act blended the interests of the central government

[9] Beattie, *Crime and the Courts*, 500–6; and see A. Roger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies, 1718–1775* (Oxford, 1987), 70.

and the authorities in the City. For the City, the new policy provided a way of dealing with convicted property offenders, petty thieves as well as members of gangs. It also held out a hope that the City treasury would be relieved of the cost of supporting them in Newgate or the Bridewell, and without increasing the incidence of public whipping. For the central government—the new whig administration that came to power with George I's accession and that found itself threatened by dangerous enemies in the early years of the new reign—the Transportation Act can be seen as one element of a policy designed to deal vigorously with disorder, including crime, if that posed a threat to the stability of the regime. A system that ensured the removal of the offenders pardoned by the cabinet enlarged the deterrent capacities of the law.

The link between the central administration, parliament, and the City was provided by the recorder, William Thomson (who was Sir William, by 1717, having been knighted soon after George I's arrival in England). He was in a position to play that role by his having been named solicitor-general in January 1717, while remaining recorder of London. He had been appointed by an administration that still included Walpole and Townshend, though the latter had recently been removed as secretary of state and demoted by being given the lord lieutenancy of Ireland, and it would not be long before conflicts within the administration over the influence of the king's German ministers on English foreign policy would lead to his and Walpole's resignation.[10] Thomson continued to serve when the administration was reconstructed around Lords Stanhope and Sunderland, in March 1717.

It is possible that Thomson had been made solicitor-general to tackle the weaknesses of the criminal justice system, or at least to deal with the problems that had plagued the administration of transportation over several decades and that the members of the cabinet council would have been all too familiar with from their management of the London pardon process. Certainly, there is no doubt that Thomson was the architect of the transportation policy, and he may well have had at least the tacit support of the government as he thought about ways of making the administration of the criminal law tougher in practice. He certainly had the support of the Court of Aldermen, since he sought and received their approval of his draft Transportation Bill in 1717. Their endorsement is noted briefly in the Repertories, the court's minutes, as follows: 'Upon reading the Draft of an Act of Parliament relating to Persons Convict now laid before the court by Mr. Solicitor General this City's Recorder this Court desired Mr. Recorder to lay the same before the House of Commons.'[11] Thomson was granted leave to introduce his bill into the Commons on 23 December, and was joined as sponsors by the four members of parliament for the City and the

[10] J. H. Plumb, *Sir Robert Walpole: The Making of a Statesman* (1957), 222–42; Ragnhild Hatton, *George I, Elector and King* (1978), 193–201; J. M. Beattie, *The English Court in the Reign of George I* (Cambridge, 1967), ch. 7.

[11] Rep 122, fo. 73.

sitting lord mayor.[12] Thomson chaired the committee that sat on the bill, carried it to the House of Lords when it passed the Commons, and managed the reconciliation of subsequent disagreements between the two houses—meeting for that purpose with Baron Montagu, the high court judge who advised the Lords' committee that sat on the bill.[13]

The crucial matter of how felons sentenced to a term of transportation were actually to be carried to the colonies was not immediately addressed in this legislation because the House of Lords objected to Thomson's proposal that merchants be paid to take them.[14] As they had on a few occasions earlier when the press of numbers in the London gaols had risen to crisis levels, the government had paid in 1717 for the transportation to Jamaica and Maryland of some two hundred pardoned felons.[15] But Thomson failed to establish in the act a satisfactory arrangement that would ensure that those sentenced to transportation would actually be taken. Each jurisdiction was left to make its own arrangements and, predictably, it was not long after the act came into effect that the London authorities were facing a problem. Predictably, Thomson took the lead in its solution. Three months after the first convicts were sentenced to transportation at the Old Bailey, he wrote to the treasury to recommend that Jonathan Forward, a London merchant who had taken convicts to Maryland in the previous year, be given a contract to manage convict transportation. Forward had offered to do so for three pounds a head from London and five pounds from gaols in the rest of the country—a bargain, Thomson thought, since those sums included the fees to be paid to a variety of officials, as well as the costs of leg irons and guards involved in getting the convicts to the ships. It was also a sound investment, he argued (as the author of the act), since an effective system of transportation would 'save [the government] considerably in rewards for highwaymen and housebreakers . . .'.[16] Forward was given such a contract in August 1718.[17]

A more permanent arrangement was embodied in a second statute two years later (which recorder Thomson also proposed and managed) that authorized magistrates to contract with merchants to take all convicts sentenced to transportation and ensured that they entered into a bond to do so.[18] The costs of transporting convicts from London and the counties of the Home Circuit assizes continued to be paid by the treasury—underlining the extent to which crime was thought to be especially serious in the metropolis. The act also addressed a problem that was particularly troublesome in 1720 by declaring the

[12] *JHC*, 18 (1714–18), p. 667.

[13] *JHC*, 18 (1714–18), pp. 671, 675, 684, 685–6, 691, 763–4, 765, 768; *JHL*, 20 (1714–18), pp. 586, 593, 600, 610, 632, 641, 648–9, 650–1, 652, 657–8, 660, 662; HMC: *The Manuscripts of the House of Lords, 1714–1718*, new ser. 12 (1977), 507.

[14] HMC: *Manuscripts of the House of Lords, 1714–1718*, 507.

[15] Ekirch, *Bound for America*, 70, n. 1.

[16] *CTP 1714–19*, p. 389.

[17] Ekirch, *Bound for America*, 70–1.

[18] 6 Geo. I, c. 23 (1720); *JHC*, 19 (1718–21), pp. 239, 265, 333, 337, 369, 375.

streets of London and Westminster (and other cities) to be regarded as 'highways' within the meaning of the 1692 reward statute—a clear encouragement, in conjunction with the one hundred pound proclamation reward promulgated just a few months earlier, to victims and accomplices to apprehend, prosecute, and give evidence against robbers (s. 8).

The new system ensured that, after a century of what had been partial success at best, the punishment of transportation to the American colonies would now be made to work by guaranteeing that the merchant who obtained the contract to take offenders to America would be well rewarded in return for taking all the convicts sentenced by the courts.[19] In London, it was made to work by William Thomson. Having established the legal foundations for the enforcement of transportation, he went on to oversee the details of its implementation in the capital. He was later to claim that he even read 'the names in every bond that is given by the merchant for transportation, and see with my own eyes, that everything is right'.[20]

The transportation system was the product of a government under seige and on the defensive. It can be seen as one aspect of a policy of tough-mindedness with respect to perceived threats to domestic tranquillity and to the survival of the Hanoverian succession and of the Revolution of 1689 itself—a mindset that produced the Riot Act of 1715 and the infamous Black Act of 1723. It was the product of a government with the political will and capacity to support a considerable infusion of public money into the administration of the criminal law. It was also in no small measure a product of a crisis of crime in the capital and, all the evidence suggests, of the ideas and determination of William Thomson, who had taken advantage of his influential position as recorder, solicitor-general, and member of parliament to propose and to push through the two statutes that established the new system. They embodied ideas about law enforcement that Thomson had held for some time and that he had expressed soon after coming to London when he was asked about how lighting could be improved in the City. His advice, then, had encouraged the expansion of the government's reach, increasing the resources being brought to bear to diminish crime. The Transportation Act and its implementation achieved a similar result.

One further initiative that seems almost certainly to have been instituted by Thomson soon after he came to the City was closely tied to his proposals to develop the more effective punishment of offenders. This was the creation of an alphabetical record of the names of all offenders who came before the City courts that would be brought up to date annually, a record that would make it possible to identify recidivists more easily if there were any doubt about how particular

[19] Outside the capital, the costs of transportation were to be paid by the county in which the offender had been convicted. The subsidy for London transportees rose to £4 in 1721 and £5 in 1727 (Ekirch, *Bound for America*, 71; and see Beattie, *Crime and the Courts*, 504–5).

[20] Ekirch, *Bound for America*, 71; and see below n. 27.

offenders should be punished. Again, there is no direct evidence that it was Thomson's idea. But this 'Index of Indictments', as it came to be called (though it is actually an index to offenders rather than indictments), certainly dates from the beginning of his term, and it so clearly fits with other elements in his practice that it seems certain to have been begun at Thomson's suggestion. The book was purpose-made for easy reference: it was long and narrow, and with alphabetical tabs down the right hand edge. At the end of each mayoral year the clerks who kept the court records entered the names of the year's defendants at both the sessions of the peace held at the Guildhall and the gaol delivery and oyer and terminer sessions at the Old Bailey, with a note of the date of the session, the category of the offence (felony, assault, riot, and so on), the verdict, and the punishment imposed. As a criminal record it was no doubt rough and ready, but it provided a more effective way of tracking offenders and an aid to sentencing and pardoning than recorders had ever had available. And if it was, as I suppose, created at Thomson's suggestion, it tells one a good deal about his intentions and attitudes as he took up the recordership.[21]

THOMSON AND THE NEW PENAL ORDER

The consequences of the Transportation Act of 1718 were felt immediately at the Old Bailey. As soon as it was promulgated, the aldermen confirmed its importance for the City's propertied inhabitants by ordering that an abstract of the 'Felon's Act', as they called it, be printed and widely distributed.[22] The bench at the Old Bailey, with the recorder very much to the fore, added its own endorsement by putting the provisions of the act immediately to work. In the first two sessions of 1718, held before the act came into force, men and women convicted of non-capital property offences had been sentenced to what had long been the familiar sanctions: twenty-one were granted clergy, burned in the hand and discharged, and six were ordered to be whipped. In stark contrast, at the April session the twenty-seven men and women convicted of non-capital theft were sentenced under the provisions of the new legislation. All were ordered to be transported; not a single offender was either clergied or whipped.[23] Clergyable branding and whipping were not in fact to disappear entirely for property offences, but the immediate move to embrace transportation established the dominance of the new punishment—a dominance that was to endure into the 1770s.

This new penal regime at the Old Bailey emerged as a consequence of the discretionary powers exercised by both the juries and the bench. One of the central elements in the Transportation Act was the authority given to the courts to sentence defendants convicted of all forms of larceny to seven years in America—not only grand larceny but those convicted of petty larceny, too. That

[21] CLRO, Index of Indictments, 5 vols., 1714–1834.
[22] Rep 122, fo. 297.
[23] OBSP, January, March, and April 1718.

clause in the act was clearly a product of the City's unhappy experience with the weakness of the sanctions available for the punishment of minor thefts, and perhaps especially concerns about the disruptive effects of public whipping. The provisions of the act were immediately implemented at the April 1718 session. With this new authority, the courts acquired considerable flexibility in dealing with theft: it was left to the judges to decide in particular cases whether to order transportation, the branding of clergy (with imprisonment in the house of correction at their discretion), or whipping. All those options came to be exercised at the Old Bailey under Thomson's influence. In looking at the patterns of sentencing that developed in London after 1718, it is useful to keep Thomson in mind, and to examine his attitudes and ideas about the way the new penal system should be managed.

Thomson had been both recorder and solicitor-general when the act was passed in 1718, but he was dismissed from his post in the central administration two years later as a consequence of a dispute with Nicholas Lechmere, the attorney-general. Apart from his frequent complaints about the way he was treated by Lechmere—being required, as solicitor-general, to serve as 'Mr Atturney General's footman', as he said on one occasion[24]—the immediate reason for Thomson's dismissal was the accusation of corruption he levelled against Lechmere in the midst of the enquiry into the South Sea Bubble in 1720, an accusation found to be groundless by a parliamentary committee.[25] The deeper reason may have been Thomson's association with the Walpole–Townshend faction of whigs who had been in opposition since Townshend's dismissal as secretary of state in 1717 and the fact that Lechmere was one of Walpole's bitterest enemies.[26] Thomson had made his loyalties abundantly clear by voting against the Peerage Bill in 1719—an opposition led by the Walpole and Townshend whigs[27]—and they were to stand him in good stead in the future. For the political world was changing rapidly by 1720 in the turmoil around the South Sea Bubble, and changing very much in Thomson's favour. Walpole and Townshend came back into office in 1720 and into control of the administration in 1722. Thomson's prospects improved, though not without his having to remind the king and Walpole of his usefulness to the government by his work in London. He sought Walpole's support and patronage early in 1722, asking particularly for some form of professional advancement to compensate him for the heavy work required by the recordership of London and the loss of income it entailed—income he could otherwise have generated in his legal practice. His work at the Old Bailey had grown more onerous, he claimed, since he had taken the post. Over the past few years it had involved

[24] SP 35/18/15. [25] Sedgwick (ed.), *History of Parliament, 1715–1754*, ii. 203, 468.
[26] Ibid., ii. 203–4; Plumb, *Walpole: Making of a Statesman*, 256, 303–4, 340, 351.
[27] Plumb, *Walpole: Making of a Statesman*, 276–81; David Lemmings, *Gentlemen and Barristers: The Inns of Court and the English Bar, 1680–1730* (Oxford, 1990), 232.

so much increase of trouble and care from my inspecting all ye proceedings with regard to the transportation of felons, from ye allmost continual application to me, ye references, reports and necessary orders and directions on this account, besides ye examinations of all persons claiming rewards for convicting highwaymen and housebreakers, and several other incidents necessary to the discharging ye business of this Commission, which is now all brought to me, and which takes up my whole time (and has forced me to quitt greate part of ye profitts of my profession) and is now become so burthensome to me, That unless I am encouraged by His majesty's Ministers in a manner suitable to His most Gracious intentions towards me, It cannot be expected that I should still goe on to sacrifice my time, my health, my quiet of mind and further to prejudice my fortune after having spent so many yeares in a service fruitless to myself, making enemies by my zeale in that interest which I have constantly espoused and finding no returne, but disregard and unkind treatment . . .[28]

This querulous, begging letter—tedious and complaining, as he himself said—eventually bore fruit. It was presumably in recognition of his work at the Old Bailey that he was awarded a pension of twelve hundred pounds a year in 1724—another element in the central government's investment of resources in the administration of the criminal law after 1714.[29] Thomson also accepted the office of cursitor baron of the exchequer in 1726, though it was an administrative rather than a judicial post and of no great prestige. Whether or not he had been a Walpole man, he was surely identified with the government by then. And that led to a significant promotion in 1729, when he was raised from what had been a relatively lowly post and made a judicial baron of the exchequer, one of the twelve high court judges.[30]

Even then, having accomplished what he had surely been angling for since Walpole and Townshend returned to power in 1722, Thomson did not resign the recordership. The four hundred pound salary (and twelve hundred pound government pension if he continued to receive it) may well explain why he continued to hold a most unusual combination of posts—recorder and judge. But it is also possible that he remained committed to the work he had been doing for fifteen years in the administration of the criminal law in London. The recorder's work had indeed grown more onerous at the Old Bailey since he had taken up the post, as he told Walpole in 1722; but it had done so largely

[28] C(H)MSS: Correspondence, 939. The Court of Aldermen recognized his work in the summer of 1722 by giving him a gift of 200 guineas, and changing his annual gratuity of 100 guineas to a salary of £400 (Rep 126, pp. 341–2).

[29] The recordership of London was also raised in the hierarchy of judicial offices in 1724 to a level just below the law officers of the Crown. Thomson had by then given further practical expression of his support for the Hanoverian cause and his hostility to Jacobitism when he was apparently immobilized in Boulogne (by a fall from his horse) while on a trip to France, and sent several letters to Walpole reporting on the coming and going of suspicious English visitors and others he thought were attached to the 'Jacobite party'. His letters are much like those of others of Walpole's spies. The letters are in the Cambridge University Library, C(H)MSS, Correspondence, 1066, 1094, 1112. For Walpole's spy system, see Paul S. Fritz, *The English Ministers and Jacobitism between the Rebellions of 1715 and 1745* (Toronto, 1975), ch. 10.

[30] Foss, *Biographical Dictionary of the Judges*, 655.

because Thomson chose to engage in the detailed business of the office. When he complained about the burden he was carrying without significant compensation, he did not exaggerate in at least one respect; that is, his involvement in the administration of the new Transportation Act. Just as he had been its author, he became its chief interpreter and administrator—shaping its application in practice, in line with his convictions about the criminal law. We can explore his influence best by examining the patterns of jury verdicts at the Old Bailey and the sentencing practices of the court.

One of the effects of the Transportation Act was to encourage trial juries to expand the use of partial verdicts—verdicts that convicted the offender of a lesser charge than that stated in the indictment—even more than they had in William's and Anne's reigns. Between 1714 and the middle of the eighteenth century, 40 per cent of those accused of property crimes in the City of London were convicted of a less-serious offence than had been alleged against them, compared to 25 per cent in the quarter century before 1718, and even fewer in the decades following the Restoration.[31] The notable increase in convictions on reduced charges that the Transportation Act appears to have encouraged meant that juries continued to save numbers of men and women from the gallows. But the act also made it possible for the judges to impose much stiffer sanctions on more convicted property offenders than ever before. That is certainly the most important consequence of the transportation system in London in this period, a consequence, we might note, that was visited equally on men and women.

With respect to capital offences, there continued to be significant differences in the way juries dealt with men and women (Table 9.1): 30 per cent of men so accused were acquitted between 1714 and 1750, as opposed to 44 per cent of women; and, of those convicted, a quarter of the men were found guilty of the capital charge and sentenced to death, as against 9 per cent of women. These verdicts appear to express jurors' reluctance to see women hanged in large numbers at Tyburn. They were ready to acquit men charged with such offences when the evidence was not entirely persuasive, or perhaps when the main evidence was being provided by an accomplice or thief-taker, whose motives in prosecuting in cases carrying a large reward could be called into question.[32] This would help to explain why well over 40 per cent of both men and women accused of what I have called the 'serious' capital offences (mainly those that threatened violence) were acquitted (Table 9.1). A sharp difference in the jurors' treatment of men and women charged with robbery and burglary is apparent in the pattern of guilty verdicts. Almost 40 per cent of the men indicted were convicted as against a much smaller proportion of women—no doubt because

[31] For jury verdicts, see Tables 6.1 and 7.2 above, and Table 9.1 below.

[32] The *Gentleman's Magazine*, 2 (1732), 1029, reported objections against the size of rewards on those grounds in 1732.

TABLE 9.1. *Jury verdicts at the Old Bailey in property offences in the City of London, 1714–1750*

	Not guilty	Guilty	Guilty of a reduced charge		Total
			Grand larceny	Petty larceny	
'Serious' capital offences[a]					
Men	62	57	28	—	147
%	42.2	38.8	19.1	—	100.1%
Women	15	4	13	—	32
%	46.9	12.5	40.6	—	100.0%
'Less-serious' capital offences[b]					
Men	102	77	105	110	394
%	25.9	19.5	26.7	27.9	100.0
Women	128	24	99	43	294
%	43.5	8.2	33.7	14.6	100.0
All capital offences					
Men	164	134	133	110	541
%	30.3	24.8	24.6	20.3	100.0
Women	143	28	112	43	326
%	43.9	8.6	34.4	13.2	100.1
Non-capital offences					
Men	164	216	21	166	567
%	28.9	38.1	3.7	29.3	100.0
Women	106	96	12	102	316
%	33.5	30.4	3.8	32.3	100.0

Notes:
[a] Robbery, burglary, housebreaking, horse-theft
[b] Picking pockets, shoplifting, theft from a house or warehouse

Source: Sample

few women involved in such offences put their victims under threat of physical harm.

More men and women (in roughly equal numbers) were charged with what I have labelled 'less serious' capital offences—principally picking pockets, shoplifting, and theft from a house without breaking in, an offence for the most part charged against servants. Juries were even more reluctant to convict defendants on the full capital charge in these cases than in those involving theft with violence—in part because of the pettiness of the losses involved, in part because, in the case of women accused of pocket-picking, the charge often involved an allegation of theft brought against a prostitute for stealing from her client, and juries were as likely as not to take the view that a man who put himself at risk of being fleeced in that way deserved to lose his money or his watch. Few outright convictions were recorded against men and women charged with these 'less serious' offences, though again, among those unlucky few, men were more likely than women to be put in danger of being hanged.

We will look in the following section at the way in which men and women convicted of capital offences for all property crimes were dealt with in this period—at the operation and consequences of the cabinet's scrutiny of the lists of condemned prisoners presented by the recorder. Here we might note the punishments meted out to defendants found guilty of non-capital crimes against property, the offences most directly affected by the Transportation Act. As we have seen, the act had made the accused liable for transportation if they were convicted of any form of simple theft, either grand or petty larceny. About a thousand of those charged in our sample of sessions between 1714 and 1750 were convicted of those offences, either directly or as the consequence of a partial verdict, and were sentenced to some form of non-capital punishment.

What is immediately striking about these sentences—especially when one remembers the pattern of non-capital punishments in the past—is the effect of the Transportation Act on the consequences of conviction for theft in London (Table 9.2). Decisions about sentencing under the act were presumably made as they were made about other penalties. During the course of the trials, agreements about appropriate sentences in particular cases may have been reached by the judges who happened to be on the bench—expressing what was referred to on one occasion as 'the sense of the court'.[33] There may have been discussion among the judges present as sessions drew to a close and the convicted offenders were brought back into court to be sentenced. But it also seems certain that William Thomson exercised considerable influence over the decisions being made. He was well known as the author of the act, and had strong views about the purposes of transportation. In practical terms, he was also in a strong position to shape the court's sentencing practices since, as recorder, he pronounced the sentences in court and—by whatever means—must have been aware of the details of each case. It was under Thomson's influence that a discretionary element crept into the administration of the law, an element that took advantage of the flexibility that his Transportation Act provided in dealing with petty theft in the metropolis.

Discretion in sentencing took shape within a year of the passage of the act. At first the Old Bailey bench seems to have taken the view—a view that recorder Thomson did nothing immediately to challenge—that the act made transportation the mandatory penalty for larceny. Virtually every non-capital property offender was sentenced to be transported in the early sessions after the act came into force. But the language of the statute clearly made it a choice at the

[33] SP 36/62/161. Usually only one of the three high court judges or the recorder presided at felony trials at the Old Bailey. On occasion, as Langbein has shown, more than one was present on the bench and his or their opinions might be sought by the presiding judge. But any resemblance to the collegial bench of Continental practice, Langbein concludes, was accidental. Occasionally one of the City aldermen sat as the trial judge at the Old Bailey (see, for example, Ch. 1, text at n. 36). But for the most part, the trials at the Old Bailey, as at the assizes, were conducted before one of the judges or the recorder, certainly the capital cases. For this subject, see Langbein, 'Structuring the Eighteenth-Century Criminal Trial', 31–6.

TABLE 9.2. *Sentences of those who pleaded guilty or were found guilty of non-capital offences, 1714–1750*

	Clergy	Transportation	Whipping	Hard labour	Total known sentences
Non-clergyable					
Men	15	187	31	4	237
%	6.3	74.0	16.2	2.1	100.1
Women	23	103	13	4	143
%	16.1	72.0	9.1	2.8	100.0
Grand Larceny					
Men	39	277	63	0	379
%	10.3	73.1	16.6		100.0
Women	9	152	46	0	207
%	4.4	73.4	22.2		100.0
Petty Larceny					
Men	0	29	4	0	33
%		87.9	12.1		100
Women	0	2	1	0	3
%		66.6	33.3		99.9
Total					
Men	54	493	98	4	649
%	8.3	76.0	15.1	0.6	100.0
Women	32	257	60	4	353
%	9.1	72.8	17.0	1.1	100.0
Grand Total	86	750	158	8	1,002
%	8.6	74.9	15.8	0.8	100.1

Source: Sample

discretion of the court: it established that in the case of offenders convicted of an offence for which they 'shall be entitled to the benefit of clergy, and liable only to the penalties of burning in the hand or whipping . . . it shall and may be lawful for the court . . . if they think fit' to order them to be transported for seven years.[34] That flexibility was put to use within a few years as it became clear that not every petty offender deserved to be punished with the full severity the law allowed. It also became clear to local authorities that a mandatory penalty of transportation was not in their interests, since they might have to support the shattered families remaining behind when fathers or mothers with large numbers of dependants were removed from England for a term of seven years. There was also the possibility that Jonathan Forward, the contractor, would have preferred not to take every offender to America, despite the government's subsidy.

Those pressures, and possibly others—the crowding in Newgate, for example—resulted in a ruling by Thomson in 1720 or 1721 that confirmed the court's

[34] 4 Geo. I, c. 11, s. 1.

right to choose among the various non-capital punishments that had earlier been available: the branding of clergy for grand larceny; the whipping hitherto ordered in the case of petty larceny; and the sentence of transportation created by the new act. A dispute at the Old Bailey in 1720 or early 1721 (presumably among the judges, though the evidence is not clear on that) about the limitations imposed by the Transportation Act on the sentencing powers of the court was said by the clerk of Newgate, who kept minutes of the session, to have been 'over ruled by Mr Recorder, who brought the Act into the house, [and who declared] that there remained a Discretionary power in the Court whether they wo'd transport, Burn or whip'.[35]

That decision had perhaps been forced by the very rigidity of the initial sentencing policy adopted by the court. Inevitably, some of the defendants sentenced to be transported petitioned the king to grant them a pardon and substitution of a punishment that, as was often said, they could serve in England. In the early years a number of such petitioners received pardons from transportation through the same process by which all pardons were granted.[36] Petitions were also, however, received by the court, and within a year or two of the act being put in place petitions were increasingly common and often led to reconsideration of sentences of transportation. Thus, in February 1719, Thomas Bates was charged with simple grand larceny and found guilty of petty larceny by the City trial jury at the Old Bailey. He was sentenced to transportation for seven years as the act allowed, but five months and several sessions later, with Bates still in gaol and awaiting embarkation, his sentence was modified by the court to whipping.[37] Petitions to alter transportation sentences were considered by the court into the mid-1730s, and a few sentences (though rarely large numbers) were regularly modified at subsequent sessions: transportation orders being changed to either clergyable branding or whipping, depending on the offence, followed by the immediate discharge of the prisoner.[38] Indeed, the process became so common and so expected that the Old Bailey bench began in 1722 to postpone sentencing decisions in a number of cases so that the circumstances of the prisoners involved—the number of their dependants, their opportunities to find employment, perhaps the interests of the parish Poor Law officials—could be investigated and a firm determination made at the following session.

[35] SP 35/26/19. The clerk, Lewis Ryder, also made it clear that the branding of clergy was thought to be the most merciful option. He observed that the defendants who were allowed clergy had given 'very good recomendations and [assurances] that they should be taken care of not to comitt the like' offence again, though sometimes—he added—'I'm afraid a Knave slips in by and by.' He also disclosed that clergy had so diminished as a punishment that the 'branding' was sometimes administered with a cold iron.

[36] SP 44/79A, p. 285; and for another example in 1722, see SP 44/81, p. 23.

[37] CLRO: SM 85.

[38] In the printed *Proceedings*—the OBSP—modified sentences became one of the regular items among the punishments reported at the conclusion of the trials. Defendants whose sentences of transportation were altered were referred to as those 'formerly convicted', and their substitute punishments are noted.

In these two ways—allowing time for enquiries into the circumstances of some of the prisoners and considering petitions for modification of sentences—the Old Bailey bench employed its discretionary powers to manage the transportation system in London for fifteen years after the passage of the act. There is considerable evidence to suggest that these procedures owed a great deal to Thomson's influence, and that he in effect made many of the decisions. It seems clear that the system had emerged in the first place because of his determination to make transportation work in the way he believed it should. Early petitions were turned over to him,[39] and subsequent petitions were either addressed to him or, if not, sent on for his recommendation.[40] His influence and importance were well known. In giving a man advice about getting a sentence of transportation altered for a former servant in 1721, a man was told by a Newgate clerk who attended the Old Bailey 'to write but a line to Sir Wm Thomson that [the prisoner] may receive the sentence of the court next sessions in as favourable a manner as the court thinks fitt'.[41] It was this heavy involvement—'inspecting all ye proceedings with regard to the transportation of felons, from ye allmost continual application to me, ye references, reports and necessary orders and directions on this account'—that had justified in Thomson's mind his plea to Walpole for significant compensation in 1722.

If the system of modification of punishments bore some resemblance to the royal power of pardon, William Thomson, for one, was not embarrassed by the parallel. He told the Duke of Newcastle in 1729, when he was asked about a London prisoner's request to the king for a pardon from transportation, that the man ought simply to apply to the Old Bailey 'to order his being burnt in ye hand instead of transportation, by which meanes there will be no occasion of any further trouble to ye Crown in relation to his being pardoned or released from transportation'.[42] Indeed, Thomson was later to claim that the practice of modifying punishments was grounded in law: 'the court at the Old Baily', he said in 1735, 'have a power by Law to change the sentence of Transportation to Corporal punishment and the discharge of the prisoners where they find them real objects of Compassion'.[43] He would have had difficulty locating that power, but by then the issue was moot, since the court had largely abandoned the practice.

[39] Successful petitions received by the court in December 1719 on behalf of two women sentenced to transportation were endorsed 'to remain and have Judgement of Burning in the hand next sessions per Mr Recorders directions' (CLRO: London Sess. Papers, December 1719).

[40] CLRO: London Sess. Papers, 1725: undated petitions (John Pritchard and Thomas Webb); July 1726 (John Glover).

[41] SP 35/26/9.

[42] SP 36/15/89. The king was petitioned occasionally by those sentenced to be transported at the Old Bailey: in January 1722 Secretary Townshend told Thomson that the king had remitted the sentence of transportation passed against Anne Lloyd, and ordered him to get her discharged from Newgate (SP 44/81, p. 23; and for another case in June, see SP 44/81, p. 66). It may have been the absence of alternative punishments attached to these pardons that encouraged Thomson to develop the Old Bailey's own system of sentence reduction.

[43] SP 36/35/141.

They had done so, Thomson himself said, because applications to the Old Bailey for reductions of punishments had become so numerous, particularly from parish officials, that the court 'came to a Resolution that no Sentence of Transportation should be changed but at the same Sessions as the Tryal and when any real object of mercy is observed that sentence is usually mitigated accordingly'.[44] Subsequent modifications of transportation sentences had now to be sought entirely from the king as pardons.[45]

There is little reason to doubt that petitions to alter transportation orders were numerous and troublesome by the 1730s. They required someone to take the lead who was both experienced and a regular attender at the Old Bailey. If punishments were going to be modified without taking up a good deal of the bench's time, someone would have to do the investigatorial work required and make a recommendation about the case, since the judges at the new session would not necessarily be those who had been on the bench when the original order was made and would know nothing about the circumstances involved. The court could deal with straightforward petitions, like that received by the lord mayor in January 1729 from a man in favour of his son, aged 13, who had been convicted of petty larceny but not yet sentenced. It was marked 'Nothing can be done in this affaire untill next Session and then if his Relations will take care of him the Court will indulge them.'[46] But one might presume that large numbers of more complex cases would be difficult to manage in the midst of a busy court session. Thomson had taken on the management of petitions in the decade and more after the passage of the act, but with his appointment to the bench of the court of exchequer, in 1729, the time he could devote to it clearly diminished, even though he remained active as recorder.[47] Aldermen Billers and Brocas, the two most active City magistrates in the early 1730s, were not in the same position as the recorder to take on the business themselves, and in any case, as we have seen, they were largely running the pre-trial administration of the law by the early 1730s. It was presumably the absence of an active manager that brought the manipulation of sentences to an end in 1734.

The Old Bailey's system of sentence modification was a temporary phase in the administration of transportation, but it had helped to shape the way in which punishment had been deployed in London. It had been managed by a

[44] SP 36/35/141.

[45] See, for example, the petition of Ann Sikes to the king for pardon from the sentence of transportation pronounced against her at the Old Bailey in 1743, referred to the lord mayor and reported on by him (SP 36/62/161, 184–5).

[46] CLRO: London Sess. Papers, January 1729 (Hubbard). For other petitions in this period mainly addressed to the sitting lord mayor, see ibid., August 1730 (Ward), Undated Papers 1730 (Fenton; Evans; Gauthorn), September 1732 (Smith), April 1734 (Field), December 1734 (Bully, Cole).

[47] In February 1731 a victim of a theft wrote to Thomson to urge him to prevent the offender, who had been convicted at the previous session and sentenced to transportation, from having his sentence reduced at the session coming up. Thomson had told him to write on the eve of the session to remind him of the case. He got his wish (CLRO: London Sess. Papers, February 1731 (Bell)).

man who had clear and decisive ideas about the way the act he had constructed ought to be administered. What Thomson did not say in complaining to Walpole about the burden of the recordership is that he had chosen to be involved in these ways in the management of transportation, and that he had chosen to do so because of his strong views about the way the criminal law should be administered in the metropolis. We will examine those views more broadly and in more detail when we look at Thomson's role in reporting capital cases for the adjudication of the cabinet, since his sense of the usefulness and purpose of transportation can best be understood in relation to the general penal framework, including capital punishment. But we might just note his convictions about the function of transportation within that larger penal structure as those views are revealed in his treatment of more minor offenders.

The author of the new policy regarded transportation as an essential addition to the penal array for dealing with persistent offenders, who, once tainted by a brush with the criminal justice system, would find it difficult, he thought, to support themselves honestly, and thus would be likely to return to crime. After being convicted of theft, he said of one man found guilty of stealing from ships on the river and whose pardon from transportation he was opposing, 'he cannot expect to be employed againe so as to maintaine his family in an honest way, and what necessity will prompt him to may be reasonably presumed'.[48] When minor offenders were 'sett at liberty', he said on another occasion, 'they very seldom if ever leave off that ill habit, and persons of creditt will not venture to employ 'em, and so they are generally observed to follow ye same course of life . . .'. Appeals to pardon such offenders, he went on to say, were often based on the petty nature of their thefts. But that missed the point of transportation, in his view. Transportation was rightly used for the punishment of those who persisted in stealing goods of small value—'The intent of ye Law being to prevent theire doing further mischiefe, which they generally doe, if in theire power by being at large after a conviction for stealing'.[49] Thomson was particularly cynical about petitions submitted on behalf of offenders from parish authorities whom he suspected of guarding their Poor Law funds. As he told the Duke of Newcastle in 1735 (in opposing a pardon petition sent to the queen), 'the Ministers, Churchwardens and other Inhabitants of parishes petitioned of Course [that is, as a matter of course] where the person to be Transported had a Wife and Children which must be maintained by the parish'. And, he added, they 'generally say' that the offence was his 'first fact'.[50] He was not opposed to the mitigation of transportation sentences when the defendant was not apparently settled into a life of theft, or when he or she had the promise of work from a respectable employer.[51] But he was consistently tough on many of those who applied to be released from a sentence of transportation when he thought they would be likely

[48] SP 36/35/141. [49] SP 36/40/228–9. [50] SP 36/35/141.
[51] SP 36/26/241; SP 36/26/357.

to return to offending; removing certain kinds of offenders from their environments and their companions, he was convinced, was an essential step in the prevention of crime.[52]

Not surprisingly, Thomson was even more strongly opposed to pardons that would allow the most serious offenders to be released from custody with merely the branding of clergy or whipping, or even worse, a pardon without any conditions whatsoever. Free pardons, he thought, sent offenders back to the course of life that got them into trouble in the first place and encouraged others to join them.[53] He was also critical of any deviation from the procedures for transportation laid down in the act, particularly the occasional attempts by the friends or relatives of offenders to get permission to arrange their private passage overseas. When in 1736 such a privilege was about to be extended to George Vaughan, the brother of Lord Lisburne and a convicted highway robber who had been pardoned on condition of transportation, Thomson wrote a strong letter of protest to the Duke of Newcastle to defend the system he had established and to set out 'the ill consequences, which I conceive will attend this, the first President of this nature since the Act of Parliament for transportation of felons, which is now about seventeen yeares'. He opposed it on the grounds that allowing Vaughan this privilege would encourage others to seek it, and the consequences would be large numbers of convicted robbers would not leave, but 'go on in theire old courses. For experience has shown that before the Act of Parliament when felons were usually pardoned upon condition of transporting themselves in six months, they never performed that condition.' As for Vaughan, he would likely go back to highway robbery if he were allowed bail in order to arrange his own transportation, and the friends who now pressed for this favour would 'soon have the mortification to heare of his being hangd'. What was worse, such a concession would lead to the undermining of the system he had created—a system that had at its core the guarantee of performance provided by the contractor's entering into a bond. Jonathan Forward had become 'esteemed an Officer with a publick trust', he said, and because of his effective management of the transportation process it was 'some addition to the terror of the sentence, that [offenders] have no way to evade it'.[54]

Thomson's management had stamped the administration of transportation with a particular character. His ideas and his active engagement—and his

[52] 'As to the case of Blewit [a notorious robber and gang leader], 'tis as you write', Thomson told Delafaye when Blewit persisted in petitioning for a pardon from transportation in 1723, 'and the best way is to take no further notice of his applications and he will be gone very soon' (SP 35/45/105).

[53] SP 36/26/318; SP 36/27/294; SP 36/28/150.

[54] SP 36/38/162. Vaughan was transported to Maryland in May 1736 aboard one of Jonathan Forward's ships (Peter Wilson Coldham, *The Complete Book of Emigrants in Bondage, 1614–1775* (Baltimore, Md., 1988), 823). For other comments on private transportation, see SP 36/27/34, SP 36/27/43. And see Ekirch, *Bound for America*, 71–2. Thomson had conveniently forgotten that he had himself supported two previous petitions for privately arranged transportation (CLRO: London Sess. Papers, June 1725; SP 36/34/120).

vigorous advocacy of a system supported by treasury money—created a presumption that clergyable offenders would be banished to the colonies unless there were compelling reasons to relent. This inclination in favour of transportation explains not why it became the most common non-capital punishment in London—it was that in other jurisdictions—but why it became *so* dominant in the metropolis, accounting as it did for three-quarters of the punishments imposed on defendants convicted of non-capital property crimes between 1714 and 1750, compared, for example, to 56 per cent in the nearby county of Surrey.[55] The reliance on transportation also helps to account for two other features of the patterns of punishment for non-capital offences revealed in Table 9.2 that are particularly notable given the previous practice of the court.

One is the similarity in the treatment of men and women, who made up two-thirds and one-third respectively of the offenders sentenced. With only slight variations, men and women were punished in virtually the same way in each category of offence. Women were more likely than men to be allowed a clergyable discharge when convicted partially on a capital charge; men were more likely to be whipped. The reverse was true when the original charge had been grand larceny. But in the case of both offences, roughly the same proportion of men and women were ordered to be transported; and overall, as their numbers among the convicted would predict, women made up almost exactly one-third of all property offenders sent to America. Gender as such played little part in the decision to transport convicted offenders rather than allowing them to be whipped or clergied and then released: women were as likely as men to be perceived as engaging in the kind of persistent offending that transportation was principally designed to counteract. If there was a gender bias it may have worked in favour of mothers whose transportation would threaten to leave young children in the care of parish authorities. Thomson's opposition to efforts to save such women from being sent to America suggests how strongly that bias was at work.

A second feature of the data in Table 9.2 is connected with the first: the continuing decline of whipping as a sanction in property cases in London. I suggested earlier that, although whipping sentences at the Old Bailey did not normally specify how and where that punishment was to be administered, it seems clear that in the late seventeenth century and the early decades of the eighteenth the punishment was inflicted upon the naked backs of convicted men and women as they were dragged through the streets tied to the back of a cart. The French traveller Misson, writing about 1698, described the typical whipping as being 'thro' the Streets by the Hands of the Hangman'; and whipping sentences ordered at the Middlesex sessions in the 1720s for attempted robbery and wounding in one case, and for an assault on a bailiff in another, were to be at a cart's tail over a stated course.[56] It was perhaps a concession to have the

[55] Beattie, *Crime and the Courts*, 507, Table 9.6.

[56] Henri Misson, *Memoirs and Observations in his Travels over England* (1719), 359; *British Journal*, 51

flogging carried out in the relative privacy of the gaol or house of correction, and when the court intended such a mitigation of the punishment, it would be included in the sentence. A sailor convicted of theft in 1734 and sentenced initially to transportation had his punishment changed subsequently to an order that he be 'whipt privately' and sent back to his ship.[57]

In our Sample of one-third of the City of London cases tried at the Old Bailey between 1714 and 1750, 161 men and 128 women were convicted of petty larceny, all but 22 of whom had been charged with a more serious offence that had been reduced by their juries. Close to half were ordered to be whipped and then discharged. That represented about 17 per cent of all property offenders subjected to a non-capital punishment over the period we are dealing with. But that total conceals the significant impact the Transportation Act had on this form of punishment. Between the accession of George I in 1714 and the passage of the Transportation Act less than four years later an unusually large number of men and women charged with property offences had been convicted at the Old Bailey of petty larceny. In our Sample of eleven sessions in those years, well over half of those found guilty of a non-capital property crime had been convicted of petty larceny—a total of 63, 70 per cent of whom were men—and, as the law required, they had been condemned to be whipped and then discharged. Juries selected the least serious offenders for this treatment, as they had in previous years: virtually all of them had taken goods under two pounds in value; almost half goods under ten shillings.[58] Juries clearly intended to convict a significant number of defendants in a way that would subject them to this painful and humiliating public punishment at a time of post-war concern about crime levels. After each session of the Old Bailey between 1714 and April 1718 five or six convicted City defendants were subjected to whipping—close to 50 every year in the City, and perhaps two to three times as many in the metropolis as a whole.

This increased incidence of whipping may well have encouraged William Thomson to erase the ancient distinction between petty and grand larceny in the Transportation Act by making both equally subject to a term of banishment at the discretion of the bench. Henceforth a defendant found guilty of petty larceny could be ordered to be whipped in the old way, or he or she could be

(September 1723), 65 (December 1723). Two men convicted in 1713 of fraudulently assuming the names of two sailors in order to receive their bounty money were ordered to be whipped until their backs be bloody at the whipping post near the Prize Office (CLRO: SM 79, May 1713).

[57] CLRO: London Sess. Papers, December 1734 (Bully).

[58] A total of 269 defendants were tried for property offences between 1714 and April 1718, when the Transportation Act came into effect. Juries showed the same tendency as in previous periods to convict outright those who stole goods with significant value and to find partial verdicts in more trivial cases. Under 10% of those indicted of theft under 10*s*. were found guilty of that charge, as against 46% of those who stole more than £5; almost 40% of defendants who stole goods of under £2 were found guilty of a lesser charge, whereas in only 15% of cases were thefts of £5 and more judged worthy of partial verdicts. Data based on the eleven sessions in the Sample in this period.

transported. It is hardly surprising that Thomson as recorder immediately employed the new powers the legislation allowed. Whipping sentences at the Old Bailey were immediately and significantly reduced when the Transportation Act came into effect. Whereas five or six City defendants had been subjected to the lash after every session of the Old Bailey in the four years before the act was passed, not a single defendant was punished in that way in the sessions sampled in the four years following its passage. It was only when the court began to alter some of its initial transportation orders in 1722, in the way we have described, that whipping sentences appeared again, although now in more limited numbers. Indeed, no more than one offender was ordered to be whipped per session on average over the next thirty years. Transportation became so firmly established as the normal punishment for petty larceny that by the 1740s the City magistrates began to commit defendants to trial on that charge at the Old Bailey in much larger numbers than ever before—almost certainly, in some cases, instead of diverting the accused to the house of correction, as they had done so commonly in the late seventeenth century and the early decades of the eighteenth. The dozen offenders in our Sample charged and convicted of petty larceny—all but one of whom were men—were ordered to be transported.

Whipping thus came to occupy a much-diminished place as a punishment for property offences by the second quarter of the eighteenth century. Several sessions of the Old Bailey could then go by without a whipping being ordered: between 1718 and the middle of the century such physical punishment for theft accounted for only 10 per cent of all non-capital sanctions. At the same time courts in other jurisdictions continued to rely on this long-established practice. The quarter sessions and assizes of Surrey and Sussex, for example, continued to order private and public floggings—for a third of convicted offenders in Surrey and 36 per cent in Sussex. In Essex, a similar proportion of property offenders was subjected to whipping in the 1740s and into the 1750s. And in Northumberland and Durham, the quarter sessions and assizes together ordered more than half the defendants convicted of theft in the two decades before 1750 to be whipped, though whipping fell away sharply thereafter.[59] Chief Justice Ryder discovered to his surprise when he first went on Circuit that the uses of whipping had been expanded in the assize courts outside London to include grand larceny. Defendants at the Old Bailey, he noted in 1754, were never ordered to be whipped for grand larceny, a punishment that he was surely right to say had no basis in law.[60]

It seems reasonable to conclude that transportation had been valued in London—and instigated at the encouragement of the City—in part because it provided a punishment for petty theft that enabled the Old Bailey virtually to

[59] For Surrey and Sussex, see Beattie, *Crime and the Courts*, 508–9, 544–5. For Essex, see Peter King, *Crime, Justice, and Discretion, 1740–1820* (Oxford, 2000), 272–3 and fig. 8.1 n. For Northumberland (including Newcastle) and Durham, see Morgan and Rushton, *Rogues, Thieves and the Rule of Law*, figures calculated from data in tables 3.5 and 3.6, pp. 72, 75.

[60] Beattie, *Crime and the Courts*, 545.

eliminate public whipping. It is possible that the street violence that had marked the years after the accession of George I had encouraged a move to limit a punishment that inevitably attracted crowds. But there were deeper and longer term reasons for controlling the frequency of displays of violence in the streets that must have seemed disruptive of business or at least inconvenient to the shopkeepers, merchants, and craftsmen who dominated the City's commerce, ran its local government, and sat on its juries. It was presumably to those interests that Thomson had responded in the Transportation Act. And if the concerns of such men had shaped the act, they continued to influence the way it was used at the Old Bailey to limit displays of state-sponsored violence in the streets of the capital. At any event, public whippings became less common in the City.[61]

Another consequence of the Transportation Act was its virtual elimination of the branding and discharge of benefit of clergy. This had been very common in the late seventeenth century, and remained so until the act went into effect. Transportation had such a dramatic effect on the incidence of clergyable discharge, that almost as many convicted offenders were branded on the thumb in the four years before the act was passed as in the more than thirty years we have sampled between 1718 and the middle of the century. Clergyable discharges continued to have their uses as a way of removing someone from Newgate who could neither be easily transported nor whipped for reasons of age or ill health or physical disability. After 1718 a handful of defendants were essentially allowed to leave the court every year without further punishment than the days or weeks they had spent in Newgate and the shame of having been convicted of a felony. And in some cases the branding on the brawn of the thumb appears to have been laid aside in favour of an entirely symbolic touching of the hand with a cold iron. In his account of a session at the Old Bailey in 1710 the German traveller Uffenbach noted that some convicted thieves actually were branded, while others, guilty of 'petty crime', were 'only touched with a cold iron to put them to shame'.[62] This was what the Newgate clerk whose advice to a petitioner we quoted earlier meant by being punished in 'as favourable a manner as the court thinks fitt'. A convict shown mercy still 'must be burnt', he said, 'tho with an Iron near cold'.[63] The inconsequential nature of clergyable discharges occasionally drew some reaction from the court and the City magistrates, as in

[61] For evidence of the further decline of public whipping in London in the second half of the eighteenth century, which he links to its increasingly commercial character and the changing nature of public space, see Gregory Smith, 'The State and the Culture of Violence in London, 1760–1940' (Ph.D. thesis, University of Toronto, 1999), 388–419; and *idem*, 'Civilized People Don't Want to See That Sort of Thing: The Decline of Physical Punishment in London, 1760–1840', in Carolyn Strange (ed.), *Qualities of Mercy: Justice, Punishment, and Discretion* (Vancouver, 1996), 21–51. See also Robert Shoemaker, 'Streets of Shame? The Court and Public Punishments in London, 1700–1820', in Simon Devereaux and Paul Griffiths (eds.), *Punishment, Pardon, and Pain* (forthcoming).

[62] Zacharias Conrad von Uffenbach, *London in 1710*, trans. by W. H. Quarrell and Margaret Mare (1934), 125.

[63] SP 35/26/19.

1730, for example, when two men charged with shoplifting but found guilty on the reduced charge of larceny by their juries and allowed clergy were forced to enter into recognizances with sureties to oblige them to return to court at the end of three years.[64] The intention presumably was to add pain to what was becoming an insignificant punishment compared to the alternative of transportation, and to discourage them from offending again. It was a gesture, and one not repeated. Indeed, by then, benefit of clergy was becoming uncommon at the Old Bailey, especially when the court abandoned its practice of sentence revision. After the mid-1730s one could say that, in the City at least, clergyable discharges essentially disappeared.

The reduction of both whipping and clergy reinforced and underscored the dominance of transportation as the principal non-capital punishment in London in the second quarter of the eighteenth century. There were situations in which the transportation system ran less smoothly than others—times when the contractor found it expedient not to send his ships regularly—and patterns of verdicts and punishments could easily vary from one session to another.[65] But the establishment of the transportation sanction for clergyable offences and of the contracting system diminished the experimentation and the *ad hoc* manipulations of verdicts and sentences that had for long characterized penal practice in London. The Transportation Act transformed the administration of the criminal law, with significant consequences for those men and women convicted of non-capital crimes against property. The act had implications for those convicted of capital offences, too, since transportation had long functioned as the preferred condition of a royal pardon. And to that subject—the consequences of the new penal system for those in danger of being hanged for crimes against property—we must now turn.

TYBURN: THE USES OF CAPITAL PUNISHMENT

A quarter of the men and 9 per cent of the women charged with capital offences against property were convicted in the period 1714–50 and were sentenced to be executed at Tyburn (Table 9.1). Whether they would actually suffer that

[64] CLRO, Charge Book, 1728–33, 5–6 July, and 7 July 1730.

[65] Even with the subsidy paid by the government for each convict transported, the contractor, Jonathan Forward, must have benefited from the sentencing system at the Old Bailey in the 1720s and early 1730s, since it had the effect of saving some of the least valuable convicts—women especially—from transportation. Not every defendant ordered to be carried to America was equally capable of fetching a high price in the dockside negotiations by which they were sold to American masters for the term of their sentence (Ekirch, *Bound for America*, 124–9). The ending of the informal system of sentence revision may explain why he was becoming more balky soon thereafter about sending his ships to America as regularly as he had done earlier, and why he seems to have left a number of convicts in Newgate untransported; on the other hand, there may have been more serious causes than that—the fluctuating price of tobacco being the most likely culprit, a consideration that had led Thomson to argue in favour of the government's subsidy in the first place (CTP 1714–19, p. 389). At any event, Forward was chastized from time to time for not clearing Newgate as quickly as the Court of Aldermen thought necessary. See, for example, Rep 140, pp. 5, 21–2; Rep 142, pp. 303, 305; Rep 141, p. 270–1; Rep 153, pp. 236, 269.

fate or be allowed an alternative punishment that would spare their lives continued to depend on the king and his ministers, for the Hanoverian monarchs retained the system established after the Revolution under which the recorder brought the list of condemned offenders to the cabinet for their final decision.[66] At that meeting the recorder or his deputy (or very occasionally the common serjeant) reported on each case in turn, receiving judgments as they went along whether the convicted men and women would be left to be hanged or be pardoned, and if so on what condition. Those decisions made, the ominous 'dead warrant' was sent by the recorder to announce who among the condemned had been ordered to be hanged and to appoint the day on which they would be taken the 3 miles from Newgate to Tyburn to be executed.[67] Those condemned might still petition the king for mercy, in which case the recorder would be asked to report again through the secretary of state and to make a recommendation.

After 1718 most of those pardoned by the king were ordered to be banished to America for the fourteen years the Transportation Act authorized. Free pardons—pardons without conditions—continued to be granted, but, as we have seen, they were not common, not at least until the country was again at war after 1739, when transportation was to some extent interrupted, and several appeals for pardons without condition (as well as pardons from the sentence of transportation) were successful, and at least one convicted offender was given permission to transport himself.[68] In the decades of peace that followed the Treaty of Utrecht, and even in the 1740s when Britain was again at war, very few men were pardoned on condition of joining the forces.

The men who made those decisions, the cabinet council as it was called early in George I's reign, included the king and his leading ministers: the lord chancellor, the two secretaries of state, the lord treasurer or first lord of the treasury, the chancellor of the exchequer, the lord president, the lord privy seal, and one or two court officials—a body, altogether, of a dozen or more men.[69] The institutional arrangements of Anne's reign were resumed in George I's; within weeks of the king arriving in England, Mr Serjeant Dee was summoned by Under-secretary Tilson to report on the recent sessions at the Old Bailey.[70] Such meetings were arranged routinely thereafter and became so commonplace that

[66] The dates on which criminal business was discussed by the cabinet in George I's reign (at least at the meetings for which minutes have been preserved) and by the lords justices (when the king was in Hanover) are noted in the very helpful list of *Records Relating to Ministerial Meetings in the Reign of George I, 1714–1727* (List and Index Society, vol. 224, 1987).

[67] In writing to Secretary Townshend in 1716 to get a condemned man reprieved at the last moment, Thomson said that he had 'signed ye warrant for execution on wensday morning' (SP 35/74/22).

[68] SP 36/50/152; SP 36/55/75, 114, 117; SP 36/56/76.

[69] Plumb, *Walpole: Making of a Statesman*, 74–7.

[70] SP 44/147, 21 October 1714. Shortly after he became recorder, William Thomson was similarly called to a meeting by Tilson: 'the cabinet council being summoned to meet at St James's tomorrow at noon, my Lord Townshend has commanded me to acquaint you with it that you may attend to make your Report to his Majesty' (SP 44/147, 3 May 1715).

within a few years it was left to the recorder to request a place on the agenda whenever his report was ready. That remained the usual arrangement.[71] When the king went to Hanover, as George I did on six occasions during his reign, and as did his son when he succeeded to the throne in 1727, the procedure with respect to the recorder's report on Old Bailey capital convictions hardly changed, since, apart from George I's first visit in 1716 when he left the Prince of Wales as regent, both kings appointed their ministers as lords justices, with authority, among their many other duties, to receive and act on the recorder's report.[72]

The procedure surrounding the recorder's report remained broadly unchanged under the Hanoverians. The recorder came to the meeting of the cabinet council or the lords justices with a list of the defendants convicted of capital crimes and sentenced to death at the Old Bailey. He stood at the end of the council table when he was called into the room and gave what must have been a brief account of the offence and of the evidence presented at the trial, along with his assessment of the character and past behaviour of the condemned man or woman. As in the past, the king and his ministers made their decision based on this oral evidence. They had no written material to refer to, with the possible exception of petitions submitted on behalf of some of the defendants.

What did change in the course of several decades after 1714 was the way in which the recorder himself prepared for the cabinet session. The evidence from the early years of George I's reign suggests that, as he had before 1714, the recorder took with him little more than a note of the names and offences of the

[71] In October 1718, replying to an enquiry by the deputy recorder, an under-secretary said that the reason two sessions of the gaol delivery of Newgate had gone by without his being summoned to make his report to the king in council was because 'there was no Application made, as usual, for such Summons, but as you have now made application, Orders will be given as you desire against the next Cabinet Council' (SP 44/147, 23 October 1718). On the other hand, the recorder might well be summoned to attend the cabinet council on a given day and time as he was, for example, on 20 October 1721, 1 February 1722, and 16 April 1722 (SP 44/81, p. 4; SP 44/147, 16 April 1722). It is possible that the cabinet was concerned then about the level of crime in the capital. The more common situation in those years and after was for the recorder or his deputy to write to the secretary, as Thomson did in February 1732, for example, to know 'His Majesty's pleasure when he will be attended with ye Report of ye last Sessions' (SP 36/26/72).

[72] Their duties and powers were set out in written instructions, and are included in the minute books they kept of their meetings (see, for example, SP 44/279). The distinction between the two kinds of pardons that applied when the king was in England continued to be observed—distinctions that underlie the king's involvement in the pardon process by the eighteenth century. With respect to London cases, the lords justices exercised their authority cautiously at first (in 1719)—respiting, rather than pardoning, those they intended to save from the gallows and asking via the secretary who travelled with him for the king's permission to pardon (SP 43/1, pp. 224–6; SP 44/279, p. 13). They were soon reassured that the king intended them to act with respect to the recorder's report as though he were present, and in effect they began to exercise the pardoning power when cases were recommended by judges well before George II explicitly gave them that authority in 1743 (SP 36/60/176). On the other hand, both kings retained the power to decide whether to grant pardons to convicts who petitioned for mercy when they had been passed over by the judges at the provincial assizes and sentenced to death or, in London and Middlesex, as a consequence of the recorder's report. Such pardons continued to be conceived as more personal acts of the king's grace, whether the king was in fact personally involved in the decision or not. The lords justices could issue a reprieve, but were instructed to report the case for the king's decision.

accused. The few rough minutes of these encounters that remain in the State Papers, taken by one of the secretaries of state, resemble the document from 1704 we examined in Chapter 7: against each name there is the barest note of the offence, the cabinet's decision to pardon the defendant or to leave the law to take its course, and occasionally some hint as to why that decision was made.[73] It seems clear, at any event, that the recorder did not bring a written report; if he did, it was not used by the secretary who kept the minutes and recorded the cabinet's decisions. But a written report was being prepared at least by 1719 and was to become increasingly elaborate thereafter. Such a document was created because the lords justices who were left in charge of domestic matters when the king went to Hanover in 1719 thought it prudent to send him an account of their management of the Old Bailey capital cases, along with the minutes of their meetings. The first report was very brief—not much more than a list of offenders and their offences and a note indicating the decisions taken. But by 1725 at the latest the recorder was preparing a fuller report ahead of the meeting, a report that could be sent to the king, though written in the form of notes from which the recorder would speak.[74]

At some point between 1725 and 1740 these written reports became much longer, until the evidence presented in each case and other relevant information could occupy four or more manuscript pages.[75] By the second quarter of the century recorders were much better prepared to give an account of the evidence presented in the trials that had resulted in capital convictions. Whether that made for longer and fuller and fairer presentations to the cabinet and lords justices remains unclear. But if they gave oral versions of the reports prepared for the lords justices and sent to Hanover, they would have been giving brief versions of the evidence presented at the trial, and, by the 1740s, including the testimony presented on behalf of the defendant and anything he or she might have said in their own behalf. Indeed, the written recorder's report so closely resembles the printed accounts of trials in the Old Bailey Sessions Paper that it raises the issue of the relationship between these two documents. The Sessions Paper had provided only the briefest accounts of Old Bailey trials from its inception in the 1670s until 1729, when, as we have seen, its length and the detail it provided on some trials significantly increased. One need not rule out a narrowly commercial

[73] See, for example, the document headed 'Minutes taken upon ye Report of ye Recorder to ye King in Cabinet, May 17 1717' (SP 35/9/6). For other examples, see SP 35/8/78, SP 35/9/22, and SP 35/9/125.

[74] A surviving example from December 1725 is at SP 35/60/25.

[75] The four long reports that remain in the State Papers, Domestic, series were all addressed to the lords justices: SP 36/56/79–85 (recorder's report on the May 1741 session); SP 36/60/254–8 (February and April 1743); SP 36/62/165–78 (3 sessions 1743 or 1744 with 'H' or 'T' against some of the names); SP 36/114,183–93 (September 1750). There is evidence that by the 1740s recorders were preparing such reports for their attendance at the cabinet. In November 1742, Simon Urlin, the recorder, sent a secretary of state 'a true copy of the Report of Robert Budd's Case, as I made it in Council'. It takes exactly the same form as the cases included in the four reports noted above (SP 36/59/180–1).

motivation on the part of the publisher for the appearance of a much expanded version of the Old Bailey trials. But the similarity between the reports of cases in the Sessions Paper and the document prepared by the recorder suggests the possibility that there was some official encouragement behind the expansion of the published version. Certainly, by the middle of the century, Langbein has shown, the recorder's report was based on the OBSP.[76]

Whatever the form of his report, the recorder was in a strong position to shape the way the death penalty was exercised in the capital. His oral summary of the evidence given in each case was, one must presume, relatively brief—considering that there were often a dozen or more cases to be presented and that his report was only one item in an agenda of state business. When there were only a few cases to be dealt with, the recorder can be found telling the secretary, in arranging the meeting, that his report would be brief: it would 'not take up two minutes time', he said on one occasion and that may not have been a mere figure of speech.[77] While the cabinet seems to have discussed some cases in detail, it is more than likely that they got through the list expeditiously, guided for the most part by the recorder's recommendations, whether implicit or explicit. There are frequent hints of the influential role the recorder played in the cabinet discussions: 'as the Recorder proposes', is marked on the notes of one of the sessions; reference to managing the transportation of the offenders he had 'recommended . . . for mercy', in Secretary Townshend's words, on those of another.[78] An effort by the Duke of Montagu to arrange a pardon to his liking also suggests the importance of the recorder's guidance in these cabinet discussions. Montagu wrote to the Duke of Newcastle early in George II's reign about a man who had stolen from him and had been condemned to death at the Old Bailey. He wanted to get him pardoned on condition of transportation—though he also wanted him to remain ignorant of the pardon until the morning of the execution 'in hopes that the aprehenstion of dyeing may make him confes the fact'. Montagu said that he had 'talked with the Recorder about it, who when the Report is made tomorrow of the condemned malefactors att Council, will

[76] Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 17–18. For the changing character of the Sessions Papers, see above, p. 372; and for the relationship between the printed accounts of trials and the recorder's reports in the late eighteenth century, see Langbein, 'Shaping the Eighteenth-Century Criminal Trial', 18, and Simon Devereaux, 'The City and the Sessions Paper: "Public Justice" in London, 1770–1800', *Journal of British Studies*, 35 (1996), 469–82. Whether or not the longer, more detailed OBSP had been encouraged by the government, the under-secretaries had come to value the fuller accounts of many trials that the new format was providing. Delafaye complained to Secretary Newcastle in 1730, for example, when an account of a trial in the OBSP was not sufficiently useful for his purposes. It is true that it was an unusual case since the French ambassador was seeking a pardon for a man convicted of sodomy. But Delafaye described it as 'a very bad account', as though he might have expected something better—a fuller and more detailed record of the circumstances of the case. He also revealed that the recorder did not depend entirely on the printed accounts for his report to the cabinet since Delafaye went on tell Newcastle that he was going to write to recorder Thomson about Laurant (SP 36/20/181–2).

[77] SP 36/22/160; and see SP 36/26/72.

[78] SP 35/9/6; SP 44/79A, p. 409.

propose that he may be inserted in the dead warrant but that att the same tyme there may be a Repreeve for him . . .'. It is an interesting indication of George II's importance at these cabinet meetings that Montagu asked Newcastle 'to prevaile with the King that it may be done in this manner'.[79]

The recorder was influential, and his report could be dealt with quickly because, like trial jurors, who also came to quick decisions, the cabinet and the lords justices knew what they were looking for. Their decisions were shaped by the commonplace ideas and attitudes that animated the criminal justice system as a whole, and that were widely shared among the propertied population of the capital. The particular circumstances of individual defendants—his or her age, the kind of support they could bring to bear, political interest and influence—would tip decisions one way or the other, as would the state of crime generally and the level of public alarm. But the crucial matters remained in this period, as earlier, the nature of the offence and the apparent character of the offender. One can see this in the judgments being made by ministers and the patterns of executions at Tyburn, as well as in the attitudes and ideas of that most engaged and influential of recorders, William Thomson—under whom the written report developed and who almost certainly saw it as a further opportunity to shape the way criminal justice was administered in the metropolis.

In many ways the earliest of the written reports are more revealing of the influence of the recorder or his deputy on the cabinet's decisions than the later, fuller versions, which became very largely duplicates of the Sessions Papers and do not reveal the recorder's importance quite as blatantly as those in which he summed up a case in half a dozen lines or less. In the report of 8 December 1725 the deputy recorder's brief summaries of cases were clearly pointed towards achieving the conclusions he had in mind. The cabinet heard that Richard Scurrier, aged 21, convicted of stealing a firkin of butter from a shop, had been seen leaving with it, and that when a second witness attempted to stop him, Scurrier had drawn a knife, cut him on the hand, and 'afterwards said he wish'd he had cut his Throat'. Deputy recorder Raby further revealed that Scurrier had been previously convicted and sentenced to transportation but had escaped as he was being taken to the ship. That was the information the cabinet heard and it sealed Scurrier's fate. A large 'H' scrawled over his name on the report indicated that the cabinet agreed that he should be left to be hanged. Two other men, aged 25 and 27, were reported to have been convicted of robbing 'a poor woman' at 4 a.m. The cabinet heard that they 'stripp'd her, beat her unmercifully, took her Clothes, and one of them thrust his Hands into her and abused her in a very barbarous manner'. No other evidence was apparently reported for or against these men, and their execution was confirmed. A man of 40 was also ordered to be hanged for a robbery in which, Raby reported, he 'knock'd the pros[ecuto]r down with a great Club' and took his coat. So, too, was a man

[79] SP 36/5/218.

who had confessed to a magistrate that he had taken part with two others in a burglary in which goods of forty pounds were stolen.

The death sentences pronounced in court against these five men were left to stand, and one can only think that the deputy recorder's emphasis on the violent nature of their offences (at least in the case of four of them) led the cabinet to those conclusions. Anything they or their witnesses might have said on their own behalf went unreported. On the other hand, five other defendants condemned to death at that session of the Old Bailey and included in this report—three men and two women—were pardoned and ordered to be transported. None of their offences had involved violence; in two, the deputy recorder raised a doubt about the prisoners' guilt by reporting elements of the defences they offered; in another, he revealed that the prisoner, who was charged with returning illegally from transportation, had been prosecuted by a woman against whom he had given evidence three years earlier: Raby also reported that the victim in that previous case, William Hucks, a prominent brewer (indeed the king's brewer, though that was not said) had promised him his favour. The deputy's report was taken up with this story, and the prisoner's sentence of death for his illegal return from America after only six months was changed to transportation.[80]

The broad considerations that underlay these life and death judgments in December 1725 were those of the past. The nature of the offence, allied with the apparent character of the offender, almost certainly remained the paramount issue that determined whether the men and women sentenced to death at the Old Bailey would be hanged or pardoned in the reigns of the first two Hanoverian kings. There was always, however, a place for personal judgement and influence, for favour, and for political considerations;[81] one could never rule out the importance in the process of decision-making of the intervention of an influential patron or the play of sheer prejudice. And almost certainly, in the quarter century during which he was the recorder, William Thomson's attitudes and ideas shaped the pattern of execution at Tyburn. We have seen his influence in the administration of transportation and his willingness to express strong opinions about penal matters in general. His views about capital punishment, equally clear and forthright, were most directly expressed in his responses to petitions on behalf of condemned prisoners, petitions that were referred to him (in

[80] SP 35/60/158. The cabinet minutes of the recorder's report in May 1717 reveal a similar pattern: three men described by Thomson as 'notorious for House-breaking in ye night' were ordered to be executed, as were two men for robbing the mail (one of whom, he reported, had been pardoned in the previous October), a man for burglary, labelled by the recorder an 'old offender', and a woman described by him as 'an old Offender house-Robber'. Those pardoned were a servant who, according to Thomson's report, had committed her first offence and was supported by her mistress, two young men of 16, also described by Thomson as first-timers and enticed by ill company, and two other young men for picking pockets, both of whose victims-prosecutors petitioned on their behalf (SP 35/9/6). For another report of the same year, see SP 35/9/22.

[81] Hay, 'Property, Authority, and the Criminal Law', in Hay, *et al.* (eds.), *Albion's Fatal Tree*, pp. 43–9.

the established procedure) as both recorder and, after 1729, judge. They reveal a man who was capable of compassion and willing to support a pardon when he thought the defendant was not settled into a life of crime or that evidence in the trial had been weak, but also a man who was clear, consistent, and tough-minded on what he took to be the purpose of the law.

Like many judges responding to the secretary of state's request for information about the trial of convicts who petitioned for the king's mercy, Thomson often replied in a way that left it to the king and his advisers to deal with particular cases as they chose. In such cases, judges tended merely to rehearse the evidence given at the trial, stating the reasons the jury came to its guilty verdict, and then, unless they thought a pardon clearly justified, leaving it to the king—deferring to his superior wisdom, as they commonly said—to decide whether a pardon should be granted. Since the decision was going to be made in the king's name (if not by the king himself at least in a way that seemed to invoke and express his opinion) judges were reluctant to box him in, and most often they concluded their reports on pardon petitions by expressing the desire to bow to his judgment.[82] Thomson, however, did not always follow those prudent guidelines. He was capable of sending a strongly worded negative and that almost certainly left the king and the secretary of state with little choice but to deny a pardon they might otherwise have been willing to grant. About two such petitions in 1721, he told secretary Townshend that 'I can add nothing which has hapned since my report to His Majesty [in cabinet] which may render George Post or Robert Hunter to be more objects of mercy now than at that time', to which Townshend replied that 'as you see no further reason for mercy . . . His Majesty acquiesces in your opinion and leaves the Law to take its Course'.[83] Some years later, the secretary informed him that the king had decided to make no further orders in a particular case in light of Thomson's report and would leave the condemned man to be executed.[84] Even in the face of a very strong and politically motivated drive on behalf of a young man condemned to death for robbery, whose relatives were said to have supported the whig side in City elections and who got the signatures of twenty-eight City men on his petition, Thomson stood firm. When Secretary Newcastle asked for his advice in 1725 as to whether this man, Samuel Sells, was a proper object of the king's pardon, Thomson was scornful of Sells' promise to amend his behaviour, and insisted that transportation was not a sufficient punishment for a street robber, especially 'when so many Notorious offenders are daily and nightly robbing in the most flagrant

[82] Beattie, *Crime and the Courts*, 432; Greg T. Smith, 'The Royal Pardon at the Accession of George III, 1760–1765', unpub. M.A. paper (Toronto, 1991), 40–5. This occasionally led judges into comical double talk to avoid making difficulties for the king—especially when the petitioner has asked for a pardon without conditions in cases in which they clearly thought it not justified. Simon Urlin, who became recorder of London after Thomson, wrote several reports in which he was reduced to saying that a free pardon might lead to a man being 'restrained by it from his former Evil courses' (SP 36/40/236; and see SP 36/45/203, 238).

[83] SP 35/27/89; SP 44/79A, p. 418.

[84] SP 44/83, p. 8.

manner with Violence and Arms and Terrifying His Majesty's innocent Subjects'. Sells was not pardoned.[85]

Those were London cases. Thomson showed the same disposition as a judge on circuit after his appointment to the exchequer bench in 1729. In his report on a petition from the members of the grand jury to spare the life of Thomas Aston, convicted before him at the Essex assizes, Thomson told the Duke of Newcastle that the defendant was 'a young man, and had a good character as to his behaviour in life before this fact'. This promising beginning did not, however, conclude as the secretary might have expected. The recommendation for mercy made by the grand jury—a jury made up of some of the notable men of the county, including several justices of the peace—almost certainly carried weight with a man as politically sensitive as Newcastle. But that apparently had little effect on Mr Baron Thomson, for his letter continues:

> The Gentlemen of ye Grandjury who sign'd ye petition on ye behalf of this young man Applyed also to me on ye behalf of another young man who was convicted of robbery on ye highway on ye same Forrest [Epping Forest]. But as I think offenses of this nature ought to be discouraged, I could not think it proper to showe any favour to these offenders, and therefore left them to ye Law as an example to deterr others, and I feare that mercy shown to persons guilty of such offenses may have an ill influence to encourage others.[86]

Aston was not pardoned. But the other young man Thomson mentioned, Andrew Simpson, was in the end saved and transported—despite Thomson's further advice ten days after writing the Aston report. Simpson mounted an even more powerful case than Aston. Not only did he get the support of the county grand jury but his father, a clergyman, was able to enlist the support of Edmund Gibson, the Bishop of London, dispenser of ecclesiastical patronage, and a crucial ally of the Walpole government. This was formidable weight, and Thomson clearly felt it. The young man's father 'has a good character', he told Secretary Newcastle in his report on the case, but 'I cannot say that for his son'. He also repeated that he 'did not think it proper to comply with [the grand jury's] request to save Highwaymen . . .'. But he relented in the end in a way he had not in the case of Aston. He had concluded his Aston report by saying 'All which is humbly submitted', revealing no inclination to leave the matter to the king. In the case of Simpson he said 'My Humble Sentiments are Submitted to His Majesty's wisdom.' The king's wisdom turned out to favour sparing Simpson's life and sending him to America for fourteen years.[87] Thomson had stood out against the political imperatives in this case more tenaciously than most judges would have thought prudent, but in the end had to give in to them. The views he expressed in these reports on petitions for pardon almost certainly shaped the recommendations he brought regularly to the cabinet and the lords justices, recommendations that seem likely to have played as important a role in

[85] SP 35/61/11–12, 16. [86] SP 36/22/186–7.
[87] SP 36/26/152; SP 36/29/124; SP 36/26/180; Coldham, *Emigrants in Bondage*, 723.

the administration of capital punishment as his views about the role of transportation had played in the administration of the act of 1718.[88]

The sentence of transportation for fourteen years had been established in that act as the condition upon which pardons from hanging would be granted. This did not induce decision-makers to grant more pardons. Roughly speaking, half the men convicted of capital offences and sentenced to death were pardoned in the period 1714–50, and about 70 per cent of the women—levels that were in both cases very nearly the same as in the previous quarter century (Table 9.3). The difference in the two periods from the point of view of the

TABLE 9.3. *Capital punishment in property offences, City of London, 1714–1750*

A. Pardons and executions:

	Sentenced to be executed	Died in gaol	Pardoned: transported	Pardoned: condition unknown	Executed
Men	135	6	61	7	61
%	100.0	4.4	45.2	5.2	45.2
Women	33	2	20[a]	3	8
%	100.0	6.1	60.6	9.1	24.2
Total	168	8	81	10	69
%	100.0	4.7	48.2	6.0	41.1
% Men	80.4				88.4
% Women	19.6				11.6

B. Offences against property punished by hanging

	Men	%	Women	%
Burglary	15	24.6	—	—
Theft from house	15	24.6	1	12.5
Robbery	14	23.0	2	25.0
Shoplifting	3	4.9	5	62.5
Horse-theft	5	8.2	—	—
Picking pockets	5	8.2	—	—
Housebreaking	2	3.3	—	—
Theft from warehouse	2	3.3	—	—
Total	61	100.1	8	100.0

Notes:

[a] Six of whom were initially reprieved for pregnancy

Source: Sample

[88] Thomson's tough-mindedness with respect to pardons was almost certainly high on the list of his attributes that Henry Fielding had in mind when he said of Recorder Thomson, twelve years after his death, that his 'Memory deserves great Honour for the Services he did the public in that Post' (*An Enquiry into the Causes of the Late Increase of Robbers*, ed. by Zirker, 163). For the pardoning process at the end of the century, emphasizing its complexity, the factors that determined the granting of pardons, and stressing in particular the 'individualized nature' of pardoning decisions, see King, *Crime, Justice, and Discretion*, ch. 9.

convicted offender was that after 1718 the overwhelming condition on which the pardon was granted was transportation. The near certainty that the alternative punishment would be carried out may have encouraged the cabinet to grant more pardons and may explain why women came to form a smaller proportion of the offenders executed at Tyburn in the years after the passage of the act than they had in the two periods we surveyed earlier. In our sample sessions between 1714 and 1750, women formed some 12 per cent of the defendants from the City of London who suffered death at Tyburn for property crimes; between 1660 and 1713 they had accounted for more than a quarter of the total (Tables 6.4, 7.6).

The imposition of the death sentence on both men and women after 1714 was significantly influenced by the statutes passed in 1699 and 1713 to combat shoplifting and servants' theft. A third of the defendants in our sample hanged at Tyburn suffered under those statutes, with women much more likely than men to be hanged for shoplifting, and men for the offence of stealing goods worth more than two pounds from houses. Indeed, by the second quarter of the century, domestic thefts rivalled the long-established non-clergyable offences, particularly robbery and burglary, for which men had been hanged in the past, though such violent offences remained at the top of the list of crimes for which men were executed, particularly robbery. The frequently expressed anxiety about such violence, as well as the rewards offered by the government, explain why so many robberies were prosecuted and why they occupied a prominent place among the offences that carried men—and they were mainly men—to the gallows.

Our Sample of City cases suggests that between 1714 and the middle of the century an average of between five and six defendants from the City of London were condemned to die at Tyburn for crimes against property every year. Data for the metropolis as a whole and for all offences tried at the Old Bailey suggest, as one would expect—given the shifting balance we have seen between the City and Middlesex—that offenders condemned from the City formed a smaller proportion of the total of men and women executed at Tyburn by the second quarter of the eighteenth century than fifty years earlier. A reasonable estimate would seem to be that just over thirty defendants were executed on average every year at Tyburn between 1714 and 1750, including perhaps twenty-six who had committed crimes against property.[89]

[89] This is based on figures in Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (1991), 91, and on reports in the *Gentleman's Magazine* and the *London Magazine*. The accounts in the two magazines suggest that an average of thirty-two men and women were executed at Tyburn (for all offences) between 1731 and 1750. On the assumption that property crimes accounted for about 80% of all executions in the eighteenth century, it seems a plausible estimate that on average something over twenty-six robbers, burglars, and thieves were among those put to death every year at Tyburn in the period 1714–50. (I owe the data from the *Gentleman's* and *London Magazines* to Simon Devereaux.)

The numbers convicted for offences in the City fell noticeably over the course of this period. Indeed, two-thirds of City property offenders hanged between 1714 and the mid-century were executed in the first fifteen years, when robberies and gang violence were thought to be at their height.[90] In the 1730s and 1740s the number of City offenders fell away more sharply than the overall metropolitan total. It is possible that that owed something to the improvements in the watch and lighting in the City in this period, one effect of which may have been to discourage the most dangerous forms of street crime that typically brought men, if not women, to the gallows. That can only be speculation. What is clear is that the gallows at Tyburn provide further evidence of the way the City's place in the larger metropolis was changing in the second quarter of the century.

As we have seen in previous periods, annual averages disguise significant fluctuations in executions. That was no less true of the decades after 1714. Reports in the *Gentleman's Magazine* and the *London Magazine*, for example, suggest that while an average of six men and women were hanged together on each execution day between 1731 (when their evidence first becomes available) and 1750, the number ranged widely: indeed, the number of hangings on the days of 'Tyburn Fair' ranged between one and as many as twenty-one. On twenty-three hanging days over the two decades 1731–50 no more than one or two men and women were put to death on the gallows; on an equal number of hanging days, ten or more were put to death together. Annual totals similarly fluctuated widely, ranging between a low of eighteen (in 1743, in the midst of the War of Austrian Succession) and sixty-three (in 1750, in the crime crisis that followed the peace).[91] It was very clear in mid-century London that, while the terror of the gallows might have it limits, hanging remained the principal resource against dangerous offenders and the principal means by which the state demonstrated the power of the law—'unsheathing the sword of justice', as judges and magistrates never tired of repeating.

How the message of the gallows was framed depended on the number of capital offenders charged and convicted at each session of the Old Bailey and the number ordered to be hanged by the cabinet. At every stage of the criminal process, from prosecution to verdict to the pardon deliberations, discretionary judgments came into play that could easily increase or diminish the number of men and women condemned to be hanged at Tyburn. Those judgments were influenced by the level of prosecutions, not merely because more defendants meant an increase in the number of men and women being condemned, but

[90] There was a particularly high rate of confirmation of death sentences by the cabinet and lords justices in the years 1720–2 and after several sessions in later years in the decade. After the September 1720 sessions, for example, four out of five condemned were left to be hanged, and in the following month, all nine of the defendants reported by the deputy recorder (from the City and Middlesex together) were ordered to be hanged (SP 44/284, 20 October 1720).

[91] These annual totals are based on mayoral years (December–December).

also because crowded gaols and longer calendars heightened concern about crime and encouraged juries to convict and judges and the cabinet to send more convicted offenders to the gallows.

The number of men and women executed at Tyburn on each hanging day was also determined by the timing of the recorder's report to the cabinet or the lords justices. In the eighteenth century the dramatic effect of the execution day was considerably heightened because recorders tended to report less frequently than they had earlier and, as a consequence, there were on the whole fewer Tyburn hanging days than in the late seventeenth century. The records do not enable us to trace the change precisely. But it clear that, beginning in the 1730s when the new magazines, the *Gentleman's* and the *London Magazine*, began to publish the dates of the Old Bailey sessions and the days on which hangings took place at Tyburn, the recorder as often as not allowed several sessions to go by before seeking the cabinet's decisions on which of the death sentences passed in court were to be carried out. Much more often than in William's and Anne's reigns defendants sentenced to be hanged often had to wait several months to learn their fate. Such irregular reporting explains why very large numbers of men and women were occasionally hanged together. The intervals between executions grew increasingly longer over the period. In the years 1731 to 1734 more than a quarter of the defendants sentenced at the Old Bailey and condemned to death at a meeting of the cabinet were executed within two weeks of the court session, and more than half within a month; another quarter waited in Newgate for more than two months. A decade later, between 1742 and 1746, the recorder was reporting even less frequently, and only 16 per cent of those condemned to death were executed within a month of being sentenced. Fully 40 per cent had to endure a wait of two months or more. Indeed, it was not unknown for the delay to be much longer than that: defendants sentenced to death in September 1745, for example, were not executed until the following April, along with those sentenced at four subsequent sessions of the Old Bailey.[92]

On that occasion the long interval between execution days was almost certainly explained by the Jacobite rebellion that fully occupied the cabinet in the last half of 1745 and the early months of 1746. Other delays in the recorder's reporting to the cabinet may also have been caused by the press of state business, or by the king's indisposition. In 1737, when Thomson became anxious about the overcrowding in Newgate and the threat of gaol fever when two sessions of the Old Bailey had gone unreported and a third session was about to begin, the delay had been caused by George II's late return from Hanover and then his illness. Thomson pressed Newcastle to arrange a meeting on this occasion because several prisoners had died and others were ill—and because there had

[92] Based on reports in the *Gentleman's Magazine* and the *London Magazine*, my knowledge of which I owe to Simon Devereaux.

been 'ill natured reflections in ye publick prints upon this delay'.[93] But irregular reporting and delayed executions remained the norm, one of the serious deficiencies in the administration of the law that Henry Fielding was to emphasize in his analysis of the 'great increase of robbers' in 1751.[94]

When William Thomson died, in 1739, he may well have thought that his Transportation Act had been a considerable success: the new secondary punishment had taken root, making it possible to punish persistent minor offenders in a way he approved and yet at the same time underpinning the use of capital punishment by introducing a reliable alternative that made the royal pardon credible. Had he lived another decade, he would almost certainly have had less cause for satisfaction. For Thomson died just as a war was beginning, a war that broadened from a limited naval conflict against Spain into a European and imperial struggle that led to a massive build-up of the army and navy. Even during the war there were moments of anxiety about violent offences in London.[95] But they paled in comparison to the anxieties that accompanied the ending of the war in 1748 and the demobilization of the forces. Once again, the transition to peacetime saw high levels of prosecution and another panic about crime in London—one that raised questions about all aspects of the criminal justice system, including the usefulness of transportation and the way capital punishment was managed.[96] It was also a crisis that was to confirm the prominence of Westminster and other parts of Middlesex as centres of crime within the metropolis and that furthered the shift of magisterial influence and leadership away from the city, from the mayor and aldermen and the recorder towards the leading magistrates of the West End, particularly in the first place Henry Fielding and his half-brother, John. The problem of crime in London in the middle years of the century induced the Fieldings and others after them to seek ways of invigorating and reforming aspects of the criminal justice system. To them, and to historians since, it looked like a new beginning. But, thinking back over the

[93] SP 36/40/66–7. On another occasion Thomson urgently sought an opportunity to present his report because some of the convicted 'have layn a good while' and there had been attempts at escape (SP 36/29/28).

[94] Henry Fielding, *An Enquiry into the Cause of the Late Increase of Robbers, with some Proposals for Remedying this Growing Evil* (1751, ed. by Malvin Zirker, Oxford, 1988). The delays that had been experienced during the war years in the 1740s were no doubt encouraged by the notable fall in the number of offences prosecuted and in the levels of capital sentences passed. On three occasions in the years 1744–6, for example, the recorder reported on three sessions together—on the first of which the cabinet dealt with a total of eight cases accumulated from the three previous sessions and ordered only one man to be hanged.

[95] Violent crime was very much in the public eye in the mid-1740s when members of the so-called Black Boy Alley gang were arrested by thief-takers attracted by the massive rewards—each of its dozen members being worth £120 on conviction (see Ch. 8).

[96] Nicholas Rogers, 'Confronting the Crime Wave: The Debate over Social Reform and Regulation, 1749–1753', in Davison, *et al.* (eds.), *Stilling the Grumbling Hive*, pp. 77–98; Beattie, *Crime and the Courts*, 525–30, 538–44.

changes that had occurred since the Restoration in the policing of the City, in prosecution practices, and in punishment, it is clear that those who sought to find better ways to manage the crime problem in the middle years of the eighteenth century were working with a system that was already in the process of transformation.

CHAPTER TEN

Conclusion

Numerous changes took place in the way the City of London dealt with crimes against property in the years between the Restoration of the monarchy in 1660 and the middle of the eighteenth century, some of them planned, others more the outcome of changing practice or the consequences of broader developments in the social and cultural character of the metropolis. The changes in policing and punishment we have discussed can be summarized under four heads that express their intentions—or at least their effects, whether intended or not: measures to improve the prevention of crime; to encourage detection and the prosecution of offenders; to ensure the conviction of guilty offenders; and to make punishments more effective. The chronology of change was shaped by political events that brought external sources of authority to bear on the issue of crime in London: the Revolution of 1689, and the regular meeting of parliament that was one of its indirect consquences; and the accession of the Hanoverian monarchs in 1714, which brought whig politicians to power who were willing to use the increasing resources of the state to deal with domestic issues, including what they took to be the threat to the security of the new regime from violence and crime.

Some of the principal changes in the system of criminal administration over the late seventeenth and early eighteenth centuries were embodied in statutes. Of particular importance was the legislation that extended the range of capital punishment to include several relatively minor forms of theft, and that introduced the major transformations in the penal regime represented by incarceration at hard labour and transportation. Parliament also introduced the practice of paying rewards for the conviction of men and women who committed what were regarded as serious offences; and of offering both rewards and pardons to the accomplices of such offenders in return for the information that led to their arrest and the evidence that convicted them. The reconstitutions of the watch and lighting systems in the City were also effected by parliamentary legislation.

Other changes were introduced at the initiative of the central government: financial support for the prosecution of a number of defendants in the 1720s, for example, and the offer of the huge supplementary sum of one hundred pounds for the conviction of highway and street robbers in and around the metropolis—both of which had important long-term consequences for policing and the conduct of criminal trials.

Still other changes emerged as a consequence of decisions being made by the aldermen who served as magistrates and of City householders who served as constables. The withdrawal of virtually all the aldermen from the conduct of preliminary hearings into criminal charges led directly to the establishment of the Guildhall magistrates' court in 1737, a court in which the aldermen served in rotation and which was open to the public at regular hours—the first such institution in the metropolis. The decisions of a significant number of men to hire substitutes to take their place as constables did not have as profound an effect on the City constabulary, largely because most householders continued to take up the office when they were called. There was as yet no effort to seek parliamentary authority to establish a body of paid constables supported by taxes—as happened in the case of the watch and street lighting, two other local services that had also been carried out by the unpaid work of citizens fulfilling their civic duty. None the less, a sufficiently large proportion of the constabulary consisted of hired men by the second half of the eighteenth century that it became possible to enlarge the body of constables from time to time by increasing the resources devoted to policing. Without facing a sensitive political issue, the City authorities were able to adapt the peace-keeping forces to meet some of the demands made upon them by the problems of a changing metropolis.

Although some of these developments brought significant changes to the way the law was administered, they had occurred very largely in the absence of public discussion of their nature or implications. This was in part because they were not generalized into principled assaults on the law or on the institutions making up the system of criminal administration. There was no ambition in this period to undertake root and branch transformations. Changes were piecemeal, incremental, *ad hoc*. Their proponents were not aiming to 'reform' the system, in the sense of achieving a full-scale reconstitution of the criminal law or of the police.[1]

They did, however, want to make improvements in these institutions of criminal justice. The proponents of rewards for convictions, of improved lighting, of a better organized watch, or more effective non-capital punishments wanted to prevent crime or, if that failed, to increase the chances of catching offenders and ensuring their conviction and punishment. The resulting changes were significant enough to affect the character of the institutions of criminal administration and to shift the bases upon which the system of criminal justice worked. These developments—and other responses to domestic problems—challenge the characterization of the first half of the eighteenth century simply as an age of stability. Such a notion usefully describes developments in the world of high politics. It reflects the contrast between, on the one hand, the reigns of Charles II and James II, in which the government was frequently weakened by conflict and

[1] This adopts Joanna Innes's argument that the term 'reform', as distinguished from the much older 'reformation', came into use in 1780 to refer to projects aimed at achieving broad institutional change. I am grateful to her for permission to read her recent unpublished paper, 'The Idea of Reform in English Public Life, to 1830'.

opposition, and, on the other, the decades following the accession of the house of Hanover, in 1714, in which whig politicians constructed secure administrations based on patronage and favour. But stability in politics did not mean that there was an imperviousness to change in other areas of life. A great deal of recent work has shown that while the idea of stability may be appropriate with respect to the structure of government at Westminster in the first half of the eighteenth century, the settlement of political conflict at the top did not result in a stultifying torpor settling over the entire political and social landscape. A shift of focus from the structure of politics towards the question of what governments did, the problems they confronted, and the relationship between the central administration and other centres of power and authority in the country has revealed an early eighteenth century in which there was a vital and energetic engagement with problems of all kinds—the consequence in part of the Revolution of 1689, particularly the establishment of parliament as an essential element in the government of the country. One result of recent work on social and economic issues in this period and on the character and importance of local centres of power has been to reveal the responsiveness of the state to domestic problems and to show that many of the reform campaigns of the second half of the century had been initiated in the decades after the Revolution of 1689.[2]

Among other investigations that are changing our view of the early eighteenth century have been analyses of the way the resources of the state were enlarged in support of the much more active foreign policy that followed William III's accession to the throne and the long and expensive European wars that were its consequence.[3] And not unconnected with the creation of a system of public credit underpinned by statute, attention has also turned to parliament as a legislating body and the role that it came to play in the management of domestic social problems.[4] A parliament that now came regularly into session every year was more than ever open to interest groups of private citizens anxious to obtain legislation that would protect or advance their concerns, as well as to local authorities seeking authority to help them deal with problems they had been left largely on their own to solve. The first half of the eighteenth century has emerged in recent work as a period in which important changes were taking place in the nature of governance and in the relationship of an increasingly powerful central state and active local authorities.[5]

Such developments in the wider political environment help to explain the timing of changes in policing, prosecution, and punishment in the City in the decades after 1689, particularly those that depended on legislative action and the commitment

[2] For an excellent discussion of the themes of this paragraph and a full bibliography, see the introduction to Davison, *et al.*, *Stilling the Grumbling Hive*, especially pp. xi–xvi. And see also, Nicholas Rogers, *Whigs and Cities* (Oxford, 1989).

[3] P. G. M. Dickson, *The Financial Revolution in England: A Study in the Development of Public Credit, 1688–1756* (Oxford, 1967); John Brewer, *The Sinews of Power: War, Money and the English State, 1688–1783* (London, 1988).

[4] See the work of Julian Hoppit and Joanna Innes cited above, ch. 7, n. 2.

[5] Davison, *et al.*, *Stilling the Grumbling Hive*, xv–xvi, xxxv–xxxviii.

of resources—the significant sums spent on rewards, for example, and the establishment of non-capital punishments. The principal explanations, however, are to be found in the City itself—in the character of the problems in the urban world and, perhaps most crucially, in the changing social character of the City.

The impetus driving changes in the policing and other criminal justice institutions was the experience of crime, especially crime against property. Offences appeared to be sufficiently common and sufficiently threatening or annoying to create a sense that the civil authorities might be overwhelmed by the violent depredations of street gangs, or by large numbers of burglaries and housebreaking, or even by more minor forms of theft. Such offences constituted the heart of the urban crime problem. They were the crimes most commonly reported in newspapers, the offences that made up the bulk of the charges before the gaol delivery sessions at the Old Bailey, and for which the vast majority of men and women executed at Tyburn had been condemned. Property crime also appeared to fluctuate, and reports of increasing numbers of incidents and prosecutions gave rise to periods of anxiety that could be sustained over months and years. Anxiety about crime explains the timing of many of the initiatives that led to changes in the criminal law and its administration, and explains why the policing and penal institutions in the City were in several ways very different in 1750 than they had been ninety years earlier.

There was, however, nothing pre-ordained or inevitable about what those changes would be—either those that arose for autonomous reasons within the City or from the engagement of the City with parliament or the central government. The existence of a 'problem' does not explain the form taken by what may appear to be the 'responses' to it. The question remains why some options and not others were taken up in the period we have been examining; why the institutions of policing changed as they did; why some forms of punishment were preferred over others.

An important part of the answer to such questions must lie in the changes we have noted from time to time in the economy of the City, and particularly in the attitudes and behaviour of the broad middling ranks of its population. The alterations we have followed in the institutions of criminal administration are to be explained in part by pressure exerted by men who were in a position to influence events—the aldermen, for example, and the men who ran the wards and who sat on the grand juries and the Common Council. They are also to be explained, more nebulously, by the thousands of individual choices made by men who had traditionally served in a variety of local offices, many of whom were opting in this period to hire substitutes. Such decisions were gradually changing the character of some of the City's most important institutions of criminal justice and the bases upon which they were constituted.

The changes in policing and in penal practices were mediated and shaped in these ways by changes in the society and culture of the City in the late seventeenth and early eighteenth centuries. One underlying development of

fundamental importance was the growth we have noted in the numbers and wealth of the middling class of the metropolis—the overseas merchants, financiers, company directors at the upper end of the bourgeoisie; and the shopkeepers, professionals, tradesmen, master craftsmen, and the more skilful among the artisans who made up its majority. Together, such men and their families accounted for about a fifth to a quarter of the population of the City in the early eighteenth century, rather more than that in the smaller, inner wards around the Exchange, the Bank, and Guildhall. Contemporaries were conscious of a significant change taking place in the numbers of the 'middling sort' in London and in their wealth.[6] Their prosperity was a consequence of the growth of trade and the increasing importance of London as a port, as a centre of finance, manufacture, and services, and as a magnet for the social world.

What has been called a 'revolution' of consumption in the first decades of the eighteenth century saw a substantial increase in the production and sale of useful domestic goods and decorative objects—furniture, metal-wares of all kinds, pottery, and the like. A greater abundance of such useful goods came within the reach, not merely of the comfortably well-off over the first fifty years of the century but of the broad ranks of middling families in London more generally.[7] The availability of such goods, as well as clothes, draperies and linens, silverware, books, and a host of other things, made for the considerable expansion we have noted earlier in the number of shops in London—shops of all sizes and conditions, including a significant number of large and well-appointed establishments in which considerable attention had been paid to lighting, design, and display. The centre of fashion and the emulation and consumption it drove was the West End. But the City was not left entirely behind. Its main thoroughfares—Poultry and Cheapside, for example—were lined with elegant shops by the middle years of the century, many of them especially fitted to display their goods on shelves, counters, and cases, as well as in large glass windows fronting the street.[8]

[6] Peter Earle, *The Making of the English Middle Class* (London, 1989), 4–5, 13, 80–1, 334–5. For the identity, size, and growth in wealth of the middle class, see also Langford, *A Polite and Commercial People*, ch. 3; Jonathan Barry, 'Introduction', in Jonathan Barry and Christopher Brooks, *The Middling Sort of People: Culture, Society and Politics in England, 1550–1800* (London, 1994); Penelope J. Corfield, 'Class by Name and Number in Eighteenth-Century Britain', in Corfield (ed.), *Language, History and Class* (Oxford, 1991); Margaret R. Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680–1780* (Berkeley, Calif., 1997), ch. 1; and for the West End and the *beau monde* in the last decades of the century, see Donna Andrew and Randall McGowen, *The Perreaus and Mrs Rudd: Forgery and Betrayal in Eighteenth-Century London* (Berkeley, Calif., 2001), ch. 4.

[7] Neil McKendrick, John Brewer, and J. H. Plumb, *The Birth of a Consumer Society: The Commercialization of Eighteenth-Century England* (London, 1982), pt I; Langford, *A Polite and Commercial People*, 69; John Brewer and Roy Porter (eds.), *Consumption and the World of Goods* (London, 1993), ch. 1; Earle, *The Making of the English Middle Class*, ch. 10.

[8] Hoh-cheung Mui and Lorna H. Mui, *Shops and Shopkeeping in Eighteenth-Century England* (Kingston, 1989); Roy Porter, *London*, 143–5; *idem*, 'Material Pleasures in the Consumer Society', in Roy Porter and Marie Mulvey Roberts (eds.), *Pleasure in the Eighteenth Century* (1996), 25–6; Claire Walsh, 'Shop Design and the Display of Goods in Eighteenth-Century London', *Journal of Design History*, 8/3 (1995), 157–76.

Tradesmen and craftsmen, merchants and shopkeepers benefited as producers, purveyors, and consumers from the expanding availability of household goods and clothes and decorative objects. And the prosperity of the middling ranks of London society brought the increasing numbers of places of pleasure and entertainment within their means—the coffee-houses and taverns, theatres and, by the second quarter of the eighteenth century, Vauxhall and Ranelegh Gardens. These features of life in the metropolis also helped to draw increasing numbers of the gentry and aristocracy to London for the social season. But the public life they supported was not closed to the aspiring bourgeoisie of the City. And over time the growth of commerce, of wealth, and of consumption encouraged an engagement with fashion and emulation, and changes in behaviour, at least among the upper ranks of the middling class, that were thought by contemporaries to signal a growth of politeness and sociability, a refinement of manners and taste, a growing ethos of urbanity.

Those attributes were indeed consciously spread and sustained by an expanding press that provided examples of, and instructions in, the alterations in sensibility that politeness required—and in magazines like the *Spectator* and *Tatler*, in which Addison and Steele set out to instruct readers in the behaviour and manners that were the signs and essence of gentility. In addition, Lawrence Klein has shown, a large number of manuals were published in the late seventeenth century and the early decades of the eighteenth that offered instruction in social as well as more practical skills to a non-gentry audience . '"Politeness", was purveyed to plebeians', Klein has said, 'in an array of non-fictional books of secular improvement, books offering people what they needed to pursue a given occupation or to assume or reinforce a certain social personality.'[9] The rules of polite behaviour were set out in these manuals, for example, for the very large number of shopkeepers in the metropolis who, for good commercial reasons, needed to treat their customers with civility and good manners.[10] The changing character of commercial life was one of the vehicles of the spread of a new urban culture.

The changing culture of the City helps to explain why men who made a great deal of money in business in the eighteenth century were more inclined than their predecessors of a hundred years earlier to retain their fundamental attachment to the urban and commercial world. London merchants and financiers continued to use their wealth to buy large estates and to take their families into the elevated social world that broad acres would in time open up to them. But many more than ever before were content to buy a house with a limited parcel of land in the Home Counties or in the suburban ring surrounding the metropolis, while maintaining their interests in the commercial world and

[9] Lawrence E. Klein, 'Politeness for Plebes. Consumption and Social Identity in Early Eighteenth-Century England', in Ann Bermingham and John Brewer (eds.), *The Consumption of Culture 1600–1800: Image, Object, Text* (London, 1995), 367.

[10] Ibid., 372–3.

passing on their businesses to their descendants. The attractions and the rewards of business were no doubt principally at work here; but the developing complexity of the London social world must have encouraged such choices—the elaboration of the culture of politeness and sociability in the metropolis and the status and honour it was capable of conferring.[11]

A consciousness of such status may help to explain why the aldermen of London increasingly left the administration of their wards to their deputies and in particular why they withdrew from the conduct of preliminary hearings into criminal charges and the other business that single magistrates traditionally conducted in their parlours. As we have seen, the City aldermen were less inclined to take on these duties by the early decades of the eighteenth century, with the result that it became necessary in 1737 to construct a new institution to fill the gap: the first magistrates' court in the metropolis, a court presided over by all the aldermen in turn, and open every day at hours known to the public. For the aldermen, it meant giving a few hours roughly once a month to work to which some of their predecessors had devoted many hours every week. The Guildhall magistrates' court was not a precise model for the court at Bow Street that was initiated by Thomas De Veil and developed by the Fieldings, or for the 'rotation' or 'police' courts that followed in Westminster and Middlesex in the second half of the century, because the City aldermen-magistrates were not willing to withdraw entirely from criminal administration and hand it over to professional justices. Nor did they set out to create a staff of detective constables that would be available to search for and apprehend dangerous offenders. None the less, the Guildhall justice room surely demonstrated the usefulness of a court that was available to the public at known hours, that monopolized all aspects of the early stages of criminal prosecution, and that was presided over in rotation by a body of magistrates.

The same concerns about their status and the appropriateness in new circumstances of roles their ancestors had played for generations—as well, again, of the demands of their work and careers—may help also to explain why the better-off men in the inner wards of the City became unwilling in the same early decades of the eighteenth century to take up the office of constable. In the late seventeenth century even substantial shopkeepers, tradesmen, and professionals had still been willing to take their turn; by the second quarter of the eighteenth century there was a strong tendency in the richer, more fashionable, wards for such men to pay for substitutes to do the work for them. As in the case of the aldermen, the withdrawal of the comfortably-off from the office of constable must have had several causes. The demands of the post were changing in ways that provide explanation enough, for the developing culture of the City inevitably altered the shape of the urban day, and, by extending the hours of leisure and entertainmnt well past the time of the old curfew, made policing

[11] See the literature cited in Ch. 2, nn. 65–6.

tasks so much more difficult. The simpler world in which the City had largely shut down at 10 p.m. had long been eroding, but it was overwhelmed completely by the commercialized entertainment that accompanied the changing urban culture in the late seventeenth and eighteenth centuries. The increasing demands being placed on those whose duty it was to police the streets at night resulted in the fundamental alterations to the night watch and the street lighting that we have followed. But those changes also increased the responsibilities of the constables in charge of the night-time forces and almost certainly made the post less attractive. They did so even in the small and less turbulent wards at the centre of the City, in which local shopkeepers and tradesmen had remained content to take their turns at filling the post into the early years of the eighteenth century. By the second quarter many of them had ceased to do so—discouraged, presumably, by the duty required, especially at night, but also perhaps by their sense of their own rising status in the changing urban world.

The pressures to improve the policing of the City thus arose from several sources. The consciousness of danger or at the least the irritation arising from what appeared to be the problem of crime was a fundamental issue. Concerns about crime fluctuated over time, but they were expressed particularly frequently in the 1690s and again in the quarter century following the end of the War of Spanish Succession, in 1713. At the same time, the problems of policing were increasing with the expanding social and cultural life of the metropolis and the growing expectations of the propertied classes with respect to the protection that the police of the City ought to provide. Those expectations and concerns found expression in the legislation of the 1730s that shifted the basis upon which the night watch and the lighting of the streets had operated and provided a model for further improvements in the urban environment funded by local taxation.[12]

The demand for more effective policing was one consequence of the changing character of the City. That same concern for order in the urban environment helps to explain the part played by the City of London in the other major change in the administration of the criminal law in this period—the establishment of non-capital punishments that the courts could impose on convicted felons. With respect to the law governing the penal consequences of crimes against property, an overriding concern in the years following the Restoration and into the eighteenth century was the need felt for a non-capital punishment for relatively petty crimes against property. By 1660 the threat of hanging for a second conviction for a clergyable felony had lost any deterrent power it may once have had. The history of punishment over the following sixty years is very largely concerned with the search for an alternative—for a sanction that could be imposed by the courts for the myriad relatively minor offences against

[12] For the broader context of urban improvements in this period, see Peter Borsay, *The English Urban Renaissance: Culture and Society in the Provincial Town, 1660–1770* (1989).

property. And since such offences were particularly common in London, it it not surprising that it was London opinion and interests that led this search, most prominently the authorities in the City.

The form that an acceptable punishment might take had been suggested in the practice of the courts during the interregnum in the 1650s, as well as in the extensive discussion of the criminal law and its sanctions in that decade. The preferred alternative that had emerged was some form of punishment that involved hard labour, a persuasion that led to a considerable increase in transportation to the American colonies and the West Indies as a condition of pardon from capital punishment. The promise of transportation survived the restoration of the monarchy. Indeed, transportation seemed certain to become established in the 1660s as a punishment that might be imposed directly on convicted felons and to provide a non-capital sanction that might at least supplement the branding and discharge that were the consequences of benefit of clergy. It was not to be, for the reasons we have explored. Transportation faded as a viable option by the 1670s because it depended on the willingness of merchants trading with America and the West Indies to take convicts to the colonies in the hopes of being able to sell their labour. The merchants received no compensation in England; not unnaturally, they chose to take healthy young men, but balked at taking others whose labour would be less valuable. In addition, no government had sufficient determination and political will to impose transportation on reluctant colonies when they objected to receiving convicts and passed legislation making it illegal for merchants to land convicts.

Transportation continued to be problematic after the Revolution of 1689, even though there was a significant increase in prosecutions for property offences in London through the 1690s. Indeed, it was almost certainly the virtual collapse of transportation, coupled with a strong increase in prosecutions as crime rose at the conclusion of wars in 1699 and 1713, that encouraged interest groups in London to persuade parliament to extend capital punishment to two non-violent but pervasive forms of theft by making them non-clergyable felonies. It is possible that the supporters of these statutes, and the members of parliament who accepted them, were persuaded that execution by hanging was the right punishment for shoplifting and theft by servants, that these offences were so threatening that only the terror of the gallows would deter potential offenders. It seems as likely, however, that the death penalty was imposed on these relatively petty offences because no effective option was available.

The succession of failed efforts to establish a workable non-capital punishment in the sixty years after 1660 makes it clear that, while private members could move parliament to pass legislation—in the absence as yet of a government claim to a monopoly over the criminal law—they could not command the public resources necessary to put ambitious schemes into effect. This weakened an effort to create a non-capital punishment for property offences when, in 1706, London members obtained the passage of a bill that gave judges the

authority to imprison certain convicted offenders in the houses of correction for terms of up to two years. The statute represented a considerable departure in penal policy in that it established a serious non-capital punishment for minor property offences that could be imposed directly by the courts. But it was also hobbled by the problem that had undermined transportation: the act failed to provide financial support for local authorities who chose to put it into effect. The result was that some did, though not without objection from the keepers of houses of correction, and many others did not.

It was with respect to the use of national resources that the regime established in 1714 was to make an immense difference—sufficient, indeed, to change the paradigm upon which the criminal justice system had worked hitherto. The transportation legislation of 1718 and 1720 not only created a sanction that could be imposed by the courts on convicted felons, it introduced the significant innovation that the costs of transporting felons from London and on the Home Circuit would be borne by the national government. The administration also used its authority to remove other barriers to the implementation of this policy, and large numbers of minor property offenders, as well as men and women pardoned from a death penalty, were sent to the American colonies over the next half century.

The Transportation Acts had been conceived by William Thomson, the recorder of London and a man who had strong and clear views about dealing with crime. His was a London policy. In establishing a form of non-capital punishment that the courts could impose on convicted felons, the transportation legislation accomplished something that the City authorities had favoured for decades. They had done so not out of hostility to capital punishment; indeed, by ensuring that transportation would be made to work and by including in the 1718 act a term of fourteen years' banishment as a condition for pardon from a death sentence, Thomson's legislation might be said to have supported the terror of the death penalty since in the past so many of those pardoned had been allowed simply to go free. A tough attitude towards pardons fitted with the recorder's general view of crime-fighting.

On the other hand, over the longer term the establishment of transportation may well have encouraged the cabinet to exercise mercy with greater freedom since a term of fourteen years' banishment provided a serious alternative to capital punishment. The establishment of an effective conditional punishment that could be imposed both on men and women, in peacetime as well as during wars, helps to explain the reduction in the proportion of convicted property offenders who were executed at Tyburn in the thirty years following 1718 compared to the sixty years before the passage of the act (Table 10.1). It must be emphasized, however, that the reduced proportion of men and women being executed did not alter the central place of capital punishment in the penal system in the first half of the eighteenth century. Indeed, the number, as opposed to the proportion, of property offenders from the City of London who were executed at

TABLE 10.1. *Sentences in Property Offences, City of London cases at the Old Bailey, 1660–1750*

		1660–March 1718			April 1718–1750		
		Male %	Female %	Total %	Male %	Female %	Total %
Hanging		12.1	5.2	9.2	7.5	1.8	5.6
Clergy		41.1	37.5	39.6	5.4	5.4	5.4
Transportation		21.1	21.1	21.1	79.0	80.7	79.6
Whipping		21.0	27.4	23.7	8.1	12.2	9.5
Hard labour		3.2	7.1	4.8	—	—	—
Forces		1.3	—	0.8	—	—	—
Workhouse		0.3	1.8	0.9	—	—	—
	N	759	563	1,322	667	336	1,003
	%	100.1	100.1	100.1	100.0	100.1	100.1

Source: Sample

Tyburn diminished only slightly following 1718. And, as we have seen, when crime was particularly threatening the cabinet continued to order the execution of large numbers of property offenders, in London as elsewhere.

The most obvious effect of the Transportation Act was the transformation it produced in the punishment of more minor offences that were, in effect, not subject to capital punishment. Table 10.1 underlines the dominance that transportation assumed after the passage of the act when, over the following thirty years, 80 per cent of men and women convicted of offences against property were transported to America, either directly by order of the judges at the Old Bailey or after being pardoned by the king from a capital conviction. One of the principal consequences of the dominance of transportation, also revealed in Table 10.1, was the effective abandonment of the branding and discharge of clergy. Another was the sharp reduction in London of sentences of whipping. Compared to other parts of the country, as we have seen, relatively small numbers of defendants in the City were subjected to the pain and humiliation of being flogged in public in the late seventeenth century. But the level fell even further with the establishment of transportation as a punishment for petty as well as grand larceny—from almost a quarter of all punishments imposed on convicted property offenders before the act to less than 10 per cent in the three decades following 1718. This striking change, which began as soon as transportation became available, points to one of the underlying forces at work in the transformation of penal practices in this period.

The clause making petty larceny subject to transportation no doubt reflected William Thomson's desire to impose a more serious punishment on some defendants. It may also have reflected his view that the established punishment for petty larceny, whipping—generally carried out in public—was no longer appropriate in a city like London, at least not if it was to be administered

frequently. In this he almost certainly echoed the views of a large segment of London opinion, including the shopkeepers and merchants and tradesmen who sat on the juries and whose verdicts in large part determined the forms that punishments would take. The fact that Old Bailey juries took advantage of the Transportation Act to effect an immediate reduction in the incidence of public whipping in the City suggests considerable concern among such men of middling station about the consequences of violent punishments carried out in public. If there had been such a concern it seems likely to have been that the brutal flogging of men and women through the streets was inappropriate in a commercial world that increasingly valued orderliness and civility in human relationships. More immediately, perhaps, these shopkeepers and tradesmen may have been dismayed by the way that whippings attracted crowds and inevitably blocked some of the main streets of the City, encouraged disorderly behaviour, wasted the time of employees and apprentices, and provided opportunities for pickpockets and other dangerous persons.

Similar ideas about the even more disruptive consequences of 'Tyburn Fair' and the slow procession of the condemned through the metropolis were expressed in the first half of the eighteenth century by Bernard Mandeville in the 1720s and Henry Fielding in 1751—both of whom denounced the carnival atmosphere surrounding the procession to Tyburn and at the place of execution itself—and in Hogarth's well-known illustration of Tyburn in his *Industry and Idleness* series.[13] The sharp reduction after 1718 at the Old Bailey in the numbers of convicted petty thieves ordered to be whipped seems to point to similar views being expressed by jurors and judges who were by then in a position to select from a number of penal options. Though whipping was not repudiated, any more than capital punishment, the frequency with which it was carried out in the City diminished in the eighteenth century—a consequence of the changing nature of the metropolis and of a statute that provided an acceptable alternative sanction.[14]

Changes in the punishment of convicted felons, as well as the attempts to encourage better surveillance and more active prosecution, reveal a persuasion that had been emerging since the second quarter of the seventeenth century: that deterrence by terror, whether that was created by execution or other physical punishments, did not provide sufficient defence against the kind of crime that London had come to experience. There was no broad support for the abandonment of capital punishment, no diminution as yet in the assumption that public executions provided the only effective brake on the appetites and passions of the most depraved men who committed serious crimes. But what was

[13] Bernard Mandeville, *An Enquiry into the Causes of the Frequent Executions at Tyburn*, reprint ed. Malvin R. Zirker (Los Angeles, 1964) 18–28; Henry Fielding, *An Enquiry into the Causes of the Late Increase of Robbers*, ed. Malvin R. Zirker (Oxford, 1988), 167–71.

[14] For evidence of the further restrictions on public whipping after mid-eighteenth century, see the work cited in Ch. 9, n. 61.

clearly emerging was the conviction that terror was not sufficient in itself—that in London, where so much crime was relatively minor and so much of it committed by women or by children too young to be executed in large numbers, terror had its limits. Capital punishment needed at least to be supplemented by more moderate sanctions and more effective policing and prosecution.

What form such changes might take was being revealed in practice, not in conformity to a grand plan or with a final destination in mind, but in response to immediate problems. Piecemeal though these responses were, they anticipated some of the arguments that would be made by the reformers of the late eighteenth century. They anticipated Beccaria's emphasis on the importance of preventing crime, and some of his attitudes towards punishment—in particular that moderate punishments, adjusted to fit the crime and administered quickly and with certainty, would provide more effective deterrence than occasional displays of the extreme violence on the scaffold.[15] Moderate punishments would encourage victims to prosecute, and potential offenders would learn that if they committed a crime they would be caught, if caught convicted, and if convicted punished. That argument had not been made coherently or clearly in England in the first half of the eighteenth century. But it had been forming in practice over a long period in the attempts to create a system of policing, prosecution, and punishment that would address the crime problems of the emerging modern city.

[15] Cesare Beccaria, *Of Crimes and Punishments* (1764, first English edn. 1767; trans. by Jane Grigson, Oxford, 1964).

Bibliography of Manuscript Sources

CORPORATION OF LONDON RECORDS OFFICE

Sessions Records

SF 159–851 Sessions Files, 1662–1750
SM 3–118 Sessions Minute Books, 1662–1750
London Sessions Papers: including depositions, petitions, and grand jury presentments, arranged in envelopes by session, with a modern guide to the nature of the documents in each envelope, covering the period 1648–1785 in two volumes.
Index of Indictments, 1714–1834 (4 vols.)
Instruction Books: 1705–40, with gaps, 6 vols. Brief notes on indictments to be drawn at sessions of the peace and sessions of gaol delivery; there are notes at the end of several volumes on the distribution of the £100 rewards for the conviction of robbers in the metropolis offered by royal proclamation after 1720.

Records of the Lord Mayor, Court of Aldermen, Court of Common Council

Rep 67–154, Repertories of the Court of Aldermen 1659–1750
Jor 45–59, Journals of the Common Council
Papers of the Court of Aldermen
Papers of the Common Council
Lord Mayor's Charge Books: two series of volumes record the lord mayors' work as a magistrate. The first, labelled 'Lord Mayor's Waiting Books', covers the years 1664–86 in nine volumes; the second, labelled 'Mansion House Justice Room Charge Books'—anachronistically, since the Mansion House was not built until the middle of the eighteenth century—consists of a broken series of volumes that survive only for the years 1686–9, 1692–5, 1695–9, 1699–1705, and 1728–33. For the sake of simplicity and clarity, I have called them all the 'Lord Mayor's Charge Books'. Two other volumes that appear to continue the first series (covering the years 1690–7 and 1700–6) are mainly notes of fees due to the four attorneys who kept the record. The work of the court in which the aldermen, sitting in rotation, conducted pre-trial magisterial work in the City after 1737—the Guildhall justice room—is recorded in a broken series that begins in 1752; and Minute Books of the Mansion House justice room begin in 1784.
Improvement Committee, Court of Common Council: Minute Book of the committee appointed to consider and improve the revenue and estate belonging to the City, 1692–6 (2 vols.).
City Lands Committee:
  Journals: 1673–1750
  Minute Books: 1668–73, 1703–1834, vols. 1–30
  Committee Papers: 1666–1750

Miscellaneous manuscripts

Misc. MSS 2.40	Lord mayors' charges with respect to the duties of constables, 1646, 1687, 1702
Misc. MSS 9.3	Proposals re the watch, *c.*1700
Misc. MSS 10.13	State of the watch, 1679
Misc. MSS 10.37	Appeals against the watch rate, 1737–81
Misc. MSS 11.27	Papers re marshalsmen, *c.*1710
Misc. MSS 11.30	Lists of inhabitants for watch purposes, 1701
Misc. MSS 12.10	Report of the commissioners of sewers, lamps and pavements on the nightly watch, 1773–4
Misc. MSS 15.5	Papers re street lighting, 1735–65
Misc. MSS 17.16	Papers re appointment of constables, 1670–1711
Misc. MSS 19.12	Returns of constables and scavengers in each ward, 1676, 1683
Misc. MSS 22.44	Accounts of children in the workhouse, 1709, 1712
Misc. MSS 28.8	List of wards and precincts, seventeenth century
Misc. MSS 31.1	Watch committee, 1701: rough minutes
Misc. MSS 38.25	Lord mayor's precepts, miscellaneous, 1703–16
Misc. MSS 64.1	The form and manner of holding wardmotes
Misc. MSS 64.4	Papers re appointment of constables, 1709–65
Misc. MSS 64.6	Committee to examine wardmote presentments, 1739
Misc. MSS 64.10	Wardmote presentments, petitions, 1673–1721
Misc. MSS 65.11	Committee for lighting the streets: Minutes, 1739–42
Misc. MSS 83.2	Return of households for the committee on the night watch, 1678, 1680
Misc. MSS 83.3	Returns of names of inhabitants in eight wards, for purposes of jury selection, 1721
Misc. MSS 105.8	Papers relating to the case of Charles Hitchen, 1712–13
Misc. MSS 112.15	Returns of households made for the committee on the night watch, 1678, 1680
Misc. MS 119.3	Report of the committee for lighting the streets. Undated, but *c.*1742–3
Misc. MSS 135.4	Notes on the office of the marshal
Misc. MSS 141.8	Garrard's opinion with respect to the office of constable, 1737
Misc. MSS 141.9	Minutes and papers re watch 1736–8
Misc. MSS 152.5	Certificates from judges authorizing the sheriffs to pay statutory £40 rewards
Misc. MSS 153.13	Payments to the recorder 1676–1720
Misc. MSS 162.14	Payment of marshalsmen, 1714
Misc. MSS 210.7	Proceedings of committees, 1708–16
Misc. MSS 242.5	Returns from the wards about the state of the watch, 1735–7
Misc. MSS 245.1	Minutes of watch committee, 1704
Misc. MSS 245.2	Ward returns respecting the condition of the watch, 1735–7
Misc. MSS 262.2	Miscellaneous papers, including papers re elections of constables, 1692–3
Misc. MSS 290.3–4	Committee for lighting the streets: Books, 1739–65
Misc. MSS 291.1–3	Committee for lighting the streets: Papers, 1739–63

Papers, Acts, and Reports [P.A.R.]—22 vols. of miscellaneous printed documents

P.A.R., vol. 1: Miscellaneous Acts, reports, and papers, 1606–1829
P.A.R., vol. 5: Miscellaneous reports, 1682–1821
P.A.R., vol. 7: Acts and ordinances of the aldermen and Common Council, 1606–1832
P.A.R., vol. 8: Acts of the Common Council, 1526–1857
P.A.R., vol. 9: Acts of the Common Council, 1581–1866

Printed Documents

P.D. 23.5 Charge at wardmote inquest, 1679
P.D. 10.192 The same, 1706, 1721
P.D. 10.48 Act of Common Council re constables, 1621
P.D. 10.49 Acts of Common Council re constables, 1621, 1630, 1640, 1655
P.D. 10.59 Precept for the publication and distribution of clauses in acts of 1707 and 1713 with respect to servants, 1726
P.D. 10.64 Proclamation re the duties of the marshal, 1676
P.D. 10.71 Order/precept re the watch, 1674
P.D. 10.73 Precept of the lord mayor re constables, 1661
P.D. 10.81 Order/precept re the watch, 1681
P.D. 10.159 Order/precept re the watch, 1728
P.D. 10.193 Articles of the charge delivered by the lord mayor to the constables on their being sworn into office, 8 January 1746
P.D. 10.194 Rules and orders to be observed by constables, beadles, and watchmen, pursuant to the Watch Act, 10 Geo. II, c. 22 (1737)

Other records

Acts of Parliament and of the Common Council with respect to the watch and police, 1705–1839: 1 box
Alchin MSS: A large collection of documents that were removed from their original locations by a nineteenth-century archivist and organized in an arbitrary way. His inadequate guide provides no more than a broad indication of the subject-matter of the documents, arranged by box and number
Lamp accounts: Annual accounts by ward of the receipts of the tax for lighting the streets and payments to the contractors, 1736–66
Minutes of the Court of the President and Governors for the Poor of London, 1703–5
Pardons: Pardons issued for condemned prisoners in Newgate in boxes dated 1667–1684, 1685–1701, 1702–56, 1786–1834. Warrants to include named offenders in the next Old Bailey general pardon, dated 1719, 1728–86. Pardons are also noted in the sessions minute books (SM)
Postern gates watch accounts, 1716–77
Wardmote Presentments, 1680–1853
Summaries of Ward Presentments, 1860–1844

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Wardmote Inquest Books

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Vestry/precinct minutes

MS 635/1 St Augustine Watling Street, Vestry Minute Book, 1640–1737
MS 5039/1 Allhallows Bread Street, Vestry Minutes, 1670–1737
MS 4056/1 St Benet Gracechurch, Vestry Minutes, 1670–1789
MS 4072/1–2 St Michael Cornhill, Vestry Minutes, 1563–1811
MS 6848/1 St Helen Bishopsgate, Precinct Minute Book, 1676–1765
MS 9680 St Katharine By the Tower, Precinct Account Book, 1589–1706
MS 11395/1 St Martin Outwich, Precinct Minute Book, 1678–1747
MS 6613/1–3 Watch rate assessment and collection books, St Bride's Precinct, Farringdon Without, 1670–1, 1677–8, 1717–18

Other records

MS 100 Office of the Mayor: Mansion House Arrangements, Mayoralty of Marshe Dickinson, 1756–7
MS 25739A Dean of St Pauls and Ward of Castle Baynard, re watch house, 1676
MS 20844 Tyburn Ticket, 1714
MS 14845 Tyburn Ticket, 1719

LONDON METROPOLITAN ARCHIVES

Middlesex Sessions Records

MJ/GBB Gaol Delivery Book
MJ/GSR Gaol Delivery Rolls
MJ/SP Sessions Papers
DL/C Diocese of London, Consistory Court

PUBLIC RECORD OFFICE (KEW)

Secretary of State Papers

SP 25 State Papers, Domestic, Interregnum: Council of State, 1649–59

SP 29 State Papers, Domestic, Charles II, 1660–85

SP 34 State Papers, Domestic, Anne, 1702–14
[Microform Edition, Michael Glazier Inc. (Wilmington 1977): references are to volumes and to folio numbers stamped on the pages, ignoring the several handwritten numbers on each document.]

SP 35 and SP 36 State Papers, Domestic, George I (1714–27) and George II (1727–60 [Microform Edition, Harvester Press Hassocks, 1978): references are to document numbers—a misleading reference system given the several numbers on each document, but one that I have followed since in ordinary circumstances the PRO requires readers to use the microform edition rather than the manuscripts. The PRO guide to the individual documents is included in the first reel of each series and has been published by the List and Index Society.]

SP 43 State Papers, Regencies, 1716–55

SP 44/1–76 Entry Books, Unclassified, 1661–1710

SP 44/77–83 Entry Books, Criminal, 1704–50

SP 44/97–134 Entry Books, Domestic, 1688–1750

SP 44/146–9 Entry Books, Under-secretaries' Letter Books, 1702–71

SP 44/267–325 Entry Books, Regencies, 1716–55

SP 44/334–71 Entry Books, Warrants and Passes, 1674–1750

Treasury Papers

T 1 Treasury Board Papers, 1557–1920

T 29 Minute Books, 1667–1870

T 38 Accounts: Departmental, 1558–1881

Exchequer and Audit Department

AO 1 Declared Accounts (In Rolls), 1536–1828

Royal Mint

Mint 15/17 Prosecutions for Coinage Offences, 1698–1706

Court of Chancery

C 82 Warrants for the Great Seal, Series II, Henry VII to Anne

C 83 The same, Geo I to Geo IV.

C 231 Chancery and Lord Chancellor's Office, Crown Office, Docket Books, 1595–1973

Court of King's Bench

KB 2/1 Affidavits (Supplementary), 1689–1737

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Minute Book of the Governors of Bridewell

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