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Oberwittler, Dietrich

Veröffentlichungsversion / Published Version

Zeitschriftenartikel / journal article

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Empfohlene Zitierung / Suggested Citation:

Oberwittler, D. (1990). Crime and authority in eighteenth century England. *Historical Social Research*, 15(2), 3-34.
<https://doi.org/10.12759/hsr.15.1990.2.3-34>

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Crime and Authority in Eighteenth Century England

Law Enforcement on the Local Level

*Dietrich Oberwittler**

Abstract: The history of crime and the criminal justice system has been a field of intensive research in the English social history for some years. This article pursues a twofold aim: Firstly, it is intended to give a broad overview over the social history of eighteenth-century crime and criminal justice in England* discussing different approaches and methodological questions. In the second part, the focus will be on the actual working of the criminal justice system on the level below the criminal courts where it was the task of the justices of the peace to enforce the law. As the analysis of justices' notebooks reveals, informal ways of dealing with delinquency were common on this local level. The importance of these findings for the character of the criminal justice system and authority in general will be assessed in part three.

1. The English History of Crime: A Review on the Field

Roughly fifteen years of increasingly intensive research on the history of crime have resulted in a much more accurate picture of crime and the criminal justice system in English history than has previously been known. Traditional assumptions that the »old« system of combatting crime was basically cruel, irrational, and inefficient and that the development of the criminal justice system in the last two hundred years was »a history of progress« (1) have been replaced by a more balanced view. This, however, was the result of a lively and partly controversial debate among social historians which took place over the last fifteen years or so (2). The fundamental presumption of all historians dealing with this subject was that criminality and the criminal justice system reflects the character of social relations and authority in a society, although not all of them have gone so

* Address all communications to: Dietrich Oberwittler, Beethovenstraße 1, D-5300 Bonn 1.

far as to consider this field as »central to unlocking the meanings of eighteenth-century social history.«(3) What was puzzling English historians particularly was the relative absence of fierce social tensions and political instability which distinguished England from other European countries, especially France (4). The acceptance of the legal system (and hence of authority) by large parts of the population undoubtedly played an important role in achieving this stability (5).

This article, too, tries to give some answers to this fundamental question. But the focus will be exclusively on the lowest level of eighteenth-century law enforcement which was run by the justices of the peace. As will be shown, this level was of crucial importance for the character of the criminal justice system as a whole.

The »History From Below« Approach

It seems useful to commence with a brief discussion of general trends and developments of the history of crime in England. Basically, there have been two different interpretations which tried to explain the role of the criminal justice system within society. The first, which has been called the »history from below« approach, claimed that the acceptance of the legal system was the result of a great deceit: the ideology of equality before the law and the belief in the rule of law which was widespread in eighteenth-century England was according to this view merely the result of a successful attempt by the small ruling class to disguise the real purpose of the criminal justice system, the protection of »a radical division of property.« (6) The originator of this radical approach, which subsequently triggered the »crime wave« of the 70s and 80s, was E.P.Thompson who discovered crime when searching for signs of »sub-political« protest and class consciousness in the late eighteenth and early nineteenth centuries (7). Thompson and his disciples presented their marxist interpretation most prominently in their collection »Albion's Fatal Tree« (8). Explaining the paradox of an increasingly savage penal code which inflicted the death penalty on a wide range of petty property offenses on the one hand and relatively few actual executions on the other hand, Douglas Hay emphasized the importance of discretion and benevolence exercised in this way in the courts for the paternalistic kind of authority in eighteenth-century England (9). Moreover, the criminal law has been given an important role in the process of establishing a capitalistic economy in rural England when traditional customary rights of the labouring poor to use land were more and more replaced by the capitalistic concept of exclusive property (10). The notion of »social crime« denotes types of behaviour, such as wood gathering, poaching or smuggling, which were declared illegal by the state but were nevertheless regarded as legitimate by large parts of the lower classes

(11). This concept of social crime has since been an important theoretical starting point for English historians of crime (12).

It is one important result of the »history from below« approach that the history of crime is to a large extent the history of the labouring classes and the poor who counted for the great majority of the accused. For this reason, the history of crime has to be embedded in the social history of the lower classes in general (13).

Having said that, it is necessary to deal with the criticism directed at this radical view of the eighteenth-century criminal law. On the one hand, the concept of social crime has been questioned for several reasons. This is not only true for the very peculiar case of a gang of poachers in the royal forests whose story has been written down in E.P.Thompson's »Whigs and Hunters« (14); poaching in general was not made a criminal offence because new capitalistic property rights were at stake, but because it was against the old aristocratic interest. Poaching was even committed partly for »capitalist« motives, since there was a rising demand for game in the towns (15). Smuggling as well could be described as an attempt to maximize profits. Yet, there are examples of criminal legislation which clearly had a strong class character. Embezzlement at the workplace, especially in the putting out industries, was common and regarded as legitimate by most of the workers, although it was subject to fines and short imprisonment. John Styles has emphasized, however, that the efforts of manufacturers and legislators to redefine property rights and to outlaw embezzlement were not peculiar to the eighteenth century but can be traced back to earlier centuries (16). J.C.Orth (1987a and 1987b) has recently dealt with another example of eighteenth-century class legislation: the combination acts which made early trade unionist activities a criminal offence.

On the other hand, the basic conclusion of the »history from below« approach that the criminal justice system was a mere tool of oppression in the hands of a small ruling class has been denied (17). J.H.Langbein has shown that Hay's basic hypothesis that the criminal justice system was designed to stabilize the existing order is to some extent tautological and cannot be falsified (18); Peter King (1984b) in a very influential article has stressed the fact that in most cases of property crime it was the middling and lower sort of people who were victims of property crimes; in fact, in many cases members of the lower classes assaulted or stole from their equals. And those victims from the lower classes »made extensive use of the courts for their own purposes.« (19) These findings which were based on quantitative research clearly don't fit to the picture D.Hay and others have given. One fundamental shortcoming of the »history from below« approach seems to me to result from a negligence of quantitative methods (20). This is not to say that social crimes, for example, were of no significance for the character of the criminal justice system at all; but in order to

get a balanced view it is indispensable to look to the statistical evidence which suggests that social crimes accounted only for a small proportion of all crimes prosecuted.

The Quantitative Approach

That leads to another approach to the history of crime which shall be discussed here: the quantitative approach (21). The rationale for quantitative research needs hardly to be explained; many of the key questions about crime deserve quantitative answers, and many of the sources produced by the institutions of law enforcement are perfectly suitable for statistical analysis. Yet, unless applied with the utmost caution and a high degree of sensibility for the limitations of this approach, quantitative methods do not necessarily enhance the historical knowledge. It is one aim of this article to demonstrate some of the problems the historian faces when using statistical data especially from a relatively high level.

There are basically two different objects of statistical analysis: the pattern of criminality and the pattern of prosecution. It is a truism for any given period that the known crime rate is only the rate of recorded crime, and that there is a dark figure which cannot be assessed properly. All historians agree that this dark figure was considerably higher in the eighteenth century, when there existed neither a detective police force nor state prosecution, than it is today. Nevertheless, on condition that »the extent of the offenses actually committed were reflected even to some degree in the indictments brought to court«, an analysis of fluctuations of the crime rate over time may make sense (22). This is particularly true for short-term fluctuations, whereas long-term developments in the crime rate are likely to be caused by institutional changes. One of the favourite questions examined over the last years is whether there was a correlation between economic hardship and the level of property offenses. D.Hay in a very thorough study has concluded that there was such a correlation which became obvious only during wartime (23). It turned out that war and peace had the most important impact on the crime rate with periods of war having a relatively low level of recorded crimes. The ending of wars, on the other hand, were followed by the release of a great number of unemployed ex-soldiers who were virtually forced to get their livelihood by dishonest means. Thus, a simple positive correlation between the cost of living and the level of property crimes clearly did not exist, as S.R.Wilson (1986) has recently emphasized. It is hardly possible for the quantitative historian to take into account all the contributory factors which were relevant for the level of recorded crimes. To mention just one point: it is known that during wartimes, many male offenders were not put on trial but went unpunished if they enlisted in the army, thus distorting the rate of recorded

crimes (24). Thus, Innes and Styles are right to conclude that »there can be no history of criminality separate from the history of law enforcement« (25).

The prosecution of crimes constitutes the major object of quantitative research. Here above all, J.M.Beanie's book »Crime and the Courts in England 1660-1800« which deals with both the pattern of criminality and the pattern of prosecution represents one of the most important achievements of the English history of crime so far (26). Almost every aspect of the prosecution of felonies starting with the detection of crimes and ending with punishments is dealt with comprehensively, combining qualitative and quantitative methods. The core of his study is, however, a quantitative analysis of the working of the assize courts, the highest level of English criminal jurisdiction. Beattie is able to show, for example, that there had already been a shift towards secondary punishments in the beginning of the eighteenth century when the transportation of felons to America was introduced (27). The number of actual executions had decreased even a hundred years earlier according to P.Jenkins (1986). Transportation and subsequently imprisonment did, therefore, not replace capital punishments but whipping and branding the thumb (28).

Although Beattie's book offers very balanced interpretations and undoubtedly enhances the knowledge about criminality and law enforcement in seventeenth and eighteenth centuries considerably, reasons for precaution remain. It is a common feature of most studies of this quantitative approach that they are based upon data sampled on a relatively high level. Beattie has taken his sources mainly from the criminal courts (assizes and quarter sessions) of Surrey and Sussex. Yet, it is clear that only a part of all cases of felonies (those offenses that had to be tried either in quarter sessions or in assizes) actually reached this stage of prosecution, as Beattie himself admits. That means that an exclusive focus on the cases brought to court distorts the reality of early modern law enforcement. The role of the pretrial process needs to be examined more carefully than has been done (29). This is even more the case as only a minority of offenses were felonies; the majority of offenses which were called misdemeanors could be dealt with by justices of the peace outside the courts. Because these petty offenses were much more frequent in the eighteenth century, they and the way they were treated are more characteristic of the criminal justice system as a whole than felonies and the work of the courts. Beattie's objection that only »mainstream« offenses as theft, burglary, robbery etc. were regarded as criminal by contemporaries and that if historians dealt with both petty offenses and felonies together it would »lead to confusion« does not convince (30). It would be easy to show that the criminal law reformers of the eighteenth century who were obsessed by the idea of prevention regarded petty offenses as particularly dangerous (31).

The lower levels of law enforcement and the different kinds of offenses which were typical on these levels have attracted a number of historians in recent years. Approaching the subject by means of local case studies rather than on a high level, they offered a new, alternative view on the criminal justice system of early modern England (32).

The Institutional Approach

There has been a more general shift towards the study of the institutions of law enforcement in recent years. To some extent, this development seems to be inevitable. It is a result both of the history from below and the quantitative approach that a very thorough acquaintance with the working of the institutions of law enforcement is necessary when dealing with the history of crime.

Various aspects of the working of the criminal justice system have been the subject of studies during the last years. The offices which were concerned with law enforcement starting with the village constable have been dealt with (33). A bulk of studies have been devoted to the office of the justice of the peace which was of crucial importance for the working of the criminal justice system, as will be argued in this article (34). The most thorough and stimulating work on the justices has been done by Norma Landau (1984) who put the emphasis especially on the legal framework and the public image which shaped their role in the criminal justice system.

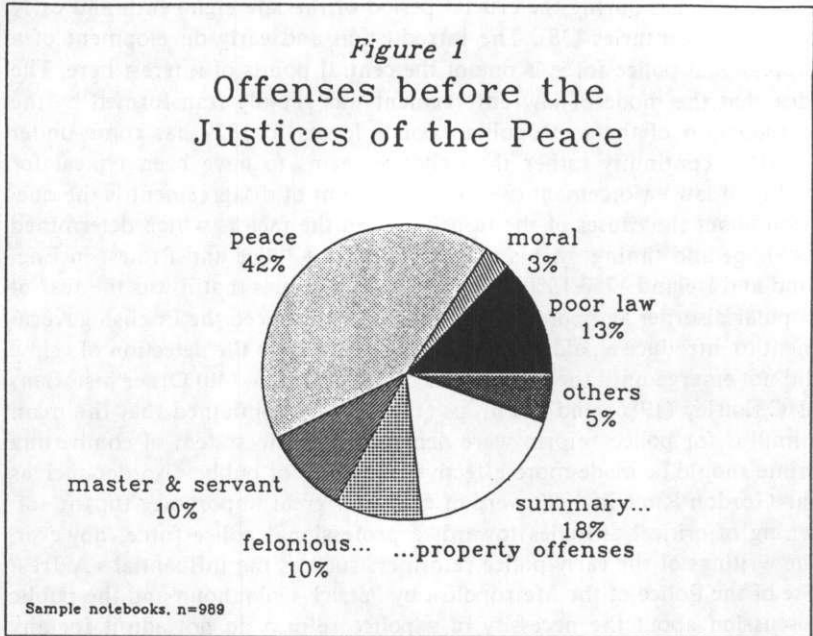
On the level of the criminal courts, the focus in recent years has been on the juries. Traditionally boasted as the bulwark of British liberties, the juries have been denoted by the history from below approach as the tools of aristocratic class interest (35). Little work has been done so far on the early modern prison system; a study of J.Innes (1987) represents the most recent account of the history of the houses of correction (36).

The transition from the traditional to the modern criminal justice system which took place mainly in the early nineteenth century is one of the most complex and controversial areas of research. After a time in which the significance and the thoroughness of this transformation has been stressed and a very unfavourable picture of the reformers' motives has been given claiming that their intention was above all to enforce social control over the lower classes more rigorously (37), there has been a trend towards a more careful and balanced assessment of this process. Was change or rather continuity characteristic of the actual development of the institutions of law enforcement? To answer this question, detailed studies of both the »old« and the »new« system of law enforcement are indispensable. A recently published collection of essays by D.Hay, P.King, D.Philips, J.Styles and others offers insights into the prosecution process

and its changes during the crucial period of the late eighteenth and early nineteenth centuries (38). The introduction and early development of a professional police force is one of the central points of interest here. The idea that the mode of law enforcement was rapidly transformed by the introduction of the metropolitan police forces in 1829 has come under revision; continuity rather than change seems to have been typical for reality of law enforcement (39). Another point of disagreement is the question about the causes of the transition and the factors which determined its shape and timing. In his massive volume »Police and Protest in England and Ireland 1750-1850«, Stanley Palmer argues that it was the fear of popular disorder and political extremism that induced the English government to introduce a paid police force; »emphasis on the detection of crime did not emerge until the second half of the century.« (40) Other historians as C.Emsley (1986) and D.Philips (1980) have maintained that the main stimulus for police reform were demands that the system of combatting crime should be made more effective. Incidents of public disorder such as the Gordon Riots in 1780 were of course of great importance for the softening of critical attitudes towards a professional police force; however, the writings of the early police reformers such as the influential »A Treatise of the Police of the Metropolis« by Patrick Colquhoun and the public discussion about the necessity of a police reform do not admit for any doubt that crime, whether petty or capital, was in fact a chief concern of the reformers (41).

II. The Work of the Justices of the Peace

In order to learn something about everyday crime and law enforcement, it is the work of the justices of the peace (or magistrates, as they were synonymously called) to which one must turn. Law enforcement on the level below the criminal courts, on the local level, rested with the justices who were supported by constables and other parish officers. Justices had to deal with all kinds of offenses, ranging from profane swearing or stealing fruit from orchards to theft, robberies and homicides. In most cases, the justices acting outside the courts could hear and determine the cases themselves using summary jurisdiction and other legal instruments to deal with all kinds of misdemeanours; but if a felony was reported to a justice, it was his responsibility to act as an investigating judge by examining the case and committing or bailing a suspected felon for trial. Thus, most cases of crime which were officially prosecuted came before a justice. This is why the work of the justices gives a fairly realistic picture of criminality in early modern England.



That it is possible at all for historians to analyse law enforcement on this local level is due to the notebooks which were kept privately by some justices. Although the keeping of notebooks was strongly recommended, only few did keep one, and only very few of them have survived. Five of these surviving notebooks containing about one thousand cases have been analysed for this study (42). The degree of information given in these notebooks is differing: at best, all cases brought before the justices together with information about the people involved and the outcome are recorded; unfortunately, not all of them come close to this high degree of completeness. Apart from these notebooks, also house of correction calendars have been used which contain information about those cases which resulted in a committal to this type of prison (43).

Enforcing the criminal law was only one part of the duties of justices of the peace who were at the same time in charge of the county administration. Due to the nearly complete absence of any state-controlled bureaucracy in England, virtually all matters of internal policy, ranging from the maintenance of streets and bridges as well as of law and order to the supervision of trade and industry, were entrusted to the work of these unpaid men who acted voluntarily and who came mainly from the landed gentry. As aristocratic »rulers of the nation«, they were rarely submitted to control, and their discretion was considerable in administrative as well as

in criminal matters. A study of the justices' notebooks can therefore shed light on the actual enforcement of the criminal law on the local level.

Offenses against the peace

What kind of offenses were characteristic of the local level of law enforcement, and in what way did the justices deal with these offenses?

As figure 1 shows, by far the largest group were the offenses against the peace. These offenses included a wide range of incidents such as assaults, batteries and insults which took place mainly among neighbours, colleagues or within the families; a third of these cases reported to the justices were committed by men against women. Interpersonal violence seem to have been very widespread in early modern England, and it was much more tolerated by society as an inevitable concomitant of everyday life, than it is today. It is fair to assume that only a fraction of cases were actually prosecuted.

As the title of the office indicates, keeping the peace was the one of the principal tasks of the justices; but in cases of private disputes, justices sought the settlement of these conflicts, not the punishment of the offenders, as the chairman of the Middlesex justices explained:

»In Complaints of this Sort, where the Injury is but small, the Magistrate ... cannot better exercise his Humanity, and I may add, his Wisdom, than by persuading the Parties to Peace and Reconciliation; an Expedient which I have seldom known to fail.« (44)

In the great majority of breaches of the peace which were reported to the justices, no formal action was taken; William Hunt recorded an agreement between the parties in 75 p.c. of these cases such as in the following case in which he granted a warrant against several persons for

»...their violently assaulting and beating the complainant in a barbarous manner and threatening to shoot her with a pistol. The parties agreed without a hearing.« (45)

Even a fighting with the subsequent death of a participant was not regarded as a matter of criminal prosecution (46). The English law offered an alternative instrument for the treatment of offenses against the peace: the so-called surety of the peace (47). A justice could order a person to enter into a recognizance, a legal document in which the delinquent promised not to offend in the same manner again. If this promise was contravened, a sum of money which was fixed on the recognizance was forfeited to the crown. This process, also called binding over, was designed to prevent further conflicts and to coerce a person to lawful behaviour. Persons who were deemed too poor to pay the sum if forfeited or who could not produce respectable persons speaking on their behalf could instead be sent to the house of correction, »for want of sureties«. In this case,

Table 1: Decisions of Justices in Cases of Breaches of the Peace (in %)

Justice	no result recorded	informal settlement	binding over	summary conviction	for trial	total	(n)
W.Brockman	85,7*	4,8'	4,8	4,8	-	100,1	21
R-Brockman	20,0	73,3	-	6,7	-	100,0	15
H.Norris	62,6*	24,1	11,0	0,9	1,4	100,0	219
RAVyatt	66,1'	6,8*	8,5	8,5	10,2	100,1	59
W.Hunt	13,7	74,8	8,4	u	2,1	100,1	95

Source: Sample Notebooks

- ¹ Of the cases in the column "no result recorded", a large percentage is likely to have been settled informally without or upon hearing before the justices.

binding over could work as a quasi-punishment directed primarily against people from low social strata or without social ties in the community. Only in a minority of cases, however, the justices felt it necessary to demand sureties of the peace (see table 1).

Poor Law and Labour Offenses

Another group of offenders violated the laws which regulated the conduct of the labouring poor, as the unpropertied and wage-dependent part of the population was usually called. It is one of the characteristics of the criminal law until well in the nineteenth century that some parts of it served explicitly as a tool of social control over the lower classes. The acts regulating the relations between employers and workers (master and servant law) and the acts connected with the poor law were closely related, because they were part of one social policy, were directed against the same part of the population and stemmed from common ideological roots.

Poverty was regarded by contemporaries as a main cause of criminality (48). The attitude towards poverty, however, was determined by the belief in individual responsibility. Idleness and moral weakness were thought to be the roots of poverty, unless obvious reasons such as illness or age were found, and hence all measures against poverty had to combat these evils.

»Idleness is the root of all evil, and properly punishable by corporal correction and constrained labour.« (49)

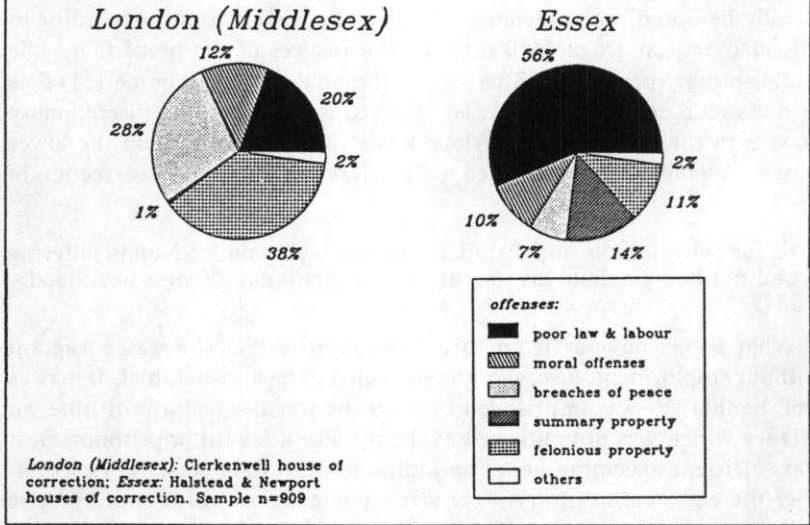
This rigid ideology had been central for the establishment of houses of correction in the late sixteenth and early seventeenth centuries (50). Together with the poor relief system which obliged the parishes to care for their »disabled« poor, the houses of correction (together with other coercive instruments as the workhouse) constituted a social policy which was designed to combine aspects of relief and punishment. It is worth noticing that the basic idea of correction through imprisonment which inspired the prison reformers in the late eighteenth and early nineteenth centuries can already be found in the ideology of this early prison system. According to this ideology, an act of 1610 directed the justices of the peace that »idle and disorderly persons shall be sent to the house of corrections (51) Due to the vague definition of this act, the justices held strong discretionary powers in the treatment of various kinds of delinquents from the lower classes. A woman was committed to the Clerkenwell house of correction in 1752

»...for being an idle and disorderly person laying out of Nights pilfering and not being able to give an account of getting an honest livelihood.« (52)

What seems obvious from this description is that she was a vagrant without employment; also, she was suspected to be a casual thief. It may as well be that she was imprisoned because she was deemed a prostitute, an offence which was not outlawed explicitly. For a lawful imprisonment, it was sufficient to commit her as an »idle and disorderly person«. However, over the eighteenth century there was a tendency towards a more precise definition of the offenses which could be punished by imprisonment in a house of correction (53). In the Essex houses of correction, leaving the family chargeable to the parish, having bastard children who were chargeable to the parish, begging and being a vagrant were the most frequent charges (54). A total percentage of 40 p.c. of the prisoners were committed for offending against the vagrant act in some way (see figure 2).

Master and servant law also included provisions for punishing labourers for certain offenses. The justices of the peace had been responsible for the supervision of labour relations since the late middle ages; an Elizabethan act of 1563 was still the basis for the justices' acting in the eighteenth century (55). Although this was not a typical case in the eighteenth century, a man was committed to the house of correction for a short period on charge of »living without employments (56). Usually, masters and employers came to justices in order to complain about their workers who were deemed »idle« or had left their job, thus breaching their contract. In such cases, justices were allowed to send the offenders to the house of correction. 13 p.c. of the prisoners in two houses of correction in Essex were committed for these offenses. Embezzlement at the workplace which was frequent especially in the textile industry was punishable by the justices

Figure 2
Offenses in Houses of Correction
Rural and Urban Areas



with imprisonment in the house of correction or a fine. In two Essex houses of corrections, only 3 p.c. of the prisoners, predominantly women, had been charged with embezzlement; in Gloucester, where the textile industry was more important, more than 10 p.c. had been committed for this offence (57). A larger proportion of cases were probably punished with fines.

Only in a minority of cases, imprisonment in the house of correction was actually applied. As the Gentleman's Magazine observed in 1769,

»...magistrates and parish officers are cautious of inflicting this punishment, but rather chuse to let it hang in terrorem over the heads of the offenders...« (58)

Acting as an exemplary punishment, it achieved its purpose: the disciplining of the labouring poor.

On the other hand, the justices were also available for complaints brought by labourers against their masters; in fact, this kind of complaints outnumbered in the justices' notebooks those brought by employers. William Hunt decided mostly in favour of labourers who had been dismissed contrary to the contract, or whose masters refused to pay their wages.

Property Offenses

The third main group of offenses which constituted about 30 p.c. of the cases brought before the justices were property crimes. Offenses of this branch of delinquency constituted the great majority of cases tried in the criminal courts. But there was an important distinction between two different kinds of property crimes: theft (larceny), burglary, robbery and fraud were regarded as felonies and had to be tried on indictment in criminal courts; this category of property crimes will be called »felonious property crimes« in this article. The theft of wild animals (poaching), wood theft and theft of vegetable products not yet harvested, on the other hand, were not regarded as felonies but as misdemeanors, subject to the summary jurisdiction of the justices of the peace acting alone or in petty sessions. This category of property crimes will be called »summary property crimes« in this article. There is another point of distinction here: not many people, may be not even those who committed these crimes, would have disputed that larceny or burglary was illegal, whereas the theft of wild animals or vegetable items was not regarded criminal by considerable parts of the population. In fact, the definition and prosecution of these offenses was a field of conflict in rural society. But the lines of conflict ran differently depending on whose property interest was at stake.

The game laws have long been denoted as the principal example of class legislation and class justice protecting the privileges of a selfish ruling class (59). The cliché of justices of the peace as partial and ruthless executors of the arbitrary game laws was widespread already in the eighteenth century (60). It was the middling sort (farmers and yeomen), who lead this protest (61). Although the game laws were clearly unjust, the importance of these laws and the role of the justices in rigorously executing them have been exaggerated, as Munsche (1981) has shown. Of course, there were examples of arbitrary jurisdiction by justices; the evidence from the notebooks, however, implies that justices treated cases of poaching in the same rather lenient way as they did in other cases. Above all, offenses against the game laws were not frequent in the everyday work of the justices: only 2 p.c. of all cases in the notebooks and only 0.9 p.c. in the houses of correction were related to the game laws. Of these cases, some ended with an acquittal, some resulted in fines, or if the offender could not pay, with a committal to the house of correction. The infamous »Black Act« declaring certain forms of poaching a capital offense was very seldom used.

Much more frequent was wood and vegetable theft. Wood theft was the principal mass delict in traditional society, committed by people from the labouring poor for obvious reasons: economic want. Together with other customs such as gleaning, wood gathering was in the traditional rural society a customary right of the poor which became more and more restric-

ted and made criminal during the early modern period when the »moral economy« was attacked (62). Contrary to the game laws, there was no public protest against this criminalization, since this time, both gentry and farmer stood together in defending their property interests against the unpropertied classes. If there was protest by the poor, it took the form of collective and riotous actions which were designed to preserve traditional customary rights (63). Wood theft and theft of vegetable items was subject to a fine of 5 shilling or, in default, of a short imprisonment in the house of correction. In the sample from Essex houses of correction, 12 p.c. of the delinquents were committed for this offence (see figure 2); 20 p.c. of the cases brought before William Hunt, who was acting in a rural area, belonged to this category of property delinquency. Finally, about a fifth of all cases dealt with by the fives justices were felonious property crimes. Most of these cases were thefts of items of very small value as food, textiles and household items valued under 12 pence. Thefts of valuables, robberies, burglaries and special types of theft such as horse theft were less frequent. As mentioned above, in the eighteenth century there were no police to carry out investigations and no public prosecutor to bring a suspected criminal to trial; instead, the burden of criminal prosecution was entirely left to the victim. It is fair to assume that under these circumstances the proportion of unsolved and unprosecuted cases was considerably higher than it is today.

If the victim expressed a suspicion, it was the justices' responsibility to order the apprehension of the suspected felon, to hear the victim, witnesses and accused and to commit or bail him or her for trial. Under no circumstances was it allowed for the justices to acquit a suspected felon, because all cases of felony had to be determined in court. Nevertheless, the pretrial process was of great importance for the working of the whole criminal justice system. The absence of an efficient system of criminal prosecution meant that the reality of eighteenth century law enforcement differed considerably from its design. Even if the delinquent was known, a large proportion of cases never reached the final step of prosecution, the trial, for a number of reasons which will be discussed in the following part.

The Informal Treatment of Delinquency

At all times, it is basically the victim's decision to prosecute or not to prosecute a property crime; but this discretionary power was considerably greater in the eighteenth century. Very often, the victim chose not to prosecute the offence even if the offender was known. Attending a trial in order to give evidence against the accused was an expensive and time-consuming affair which deterred many people, especially from the lower classes. Henry Fielding, a justice of the peace and early police reformer, complained that due to the costs of prosecution a poor victim

»... must be a Miracle of public Spirit if he doth not rather choose to conceal the Felony, and sit down satisfied with his present loss...« (64)

Many victims preferred the compounding of a property crime to a criminal prosecution, if the stolen goods could be recovered in this way. In the capital, advertisements in the newspapers were a frequently used medium for communication between the victim and the thief. Another reason not to deliver the criminal to the courts was public disapproval of a criminal law which inflicted capital punishment or transportation for the mere theft of the proverbial silk handkerchief. In many cases, sympathy with the culprit's fate or the fear of hostile reactions from the neighbourhood prevailed over the wish for punishment. This attitude which contravened the concept of exemplary punishments was widespread in the eighteenth century and prompted the criminal reformers to call for proportional punishments (65). In some extreme cases, victims whose initiative resulted in a criminal's execution became the target of riotous actions or were even lynched by the mob (66).

What happened once the victim chose to report a felony to a justice of the peace? As stated above, the law directed the justices to commit or bail suspected felons for trial; also, it was his task to bind the victim and the witnesses over in order to make sure that they appeared in court to give evidence. In reality, only in about a quarter of all cases of felonious property crimes it was decided to put the suspected delinquent on trial. The infrequency of these cases leads to the impression that a zealous execution of the criminal law was not the justices' main concern; the practise of law enforcement was instead characterized by a very different pattern in which informal ways of dealing with delinquency were dominant.

The justices used their discretion to deal with cases of felonious offenses in various ways. If they regarded the suspected criminal as innocent, they sometimes acquitted him or she contrary to the law. In 1771, a chimney sweeper and his servant were accused of a burglary by a yeoman. After some examinations Richard Wyatt discharged the two men, insufficient evidence appearing against (them).« (67) In the same way, Henry Morris discharged a man accused of having stolen two pots of the value of 2-3 pence because the case seemed too trifling to him to justify a criminal prosecution (68). Even in a case of suspected infanticide, R. Wyatt discharged the woman (69). About every sixth case of felonious property crimes in the sample was dismissed by the justices.

In the decision-making process which took place when a case was brought before a justice of the peace, the complainant continued to play a decisive role. The notebooks show that the justices suffered and even encouraged the opponents to come to informal settlements, as they were used and expected to do in cases of breaches of the peace. Such informal settlements could be found at several steps of the prosecution process. They

could be reached after the justice had granted a warrant at the complaint of the victim, but before the examination actually took place. In the notebook of Henry Norris for example, no hearing and no outcome was recorded in 46 p.c. of the cases of felonious property crimes. We can assume that a considerable proportion of these cases were settled by direct negotiation between complainant and accused. In these cases, the warrant issued by the justices could serve as a means to threaten the delinquent with a formal criminal prosecution.

Informal settlements during the hearing of the parties before the justices were also common. In the work of William Hunt, they made up half of the cases. Even if the justices had already send the parties to trial, opportunities for a settlement remained. If the complainant decided to settle the case outside court, justices did usually not insist on the forfeiture of the recognizance which the complainant had entered into (70).

Which factors were important for the decision whether a case was to be settled informally or be prosecuted according to the law? An analysis of the notebooks may help to answer this question. A typical case of a property crime which ended with an informal agreement can be found in Hunt's notebook:

»Granted a warrant on the complaint of Mary Amor of Market Lavington against Thomas Hunt and Elizabeth Coleman of same for taking and carrying away certain goods, the property of the complainant. Upon their appearance, they promised to restore the goods. Upon which they agreed it.« (71)

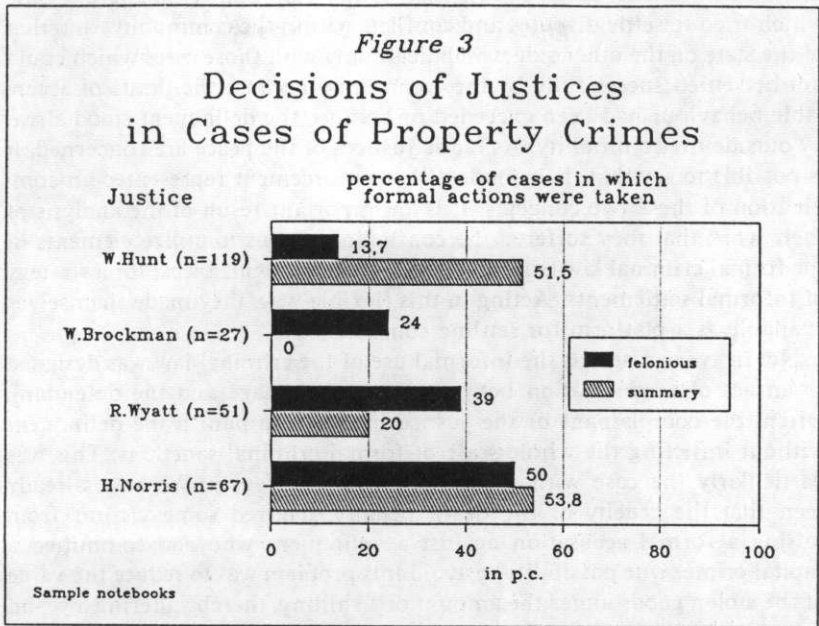
That the opponents were living in the same parish and knew each other had without any doubt an important impact on the outcome. The propensity to bring a person to trial who lived in the neighbourhood was of course very low; at the same time, informal settlements worked better in those traditional communities where the social control the delinquent could be submitted to was tough.

If the social status of the complainant was considerably higher than that of the defendant, informal settlements took rather the character of a pardon than of an agreement, as in the following example of a wood theft which three boys had committed in the forest of a gentry landowner:

»... upon their humbling themselves to Mr Wadman, and their promising not to offend in like nature any more, they were forgiven by the complainants (72)

The defendant's submission to the authority of the complainant and the complainant's use of mercy and benevolence reinforced the unequal nature of social relations between persons from different social classes. The same is true for the manner in which justices of the peace administered the summary jurisdiction. As mentioned above, when they dealt with offenses against the poor law, the labour laws and other offenses which were

committed mainly by the labouring poor, they inflicted penalties only in a part of all cases, thereby giving an example of their benevolence and at the same time enhancing their authority.



It is risky to draw conclusions from the sketchy evidence which the notebooks offer; however, if one compares the propensity of the justices to inflict formal sanctions in cases of felonious property crime, an interesting pattern emerges which underlines the importance of community. The lowest proportion of cases in which formal sanctions were taken can be found in William Hunt's Notebook (see figure 3) (73). The area in Wiltshire in which he was living was purely agrarian and had kept its traditional socio-economic structure until mid-eighteenth century; the same is true for the part of Kent where William Brockman was justice of the peace at the beginning of the eighteenth century. Richard Wyatt, who inflicted formal sanctions in about 40 p.c. of the cases of felonious property crimes, lived in an area of Surrey which was situated near London and saw lively traffic on turnpikes and on the Thames. Although most of the persons he had to deal with came from two adjacent parishes, among those he sent to trial were predominantly non-residents. Finally, Henry Norris, who lived only few kilometers off the boundaries of the metropolis, he showed the highest propensity to apply formal sanctions in cases of felonious property crimes.

These findings support the hypothesis that traditional communities with tight social relations were fitted best for an informal mode of law enforcement. Some historians distinguish two different concepts of law enforcement existing side by side (74): that of the community on the one side which tried to settle disputes and conflicts within the community; and that of the state on the other side which dealt only with those cases which could not be settled successfully by the community because the limits of acceptable behaviour had been exceeded or because the delinquent stood already outside the community. As far as justices of the peace are concerned, it is possible to say that their mode of law enforcement represented an combination of these two concepts. It is an important result of the analysis of their work that they suffered the conflicting parties to utilize elements of the formal criminal law (such as warrants and recognizances) for a strategy of informal settlements. Acting in this flexible way, they made themselves available as a platform for settling conflicts (75).

Not in every case was the informal use of the criminal law was designed as an act of reconciliation between the complainant and the defendant. Often, the complainant or the justice intended to punish the delinquent without inflicting the whole scale of formal criminal sanctions. This was particularly the case with felonious property offenses. We have already seen that the cruelty of the death penalty deterred some victims from raising a formal accusation against a delinquent who had committed a capital crime. One possibility to avoid this problem was to reduce the value of the stolen goods under the amount of 1 shilling, thereby altering a grand larceny which was a capital crime into a petty larceny which was not a capital crime. This behaviour was common in the eighteenth century. In fact, one of the principal arguments of the reformers of the criminal law was that »capital punishment in the minor offences operate powerfully in preventing *conviction*.« (76) The reformers criticized the traditional criminal trial at common law in general as inappropriate, inefficient and too uncertain: only half of the accused were found guilty (77). In cases of small theft, a summary conviction with a short period of imprisonment as it was usual in cases of summary property offenses seemed to be more appropriate. Although the summary jurisdiction for petty theft was introduced only in 1850, justices of the peace did commit delinquents to the house of correction without proper trial throughout the eighteenth century. The extent of this informal punishment is difficult to assess. Beattie has maintained that this practise fell off sharply in the second quarter of the eighteenth century and did not play an important role afterwards (78); however, the evidence from the houses of correction calendars gives another impression. Of 34 delinquents who were committed for felonious property crimes to two houses of correction in Essex between 1771 and 1775, only 17 were put on trial. These findings correspond with those of P.King

who analysed the Essex houses of correction calendars of the years 1753-1759 (79). The reason for such imprisonment without trial was openly stated in the prison calendars as in the case of Jane Sutton who was committed

»... to be corrected and held to hard labour for the space of one Calendar Month being duly convicted of being guilty of Stealing of two Shirts of small Value.« (80)

The justices also committed casual thieves and pilferers to the house of correction as »idle and disorderly persons«. 17 p.c. of the prisoners in the Middlesex house of correction in Clerkenwell between 1750 and 1752 were committed under this charge. Some of them were surely committed for theft, as one example reveals: A man called Robert Nest was accused of having stolen some clothes. The justice committed the suspected thief to the house of correction but acquitted him on the same day, apparently because the evidence did not warrant a formal accusation. On the next day, however, Robert Nest was convicted to hard labour in the house of correction because he was an »idle and disorderly person«. (81)

This was the other face of the informal treatment of delinquency: whereas offenders who were resident and had social ties within the community could hope to be dealt with in a rather lenient way, social outsiders, strangers and vagrants were likely to be subjected to arbitrary punishments.

The Implications of Informal Settlements

These findings about the working of the eighteenth century law enforcement on the local level cannot be without consequences for our understanding of the whole criminal justice system.

Firstly, the dangers of quantitative analysis based on the records of the courts are stressed. It is not possible to quantify the percentage of cases which were dealt with informally; however, it is necessary to use data from this high level very cautiously. This is not only a problem of numbers; also the character of the criminal justice system needs to be considered. If a considerable proportion of property offenders were not put on trial but treated informally during the pretrial process, the historian's focus on the work of the courts distorts the real character of a criminal justice system in which flexible forms of dealing with offenders were much more frequent than commonly assumed. Selectivity was not only crucial at the level of the criminal courts but also during the pretrial process where the justices together with the victims decided whether a delinquent should be put on trial or not. The experiences people had with the criminal justice system were above all determined by the work of justices of the peace. This is true all the more as only a minority of offenses in the eighteenth century were felonies. The typical eighteenth-century delinquent did not commit a ca-

pital crime but a misdemeanour as a wood theft or an assault, and he did not encounter the criminal justice system in the court-room but in the house of the justice of the peace.

III. The Paternalist Concept of Authority

The results underline the role of the justices of the peace in eighteenth-century law enforcement. The way they exercised their judicial powers is not only telling for the character of law enforcement but also for their concept of social relations and authority in general. The label which describes this concept best is paternalism (82). Paternalism means an inegalitarian, hierarchial social order in which the lesser ranks are supposed to be dependent on the guidance of their superiors who are the »natural rulers«. At least in theory, paternalist authority was not based on force and repression but on harmony and consensus. Confrontation and Conflict between the rulers and the ruled had to be avoided:

»...it is the Duty as well as the Interest of every Civil Magistrate, to endeavour to render himself beloved and popular...; and if there are many who are more hated, and consequently less obeyed by the people, it must be owing to their own ill Conduct.« (83)

In what respect did this paternalist concept influence the justices' role in eighteenth century law enforcement? Basically, leniency rather than rigorous enforcement of the criminal law was characteristic of their judicial work. As we have seen, a considerable percentage of all offenses went unpunished. Whether a delinquent was to be treated leniently or whether he was prosecuted according to the law depended largely on the justices' mercy. The importance of benevolence and mercy in dispensing justice underlined the enormous discretionary power held by justices of the peace. As D.Hay has pointed out, people may even accept despotic power »when it comes from the 'good king'« (84). The lenient way the justices of the peace exercised their judicial work reinforced and enhanced their authority over the people.

This would help to explain the relative stability of English Society in the eighteenth century. But there is another aspect of the justices' mode of law enforcement which is crucial in this context. By dispensing with official rules and applying the law in a flexible way they made the criminal justice system available for the interests and intentions of the people. As we have seen, the victims of property crimes were given an important role in the decision-making process which was not intended by the official criminal law. In cases of breaches of the peace, the justices sacrificed their time to mediate the private disputes of their inferiors. By doing this they underlined the image of the paternal ruler who cares for the peace and con-

sensus of the community. About two-thirds of all cases Henry Norris had to deal with were such quarrels many of which took place among the labouring poor.

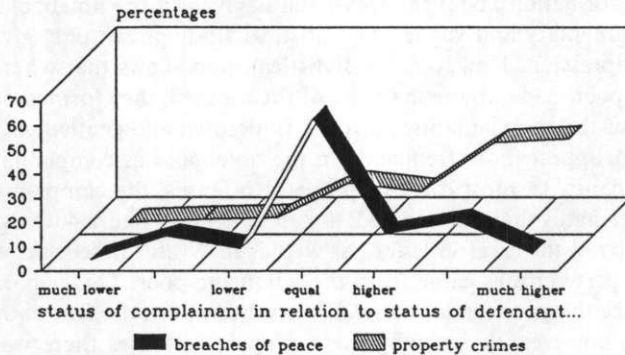
To what extent was the criminal justice system as represented by the justices of the peace available for the lower ranks of society? First of all, because the information about the social status given in the notebooks is somewhat fragmentary and vague, the statistical findings can only give a very rough impression. However, the statistical map shows that whereas the labouring poor made up the majority of the accused, they formed only about a third of the complainants. Farmers, tradesmen and gentlemen, on the other hand, appear more frequently in the notebooks as complainants than as defendants. In most cases of property offenses, the complainant was of a higher status than the accused, as can be seen in figure 4. Only in a small minority of the cases in Hunt's as well as in Wyatt's notebooks, the victims of property crimes came from the labouring poor. This is hardly surprising, since the poor tended to steal from the better-offs. One should bear in mind, however, that among these property offenses there was a considerable proportion of offenses such as wood theft which were a matter of conflict within the rural society. Here, as with the poor law and the acts regulating the labour relations, the justices enforced a criminal law which was designed to protect the interests of the upper classes.

But the labouring poor did not meet the law solely as defendants. People from the lower classes went to the justices to pursue their interests against opponents from the same and from higher ranks. In most cases of private disputes, assaults and insults, the social status of the opponents was roughly equal (see figure 4). Most of them came from the labouring poor. The justices' availability for the mediating of conflicts among the lower classes determined their public image to a large extent (85).

Very often, people from the labouring poor complained about unjust or unlawful treatment by their employers or by the parish officers who ran the poor relief system. As mentioned above, complaints brought by labourers against their employers were more frequent than vice versa. In this regard the justices actually provided »a poor man's system of justice« (86). The justices were influenced in their judicial behaviour by a popular ideal which stressed their role as fatherly protectors of the poor. In eighteenth-century writings, justices were described as »the poor Man's hope, the poor Man's Friend« (87), and they were admonished to »administer impartial justice« (88) when employers complained about their labourers and vice versa. In fact, it was a part of the justices' task to control the working of the poor law system and to supervise labour relations; yet, since the law itself was heavily biased against the labouring poor, actual justice and equality before the law was a mere ideology.

Finally, an analysis of the justices' work exemplifies the importance of the middling sort as a group of society which took advantage of the cri-

**Figure 4: Social Status of Opponents
before Justices of the Peace
Breaches of the Peace & Property Crimes**



Because of a high percentage of missing values (about 30%) these lines can only represent rough tendencies, not exact ratios.

Sample notebooks R.Wvall & W.Hunt, n=244

minimal justice system, especially in the prosecution of property offenses. Due to the focus of the history from below approach on the labouring poor, the middling sort although particularly strong in English society has not received due attention by historians of crime for many years (89).

Taking all findings together, it is possible to come to a balanced but somewhat contradictory conclusion about the character of the eighteenth century criminal justice system on the crucial local level. The criminal law was not just an instrument to punish offenders and to protect people's safety; it was also a platform for conflict and compromise between individuals and groups in society. Although the criminal law was controlled by a small ruling class, it did not serve their interests exclusively; it was available to people from the middling sort and, to limited but nevertheless remarkable extent, from the labouring poor. The justices' practice of law enforcement reflected their paternalist concept of authority and accounts for the relative acceptance of their role by the public. If one looks to the institutional changes of the late eighteenth and early nineteenth century, the persistence of this traditional concept of law enforcement and the almost unequivocal rejection of paid stipendiary magistrates and a professional police force by the English public is striking. Public criticism of the aristocratic rule by justices of the peace remained rare throughout the

eighteenth century when other aspects of the criminal justice system were heavily criticized. Although many factors, most importantly the fear of a French-style police, contributed to this attitude, one is tempted to regard the role of the justices of the peace in the criminal justice system as a story of success rather than failure.

Notes

I would like to thank Bob Shoemaker for his comments on an early draft of this article and him and John Styles for their readiness to discuss the subject of this article and to give me crucial support.

- (1) *L.Radzinowicz* (1948, vol.1, p.ix).
- (2) The most comprehensive review article is *J.Innes and J.Styles* (1986). Cf. *D.Blasius* (1988), *J.L. McMullan* (1987) and *J.A.S/wrpe* (1983b).
- (3) *D.Hay. P.Linebaugh e.a.* (ed.) (1975), Introduction, p. 13. For a short critical assessment see *J.Styles* (1988).
- (4) See e.g. *I.R.Christie* (1984).
- (5) See *J.A.Sharpe* (1985); *J.Brewer and J.Styles* (ed.) (1980), Introduction. Parts of this article have also been published as: Popular Attitudes Towards the Law in the Eighteenth Century, in: *M.Fitzgerald* (ed.), *Crime and Society: Readings in History and Theory*, London 1981, pp.29-36.
- (6) *D.Hay* (1975b, p.35).
- (7) *E.P.Thompson* (1963, p.59, p.64). Cf. about E.P.Thompson: *T.L.Chapman* (1980); *E.K.Trimberger* (1984). It has to be stressed that he was able to build on work done much earlier by other historians. See *J.L.Hammond and B.Hammond* (1911); *K.Marx* himself dealt with crime and vagrancy in pre- and early-industrial England as a result of economic grievances.
- (8) *D.Hay, P.Linebaugh e.a.* (1975).
- (9) *Hay* (1975b).
- (10) *E.P.Thompson* (1975, p.240ff).
- (11) Seminal for the concept of social criminality: *E.J.Hobsbawm* (1972); cf. *J. Rule* (1979).
- (12) See e.g.: *E.Billinge* (1985); *R.Williams* (1985); *B.Bushaway* (1983); *J.Carter* (1980); *R.A.E.Wells* (1984).
- (13) See especially: *F.Snyder and D.Hay* (ed.) (1987). Other major new works on this field: *K.D.M.Snell* (1985); for the 16th and 17th centuries, see: *A.L.Beier* (1985); *P.Slack* (1988).

- (14) *Thompson* (1975). Cf. the criticism in: *E.Cruickshanks/H.Erskine-Hill* (1985); *J.Broad* (1988).
- (15) Cf. *C.Emsley* (1987), p.3. The best work on poaching and the game laws has been done by *P.B.Munsche* (1981).
- (16) *J.Styles* (1983a, pp. 173-210).
- (17) It must be stressed that *Thompson* has come to a revision of his once clear-cut picture of the eighteenth-century legal system. Already in 1975, he drew a more »complex and contradictory« conclusion in which he regarded the rule of law as »a cultural achievement of universal significance,... an unqualified human good.« (1975, p.265f.).
- (18) *J.H.Langbein* (1983, p.97, pp.114f).
- (19) *P.King* (1984b, p.33).
- (20) This may originally stem from E.P.Thompson's dislike for any kind of counting which he has shown e.g. in the standard-of-living debate. See *Thompson* (1963, chpt.10).
- (21) See *Emsley* (1987), chpt.2); *Innes/Styles* (1986, pp. 388-395); *E.Monk-konnen* (1985).
- (22) *J.M.Beattie* (1986, p.199).
- (23) *D.Hay* (1982). Cf. the critical comments by *Innes/Styles* (1986, pp.391-394).
- (24) An example can be found in the Essex houses of correction calendars (Essex Record Office Q/SBb/223, 11th November 1760).
- (25) *Innes/Styles* (1986, pp.401 f).
- (26) *Beanie* (1986). There is a lengthy review of this book in *Innes/Styles* (1986, pp.413-418).
- (27) *Beanie* (1986, p.620); for the history of transportation see: *R.Ekirch* (1988).
- (28) *Beanie* (1986, p.619).
- (29) See *P.King*, Review of N.Landau, The Justices of the Peace, in: *Criminal Justice History* 7/1986, pp.184-187.
- (30) *Beanie* (1986, p.6/7).
- (31) Take, for example, the following sentence by Sir *George Onesiphorus Paul* (Considerations on the Defects of Prisons and Their Present System of Regulation, London 1784, p.50), prison reformer in Gloucestershire: »Few man have been hanged for a felony, that might not have been saved to the community by correction of a former misdemeanours
- (32) Important contributions are: *J.Sharpe* (1980); *K.Wrightson* (1980); *A.Macfarlane* (1981); *R.B.Shoemaker* (1985).
- (33) *J.R.Kent* (1986).
- (34) Still fundamental is *B.Webb* and *S.Webb* (1906). Cf. *E.Moir* (1969). *P.Wettmann* (1987) has dealt with the work of the justices of the

peace on the bases of R.Wyatt's and W.Hunt's notebooks which are two of the main sources of this article, too. Unfortunately, his statistical analysis is rather fragmentary.

- (35) *T.A.Green* (1985); *J.S.Cockburn* and *T.A.Green* (ed.) (1988).
- (36) See also *M.DeLacy* (1986).
- (37) For the traditional view see *Radzinowicz* (1948-1986); one of the studies putting forward the marxist argument most powerfully is *M.Ignatieff* (1979); approaching the reformers from the intellectual angle: *R.McGowen* (1986); for a recent case-study see *M.J.D.Roberts* (1988).
- (38) *D.Hay* and *F.Snyder* (ed.) (1989).
- (39) For a historian who tends to stress the changing character, see: *D.Philips* (1980); taking revisionist positions are: *C.Emsley* (1986) (this article is identical with chapter 4 of *Emsley* (1987)) and *J.Styles* (1987). For eighteenth-century attempts of police-reforms see *J.Styles* (1983b).
- (40) *S.H.Palmer* (1988, pp.8-9). Also stressing the role of disorder: *R.K.Vogler* (1987); *D.S.Eastwood* (1985).
- (41) Although Palmer makes it clear in the preface (pp.8-9) that crime is nothing a historian of the police has to deal with seriously and dispenses with consulting recent studies on crime and criminal justice thoroughly, he cannot but employ the findings and arguments of the history of crime himself. The Ratcliffe Highway Murders of 1811, for example, are presented as a trigger of police reforms in London (p.164).
- (42) Two of them have been published: *E.Crittall* (ed.), *The Justicing Notebook of William Hunt, 1744-1749* (Wiltshire Record Society 37), Devizes 1982; *E.Silverthone* (ed.), *The Deposition Book of Richard Wyatt JP, 1161-1116* (Surrey Record Society 30), Guildford 1978; unpublished: *Notebook of Henry Norris, 1730-1741* (Greater London Record Office, London, G.L.R.O. M79/x/1); *Notebook of William Brockman, 1689-1721* (British Library, Add.MSS 42598) and *Notebook of Ralph Brockman, 1770-1781* (British Library, Add.MSS 42599).
- (43) *Calendar of Clerkenwell House of Correction, Middlesex, 1750-1752* (G.L.R.O. MJ/CC/R/23-39); *Calendars of Halstead and Newport Houses of Correction, Essex, 1761-65 & 1771-1775* (Essex Record Office, Chelmsford, E.R.O. Q/SBb/218-282). The sample contains a total of about 900 cases.
- (44) *J.Hawkins*, *A Charge of the Jury of Middlesex, London 1780*, p.27.
- (45) *W.Hunt*, *Case No.103*.
- (46) *R.Wyatt*, *Case No.60*.
- (47) *R.Burn*, *The Justice of the Peace and Parish Officer, 18th ed. London 1797*, vol.IV p.100 ff.

- (48) Most writers who contemplated about criminality began their pamphlets with the problem of poverty. See most prominently *H.Fielding*, *An Enquiry into the Causes of the Late Increase of Robbers with some Proposals for Remediying this Growing Evil*, London 2nd ed. 1751; *P.Colquhoun*, *Treatise*.
- (49) *M.Dawes*, *An Essay on Crimes and Punishments, with View of, and Commentary on Beccaria, Rousseau, Voltaire, Montesquieu, Fielding and Blackstone*, London 1782, p.81.
- (50) See *J.Innes* (1987); *P.Spierenburg* (1984).
- (51) *7Jac.l.c.4*.
- (52) G.L.R.O MJ/CC/R/39, *Clerkenwell House of Correction Calendar*, October 1752.
- (53) These definitions were laid down in the vagrant act of 1744, *17.G.11.c.5*.
- (54) Contrary to the other offenses, having bastard children was not punishable in most cases; many fathers of bastard children were only committed to houses of correction because they were unable or unwilling to pay for their children's maintenance.
- (55) *5 El.l.c.4*; cf. *J.Rule* (1981); *R.Malcolmson* (1981).
- (56) E.R.O. Q/SBb/280, *Newport House of Correction Calendar*, April 1775.
- (57) *J.R.S.Whiting* (1976, pp.228f).
- (58) *Gentleman's Magazine* 39(1769), p.372.
- (59) See e.g. *Hammond/Hammond* (1911, p.186f.); *Hay* (1975a).
- (60) See e.g. *Gentlemaivs Magazine* 21(1751), p.l 12, 40(1770), p.222.; *Daily Universal Register*, 17 Nov 1785, p.2; *W.Taplin*, *Observations on the Present State of the Game in England*, London 1772; *S.Purlevent*, *A Dialogue between a Lawyer and a Country Gentleman upon the Subject of the Game Laws*, London 4th ed. 1775; cf. *Munsche* (1981).
- (61) Even the leading lawyer of the eighteenth century, William Blackstone, opposed the game laws. *W.Blackstone*, *Commentaries on the Laws of England*, 1765, vol.IV, p.415f.
- (62) *E.P.Thompson* (1971). See a contemporary's account of this process in *anonym*, *Observations on a Late Publication intituled Treatise on the Police of the Metropolis*, London 1800, p.29f.
- (63) See for an example: *R.Bushaway* (1981).
- (64) *Fielding*, *Enquiry*, p. 110.
- (65) See the Report from the Select Committee on Criminal Laws 1819 (*British Parliamentary Papers*, *Criminal Law*, Dublin 1971, vol.1, p.9f.); *Colquhoun*, *Treatise*, p.14f.
- (66) *R.Paley* (1983, p.77f).
- (67) *Wyatt*, Case No. 122-125.
- (68) *Norris*, 15 September 1732.

- (69) *RWyatt*, Case No.262-264.
- (70) See for the informal use of recognizances *Shoemaker* (1985), p.128.
- (71) *Hunt*, Case No.283.
- (72) *Hunt*, Case No.299.
- (73) In cases of summary crimes, on the other hand, he applied formal sanctions much more often. This could be explained by the fact that these sanctions - mainly a fine of 2-5 shilling - were relatively harmless and he himself could control the outcome of the cases.
- (74) See *B.Lenman* and *G.Parker* (1980); *Wrightson* (1980); cf. for the USA: *L.Rosen* (1987).
- (15) See *J.A.Sharpe* (1983a).
- (76) Report from the Select Committee on Criminal Laws, p. 10 (P.Colquhoun).
- (77) *Beanie* (1986, p.428).
- (78) *Beanie* (1986, p. 18).
- (79) *P.King* (1984a, pp.261 ff).
- (80) E.R.O. Q/SBb/270, *house of correction calendar*.
- (81) G.R.L.O. MJ/CC/R/39, *Clerkenwell house of correction calendar*, October 1752.
- (82) See *N.Landau* (1984, p.2f.); *L.Stone* and *J.C.F.Stone* (1984, p.412f.); *E.P.Thompson* (1976, pp.137ff).
- (83) *Gentleman's Magazine* 8(1737), p.513.
- (84) *D.Hay* (1975b, p.39).
- (85) See e.g. *Gentleman's Magazine*, 2(1732), p.910. This was already true in the sixteenth century. See *W.Lombard*, *Eirenarcha* or the Office of the Justice of the Peace, London (4th ed.) 1599, p. 10.
- (86) *J.Davis* (1984, pp.309-335).
- (87) *J.Langhorne*, *The Country Justice. A Poem*, London 1774, Part 2, p.11.
- (88) *T.Gisborne*, *An Enquiry into the Duties of the Men in the Higher and Middle Classes of Society*, London 1795, p.418.
- (89) This has been changed in recent years thanks to the work done by *Peter King* and others. Cf. also *C.B.Herrup* (1987).

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