Crime and Punishment in Eighteenth-century England

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To Pauline

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Introduction

The Bloody Code is the name traditionally given to the English system of criminal law during the period 1688–1815. In these years a huge number of felonies punishable by death was added to the statute book. In 1688 no more than fifty offences carried the death penalty: the crimes so punishable were treason, murder, rape, and arson. By 1765 this figure had risen to about 160; an average of one new capital offence a year was added during the thirty-three-year reign of George II. A further sixty-five capital felonies added to the Code from 1765 to 1815 brought the number of crimes that bore the death penalty to about 225 by the end of the Napoleonic wars.[1] Even so, the number of capital offences was not co-extensive with the number of cases where the death penalty *could* be inflicted. On one calculation, the actual scope of the death penalty was about three or four times as wide as the capital provisions indicate.[2]

The other notably sanguinary feature (at least on paper) of the Bloody Code was that the new capital statutes deprived the felon of 'benefit of clergy'. Before 1706 it had been possible for members of the clergy and other literate persons to escape the death penalty in the case of lesser crimes by pleading an old form of ecclesiastical privilege; to obtain 'benefit of clergy' a person had to offer proof of literacy by reciting a passage of Scripture. An Act of 1706 abolished the literacy test.[3] Its abolition undoubtedly saved many illiterate men and women from the gallows since they were taken under the umbrella of equity. But what the elite gave with one hand it took back with the other. As well as enlarging the scope of the death penalty, the authorities saw to it that the new capital offences were 'non-clergyable', that is, benefit of clergy could not be invoked.

The explosion of capital statutes marked a return to Tudor severity and was the product of a mentality that saw the gallows as the only deterrent to serious crimes. In functional terms the Bloody Code was the response of a society where capital enterprise was releasing new forms of wealth which could not be adequately protected without a regular police force. There is no need to posit a conspiracy to introduce draconian legislation *in general*. In terms of challenge and response, the Bloody Code was an organic process of adaptation by a society concerned to protect new forms

of property and to restrict the benefits of a huge increase in wealth. The increase in commercial activity after the 'Glorious Revolution' of 1688 led to a plethora of laws on stolen property, receiving, embezzlement, fraud, and the obtaining of goods on false pretences. The modern law on theft may be said to date from this period.[4] The pattern was clear even in the reign of William and Mary. A law of 1691 made it a non-clergyable offence to take goods from a house while the owner was present and put in fear, and to break into houses, shops, and warehouses and then steal items to the value of five shillings.[5] Eight years later it was made a non-clergyable offence to shoplift any item worth more than five shillings or to steal articles of the same value from stables and warehouses.[6] In Queen Anne's reign it was additionally made non-clergyable to steal goods worth more than forty shillings from a house or outhouse, even if entry was secured without breaking and the owner was absent.[7]

It is a constant of human society that each age imagines itself more wicked than the preceding ones. Lord Chancellor Hardwicke remarked that the draconian provisions of the Bloody Code were made necessary by the egregious wickedness of the age.[8] And it is quite clear that, despite the hindsight assurances of later historians that the Hanoverians lived in a period of Augustan calm, the upper classes genuinely feared the mob, whether overtly criminal or not, and were quick to convert an increase in criminality into a threat to social order itself.[9] It was quite true that crimes against property *did* increase in the eighteenth century. Whether they increased at anything like the rate of trade or wealth, especially in real estate, is much more debatable. Those who argued for the singular wickedness of the age forgot the economic side of the social equation, just as they ignored urbanization, poor infrastructure, and (in the second half of the century), industrialization and population increase.

Yet while many members of the elite were prepared to countenance the Bloody Code as a necessary defence of social order against the evil anarchy of the mob, the violent, and the incorrigibly criminal, more thoughtful beneficiaries of the social system were disturbed by the Code's wild irrationality. In the first place, there was the element of 'overkill'. It was a capital crime to steal a horse (and after 1741 a sheep); to pickpocket more than a shilling; to steal more than forty shillings in a dwelling place or five shillings in a shop; to purloin linen from a bleaching ground or woollen cloth from a tenter ground; to cut down trees in a garden or orchard; to break the border of a fishpond so as to allow the fish to escape.

Second, there was the confusion arising from the fact that ancient statutes were not repealed, and that legislation long considered obsolete could suddenly be revived. The Bloody Code could become more severe in its effects simply through inflation. An Act that ordained the death penalty for stealing five shillings at the beginning of the eighteenth

century could appear altogether harsher if revived unchanged at the end of it. As one historian has put it: 'While everything else had risen in its nominal value and become dearer, the life of a man had continually grown cheaper.'[10]

In addition, the same crime could be prosecuted under totally different statutes and penalties. Often a multiplicity of laws bore on the same crime. The theory and practice of the criminal law were light-years apart. Then there were the well-known anomalies in the Code. To commit a theft in a furnished house which was let as a whole was not an offence. Pickpocketing carried the death penalty but child-stealing, despite its high incidence, was not even an offence.[11] It was a capital felony to steal goods worth more than forty shillings from a ship on a navigable waterway, but not on a canal. To steal fruit already gathered was a felony; to steal it by gathering it was a mere trespass. To break a pane of glass at 5 p.m. on a winter's evening with intent to steal was a capital offence; to housebreak at 4 a.m. in the summer when it was light was only a misdemeanour. To steal goods from a shop and to be seen to do so merited transportation; to steal the same goods 'privately', that is, without being observed, was punishable by death.[12] In extreme cases parricide might receive the same punishment as the theft of five shillings.[13]

Some of the anomalies became notorious. A servant who had wounded his master fifteen times with an axe was executed, not for attempted murder, but for burglary, on the grounds that he had had to lift the latch of his employer's door to enter his chamber. In another case, an inveterate burglar was convicted and executed on the 'lesser' charge of cutting down trees.[14] The essence of the situation was that the Code worked by exemplary punishment, where the retribution did not fit the crime.

There are two obvious traps to fall into when discussing the Bloody Code. One is to underrate its ferocity; the other is to overrate it. On the one hand, for those unlucky enough to be caught up in the web of exemplary punishment the criminal Code was unjust, irrational, and exceptionally severe. There was some discrimination on grounds of age and sex, but not nearly enough. What there was attracted the censure of hardline defenders of the Code like Martin Madan, who deplored the fact that juries tended to be lenient towards young offenders.[15] The safeguards supposedly guaranteeing the liberties of Englishmen, like Habeas Corpus and the jury system, were inadequate to prevent miscarriages of justice. Judges often admitted that capital punishment did not fit a given crime or even that they had doubts about a particular person's guilt; nevertheless they continued to argue that the death penalty should stand even in such cases, since it served as an awful example and warning.[16]

Sir Erskine May famously described eighteenth-century justice thus: 'The lives of men were sacrificed with a reckless barbarity, worthier of an eastern despot or African chief, than of a Christian state.'[17] His words were an elegant gloss on the dithyrambic attack on the Code made in Parliament by Sir William Meredith in 1778. Meredith exposed the fallacies in the Code's premises in a *tour de force* of anti-deterrent rhetoric. Cruel laws encouraged crimes rather than preventing them. Since only half at most of all convicted felons were hanged, a thief might reckon the odds in his favour to be as much as twenty to one. And even if the odds were twenty to one on his being apprehended, criminal psychology was such that the felon could still argue that it was his fate to be the one in twenty. Moreover, the death penalty could be shown to be no deterrent even in the case of crimes that were never pardoned. Perpetrators of forgery and coining were virtually certain to be hanged under the Code, yet these were among the most common offences. Finally, Meredith pointed out, every new capital statute begat twenty more. If you hanged for sheep-stealing, logically you had also to hang the man who stole a cow or a goat. There would literally be no end to the crazy cycle of 'deterrence'.[18]

On the other hand, it would be a travesty of eighteenth-century history to suggest that the grisly ritual at Tyburn was inevitable and unending. One hundred executions a year in England was thought to be the limit the Code could order without bringing the entire notion of justice into disrepute. Judges and juries mitigated the law's sanguinary provisions by discretionary actions. Often juries would flagrantly flout the evidence placed before them in order to avoid sending a felon to the gallows. Indictments for grand larceny (carrying the death penalty on conviction) would be downgraded to petty larceny (where the maximum penalty was transportation) by valuing the stolen goods notionally, at less than one shilling. On one occasion it was clearly established that a large number of golden guineas had been stolen, yet the jury chose to reduce the charge from felony to misdemeanour by finding that less than forty shillings had been stolen![19]

Judges too played their part in the process of clemency by sometimes discharging the accused before their cases even came to trial. Such a discharge was quite distinct from acquittal by the jury *after* trial. Large numbers of petty criminals were pardoned without entering a court-room.[20] In the year 1791–5 it was estimated that 5,592 persons were discharged before trial, while 2,962 were acquitted after trial.[21]

The general rule of thumb discernible from an examination of the way the Code actually operated was that for the most part judges ordered capital punishment for the 'old' (pre-1688) offences, like murder and highway robbery, and handed down sentences of transportation for the 'new' capital offences added to the statute book after 1688. This tendency

was particularly marked after 1750. By the 1790s, even when juries returned a guilty verdict for theft, they accompanied it with a plea for mercy, so that execution for stealing was uncommon. Where it took place, there were usually aggravating circumstances: armed robbery, demanding money with menaces, and so on.[22] Gang activities were particularly likely to elicit the full force of the Code.[23] But it must be emphasized that this was a relative pattern, not an absolute one. There was a proliferation of criminal statutes in the eighteenth century directed against forgery and counterfeiting. This was a response to the sustained lobbying of banks and other commercial interests, who were determined to secure protection for the new system of paper credit and exchange.[24] As a result, the crime of forgery was one great exception to the rule. Two-thirds of the century's convicted forgers were executed; except for murder, no crime was more relentlessly punished.

The central paradox of the Bloody Code was that a vast increase in capital statutes did not lead to higher levels of execution. This raises the question of what the ultimate intention of the framers of the Code actually was. The usual interpretation is that deep-seated resistance to a professional police force on the French model left the elite no choice but to use the deterrent horrors of Tyburn tree to protect its own property and privilege. The proliferation of capital statutes is then explicable in terms of lobbying by special interests to impose the death penalty for threats against their particular form of property. On this view, the fact that so many new offences were removed from benefit of clergy does not denote a ruling-class conspiracy or grand design by the Whig/Hanoverian ascendancy, but rather filling in the spaces of what has been described as a crude and rather mindless matrix. Blackstone adduced as the *locus classicus* of this process of piecemeal 'tacking' on to the Bloody Code by determined local pressure groups the 1741 Sheepstealing Act, the fruit of lobbying by a small group of farmers. Similar considerations apply to the passage of the 1731 and 1745 Acts against the theft of linen or cotton cloth, the 1742 Act against cattle theft, and the statutes of 1751 and 1765 directed against theft respectively from ships in a navigable river and from the mails.

It has not perhaps been sufficiently realized that the theory of the growth of the Code, as it were spontaneously and in a fit of absence of mind, as a functional response to the lack of a regular police force, does nothing to explain why the capital statutes were not more rigorously executed. Except for a few diehards like Madan, elite members of society themselves were fully aware that capital punishment could never fulfil the role of a police force. The theory that the Code was not inspired by a central intelligence but was an unconscious, quasi-organic adaptation to a new property-owning environment, also ignores the occasions when the elite did act in a concerted manner. The most famous such occasion was

the 1722 Waltham Black Act, which in effect provided an overarching capital statute covering almost every conceivable criminal activity.

The truth is that, in explaining the explosion of capital statutes in the eighteenth century as a reaction to the absence of a police force, many historians have mistaken a symptom for a cause. The dislike of police was part of a cluster of attitudes, including hostility to a standing army, that stood at the heart of English political culture. This culture can be characterized as empirical rather than rational, relying on habit, custom, tradition, hunch, and intimation rather than reason. This tendency informs classical English political theory, providing a thread that runs from Hume and Burke in the eighteenth century to Oakeshott and J. L. Austin in the twentieth. A corollary of this empirical political culture is the aristocratic tradition and the cult of the amateur. Professionalism, being an aspect of rationalism, has always been suspect in England. 'Too clever by half' is a phrase that is inconceivable in French.

In terms of law enforcement, dislike of rationalism means a distaste for making the punishment fit the crime, in favour of general deterrence through exemplary punishment. A contemporary example may make the point clearer. The English law enforcement system favours the implementation of highway speeding regulations by means of the occasional ferocious example. There is no regular police patrol of the nation's motorways. In the USA, by contrast, a professional highway patrol rigorously enforces speed limits, so that speeding invites the certainty of detection. This reflects the differential experience of a society strongly influenced by Continental rationalism (the USA), with a written constitution and Bill of Rights, and a society accustomed to muddling through by 'intimations'. In a word, English law has always been concerned more with credibility and authority than punishment of each and every infraction.

That this political culture meshed beautifully with the requirements of the elite has been ably demonstrated by the most convincing explanation yet provided of the 'meaning' of the Bloody Code.[25] As Douglas Hay explains it, in eighteenth-century England the elite used a system of draconian punishments to allay its own anxieties over a number of issues: the real stability of their regime, the threat from Jacobites and later from Jacobins, the fear of the mob. The real motive was credibility. The sanguinary statutes were not meant to be implemented at all times and at all points. As Hay expresses it, they were more concerned with authority than property.[26] The principal aim was always to compel the deference of the lower orders. It was deference – an obvious aspect of the aristocratic tradition – that the authorities wanted, not one hundred per cent effectiveness in punishment or control of crime.

Yet there was a further subtlety to the elite use of the Code that made the superficially sanguinary criminal law system a masterpiece of social

control. The grip exercized by the eighteenth-century elite was precarious, reflecting the 'half-State' twilight characterized by parasitism when a ruling class has not yet sunk its roots deeply enough. What was needed was an ideology to provide social cement and legitimate the entire system. With the decline in traditional beliefs, religion could no longer play the required role. The great nineteenth-century ideology of market liberalism was still in the future. To fill the ideological gap, the elite invoked the law, insinuating the idea that every man was equal before the law, that the law was dispassionate, impartial, and blind to social stratification.[27] As Gramsci was later to explain it, social hegemony is only truly attained when a ruling class can persuade those it rules that the norms and sanctions of society, which in reality benefit only the privileged few, are devised for the good of all.

The occasional exemplary ferocious punishment meted out under the law would reinforce the majesty and authority of the allegedly trans-class law courts. An insistence on meticulous punishment for each and every transgression ran the obvious risk of giving the game away, of directing attention to how the legal system actually operated. But it is important to be clear that, in order to achieve this *pièce de résistance* of social control, to promote the law as the central legitimizing ideology, the elite had to accept very substantial limitations on its own freedom of operation. The trick of conflating 'equality' with 'equality before the law' is a difficult one to bring off.[28] It could be made convincing only if the authorities themselves accepted the restrictions imposed on them by the 'rule of law'. The ruling class had to be inhibited by its own laws from the use of arbitrary imprisonment, torture, or the indiscriminate use of the military. The occasional aristocratic victim like Lord Ferrers (see below p. 150) had to be offered up. Sometimes, as in the Wilkes case, the government retired from the courts defeated.

The social control achieved by the eighteenth-century elite was thus always partial and relative. Quite apart from lacking the necessary technology, the rulers of eighteenth-century England could not hope to rival the power available to a modern totalitarian state. There is a very great gap between ruling by a system of bad or imperfect laws, and even bending or misusing those laws, as in a primitive authoritarian regime, and simply inventing the law, as in modern totalitarianism. The English elite possessed no 'death squads' or secret agents 'licensed to kill'. By and large, the rule of law exhausted the range of its powers. This is a truth obscured by a vulgar Marxism of base and superstructure, where law is considered 'nothing but' the interest of the ruling class. The attitude of Sir Robert Walpole and Lord Hardwicke to the rule of law may have been the merest humbug; this does not mean to say that the concept of the rule of law itself was. As E. P. Thompson has well remarked: 'We may imagine how Walpole would have acted, against Jacobites or against

disturbers of Richmond Park, if he had been subject to no forms of law at all.'[29]

Some of the more puzzling features of the Code thus become clear. Its egregious absurdities are revealed as part of a general resistance to rationality by a political culture that was profoundly functional in its support of elite interests. Since these absurdities were widely known and widely debated, it might be asked why the Code was not tidied up. After all, the elite had its own overarching enabling legislation in the form of the Waltham Black Act. Why not lop away the surplus or obsolescent statutes? The answer is that their retention increased the obfuscatory effect of the Code and facilitated social camouflage, so that the special interest of the elite could masquerade as the General Good. The same 'mystifying' effect was achieved by the use of exemplary rather than certain punishments. There can be few more misleading assessments than this by Blackstone: 'It is moreover one of the glories of our English law that the species, though not always the quantity or degree of punishment is ascertained for every offence.'[30] Nothing could be further from the truth.

1

London

> London joyned with Westminster, which are two great cityes but now with buildings so joyned up it makes but one vast building with all its suburbs.
>
> Celia Fiennes, *The Journeys of Celia Fiennes*

> Dear, damn'd, distracting Town farewell!
> Thy fools no more I'll tease
> This year in Peace, ye Critics, dwell,
> Ye Harlots, sleep at Ease!
>
> Alexander Pope, *A Farewell to London in the Year 1715*

> That tiresome dull place! where all people under thirty find so much amusement.
>
> Thomas Gray, letter to Norton Nicholls, 19 November 1764

In eighteenth-century England crime was overwhelmingly a London phenomenon. Outside the capital there was of course the natural quota of murders and petty theft. But in the provinces what the London authorities considered as crime was usually viewed very differently by the local community, as in the case of coining, poaching, smuggling, or wrecking. Here 'local mafias' conducted their illicit operations with the implicit or explicit sanction of local folkways. Only in London was there a distinct criminal subclass, sustaining itself by its own 'underworld' ethos, at odds with the wider community in which it found itself.

London was different from the rest of the country both in degree and kind. In 1700 England had a population of some five millions, two thirds of whom were employed in one way or another in agriculture. During the entire eighteenth century London contained at least one-tenth of the population. Before the first official census in 1801 all estimates are guesswork. But if we take the population of London in 1801 (900,000) as the fixed point, the best conjecture produces a population steadily rising from about 575,000 in 1700 to 675,000 in 1750, then accelerating more rapidly thereafter.[1] Between 1720 and 1750 there were more deaths than

births in London, but after 1750 the death rate declined. In the first half of the century bad harvests followed by a rise in the price of bread combined with harsh winters to produce epidemics of disease that carried off large numbers, as in 1709-10, 1713-14, 1727-8 and 1740-1.[2] The fact that London's population rose during 1700-50 was attributable to the 'population implosion', the increasing flight from the countryside to the capital.

'The great wen' dominated England to an extent difficult to appreciate. In 1700 when London's population was already well over half a million, the second city in numbers, Norwich, contained no more than 20,000 souls, while Birmingham had no more than 10,000. Throughout the entire century London contained at least one-tenth of the nation's people. Paris provided at most one-fortieth of the population of France in the same period. By another index, London's domination was even more complete. It is estimated that by 1750 one sixth of the English population either was living in London or had lived there for significant portions of its lives.[3]

Early Hanoverian London (including the cities of London and Westminster) was a noisome farrago of cobbled, mud-covered streets. Overcrowded and pestilential, it sometimes resembled a gigantic market town, where animals wandered freely in the streets and their smells and noises were ubiquitous. It extended from modern Bond Street and St. James's Park on the west to Wapping in the east, and from Moorfields (Sadler's Wells) to St. George's Fields, Southwark in the south. Included in the population total of some 600,000 for the early period were the villages of Chelsea, Kensington, Hampstead, Islington, Bow, Stepney and Camberwell. Soho and Mayfair were largely pasture ground. But the sheer appetite for space of the 'monster city' was beginning to appal the most perceptive contemporaries. Daniel Defoe estimated that London would soon have a circumference of thirty-six miles and would include not only the cities of London and Westminster but Southwark, Deptford, Islington and Newington. Next, the moloch would consume Poplar, Greenwich and Blackwall in its maw; soon Chelsea, Knightsbridge and Marylebone would be devoured:

> It is the disaster of London, as to the beauty of its figure, that it has thus stretched out in buildings, just at the pleasure of every builder, or undertaker of buildings, and as the convenience of the people directs, whether for trade or otherwise; and this has spread the face of it in a most straggling confus'd manner, out of all shape, incompact and unequal; neither long not broad, round or square, . . . one sees it in some places three miles broad, as from St. George's in Southwark to Shoreditch in Middlesex: or two miles, as from Petersburgh House to Montague House; and in some places not half a mile as in Wapping; and much less as in Redriff. . . . We see several villages, formerly

> standing, as it were, in the country, and at a great distance, now joyn'd to the streets by continual buildings, and more making haste to meet in the like manner. . . . That Westminster is in a fair way to shake hands with Chelsea, as St. Gyles is with Marybone; and Great Russell Street by Montague House, with Tottenham-Court; all this is very evident, and yet all these put together, are still to be called London: whither will the monstrous city then extend? and where must a circumvallation or communication line of it be placed?[4]

At the end of the century Horace Walpole confirmed Defoe's prognosis:

> There will soon be one street from London to Brentford; ay, and from London to every village ten miles around! Lord Camden has just let houses at Kentish Town for building fourteen hundred houses – nor do I wonder; London is, I am certain, much fuller than ever I saw it. I have twice this spring been going to stop my coach in Piccadilly, to inquire what was the matter, thinking there was a mob – not at all; it was only passengers.[5]

The topography of London with its tangled lanes, hidden courts, dark alleyways and sprawling suburbs provided an ideal nesting ground for criminals of all kinds. As Henry Fielding remarked in a famous passage:

> Whoever indeed considers the cities of London and Westminster with the late vast addition of their suburbs, the great irregularity of their buildings, the immense number of lanes, alleys, courts and bye-places; must think that, had they been intended for the very purpose of concealment, they could scarce have been better contrived. Upon such a view, the whole appears as a vast wood or forest, in which a thief may harbour with as great security, as wild beats do in the deserts of Africa or Arabia.[6]

The situation was aggravated by the existence of criminal sanctuaries. It had long been a practice for criminals to claim the right of sanctuary on consecrated ground where the old dissolved monasteries had once stood. By 1712 the authorities had effectively clamped down on this misuse of ancient privileges. Only the Mint at Southwark, a refuge for debtors, remained as the last of the 'bastard sanctuaries'. But the old sanctuary areas continued to be popular criminal ghettoes. The most famous were at Whitefriars and Alsatia (the area between Fleet Street and the river), but there were many others: Whitechapel, Barbican, Smithfield, Bankside, Covent Garden, Shoe and Fetter Lanes, parts of Holborn. There were many notorious streets, feared and dreaded by the law-abiding: Chick Lane, Thieving Lane (near Westminster Abbey), Petty France, Orchard Street.[7] The riverside district from St. Katherine's to Limehouse was widely considered a 'no go' area. Even the fields and

roads around London were unsafe except on Sundays, when crowds of people streamed out to the pleasure gardens and tea rooms.[8]

Into these ghettoes peace-officers ventured at their peril. Fielding recorded glumly 'it is a melancholy truth that, at this day, a rogue no sooner gives the alarm within certain purlieus, than twenty or thirty armed villains are found ready to come to his assistance.'[9]

Violence was endemic in London, especially in the first half of the eighteenth century. Cock-fighting, bear-baiting, goose-throwing, bare-knuckle fist-fighting were just some of the popular recreations. A culture of heavy drinking, bawdy houses, illiteracy and low life-expectancy bred an ephemeral, gambler's attitude to 'law and order'. This 'deviant' subculture even produced its own literature and had a strong influence on the productions of elite culture and literature.[10] The violence was compounded by the minions of the elite, notably by press gangs, whose strong-arm methods routinely provoked serious rioting.[11] The French traveller and mathematician La Condamine said that he had visited the most barbarous countries in the world (he instanced Russia, Turkey, Algiers, Tunis, Tripoli, Morocco and Egypt) and had never seen savages to equal Londoners. In his view, the inhabitants of the capital were more ferocious and fearsome than any other group of people from China to Peru.[12]

There can be no mistaking the general level of casual violence. On a single day in 1764 the following crimes were reported. A footpad was committed for stealing a hat and a wig; another for stealing a bundle of linen from a woman's head; a man was arrested who had stolen £500 worth of plate in Cavendish Square. A housebreaker wounded the occupant in a house in Gloucester Street and made off with £100. A man lost a watch and £12 to a robber between Kentish Town and St. Pancras. A woman was robbed when one member of a gang fell down in front of her; she tripped over him, and his accomplice made off with her bundle. Meanwhile a ship's master was brought from Bristol on a charge of murdering two blacks on the high seas.[13]

Six months later casual violence was just as evident. On a single day, in December 1764, the *London Chronicle* records the following. A sailor bumped into a porter in Threadneedle Street, begged his pardon but was struck. He struck back and killed the porter. Since he was not the aggressor, the crowd of onlookers let him escape. On the same day the woman servant of a tripe-man in Southwark cut her own throat. On the road from Guildhall to London a married couple got caught up in a furious row. The husband, a carpenter, in his fury threw himself into a pond and was drowned.[14]

It is tempting to conclude that everyday life was not far removed from Hobbes's state of nature – 'nasty, brutish and short' – and there is some truth in such a shorthand description. Yet observers detected a more nuanced attitude to other human beings, suggesting that human life was

not held quite so cheaply as in the cliché picture of early Hanoverian London.[15] The traveller d'Archenholz noticed that London crowds were in general very considerate towards women and children.[16] It has to be remembered, too, that modern indices of stress factors predisposing people to aggression are cultural constructs. The same triggers would not necessarily have elicited the same responses in the eighteenth century. The inhabitants of London lived in overcrowded conditions, but so did the capital's upper classes. It is a mistake to read back modern notions of privacy into the eighteenth century.[17]

The species of London criminal feared most was the footpad, the armed robber operating on foot, usually in gangs. They infested London and the outskirts. The normal pattern of operation was to waylay people in one area and then to retreat to safety in the 'flash houses' (safe houses) of one of the notorious 'rookeries'. Favourite operating haunts of the footpads were around Knightsbridge and Tottenham Court Road, then surrounded by ditches and open fields.[18] After the robbery the favourite retreat would be one at Holborn, Gray's Inn Lane, St Giles, Great Queen Street, Long Acre, St Martin's Lane, Bedford Street and Charles Street. Such was the *modus operandi* of the notorious White Brothers (executed in 1758).[19]

Footpads would steal anything of value but different gangs had different specialities or 'lays'. Obadiah Lemon's gang, operating in the second decade of the century, specialized in stealing from coaches. At first they used fishing hooks and lines to whisk hats, whigs, and scarves out of coach windows. The coach owners retaliated by fitting their vehicles with perforated tin sashes, though one unwelcome consequence was that passengers then had to travel in darkness and stifling heat.[20]

The Lemon gang then developed a new expertise. They would jump on to the backs of coaches, cut through the roof and snatch hats, whigs and jewellery out through the hole. A much simpler ploy was simply to sever the leather straps supporting the coach. Then, when the coachdriver got down to see what was the matter, the footpads simply made off with the boxes under the driver's seat.[21]

Other footpad specialities were the waylaying of stage-coaches when they dropped speed. The difficulty of their robbing men on horseback was obvious, though many such attempts were made.[22] But when a coach slowed down to cross a bridge, an opportunity arose. In June 1792 Mr Fry of Wimpole Street and six young ladies in his company were held up at Richmond Bridge on their way home from Richmond theatre and robbed of four guineas and some silver. There were six footpads on the bridge, and they fired into the coach window to stop it. One of the shots grazed a lady's ear and carried off her earring.[23] The same gang had held up two post-chaises from Richmond three days previously in Kew Lane.[24]

Footpads were much more violent and far more dreaded than the

better-known highwaymen. Their level of homicide during robberies was high, unlike that of the highwaymen, simply because the footpads were unable to leave the scene of the crime quickly and were thus tempted to decrease the odds against them by killing the witnesses to their robbery. This in turn led to severity on the part of the authorities.[25] A convicted footpad was unlikely to escape the gallows. Any form of demanding money with menaces of bodily harm was virtually certain to consign the offender to public hanging.[26]

Nor was there any residue of popular sympathy for the footpad, again unlike the highwayman. No footpad could hope to become a folk hero. Only the most extraordinary individual abilities would keep a street robber even fleetingly in the public mind. Such a one was 'Jumping Joe Lorrison' (executed 1792), so-called from his cat-like ability to leap into carts and wagons to rob them.[27] But in general the footpad was regarded with loathing and horror. A case in 1768 showed that public vindictiveness towards them could extend all the way to the gallows. A 19-year-old carpenter's servant was condemned to hang at Tyburn for footpad robbery. James Gibson, who was being executed at the same time for forgery, asked that Payne be allowed to accompany him in his mourning-coach, instead of being conveyed on a cart. This compassionate request was turned down contemptuously by the Sheriff.[28]

Three generalizations are possible on footpad robbery. One was that particular hatred was aroused if such a crime was committed by gypsies, whose very legal status was uncertain in eighteenth-century England.[29] Second, the level of footpad robbery rose in the demobilization of the immediate post-war periods. In 1784 a 'moral panic' in London, resultant on a number of murder and footpad cases, made people afraid to walk even the main streets of London after dark, to say nothing of the back alleys.[30] It was a matter of general rejoicing when a footpad was taken for exemplary punishment that year.

Third, the coming of turnpike roads made it easier for the footpad to range out of London to the lush villages in its environs, especially those lying on or near main traffic arteries. In 1778 Sir Richard Perrin was robbed at his own front door in Twickenham.[31] Sixteen years later, a gang of pedestrian footpads competed with the highwaymen by operating on Whitton Heath.[32]

The pickpocket was another London criminal type that excited the astonishment of contemporary observers. The poet William Shenstone ('nothing is certain in London but expense') related in 1743 that after 8 p.m. armed pickpockets in Fleet Street and the Strand routinely knocked down passers-by. In Covent Garden they came in large numbers, armed with knives, and waited for people to come out of the theatres.[33] London pickpockets were especially skilful. Frequenting race-meetings, theatres and (especially) public hangings, they snatched

handkerchieves, snuffboxes, watches, pocket-books and bank notes.[34] Their favourite haunts within London were Drury Lane, Covent Garden and the Exchange.[35] On one occasion the Duke of Cumberland ('Butcher Cumberland') had his sword stolen as he entered a theatre. Elite groups of pickpockets, elegantly dressed for the occasion, specialized in winnowing the wealth of race-goers and visitors to county fairs.[36]

Some of the pickpockets were of rare ingenuity. Tom Gerrard (executed 1711) taught his dog to lift valuables from people's pockets.[37] Arthur Chambers's speciality was to do it while his victims' attention was elsewhere. His favourite trick was to enter a tavern and attract a crowd around him by speaking gibberish and pretending it was Greek. He always carried a Greek testament with him to 'prove' his claim. While the publican and his customers were trying to make sense of St. Paul in the original Greek, Chambers was able to pick their pockets with ease. He had many years of success before being caught and executed in 1706.[38]

Women featured prominently in this crime, largely as prostitutes picking the pockets of their comatose or slumbering clients. But in such cases pickpocketing was an adjunct to the main activity. Direct pickpocketing was largely a male preserve. It was traditionally the way for a young male to begin his criminal career; most of those apprehended were between 12 and 14 years old.[39] Usually these lads worked in gangs under the direction of an adult (much as Fagin's gang did in *Oliver Twist*).[40] A pickpocketing combination of sixteen very young boys was reported in 1764.[41]

But it was not just their youth that made it difficult to prosecute and convict pickpockets. In the first place it was difficult to detect them; in the second, even when a boy was caught in the act, he was most unlikely to incriminate his accomplices. Apart from the reluctance of individuals to press charges, especially in circumstances where they had recovered their property, the ferocious nature of the Bloody Code itself was a deterrent. In cases where a pickpocket was caught in the act, it was more usual to mete out punishment then and there. The most common treatment of young offenders was simply to beat them up.[42] When a pickpocket was discovered in the Strand in 1784, the crowd pursued him and recovered a snatched purse. After a severe beating, he was then released.[43] A refinement was for the crowd to hold such offenders under water until almost at the point of drowning before releasing them.[44] This vigilante law enforcement sometimes had tragic results. In 1784 a man was caught in a petty theft and taken by the crowd from pump to pump for a long succession of duckings. In the end the man's heart gave way and he dropped down dead in the road near Cheapside. There was general outrage, expressed by this newspaper correspondent:

It certainly is highly incumbent upon the magistracy to interfere, to

> prevent the administration of justice from being assumed by a lawless rabble; who are in general as unable to discriminate between the nature of the crimes as they are incompetent to the proportioning of punishment to the guilt of the criminal.[45]

But the farther the pickpocket progressed in his career and the more refined his skills became, the more difficult the task of the authorities became. The ability to pick pockets often extended to that of picking locks. In September 1764 a one-legged sailor and a notorious pickpocket broke out of Bridewell together. The pickpocket had been double-ironed with the fetters riveted. Three hours later he sent back the irons, saying he was much obliged to the keeper for their use but no longer needed them.[46] Only when Sir John Fielding began to organize his mounted patrols in the 1750s did the authorities start to gain some success in the war against pickpockets. His patrolmen caught nine of them in January 1764 as they waited for crowds to come out of the Covent Garden theatres. Another twelve were taken up in St James's Park at the end of that month in the same way.[47]

London criminals were nothing if not audacious. A favourite trick was to throw ash in the faces of the better-off, then to seize hats and wigs from the temporarily blinded victims. No one, whatever the status, was safe from criminal attention in London. George III himself was robbed of his watch money and shoe buckles one evening while walking in the gardens of Kensington Palace.[48] Some criminal behaviour verged on the compulsive or pathological. In September 1764, while two pickpockets were being examined before the Lord Mayor of London, one was found with his hand in the pocket of one of the witnesses![49]

But perhaps the greatest incitement to crime in London was the Thames itself. Theft and pilferage on the river continued at epidemic levels throughout the century. The wealth of the Port of London was a magnet to thieves, both casual and organized. The value of goods stolen in the port in 1749 and the first half of 1750 was estimated at £100,000.[50] The water-thieves or 'mudlarks' had accomplices among the sailors and lightermen working on ships at anchor in the Thames. They would tip goods overboard for the 'mudlarks' to retrieve at low tide. More audacious thieves would cut the hawsers of anchored barges at night, so that they floated on the tide to some remote spot where the goods could be unloaded with impunity.[51] The river thieves' favourite haunt was 'Alsatia', between Fleet Street and the river. Bursting with thieves, receivers, footpads, and prostitutes, Alsatia was immortalized by Hogarth in the 'Thieves' Kitchen'.[52]

The Customs and Excise and the West India Company tried vainly to staunch this outflow of goods by appointing special constables. But these men were themselves incompetent or corrupt and could easily be bribed

to turn a blind eye to the most barefaced theft. Sugar was a particular target of the thieves. Near the end of the century the annual value of sugar lost through fraud on the river amounted to £70,000. All classes of men were involved in the fraud. While the ship waited for the necessary delivery papers, the crew would fill sacks and their trouser pockets with sugar and take some ashore three times a day when they went for their meal breaks. Coopers who came on board to repair broken casks would send out bags ostensibly to fetch the necessary nails; in reality the bags would be full of sugar. Much the same happened with other West India cargoes such as rum and indigo.[53]

After 1751 it was a capital crime to steal more than 40 shillings worth of goods from a ship on a navigable river or wharf. But since customs and other law enforcement officers were 'on the take', they rarely intervened. Only with the organization of an effective river police at the end of the century did the law claim its first victims. John Fisher, aged 23, convicted of stealing 800 lbs of sugar from the Dundee Wharf and executed in 1801, was the first case of a hanging for this crime recorded in the *Newgate Calendar*.[54]

It was estimated that nine-tenths of all crime in the Port of London was the work, not of professional criminals, but of people whose presence was authorized and bona fide: sailors, portworkers, watchmen, revenue officers.[55] But organized crime gradually increased its scope and significance as the century wore on. Foreign visitors had long noted that London was different from other European capitals in the number of criminal gangs it possessed, operating in footpad robbery, river theft, pickpocketing, receiving stolen property, and protection rackets.[56] And after the revelations of John Poulter in 1753, there was no longer any room for doubt. Poulter, a professional criminal facing the death sentence, produced a contemporary best-seller with his day-to-day record of criminal activities during 1749-53, which revealed the vast extent of organized crime.[57] How important a feature of eighteenth-century life, then, were the criminal gangs?

There undoubtedly was a hard core of professional criminals in London who lived off their 'earnings'. These men (and women) had their own private customs and lore, and even a private language, the 'canting' vocabulary of the underworld.[58] The professional criminal fraternity thus formed a subculture within a subculture of the more casual criminals. At the beginning of the century conditions were particularly propitious for them. There was a vast number of pawnbrokers, fences, and receivers on hand, who asked no questions about the ownership of goods. This made it easy to dispose of stolen loot.[59] In addition, the 'flash houses' in such notorious streets as Chick Lane, Cock Lane, and Black Boy Alley provided a safe refuge.[60] On the other hand, 'organized crime' conjures visions of twentieth-century criminal societies like the Mafia and to that

extent introduces anachronistic perspectives.[61]

In the first place, the number of fully professional criminals was probably smaller than in the more perfervid estimates of Defoe and the Fieldings, who had obvious axes to grind. At the end of the century Colquhoun thought there were only about fifty or sixty large-scale receivers in London, plus several thousand small-time (and part-time) operators.[62] The underworld fluctuated as people drifted in and out of the gangs and of crime itself. There was nothing in eighteenth-century London corresponding to the military discipline and cell-like structure of the modern Mafia with its 'made men'. Oaths of allegiance and brotherhood were sometimes taken,[63] but these were largely ineffective and cannot be compared with the dreadful modern '*omertà*' of the Mafia. Indeed the lack of a modern machinery of systematic terror and intimidation was the major weakness of the eighteenth-century gang. Criminal organizations had little defence against the temptations to betrayal provided by the huge rewards the authorities in this century offered for information.

Moreover, in modern terms the eighteenth-century gang was a very small-scale unit. The effective operating size of a gang was four or five members.[64] Larger organizations tended to be confederations. Occasionally gangs as large as fourteen were reported,[65] but even in these cases the organization tended to be of the self-help variety. In other words a gang of, say, fourteen footpads would work in twos for operating purposes and band together only for some degree of self-protection and rescue.[66] Even in this context, the bonds were very tenuous. If a gang was betrayed to the authorities, its members did not stick together to concoct a common story or alibi or to silence and intimidate witnesses. In such cases they tended to disintegrate very rapidly; it was every man for himself.

This looseness in organization extended to membership. People sometimes returned periodically or entirely to legitimate occupations. At one time the famous highwayman Ralph Wilson gave up his calling and returned to his mother's business, before being blackmailed to return to his old way of life.[67] Another man who committed more than one hundred robberies in London in 1740-1 had a spell off in the middle of his career, running a shoemaker's shop in Birmingham.[68]

There was also a gradation in the looseness of the gangs depending on the type of crime. Loosest of all were the combinations of footpads. The small bands of professional pickpockets and shoplifters tended to be more cohesive, partly because they were often units of an extended family, in which the criminal skills had been nurtured and handed down through the generations.

But the most persistent and tenacious type of organized criminal was the professional river thief, a class distinct from the sailors and lightermen

and the more disreputable watermen who took to river piracy.[69] The gangs did not do anything very different from the casual or amateur pilferers; it was the scale and organization that marked them out. First of all, a network of skilled riverside receivers was organized. These receivers provided the 'licence to plunder' – the money paid to revenue officers to get them to turn a blind eye. These fees could be as high as twenty to thirty guineas a night. Then the river gangsters boarded the West India merchantmen after dark. They opened and resealed casks, having shovelled out quantities of sugar that were put in the 'black strip' – a bag large enough to contain one hundred pounds of sugar and dyed black so as to be invisible in the darkness.

Meanwhile the watermen in the organization would procure as many boats as necessary. Lumpers would unstow the casks, coopers take out the heads, all would then fill and remove the bags, taking not just sugar, but coffee, rum, ginger etc. 'Mudlarks' would prowl in the mud under the ship to receive from the lumpers and others miscellaneous articles. Everything would be taken immediately to the receivers so that a number of trips could be made in the course of a single tide.

Other useful members of these gangs were rat-catchers, since they were allowed on board ships at night to set traps. A particular ploy of the rat-catchers was to move a set of rats from one ship to another, thus getting paid for catching the same animals several times. All the while they would be carrying out reconnaissance missions for the gangs and sharing in the eventual plunder.[70]

London's criminal life was parasitic on the great and increasing wealth of the country. England's seaborne expansion and the rise of the joint-stock company were the main factors. Estimates of the wealth arriving in the mother country from foreign trading ventures tend to be impressionistic, but one study records that by the end of the seventeenth century a single trading company had extracted 100,000 slaves from Africa.[71]

The criminal scene in London did not remain monolithic and unvarying over the century. After about 1750 a gradual change can be discerned. As well as the major structural factors discussed below in chapter 16 and the wartime fluctuations dealt with in chapter 17, variables peculiar to London were involved. These were both negative and positive. On the negative side the most important was undoubtedly the grip exerted by the authorities on public drunkenness.

To ascribe significant social change to control of the nation's drinking habits seems like the argument of a temperancer but the respected social historian of London, Dorothy George, has this to say about the gradually improving quality of life in the capital after 1750: 'A pronounced setback, for instance, between 1720 and 1750 was almost certainly due to an enormous consumption of very cheap, fiery and adulterated spirits.'[72] Certainly the extent of alcoholic consumption in London up to the

mid-century provides powerful circumstantial backing for this argument. Smollett's impression was that London 'teemed' with public houses.[73] More specific estimates endorse his judgement. In 1750 one in every fifteen houses in the City of London was a public house. In the City of Westminster the figure was one in eight, in Holborn one in five, while in St Giles every fourth house was a pub.[74] In the same year 50 per cent of the wheat sold weekly in the London markets was converted into alcohol.[75] The consumption of alcohol that year was estimated at 11,200,000 gallons.[76]

The spectacle of an impoverished population reeling intoxicated about the streets of London, then turning to petty crime to fuel its alcoholism had long worried the authorities.[77] In the mid-1730s the first attempts were made to grasp the nettle. The 1736 Gin Act required retailers selling less than two gallons of spirits at a time to obtain a £50 licence each year, with a further £1 payable on each gallon sold in lesser quantity. The penalty for retailing without a licence was to be £100. If implemented, this act would have been another 'noble experiment' – an eighteenth-century English version of Prohibition.[78] But, like Prohibition, the act proved to be a classic example of a law that could not be enforced, since it commanded no popular consensus. The situation was quite the reverse: there were very real fears of mass insurrection by the London mob.[79] And apart from the threat of riot, the Gin Act threatened to produce an army of informers, thus exciting the same sort of fears over the loss of traditional English liberties that had contrived to defeat Walpole's 1733 Excise Act.[80] More sagacious observers pointed out that the net effect of the Act would almost certainly be to raise the crime rate. Not only would a thriving bootlegging trade spring up, but the former publican class, unless it joined that illicit trade, would be reduced to penury, thus swelling the throngs of London's beggars.[81] It is no wonder that across the water the Jacobites looked forward with relish to the disastrous loss of popularity the Hanoverian regime would incur.[82] The Whigs themselves saw the point. After seven years of impotent attempts to enforce a licensing law that would really bite, they admitted defeat in 1743.

It is possible that the final defeat of the Jacobite threat in 1745-6 gave the regime a new confidence. Certainly by 1751 it felt strong enough to lock horns with the mob once more. The time was ripe. Choruses of lamentations about the ill-effects of spirituous liquors were again mounting.[83] This time the authorities pursued a triple-track strategy. Their first assaults were indirect. An Act of 1751 increased duties on drink.[84] Next year there was Parliamentary legislation aimed at brothels and disorderly houses.[85] Only in 1753 did the government show its hand openly by introducing another Act for licensing public houses.[86] This legislation was heavily influenced by the Fieldings' writings on crime. It succeeded where the 1736 Act had failed in tightening the screws on

public inebriation. The power to withdraw licences was a sanction with real bite.[87]

By the mid-1750s the authorities had succeeded in turning the corner on public drunkenness. It would be a mistake to overdramatize their success, however. The endemic bribery and corruption of the eighteenth century soon lent a hand. By the 1770s venal magistrates were conniving at the free sale of drink. Throughout the second half of the century the battle to control public intoxication was more a see-saw affair than an outright victory for either side.[88] The really crucial turning point came in the 1790s when the pendulum swung back decisively in favour of the temperancers. The growth of Methodism and the influence of reforming societies (especially Wilberforce's) made decisive inroads on alehouses and gin palaces.[89] Clearly this was a battle that could never be totally won, but there seems no disputing the fact that this aspect of London life was different in kind in the two halves of the century.[90]

The positive elements in the improving picture of London crime over the century can be summed up as ameliorated technology, higher living standards, better policing and changing attitudes within society. Naturally, this progression was not direct; there were many zigzags caused by war and economic depression, as we shall see. The more old-fashioned ideas of ever onward and upward progress should be discarded.[91] But enough real change took place to warrant Dorothy George's remark that 'by the end of the century we are in a different world'.[92]

The most important aspect of improved technology in the capital was the revolution in street lighting. Between 1717 and 1750 London crime entered a dark period in more ways than one. The street lighting devised by Hemmings in 1680 (convex-glassed lanterns) had been subsidized by a tax. But after Hemmings lost his patent in 1717, the system fell into disuse. As a final absurdity, the lighting tax was increased even as the streets were in total darkness.[93] Henceforth bourgeois Londoners ventured out into the murk to dine or go to the theatre only if armed to the teeth. London householders felt unsafe unless their houses were fortified by palisades and redoubts and defended by an army of servants. Even if there had been an efficient police force in London before 1750, the murky, fuliginous light in the dim alleyways and noisome rookeries would still have made the job of catching criminals a chancy affair.[94] But from the mid-century, the streets began, by comparison, to be bathed in light. Fielding's comparison of the capital to the deserts of Arabia began to seem less telling.[95]

Improving technology fed into higher living standards. Better sanitation and drainage together with less drinking made Londoners healthier. The death-rate started to fall after 1750, then more rapidly still after 1780. In general there was more poor law relief, there were fewer cases of imprisonment for debt, less brutality, and fewer crimes of violence. At

the end of the century London was still full of beggars and prostitutes. There was still much drunkenness and addiction to gaming and blood sports.[96] But impressionistic estimates suggest that the level of these peccadilloes had declined steeply since 1700. Crime tended to change its character. There was more burglary and less footpad robbery, doubtless in part reflecting the greater pickings possible from the planned robbery rather than from the mindless chance assault.

Most important of all, there had been a profound change in attitudes. We shall examine later the lessening commitment to violence in society as a whole over the century. At present it is enough to record the judgement that the simultaneous assault on violent attitudes by Methodism and Enlightenment thought, as it were in echelon, had a significant impact. This change in attitudes affected both rulers and ruled. Considerable scepticism was evinced by the end of the century about the efficacy of the Bloody Code. The draconian laws ordaining the death penalty for an immensely broad spectrum of offences had had no effect on violent crime, and even less deterrent power in the case of fraud, coining, counterfeiting, smuggling, and the receiving of stolen goods.[97]

Underlying the belief in the death penalty had always been a hard core of 'original sin' pessimism by the authorities. But under the impact of the Enlightenment, shrewder critics now began to point to obvious facts about society as the primary causes of crime. In the first place, it was much harder to sustain a rigid hierarchy of norms and values, especially that of deference, in London than in a village community. In the traditional community it was plausible to accept the myth of god-given social stations with every man in his proper place. A highly stratified system of inequality could be reinforced in a traditional, inelastic community. But not in London. There the working and serving classes confronted not just absolute but relative deprivation. They saw fortunes made by rogues who had not been born to wealth. And quite apart from the obvious temptations in the capital, the working and serving classes were prey to unemployment, underemployment, and disguised unemployment. It was clear that crime was more common in London than in the country simply because large numbers of people depended on casual and seasonal work. They were thus peculiarly vulnerable to economic fluctuations: to sudden contractions in the supply of jobs or to oversupply of labour.[98]

Most of all, the impact of Enlightenment thought was to alert increasing numbers of people to the fact that the sheer wealth of London was in itself a cause of crime. It was obvious that robberies were parasitic on wealth, highwaymen on the volume of prosperous traffic in and out of London and so on.[99] Similar considerations applied in the case of crime in the port of London. The immense wealth at anchor on the Thames, with

no effective protection, was too great a temptation to crime. Thus the poet James Thomson described it:

> Then Commerce brought into the public Walk
> The busy Merchant; the big Warehouse built;
> Raised the strong Crane; choak'd up the loaded street
> With foreign Plenty; and thy Stream, O THAMES,
> Large, gentle, deep, majestic, King of Floods!
> Chose for his grand Resort. On either hand,
> Like a long wintry Forest, Groves of Masts
> Shot up their Spires; the bellying Sheet between
> Possess'd the breezy Void; the sooty Hulk
> Steer'd sluggish on; the splendid Barge along
> Row'd, regular, to Harmony; around,
> The Boat, light-skimming, stretch'd its oary Wings;
> While deep the various Voice of fervent Toil
> From Bank to Bank increased.[100]

The propensity to river crime was also aided by two features of general eighteenth-century English culture. One was that, irrationally, the pillage of commercial property afloat seemed to attract less opprobrium than other forms of theft. The other was that all crime by water tapped into the general resentment at excessively high duties that so favoured the smugglers.[101]

There is one final factor in London crime, clearly important, which however cannot be assessed with any exactitude: Durkheim's category of *anomie*. Living in the monster city seems to have induced feelings of fear and anxiety, a genuine feeling that social laws had gone into abeyance. Elite detestation of London is everywhere apparent in literature. 'This sinful Sea Cole Town', Lady Mary Wortley Montagu called it. 'May my enemies live here in summer!' Jonathan Swift recorded in his *Journal to Stella* (August 1711). Pope's verdict was equally savage:

> Yes; thank my stars! as early as I knew
> This town, I had the sense to hate it too.[102]

Even Samuel Johnson, famous for his remark that when a man was tired of London, he was tired of life, provided this description:

> Here malice, rapine, accident conspire,
> And now a rabble rages, now a fire;
> Their ambush here relentless ruffians lay,
> And here the fell attorney prowls for prey
> Here falling houses thunder on your head
> And here a female atheist talks you dead.[103]

Where elite anxiety and dread was so palpable, is it far-fetched to speculate that the 'lower orders' might also have perceived themselves to be in the chaos world and reacted accordingly? The Hobbesian jungle of *homo lupus homini* may well have possessed the same reality to those who lived in it as to those who merely observed it. Certainly, historians hitherto have underrated the psychic strain on mankind that results merely from living in a megalopolis.[104]

Increasing sophistication in attitudes and a lessening in the levels of violence were aspects of eighteenth-century society that altered only gradually, and in the short-term had little effect on the authorities' determination to continue to use the Bloody Code. What contemporaries noticed most after 1750 was the rise of policing bodies and a growing acceptance of the notion of police. It was in this area, rather than in their tirades against the taste for 'luxury' of the London poor, that the Fielding brothers were to make their most revolutionary contribution to London life.

2

Law Enforcement

Great crimes may raise a growing cause, but seldom retard the fall of a sinking one.
Horace Walpole to Sir Horace Mann, 22 October 1774

Who's to doom, when the judge himself is dragged to the bar?
Herman Melville, *Moby Dick*

No ceremony that to great ones 'longs
Not the king's crown, nor the deputed sword
The marshal's truncheon, nor the judge's robe,
Become them with one half so good a grace
As mercy does
William Shakespeare, *Measure For Measure*, II.ii.59

At no stage in the eighteenth century did England possess a central police authority. The feeling that professional police on the French model would be the death of traditional English liberties was deeply rooted in the political culture.[1] The despotism of the Bourbon monarchs, sustained by an army of informers and secret policemen, was thought to be conclusive evidence on this point.[2] Consequently law enforcement was a patchwork process, carried on by a number of disparate bodies. Only at the very end of the century did the first glimmerings of a professional English police force appear.[3]

This resistance to policing amazed foreign observers. One of the first comparative social analysts, Le Blanc, when contrasting the English and French nations, recorded his opinion that the English would rather be robbed on the highways than in their houses, that is that they had a greater tolerance for footpads and highwaymen than for ministerial intrusions into their private lives.[4] But the morbid fear of organized bodies of government-funded officials struck a deep resonance in English political culture. It had implications beyond the issue of policing. The Hammonds went so far as to claim that as a consequence there was no

effective central government control at all in the first decades of the eighteenth century.[5] What looks like an exaggerated claim comes to seem more soberly based when the administrative competence of central government is examined in times of crisis. The *locus classicus* is of course the Jacobite risings; here we find the nexus binding central and local government held together by the thinnest of gossamer threads.[6]

Such rudimentary law enforcement as did exist was carried out on an *ad hoc* basis by a number of bodies. Because fear and suspicion of the Army was one of the cluster of 'country' ideas involved in the resistance to policing itself, the authorities could use the military only in times of dire emergency: against organized gangs of well-armed criminals (especially those involved in smuggling and poaching) and in the cities against rioters.[7] Yet the military was a particularly blunt instrument: it was ill-equipped to respond quickly to anything save large-scale riots where magistrates gave army commanders discretionary powers. Even in the case of serious rioting, a time-lag of two to three days between the inception of the disturbances and the appearance of the military was not uncommon. In addition, military intervention in civil disturbances was unpopular at all levels. It increased the bitterness of the crowd and exacerbated social tensions; it was unpopular with the troops; it was regarded by army officers as a task beneath their dignity.[8] Besides, citizens hated having troops billeted on them. The very moment the disturbances were over they would petition for the army's withdrawal.

In theory, the militia could also be used as a peace-keeping body, but, certainly until the 1757 Militia Act, this was an ill-armed, amateur, purely nominal force with infrequent musters and uncertain legal status.[9] That left the official policing bodies. The King's Messengers were a purely political police force, answerable to the Privy Council. In the first half of the eighteenth century their role was restricted to surveillance of political subversives and penetration of the English Jacobite movement.[10] The Press Messengers similarly were entirely devoted to looking for publishers of seditious literature. The Court of Aldermen in the City of London possessed its own private police force – the City Marshals and their men.

The only general and permanent system of law enforcement in England at the beginning of the eighteenth century was provided at local level by the justices of the peace and their executive officers, the parish constables. JPs dealt with minor crime at quarter sessions and petty sessions. They were responsible for preserving public order, reading the Riot Act, calling in the military, issuing warrants, etc. The difference between an eighteenth-century magistrate and his modern counterpart lay in the power to issue warrants as part of *initiating* a prosecution. In this way the eighteenth-century JP was more like a US district attorney or a French *juge d'instruction*.[11]

Justices of the peace were pillars of the local community. But they were

not evenly distributed nationwide, since men of sufficient wealth and status were not necessarily available in every locality. Also, not everyone with the right qualifications wanted to take the mandatory oaths of allegiance and supremacy.[12] Moreover, the burden of work increased alarmingly in the eighteenth century with the growth in the number of offences that magistrates could deal with summarily – a further disincentive to service.[13] This burden of work, even more pressing in London, led to the growth in the capital of the notorious 'trading justices' – magistrates who made a living by charging fees (especially bail fees) for their services. Nor was hard work the only deterrent to the would-be justice of the peace. The preservation of law and order could involve one in counter-litigation, especially in cases where magistrates called in the military as a panicky reaction to some little local difficulty, or ordered troops to open fire without good cause. Justices of the peace had to find the elusive optimum point: too much force, and they could be sued for damages; too little, and they would be accused of incompetence. There was an endemic danger of 'damned if you do, damned if you don't'.[14]

The parish constable was the magistrate's subordinate and executive officer. Constables could police 'night-walkers', gypsies, peddlars, fortune tellers, servants absent without leave, infractions of Sunday or gambling laws. They could punish mothers for bearing bastards, whip vagabonds, force the unwilling to work, uphold apprentice statutes, confine begging to those licensed to beg, restrain lunatics, and detain suspicious characters. They were also responsible for crime detection, raising the 'hue and cry', apprehending criminals and housing them once detained. Here too the burden of work was oppressive. Often those eligible for office paid to escape the chore or obtained a certificate of exemption. The most famous such exemption was the 'Tyburn ticket'. If someone brought to justice an offender likely to be sent to Tyburn (a burglar, horse-stealer, robber, etc.), he or she received a certificate giving exemption from compulsory service in the parish in which the offence had been committed.[15] Another way to evade service was to accept office and pay a deputy to do the job on one's behalf. Reluctance to serve as constable was compounded by the financial penalties ordained for wrongful arrest or escape from custody.

In London the system of the justice of the peace and constable received a few refinements. Chief of these were the institutions of Beadle and the Watch. The beadle (immortalized in Dickens's Mr Bumble) was a paid employee who took over the lesser duties of a constable. He implemented the Poor Laws, acted as town crier, kept order in church yards, and, most important, supervised the parish Watch.

The Watch was the egg from which the later police force hatched. The Watch House, supervised by the beadle, was an embryonic police station. Every evening the officers of the Watch reported to the Watch House,

armed with lantern and cudgel. Each man was assigned a length of street and given a sentry box from which to oversee it. He was supposed to patrol the 'patch' every hour. The problem was that the officers of the Watch were just one precarious social notch above the criminals they were supposed to be deterring. They were paid very little, and therefore tended to be men who could get no other employment. Moreover, there was a glaring defect at the very heart of the system. There was usually an interval of some four to eight hours between the end of the night watch and the commencement of the day shift. The predictable consequence was that most crime was carried out during this time 'window'.[16]

It was the received opinion during the first half of the eighteenth century that the Watch was incompetent.[17] Both its personnel and administration were heavily criticized and there were calls for a drastic overhaul.[18] Only in 1735 was a small start made in this direction. The two parishes of St George's, Hanover Square and St James's, Piccadilly, in the City of Westminster (the location of many wealthy houses), were given permission by a local Act of Parliament to set a rate and use it to employ and pay more highly skilled watchmen.[19] A dramatic improvement in the service was at once noted. From then on watchmen left the snug apathy of their boxes to patrol their patch, checking that the doors on business premises were secure, much like the modern policeman.[20] The example caught on. The Watch steadily improved in efficiency in the second half of the century. Criminals, formerly openly contemptuous, came to regard it as a force to be reckoned with.[21]

Yet for most of the century it was not law-enforcement agencies that secured the arrest and conviction of criminals. The most obvious problem was that each peace-keeping body operated within severely restricted territorial limits. Eighteenth-century policing was vitiated on a small scale by the problems that beset the USA before the coming of the FBI and the creation of a class of federal offences. In other words, each officer could patrol his own parish but was not allowed to stray into his neighbour's 'beat', nor could he expect help from other forces.[22] There was rivalry and jealousy rather than co-operation and mutual help between the Watch, King's Messengers, Press Messengers, city marshals and sheriffs, and the other *ad hoc* bodies. This meant that the system of policing broke down when faced with organized crime or rioting. In the case of a serious robbery a sheriff or magistrate could proclaim a 'hue and cry' so that the *posse comitatus* could be formed.[23] But, quite apart from the rivalries and jealousies that had to be overcome before a credible fighting force could pursue armed robbers over great distances, there was an understandable reluctance by citizens to join in an unpaid adventure with the risks of armed conflict simply on the basis of the 'king's prerogative'.[24]

Some attempt was made by an Act in 1735 to strengthen the ancient principle of 'hue and cry'.[25] Two of the most notorious parts of the 'Code

of Blood' – the 1715 Riot Act and the 1722 Waltham Black Act – tried to stiffen the notion of local collective responsibility by making the inhabitants of a 'hundred' liable to make good losses committed in that area.[26] The one thing central government would not do (*plus ça change*) was to provide the finance to make local initiatives truly effective. This ran counter to the whole tenor of eighteenth-century England and was the other main barrier to successful crime-fighting.

The endemic corruption of Hanoverian England meant that securing justice was always expensive. Since the Walpolian political system was based on sustained patronage and bribery, and all 'places' from the City Recorder to the merest turnkey in the Fleet prison had to be bought, citizens who petitioned for justice had themselves to line the pockets of those who had bought these 'places'. In addition, there was no system of public prosecution. A citizen was expected to do his own police work: obtain an arrest warrant from a magistrate, arouse the constable, and then, providing the manpower from among his own friends and acquaintances, find and arrest the criminal. Then he had to bear the costs of the prosecution. It is not surprising that many people simply found it too expensive to bring an offender to justice, especially when most crime involved offenders too poor for the prosecutor to recoup his costs from. And even though in fact most criminal gangs did not stay together long enough to intimidate witnesses or prosecutors, the fear that they might do so was another powerful disincentive in the minds of would-be prosecutors.[27] The fortunate ones were those who belonged to a prosecution association, which provided an early form of insurance.[28]

There were some who called for a system of public prosecution in London, where all charges were met by the authorities.[29] But these were largely voices crying in the wilderness. There was little conception of the public good or of civic duty in eighteenth-century England. The lack of any true civic *virtù* explains why fires were so dreaded. Fire-fighting above all depends on co-operative effort and a high degree of motivation. The lack of these in eighteenth-century England was often disastrous. A fire in Wapping in 1715 destroyed 150 houses and carried off fifty people. So far from tapping any residue of collective effort, such disasters merely provided even greater opportunities for the underworld to plunder with impunity amid the confusion. Hanoverian England was *par excellence* a society where you got only what you paid for. This is shown most clearly by an examination of the mechanism whereby most criminals were actually caught: the system of rewards.

Well into the nineteenth century the state relied largely on rewards as its main weapon against crime and public disorder. Walpole and his successors believed that every man had his price. It followed that cash benefits accruing to private individuals for the discovery and conviction of offenders was the most efficacious method of fighting crime. The financial

rewards offered to informers were of a very high order by the standards of the day. The standard fee for information leading to the capture of a highwayman was £40.[30] In the case of damage to a turnpike, the reward for identifying the offender could go as high as £400.[31] When rioting broke out in 1795, the level of fear entertained by the elite about the revolutionary temper of the crowd was so great that £1,000 was offered for the 'discovery of any person endangering the safety of the Royal Person'.[32] However, in discussing rewards an awareness of chronology is all-important. After about 1750 the government cut back severely on the rewards it offered. This development was connected with the rise of new methods of policing, to be considered below. Thereafter the goverment offered rewards only for offences against its own property (for example, burglary on a government building).[33] But rewards continued to be offered by private individuals throughout the century.[34]

Along with rewards as an inducement to turn informer went a whole hierachy of pardons.[35] In this way the criminal fraternity could be turned against itself, shoplifters against burglars, thieves against receivers, footpads against highwaymen. The 'Tyburn ticket' was just the best known of these inducements.[36]

The high levels of crime, totally inadequate or non-existent policing, plus the lavish rewards offered for apprehension of criminals provided the ideal breeding-ground for that distinctive eighteenth-century phenomenon, the thief-taker. The role of the thief-taker is best illustrated by an examination of the career of Jonathan Wild, who arguably had the greatest criminal mind of the century.[37] Born in Wolverhampton in 1683, Wild came to London first as a servant, then worked briefly as a 'setter' or 'bum bailiff' before being committed to prison for debt in 1710. As so often, prison turned a petty criminal into a hardened professional.[38]

Released in 1712 under the Act for the deliverance of debtors, he set up as a brothel-keeper with his common-law wife Mary Milliner (or Molyneux). His next step up the ladder was to serve as deputy to undercity marshal Hitchen. The two worked together up to a quarrel in 1717. During this period Wild discovered his talent as a receiver of stolen goods. His criminal career was a process of ever-increasing subtlety. At first he and Hitchen ran a crude protection racket, extorting money and valuables from guilty and innocent alike. Then Hitchen evolved a primitive receiving system. But he lacked the patience necessary for success in this *métier*. He would often sell stolen goods to other receivers or dispose of stolen banknotes at gaming houses, before the owner of the stolen property had been brought to the point of paying 'rewards' for its return. Also, Hitchen restricted himself to stuff that was easy to dispose of but hard to trace, like banknotes and watches, or that could be used for blackmail, like pocket-books and diaries. He had no outlet for jewellery, silver plate, fabrics, or furniture.[39]

This was where Wild's genius first manifested itself. His solution was to cut out the fences and pay a higher rate directly to the thieves. He covered his costs by charging the original owners a still higher fee. But his true subtlety lay in the way he avoided falling foul of the Receiving Acts. Hitchen had made the mistake of actually taking possession of the stolen goods in exchange for cash. Wild merely took the details of the loot from thieves. Then he would call at the owners' houses, saying he had heard that certain goods stolen from the house had surfaced, at a pawnbroker's, say. He would then offer to have the goods returned. If the proprietors turned him away, he would leave in a dignified huff, which usually had the effect of making the owner think again.[40]

Wild had other ways of making recalcitrant victims consent to use his services as middleman. He would place an advertisement in a daily newspaper. The following is a typical example:

> Lost, the lst October, a black shagreen pocket-book edged with silver, with some notes of hand. The said book was lost in the Strand near the Fountain tavern, about seven or eight o'clock at night. If any person will bring the aforesaid book to Mr. Jonathan Wild in the Old Bailey, he shall have a guinea reward.

The subtext of this was clear to everyone who knew London; the phrase 'notes of hand' indicated that Wild knew who the owner was. The Fountain was a well-known brothel; therefore the owner would either have to retrieve his property or explain to his wife or mother what he was doing there.[41]

The final difficulty Wild had to surmount was how to return the property without compounding the felony. He did this by arranging direct meetings between thieves and owners at street corners, squares, or bridges. In the earlier part of his career Wild refused to accept a reward but took a share of the money paid to the thieves or pawnbroker.

More usually, however, the victim of theft or robbery was at once willing to co-operate with Wild. The victim would place an advertisement in the newspaper, naming Wild as his intermediary and specifying the reward. 'Going public' like this had a number of advantages for Wild. Placing the advertisement allayed any suspicions the owner, the public, or the authorities might have had that Wild might manipulate them: it proved that Wild did not possess the stolen goods himself; it informed the thieves that the owner was ready to come to terms; it made Wild's name familiar to the general public. In addition, in the rare cases where Wild genuinely did not know who had stolen the property in question, it brought new thieves into his circle.[42]

Pari passu with this ingenious system of receivership, Wild gradually brought the London underworld under his personal control, thus making himself in effect both chief of police and controller of organized crime.