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CRIME AND THE COMMON LAW IN ENGLAND

1580-1640

HONORS THESIS PREPARED FOR

THE HISTORY DEPARTMENT

BY

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RICHMOND, VIRGINIA

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Preface

In this paper, I have endeavored to illustrate many of the forms of crime committed during the late sixteenth and early seventeenth centuries. I have also attempted to show the role of local people in the law. The workings of the common law of England have been simplified to outline the investigations, the trials, and the punishments received by felons and trespassers. Much of my research came from original manuscripts. Therefore, I have retained the original spellings, word order, and phrases, neither correcting nor modernizing the words, word order, or phrases, of the quotations and excerpts from those original manuscripts.

Cara Swinden

Chapter 1

An Introduction to Crime in England

Crime and punishment have long occupied the thoughts and actions of people around the world. In the late Tudor-early Stuart era, however, crime figured prominently in important social issues. More and more people perpetrated crimes in an effort to alleviate harsh economic poverty. Religious strife and incessant war with Spain, beginning in 1588, also occupied the thoughts and actions of the English people throughout the sixteenth and seventeenth centuries.

Religious turmoil and Elizabeth's anti-Catholic stance on domestic and foreign policy caused much unrest and great resentment through certain sections of the population. The government's decision to aid the Dutch resistance of French Catholicism added a great monetary burden to the English country. In 1588, Spain sent the 'invincible' Spanish Armada, without a declaration of war, to subdue the Protestant, English people. After the destruction of the Spanish Armada, Elizabeth and England pursued a continual war with Spain throughout the remainder of the sixteenth and into the seventeenth century. Several other policies of the English government led to a decrease in the country's finances. Elizabeth sent aid to Henry of Navarre, the French Huguenot heir to the Catholic throne of France. The Earl of Essex, a favorite of the queen's, attempted to suppress rebellion in Ireland and failed miserably, costing England innumerable arms, troops, and money. In 1603, Elizabeth died, leaving James Stuart of Scotland heir to the throne of England.

The war debt, rising inflation, and out-dated taxation

practices caused many financial difficulties for the people of England and the new monarch, James VI of Scotland and I of England. The new ruler faced many problems upon his accession to the throne. James I of England concluded the war with Spain in 1604. Following the peace, England experienced a period of economic prosperity. However, James still collected very little in revenues and paid even higher prices. Incessant religious strife on the European continent and in England continually troubled James I during his reign. By the time of his death in 1625, James I's government was corrupted, foreign relations deteriorated rapidly, and England teetered on the brink of war with Spain once again.

James' son and heir, Charles I, faced even greater financial difficulties. Dependent upon Parliament for grants, Charles attempted to earn money through forced loans and unpopular taxes. Rebellion erupted in Scotland, after Charles attempted to impose the English Episcopacy on the Scottish Presbytery, and further depleted the economic reserves of England. By 1640, the King of England was bankrupt. Unemployed laborers, soldiers, and others throughout the seventeenth century caused an increase in the crime of vagrancy, which according to some officials led to an overall increase in crime.

Crime, however, developed diverse classifications with respect to the victims of the offense. Crimes were perpetrated against three distinct categories of victims. The first category involved any criminal action against the state, meaning the government of England. The second classification included all crimes against people. This category contained any crime which physically or emotionally injured the victim. The last group

involved crimes against property. In this category, the criminal action affected only the property of the victim.

Two distinct divisions concerning the actual transgressions subdivided all of these classifications of crime. In any category of crime, all felonies were considered capital offenses, many of which were punishable by statute:

During the seventeenth century some 300 crimes were designated as felonies, and from the fact that house-breaking, or stealing anything of value greater than a shilling, was thus made punishable by death the severity of the code may be estimated.¹

The second type of crime was the trespass. This crime, according to Cynthia Herrup was, "any transgression of the law less than treason, felony or misprision of felony, but most commonly used for a wrong or damage done by one private individual to another."² As this definition states, trespasses included any crime that was not a capital offense.

The law recognized six separate classes or estates of people. The first class included all of the nobility, esquires, and gentlemen. Yeomen, any freeholder of land valued at forty shillings, constituted the second class in the law. The requirement of forty shillings was made irrelevant by the increasing inflation of the late Tudor and early Stuart monarchies. The third group, recognized as a legal class, consisted of peasants or husbandmen. This group owned little or no land and generally leased farm land from the wealthier yeomen. The fourth classification contained all of the men who practiced any trade in any part of England. Laborers comprised the fifth legal class of citizens. Finally, a sixth class under the laws of England recognized women.³ Class considerably affected the type

of crime committed, the trial received, and the punishment ordered by the judge and jury. In fact,

...most...felons tended to be very respectful of status lines in their criminal acts with two exceptions. Gentlemen and yeomen were indiscriminate in choosing whom to injure. Laborers and small tradesmen and craftsmen as well as women, on the other hand, rarely did a wrong to anyone above them in social status.⁴

Crime evolved into a major social problem in the years between 1580 and 1640. However, neither the crimes, investigations, trials, and punishments had not changed greatly since the beginning of the sixteenth century.

Before an investigation commenced, a trial heard, or a punishment executed, a crime must have been committed. The most serious crimes pertained to crimes against the state. Some of the most violent crimes committed fell under the category of felonies against people. The most common criminal acts involved trespasses against property. Some crimes were committed by different classes, other criminal acts were perpetrated along sex lines. Some of the classifications contained criminals that acted within a criminal hierarchy and followed the rules of the society of criminals and rogues.

Within the classification of crimes against the state, one felony and one trespass existed. Treason was a capital offense punishable by statute. The most celebrated cases in Tudor and Stuart England included the trials and executions of Mary Queen of Scots in 1587, the fallen favorite, the Earl of Essex in 1601, and Guy Fawkes in 1605. Mary, the Catholic Queen, was implicated in several plots to kill Elizabeth and to transfer power in England to Mary and the Catholics. Mary's execution warrant was signed by Elizabeth and the execution carried out in the secrecy of the

castle imprisoning Mary in 1587. The Earl of Essex, after his failed attempt to suppress the rebellion in Ireland, failed also to arouse the citizens of London against Elizabeth. Essex was tried, condemned, and finally, executed in public in 1601. On November 5, 1605, Guy Fawkes was captured emerging from the Parliament building where a cellar had been filled with gun powder in order to blow up James I and the Protestant dominated Parliament. Fawkes was also tried and executed for treason. However, torture forced Fawkes to reveal the names of several of his accomplices, later tried for treason.⁵

Some people committed sedition, a trespass against the state. F. G. Emmison affirmed that, "Sedition, or the inciting of people to disaffection towards the crown, could be perpetrated by violent action or by spoken or written words."⁶ The crown prosecuted several men, usually educated and upper class, for sedition. James I prosecuted a priest for writing an unpublished, seditious tract against the government. Sedition was not a capital crime; therefore, the penalties handed down by the judge and jury varied with respect to the harm caused by the criminal misdemeanors.

The most violent crimes involved the violation of a victim's body. Crimes such as homicide, infanticide, suicide, buggery, bigamy, kidnapping, witchcraft, and rape constituted capital felonies. Some common trespasses committed by rogues against numerous people included assault, slander, debt, bearing a bastard child, and illegal assembly. Some crimes overlapped the three different categories of crimes against people, crimes against state, and crimes against property as in the cases of bastardy, witchcraft, and illegal assembly.

Homicide or murder, while being the least prevalent felony, often resulted from the unstable passions of human beings. Many of the killings in the late Tudor-early Stuart period were recorded as domestic slayings. Men committing these crimes repeatedly claimed to have been possessed by wild, uncontrollable, raging passions. Blunt instruments were the typical weapon of choice for the male felons. Women, on the other hand, were associated more frequently with premeditated murder. Women administered poison as the favorite means of killing. Guns, however, related to many violent crimes, especially homicides, as well as other forms of killing. In fact, many groups endeavored to obtain gun control legislation. However, this venture failed to pass successfully through Parliament.⁷

Infanticide was, perhaps, the least common violation of the early seventeenth century. Women killed unwanted children more frequently than men. Financial difficulty and the shame of bearing a bastard child, drove some women to kill the infant shortly after birth. However, this crime was very rarely prosecuted which has led scholars to believe the act extremely unusual and that the bastardy rates proved extremely low, between two and three percent for this time period.⁸

Suicide was also connected repeatedly with women. Perhaps, the shame of an illicit liaison or financial burden caused many women to take their own lives. However, suicide still qualified as a felony. Any property of the victim, especially male suicides, was confiscated and the victim was refused a religious burial. For that reason, bribery and lies concealed many suicides, especially in the wealthier classes.⁹

The quarter sessions of the peace as well as the assize courts tried the sexual offense of buggery. Buggery or sodomy was a capital offense which was very difficult to prove. Buggery included homosexuality and sexual bestiality between men and animals or women and animals. Conviction rates of buggery were extremely low, ranging between .5% to 1%.¹⁰ Thomas Dekker, a contemporary of the seventeenth century, compared men to beasts in manner, appearance, and diet in his Seven Deadly Sinnes of London.¹¹ As many people wrote only of the greatest concerns of society, bestiality and buggery concerned many people and must, therefore, have been a rather prevalent crimes.

Bigamy, another capital offense, was perhaps, more common than first believed. In the seventeenth century, obtaining a divorce proved to be extremely difficult and expensive process. The instability of the economy and the necessity of traveling to seek work precipitated an increase in bigamous relationships. Many husbands, forced to seek work in other areas of the country, lost contact with wives and families. Many spouses lost contact for several years which led each spouse to believe the other dead. Abandonment also caused an increase in bigamy. Bigamy was extremely difficult to detect because communications between different areas of the country were minimal. A person from one part of the country could have married another person in another community where the local people did not know of the other marriage. Virtually the only means of discovering a bigamous relationship involved a coincidence or other unusual event.¹²

Kidnapping proved a problem in the seventeenth century as demonstrated by an act of Parliament in response to increasing

reports of this crime:

It is ordered by the Lords and Commons in Parliament assembled, That all Officers and Ministers of Justice be hereby streightly charged and required to be very diligent in apprehending all such persons as are faulty in this kind, either in stealing, selling, buying, inveigling, purloyning, conveying, or receiving Children so stolne, and to keepe them in safe imprisonment, till they may be brought to sever and exemplary punishment.¹³

Criminals kidnapped children to sell to businesses as slave labor. Some ransoming of children of the wealthy must also have occurred but very few, if any, cases were recorded in the transcripts of the court proceedings which have not been lost or destroyed through time.

Witchcraft and rape also qualified as capital offenses. The ecclesiastical courts and the common law courts handled both of these crimes. Unfortunately, very few rape cases were reported or tried in the seventeenth century as the only acceptable proof of the deed, penetration or conception, was difficult to prove to the judge and jury. The victims of rapes and attempted rapes, which were tried as common assault, tended to be young girls and servants.¹⁴ Witchcraft, on the other hand, appeared more frequently in the courts. While the cases of witchcraft decreased during the Tudor-Stuart era, witchcraft cases still comprised 5% of all indictments between 1559-1603.¹⁵ English witches tended to be women from the lower socio-economic levels, such as laborers. However, witches practiced either "white" or "black" magic. White witches or wise women were sought for their ability to heal through herbs and natural remedies. Black witches were prosecuted for specific acts against individuals rather than for simply losing their immortal soul, for which witches on the European

continent were tried.¹⁶

Trespasses against people of the Tudor-Stuart era included three crimes against individuals and two crimes against the entire community. The first of the individual trespasses was assault. The victim of many assaults usually represented the law or a member of the family. Assault or the brutal beating of a person appeared to be a rather common crime. Fist fights often settled disputes between neighbors and family. Assault, however, usually included unfair odds and very little chance for the victim to defend himself successfully against his attackers. The second crime against individuals was slander. Vicious name-calling and spreading ruinous falsehoods, while common among the wealthier, educated classes, was also engaged in by the lower classes, especially among rival tradesmen. Debt, an especially common crime in the late Tudor-early Stuart period, caused many debtors to be arrested after being unable to repay creditors.¹⁷

Bastardy was a crime that was committed against the entire community. When a bastard child was born into a community, the law required that the community provide for the child. However, many communities attempted to send bastards into other communities, in order to avoid the financial obligations requisite towards caring for the fatherless child. Many court cases involved towns suing one another because a bastard of one community had been foisted off on the other community.¹⁸

The second crime against the community was illegal assembly or riot. When a large group of people congregated in an area of the county for reasons beyond those prescribed by the government such as church or other ceremonies and meetings, then the law

considered the group to be illegally assembled and the leaders could be arrested and charged. When the illegally assembled group began to riot, anyone in the group was liable to be caught and charged with leading the riot against the community. However, none of these crimes were capital offenses. Therefore, the judge and jury determined the extent of complicity in the trespass and the appropriate punishment for that involvement.¹⁹

The final category of criminal action involved crimes against property. The major problem of the Tudor-Stuart era was vagrancy which in turn led to other criminal problems. Vagrants included any person not earning a respectable living by farming or practicing a trade; in effect, an unlicensed beggar. Since the peace with Spain in 1604, many of the vagrants, vagabonds, and rogues were ex-soldiers. Vagrancy led to other felonious crimes against property such as burglary, highway robbery, and arson.

Vagrants were typically considered to be lower classes of people. Many criminals trespassed against other people only once. However, criminals committing capital felonies more than once tended to be professionals. Burglary of the property or possessions of any person comprised a felony. The burglar was also charged with house-breaking and entering. With the help of other rogues, a burglar disposed of his stolen goods quickly and easily. The ability to hide and dispose of the stolen property so easily made catching burglars extremely tricky. Most often burglars had to be caught in the process of stealing more goods from another victim.²⁰

Highway robbers embodied thievery of a different sort. These men waited, hidden on the side of the roads, in anticipation of

unwary travelers. The highway robber jumped out of the hiding spot and held up the carriage, often with the help of a fire-arm. Fear of highway robbery led many officials to sue towns that neglected to repair sections of the highway or bridges, as the unrepaired sections caused travelers to slow down allowing the highwaymen greater opportunity to rob the passing coaches.²¹

Arson or the willful setting on fire of buildings or other property was especially feared by the people of the sixteenth and the seventeenth centuries. As the homes and buildings of every town and villages were constructed of wood and stood relatively close together, fire was the most destructive and greatly feared force throughout England. Arson, a rare capital crime, generated great fear in the English people.²²

The classification of crime against property contained many trespasses. Larceny, fencing stolen goods, poaching, illegal gambling and gaming, drunkenness, disseisin, being a gypsy, usury and other unethical crimes comprised a list of categories which contained many sub-categories of violations. None of these misdemeanors was capital by statute but crimes such as larceny could be adjudged capital by a judge and jury if the action merited a classification of grand larceny or even burglary.

Larceny or theft was the most common form of crime throughout England, if not the world. The underworld of thieves developed a hierarchy of its own. Dekker questioned, "who is more liberall then you? who (but only Cittizens) are more free?"²³ In fact, Thomas Dekker maintained in his Guls Hornbook that the hierarchy of thieves was almost as strict, if not stricter, than the social hierarchy of England. Dekker described the dress and customs a

criminal should follow in order to present a discriminating appearance and manner to fellow thieves:

But one note by the way do I especially woee you to, the neglect of which makes many of our Gallants Cheape and ordinary, that by no meanes you be seene above foure turnes; but in the fift make your selfe away...²⁴

Many groups of thieves, such as pick pockets, cutpurses, forgers, extortionists, and others formed individual classes in the hierarchy of the underworld. Robert Greene, a contemporary of Thomas Dekker, asserted that, "...as now by their close villanies they cheat, cozen, prig, lift, nip, and suchlike tricke, now used in their cony-catching trade to the hurt and undoing of many an honest citizen."²⁵ Thieves developed a unique language describing the types of crimes that could be committed. The high law described robbing on the highway, the sacking law was lechery or whoring, the cheating law involved playing with loaded dice, the crossbiting law was swindling by whores, the cony-catching law was cozening by cards, the versing law described swindling through false gold and money, the figging law was cutting purses and picking pockets, Barnard's law allowed for drunken cozening with cards.²⁶ Other terms for crimes included the black art which was lock picking, the curbing law was hooking goods through open windows with long, hooked poles, the Vincent's law was cheating at bowls, the priggig law was stealing horses and the lifting law was stealing anything.²⁷ Many of the criminals and rogues exhibited talents for all or many different forms of crime. Pornography, a violation committed by whores especially, involved modeling for dirty postcards engraved with erotic scenes and sonnets as well as directions to the best whores for certian

tastes. Criminals concocted love potions and love charms to sell to the public. Alchemy was practiced by these criminals as many claimed to have a formula for making gold from such substances as goose-grease. In fact, evidence has been found that mechanical letter bombs were manufactured and used by some of these criminals.²⁸

Fencing the stolen goods also constituted a trespass. The society of criminals provided many opportunities for stolen goods to be hidden away from the authorities. The criminal society also provided thieves with many English fences and contacts with French and Dutch smugglers willing to buy and sell the stolen property.²⁹

Illegal gambling and gaming evolved into a prosperous and addictive pastime for many members of every social class. Frequently, games of dice and cards were played in alleys and ale houses. Often, the games were rigged in some fashion either with loaded dice or marked cards.³⁰

Everie Justice of P. may from time to time...enter into any common house or place, where any playing at Dice, Tables, Cards, Bowls, Coyts, Cailles, Logats, Shove-groat, Tennis, casting the stone, foot-ball, or other unlawfull game, now invented, or hereafter to be invented, shall be suspected to be used; And may arrest the keepers of such places and Imprison them, till they finde Recognis. no longer to occupie any such house, play, game, alley, or place.³¹

The list of illegal games was long and varied. However, gaming and gambling remained a favorite sport of all classes of English people.

Often those people accused of playing illegal games or gambling claimed to have been drunk during the entire affair.

"Drunkenness, legally defined, amounted to almost total

incapacity."³² Drunkenness, as a crime, most often went before the ecclesiastical courts. However, many of the trespasses recorded in the common law courts reported the overuse of spirits by the alleged culprit.

Disseisin entailed a trespass against property. Disseisin was the unlawful, forceful taking of land or property. This crime occurred most often in disputes over land in which one party gathered a group of friends or family together to seize the questionable land from the other party involved in the dispute.³³

Gypsies were criminals simply by being gypsies. The English government deported captive gypsies to the European Continent and attempted to run the rest of the gypsies out of England through Parliamentary legislation. When a gypsy was captured and imprisoned, his goods were confiscated. The law prosecuted anyone caught helping or associating with the gypsies as a gypsy.³⁴

Usury and other unethical business practices were also committed in the Tudor-Stuart period. Usury involved the lending of money to another person and charging interest, usually outrageously high, on that money. Another practice prevalent in some trades was that of cheating. One example of that cheating was coal peddlers who filled the coal bags with dust and put a layer of coal on top. The peddlers charged customers for a full bag of coal, thereby making exorbitant profits. The coal peddlers were not the only tradesmen caught cheating customers. Even the upper classes practiced unethical policies. Courtiers and the nobility used the monarch's influence to gain patents and monopolies on certain services and goods. When these men enforced the monopoly, prices of goods rose considerably, oftentimes beyond

the financial capabilities of the majority of the people.³⁵

Almost every office or service accepted bribes. Judges, jurors, justices of the peace, sheriffs, and constables numbered among the many government officials willing to accept bribes in return for favors.³⁶

Chapter 2

The Common Law in England

Once a crime had been perpetrated, an investigation ensued to determine the crime and the criminal. Unfortunately for the people of the late sixteenth and early seventeenth centuries, no organized, modern police force existed. The night watchman, the most visible form of law enforcement, roamed the streets of many cities and larger villages watching for any suspicious people or events. The duties of this official entailed watching the streets of the city or village for any felonies or trespasses being committed at night.³⁷ The bellmen chanted:

Look well to your locks,
Fire and your light,
And God give you good night
For now the bell ringeth.³⁸

Carrying a lantern with a bell attached to the casing and a pike or axe, these nightly watchers or bellmen called the time and the state of activity in streets and alleys of the cities and villages.³⁹ In his Guls Hornbook, Thomas Dekker advised criminals of the necessary behavior to avoid the suspicion and capture of the bellman:

the Watch will winke at you, onely for the love they beare armes and knighthood: Mary, if the Centinell and his court of Guard stand strictly upon his martiall law and cry stand, commanding you to give the word, and to shew reason why your Ghost walkes so late, doe it in some Jest (for that will shew you have a desperate wit, and perhaps make him and his halberdiers afraid to lay fowle hands upon you) or, if you read mittimus in the Constables booke, counterfeit to be a French man, a Dutchman, or any other nation whose country is in peace with your owne; and you may passe the Pikes: for being not able to understand you, they cannot by the customes of the Citie take your examination, and so by

consequence they have nothing to say to you.⁴⁰

Prior to the sixteenth century, the family of the victim investigated the crime and collected the evidence, which had a different connotation in the seventeenth century. The court permitted and favored witnesses, hearsay, and depositions to physical evidence presented during a trial. Occasionally, a piece of physical evidence, such as a weapon or conspicuous personal article belonging to the alleged felon found at the scene of the crime, was presented to the judge and jury. Criminals caught breaking the law provided irrefutable evidence for the judge and jury.⁴¹

Beyond the citizens, the sheriff also investigated crimes. Three vital character requirements necessary for a man to be a sheriff, according to Chief Justice Coke of the King's Bench included:

Honesty: to execute his office truly without malice, affection or partiality; Knowledge: to understand his duty what he ought to do; Ability: as well in estate as in body.⁴²

As the law required the sheriff to present all the felonies and misdemeanors that had occurred within his precinct since the last quarter session or assize, the sheriff or his deputies investigated the minor as well as the major infringements of the common law within the community. As servants of the Justices of the Peace and the coroners, sheriffs suppressed riots, observed suspicious individuals, seized the property and goods of indicted felons and trespassers, and searched for stolen goods and felons. The sheriff and his deputies also maintained the local tools of punishment such as the stocks, cage, pillory, or whipping post.⁴³

However, the job of sheriff was not highly prized by the individuals capable of paying the costs of taking office, paying deputies and staff workers, and entertaining traveling officials and judges. The Exchequer expected a specified sum of tax money to be collected in each county. The sheriffs' duties included collecting taxes, forced loans and ship money. If the requisite sum of money was not collected in his area, the Exchequer expected the sheriff to personally add the difference between the collected money and the specified sum.⁴⁴ Dalton complained of the local deputies of the sheriff in a letter written to John, Lord Bishop of Lincolne,

...Undersherifes and Officers (men for the most part of meane estate, who looking onely after their private profit, neglect the publicke, regarding little or nothing, either the preservation of the king's rights, or the common good of the Countrie; but contrariwise use much deceipt, to the king in concealing his rights and dueties, and much oppression to his subjects)⁴⁵

Another official responsible for investigating criminal acts was the local Justice of the Peace. These justices focused on minor, local matters as well as dealing with the larger, more important concerns of the nation. "The assize judges also had an important function in passing the concerns of central government into the localities and collecting details of local grievances, notably through the medium of grand jury presentments."⁴⁶ Gleason described the justices:

As a group they were wealthy, well educated, ambitious, in reasonable accord with national policy both religious and political, much more than the mere creatures of the royal administration; in brief, they were the leaders of their counties.⁴⁷

The Justices of the Peace supervised the working of the criminal

justice system from the investigation of the crime to the trial of the alleged felon. "Justices of the peace for counties derived their judicial authority from the commissions of the peace."⁴⁸ These commissions of the peace granted the appointed justices the power to "make inquiries, issue warrants, take informations, record examinations under the Marian statutes and take recognizances to keep the Peace."⁴⁹ In the most serious cases, such as murder, treason, or burglary, the "justices' role...was that of prosecution rather than judge."⁵⁰ The justices of the peace were the primary form of police in sixteenth and seventeenth century England.

When the law agent investigating a case held strong suspicions but no solid proof concerning a suspected criminal, the sheriff or justice of the peace petitioned the crown for a torture warrant. Interrogators used torture as a method of obtaining a confession to a crime. The government issued torture warrants for political or religious crimes. The torture sessions took place prior to the trial. The wardens of the Tower and Bridewell tortured the criminals incarcerated in those prisons. Forms of torture included whipping, being stretched upon the rack, manacled, or having needles stabbed under the fingernails.⁵¹

Other methods of torture involved having thumbscrews attached to the hands or being placed in the Scavenger's daughter. By compressing the body rather than stretching it, the Scavenger's daughter produced the opposite effect of the rack.⁵² The most common form of torture involved pressing the alleged felon with stones, called *la peine forte et dure*. Stones pressed the chest

of the criminal. When no confessions were forthcoming, more stones were added to the chest of the victim until he confessed or died from the pressure.⁵³ "In the first two decades of James I's reign forty-four people in Middlesex alone, including three women, were pressed to death, in addition to over 700 who were hanged."⁵⁴ The courts permitted any confessions or evidence presented during a torture session as admissible in court. However, the use of torture dwindled after Elizabeth. Torture appeared primarily in important cases, such as the Guy Fawkes case in 1605 and other treason cases.⁵⁵

After the investigation, the sheriff presented the results of the investigation and all forms of evidence to a grand jury and a judge either at the quarter sessions or the assizes. "At least one grand jury was summoned to appear at every assizes and sessions for the purpose of finding indictments."⁵⁶ Each of the twelve members of the jury were administered the grand juror's oath before the case was heard. "Each jury was composed of twelve or more substantial freeholders, sworn to present all crimes committed in their country such as were listed in their charge."⁵⁷ Each of the members of the jury swore the following oath prior to the trial:

You shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge. The king's Majesty's Counsel, your fellows; and your own, you shall well and truly observe and keep secret. You shall present no man for envy, hatred, or malice; neither shall you leave any man unpresented for love, fear, favour, or affection, profit, lucre, gain, or any hope thereof; but in all things you shall present the truth, the whole truth and nothing but the truth. So help you God.⁵⁸

The judge and jury heard only evidence presented by the prosecution as the indictment trial determined only whether the case warranted the detainment of the defendant for a criminal trial. "An indictment was an accusation made by twelve or more laymen sworn to inquire on the king's behalf and recorded before a court of record."⁵⁹ This indictment trial was a vital part of English common law, "because it meant that the king and his ministers could not of their own motion put a man on trial for a felony. A man could only be tried for his life upon either the appeal of an interested subject or the presentment of at least twelve of his peers."⁶⁰

If a felon were indicted for a crime, another trial by jury ensued. Chapter 29 of the Magna Carta assured every citizen the right to a trial by a jury of peers, a system peculiar to England during this time. This document also defined two classes of peers; the temporal lords of Parliament and the commoners.⁶¹ In the criminal trial, the court permitted the defendant to plead his case and offer evidence. Except in trials involving the state, neither the defendant nor the prosecution had counsel. Often, the Justice of Peace coerced the accuser to act as prosecution in the trial, while the indicted felon acted as defense.⁶² Again, a judge and jury heard the case. Lambard described how a court must remain impartial and fair in his Eirenarcha, a handbook for Justices of the Peace,

The court beeing thus made privie and possessed of causes, must of duetie procede to the handling (or hearing) and tryall of them: the whiche bicause it can not indifferently doe, unlesse it keepe one eare for the offendour, as other were heard to lay the charge upon him...⁶³

Following the disclosure of all evidence to the judge and jury, the law entitled the judge to highlight the points made during the trial before reminding the jury of its duty to the law. The jury was then permitted to leave the courtroom to deliberate. When the jury returned to the court, the foreman read the verdict aloud. If the defendant were acquitted of the charge, the individual was discharged from the court after paying the court fees. "At common law an acquittal either on indictment or appeal barred any further proceedings for the same offence."⁶⁴ If the verdict were guilty, the defendant was asked to name his property in order that it may be seized by the court. The court then asked if any juror dissented from the verdict. If the jury were in unanimous agreement, then the defendant was duly convicted and bound over to await sentencing.⁶⁵

The severity of the sentence pronounced varied with the degree of the crime. The judge deliberated and passed the sentence on the convicted felon. "The Judgements of the Justices of Peace bee in some cases arbitrarie (or referred to discretion) and in other some cases prescribed, or limited."⁶⁶ Frequently, the law prescribed the sentence for certain criminal actions.

For upon Murders, and other Felonies, they must pronounce the usual Judgement of Felonie: upon such as bee convicted of Trespasses, Contempts, Riots, and such other offenses, whereupon no certaine forfeiture is layed by Statutes, they must adjudge.⁶⁷

Once the guilt of the alleged felon had been determined and the judgment passed, punishment awaited the convicted felon. Depending upon the punishment, the criminal received the penalty, administered by the sheriff, immediately following the trial.

In the case of crimes against the state, the felon was held in prison until the trial and then following the trial until punishment was meted out. The law dictated the method of punishment for convicted traitors. The punishment for treason differed in respect to class and gender. Women convicted of treason as well as other capital offenses such as murder, were burned at the stake.⁶⁸ Common men, on the other hand were to be punished in the following manner:

You are to be drawn upon a hurdle to the place of execution, and there you are to be hanged by the neck, and being alive cut down, and your privy member to be cut off, and your bowels to be taken out of your belly and there burned, you being alive; and your head to be cut off, and your body to be divided into four quarters, and that your head and quarters be disposed of where his majesty shall think fit.⁶⁹

In the case of treasonous peers, the law specified a different trial:

A peer of the realm indicted for treason or felony could only be tried by other peers of the realm, and the form of trial differed somewhat from that of a commoner in that the triers did not take an oath (and so were not 'jurors'), and unanimity was unnecessary so long as there was a majority of at least twelve.⁷⁰

The punishment applied to peers, however, was beheading rather than hanging.⁷¹ Many times, the executioner extended mercy to the traitor. Often the executioner did not cut down the body and begin the dismemberment until after the death of the traitor.

In 1606, when a Jesuit Henry Garnet was hanged in Paul's yard, King James expressly ordered that the authorities made sure he was dead before the body was quartered, contrary to the usual practice with executed traitors; an efficient hangman was expected to cut down the body while it was still alive, open the victim's belly, pull out his entrails and show them to him before his eyes closed in death.⁷²

Women also received mercy from the executioner by being strangled prior to burning on the stake.⁷³ The executioner had to be careful in granting mercy as executions attracted vast crowds of spectators. The Newgate Calendar, a London newspaper, informed the public of upcoming executions or punishments as well as theatrical events about crime and famous criminals which also generated crowds.⁷⁴

Capital felonies were punished by hanging, except in the case of peers who were beheaded. The gallows of London were located in Tyburn. Often, cities and villages erected temporary scaffolds for the execution of convicted felons. Crafty criminals escaped capital punishment by pleading the clergy, pregnancy, or insanity.⁷⁵ The court system enabled felons to avoid death through the "pious perjury" of the jury, pardon, or transportation.⁷⁶

Pleading the clergy allowed the criminal to prove to the judge the ability to read a section of the Bible. Many criminals memorized the commonly read sections in order to plead clergy in a trial. The benefit of the clergy could be used once to commute a capital sentence to the branding of the thumb with a letter indicating the type of felony committed.⁷⁷ The brand prevented the criminal from pleading the clergy on a second conviction. The criminal used the benefit of clergy frequently as the passage of laws prohibiting the benefit of clergy showed:

Statutory exceptions making certain offenses non-clergyable proliferated in the Tudor period, and in the years 1620-80 these exceptions included treason, piracy, murder, arson, burglary, housebreaking and putting in fear, highway robbery, all other forms of robbery, stealing from the person to the value of more than a

shilling, buggery and rape.⁷⁸

Pleading pregnancy also prevented the executions of female convicts. Women technically obtained a stay of execution until after the birth of the child. The pregnant convict was tried by a jury of matrons to determine her role in a criminal action and the validity of her pregnancy. By the time of the birth, many women had successfully avoided punishment by being set aside and forgotten by the criminal justice system during the months of the pregnancy.⁷⁹

Insanity was pleaded with some frequency as the alleged felons claimed to have committed the crime during a time of temporary insanity. Temporary insanity was regarded in the same fashion as a passionate outburst. Temporarily insane felons often escaped the death penalty and usually ended up with another form of punishment. When full insanity was pleaded, the convict escaped capital punishment but was incarcerated in an asylum. Often the asylums were a worse form of punishment than anything the court system prescribed.⁸⁰ Bedlam, the most notorious lunatic asylum, provided inmates with constant beating, confinement, and other correctional methods in attempts to cure or control insanity. The running of Bedlam fell to the wardens and governors of Bridewell. As with executions, society amused itself by paying admission to view the actions and punishments of the lunatics imprisoned in Bedlam.⁸¹

In cases of larceny and burglary, the jury helped the felon escape execution through "pious perjury". The jury undervalued the goods which had been stolen to change the term of the criminal action from larceny or burglary to theft. Juries often

undervalued stolen goods for first time offenders or those criminals charged with stealing slightly more than the definition of theft entailed. The felon was then punished as a trespasser rather than a capital offender.⁸²

Only the crown issued pardons. However, the judges in each case recommended pardons to the crown if circumstances warranted such a recommendation. Some pardons contained no terms or strictures to constrict the movements or actions of the pardoned criminal. Other pardons, however, provided the criminal with certain requirements that must be met in order to maintain the pardon. Although not officially sanctioned by the government, transportation of criminals to other sections of the world was used frequently throughout the Tudor-Stuart period, but especially in the Stuart era.⁸³ King James I wrote in 1614 to his Privy Council Commission:

...to reprove and stay from execution such and soe many persons as nowe stand attaynted or convicted of or for any robberie or felonie, (wilful murder rape witchcraft or Burlglarie onlie excepted) whoe for strength of bodie or other abilities shal be thought fitt to be ymployed in forraine discoveries or other services beyond the seas.⁸⁴

Many convicts escaped capital punishment by agreeing to transportation from English soil. The West Indies, Jamaica, the Leeward Islands, and especially Virginia all received English criminals, including the sixty convicts transported before 1634.⁸⁵ Merchants shipped the convicts to these foreign areas while trading with the many plantations. Often the convicts became bonded servants, treated in the same manner as the other bondsmen, and received land and freedom after a certain number of years in

servitude. Transportation pardons often required that the convict not return to England within a certain number of years.⁸⁶ Another form of transportation included conscripting the convict into foreign military service or work on the galleys of the English fleet. All of these pardons required approval from the King's Bench, the highest common law court in England, record of the pardon in the court's register, and the official seal of the king affixed before the pardon commuted the capital sentence to a less severe penalty.⁸⁷

A myriad of correctional devices punished trespasses or non-capital crimes. Whipping, mutilations, branding, spending time in the stocks, pillory, or cage, dunking, fining, and imprisoning the convict provided commonly used methods of punishment for many crimes. The judge determined the penalty warranted by the criminal for the seriousness of the crime.

Whipping, often in conjunction with another method of punishment, usually mutilation of the body, served as the most commonly used correctional technique for convicted whores, vagrants, tricksters, thieves and other minor criminals. Offenders lost ears and hands or were burned on any part of the body, most commonly in the ear. Branding, an especially common disciplinary device, provided punishment for many offenders. The brand, located on a prominent part of the body, served to warn people of the crime committed by the person carrying the landmark. Public embarrassment proved especially effective in the smaller villages and rural towns. Being locked in the stocks, pillory, or cage with a description of the crime written on a piece of paper and attached to the forehead of the convict served

as an effective form of punishment for minor trespasses. The convict was ridiculed by friends and neighbors during his incarceration in the public, punishment device. The sheriff dunked women in water for scolding and other minor transgressions.⁸⁸

Criminals convicted of larger trespasses often received fines, along with another form of penalty, for the crime. Fining became a very common form of punishment for members of the middle and upper classes. The lower classes, however, were also liable to being fined for trespasses. "In fine, the great mass of early seventeenth century litigation, far from affecting only the gentry and nobility, penetrated deep into the society as a whole."⁸⁹

Finally, another means of punishment involved imprisonment. Prison was a rather expensive form of punishment. A convict sentenced to prison was required to pay for his accommodations, to keep his clothes, to get food and drink and to bribe guards for fair or better treatment. Often the prisoner could not afford decent quarters in the prison for an extended period of time.⁹⁰ A typical, affordable cell was described as being, "a narrow cobweb-festooned room with some straw and a pair of dirty sheets and a candle-end for illumination."⁹¹ Wood Street Counter, Fleet, Newgate, Clink, Ludgate, and Bridewell became the most notorious of the fourteen prisons in England in the late sixteenth and early seventeenth centuries.⁹² In his 1623 pamphlet, John Tyler summarized the prisons and correctional devices available in London:

In London, and within a mile I ween
There are of jails or prisons full eighteen,
And sixty whipping-posts, and stocks and cages,

Where sin with shame and sorrow hath due wages.
 For though the Tower be a castle royal,
 Yet there's a prison in't for men disloyal...
 And last it is a prison unto those
 That do their sovereign or his laws oppose.
 The Gatehouse for a prison was ordained
 When in this land the third King Edward reigned:
 Good lodging-rooms and diet it affords...
 Since Richard's reign the First the Fleet hath been
 A prison, as upon records is seen,
 For lodgings and for bowling, there's large space...
 Old Newgate I perceive a thievish den,
 But yet there's lodging for good honest men...
 ...No jail for thieves, though some perhaps as bad,
 That break in policy, may there be had.
 The Counter in the Poultry is so old
 That it in history is not enrolled.
 And Wood Street Counter's age we may derive
 Since Anno Fifteen Hundred Fifty Five...
 Bridewell unto my memory comes next,
 Where idleness and lechery is vext:
 ...for vagabonds and runagates,
 For whores and idle knaves and suchlike mates,
 'Tis little better than a jail to those,
 Where they chop chalk for meat and drink and blows...
 Five jails or prisons are in Southwark placed,
 The Counter (once St Margaret's Church defaced),
 The Marshalsea, the King's Bench and White Lion,
 Where some like Tantalus or like Ixion
 The Pinching pain of huger daily feel...
 And some do willingly make their abode
 Because they cannot live so well abroad.
 Then there's the Clink, where handsome lodgings be...
 Cross but the Thames unto St Katherine's then,
 There is another hole or den for men
 Another in East Smithfield little better,
 Will serve to hold a thief or paltry debtor.
 then near Three Cranes a jail for heretics,
 For Brownists, Familists and Schismatics.
 Lord Wentworth's jail within Whitechapel stands,
 And Finsbury, God bless me from their hands!
 These eighteen jails so near the city bounded
 Are founded and maintained by men confounded:
 As one man's meat may be another's bane,
 The keeper's full springs from the prisoner's wane.⁹³

Bridewell was a house of corrections and rehabilitation for criminals.

Bridewell was the first remedial institution for rogues and vagabonds in England, though the principles behind it--notably the need to abolish beggary, corporate responsibility for vagrancy and relief in return for

work--came from continental thought and experiment...⁹⁴
Bridewell supposedly supplied convicts with some form of productive, respectable work in an effort to rehabilitate the criminal. However, the jailers, often former prisoners, practiced corrupt policies and often allowed the convicts to continue illegal practices from within the jail. "Winchester Geese" or prostitutes plied their avocation while in Bridewell usually for the benefit of the jailer.⁹⁵ Other forms of corruption occurred within the walls of Bridewell and the other thirteen prisons. Ludgate and Newgate, beggar prisons, allowed the prisoners, already destitute, to live in sub-poverty conditions and to beg for food through the bars on the windows.⁹⁶

The law and courts administered punishment in a concerted effort to deter further criminal actions. "It is evident that the main objective of punishment was deterrence: there was no certainty that criminals would be caught so potential criminals had to be terrified."⁹⁷ Common law attempted to scare people from a life of crime by making a vast number of crimes capital offenses. The assizes and the quarter sessions traveled into the countryside to judge provincial criminal cases. The "assizes were for the most ordinary purposes the principal criminal courts in the country."⁹⁸ During the provincial criminal court sessions,

the Power of the Justices of Peace, is in some cases limited and (in otyer some cases) Absolute...but after a Manner: For, they may neither hang a man for a greevous Trespas, nor fine him for a Felonie: and therefore this absolute authoritie is to our law better knowen by the name of Discretion.⁹⁹

However, many crimes were not reported or investigated.

Constables and sheriffs often proved willing to investigate only certain classes of people, usually the lower class and vagrants. Many crimes never went to trial because of the necessity of paying court fees, as well as fees for the judge and jury. Prosecuting a crime involved many expenses, sometimes requiring more money than the theft or loss of property cost. Problems arose when a crime necessitated a trial:

the importance of the good name of the accused, the intrusion of personal factors into the conduct of law enforcement officers, and the difficulties involved in obtaining witnesses when the pressure of time upon them could be heavy, given the personal nature of the system of justice at its lowest level it is surprising that there were not more reports of assaults upon parish officers, or of partiality or corruption on their part.¹⁰⁰

The common law "was administered that the peace of the land might be maintained in all points, and common right be done to all."¹⁰¹

During the troubled sixteenth and seventeenth centuries, the maintenance of the law kept the country from falling into anarchy. The people of England expected protection and justice from the government against all manner of criminal actions. While punishment was not administered fairly, the people of all social classes received equitable retribution for criminal acts. The greatest concern of the English common law system of justice provided that every citizen receive a fair, impartial indictment and criminal trial by a jury of peers, regardless of the guilt or innocence of the alleged offender. One of the main concerns of the law was to keep separated secular, religious and political felonies and trespasses.

With religious strife on the European continent as well as in England, the court system strove to keep violence and internal

strife to a minimum. Offenders received quick trials and punishments. However, the system contained many flaws. The culpability of human beings being the greatest flaw of the criminal justice system. The judge and jury occasionally acted more favorably to some than to others. In fact, juries proved "as liable to prejudice as judges and more susceptible to intimidation and bribery."¹⁰² That officials accepted bribes in exchange for leniency or silence also pointed to a flaw in the system. As time passed, the corruption and flaws of Charles I's government created greater unrest among the English people. The end result of this political and social unrest being the civil war which tore the country along religious principles as well.

Crime in England between 1580 and 1640 convinced many people of the necessity of severe punishment for certain actions. The people of England also believed in the policy of leniency for less severe felonies and trespasses. That the criminal escaped the death penalty through numerous means pointed to the leniency of the system and the fairness of the English people in administering justice to convicted felons and trespassers. Whether this system of justice prevented further crime can not be completely answered as the information necessary for such a statement can not be definitively determined. That crime continued to be a problem of the English society was furnished by irrefutable existence of further legislation against the same crimes that had been committed since the early sixteenth century.

In fact, many of the crimes committed in the sixteenth and seventeenth centuries can be found in societies all over the world in the twentieth century. Greater technological advancements help criminals of this century but the basic types of crime remain the

same as the crimes of the late Tudor-early Stuart period. Crime and punishment have concerned the people of England and the world throughout history. In times of strife and times of peace, crime continued to present a most pressing problem to judicial systems everywhere. The methods of punishment evolved into other means since the sixteenth and seventeenth centuries, but punishments still serve as the recognized consequence of criminal actions. Even though some evolution has occurred, some of the correctional devices, such as imprisonment, fining, and forfeiture of property, used by the English continue to be applied in modern societies. Crime and punishment occupied a prominent place in the concerns of sixteenth and seventeenth century English citizens. Crime and the criminal justice system will continue to concern the people of the world until all crime can be eradicated.

Endnotes

¹Abbott Emerson Smith, Colonists in Bondage: White Servitude and Convict Labor in America 1067-1776 (Chapel Hill: University of North Carolina Press, 1965), 90.

²Cynthia B. Herrup, The Common Peace: Participation and the Criminal Law in Seventeenth Century England (New York: Cambridge University Press, 1987), xiii.

³Joel Samaha, Law and Order in Historical Perspective (New York: Academic Press, 1974), 24-25.

⁴Ibid., 24.

⁵Luke O. Pike, A History of Crime in England (London: Smith, Elder & Company, 1876), 2:118-123.

⁶F.G. Emmison, Elizabethan Life: Disorder (Essex: Cullingford & Company, Ltd., 1970), 39.

⁷J.A. Sharpe, Crime in Seventeenth Century England (New York: Cambridge University Press, 1983), 129-130.

⁸J.A. Sharpe, Crime in Early Modern England 1550-1750 (New York: Longman Group Ltd., 1984), 109-110.

⁹Samaha, 17-27.

¹⁰Sharpe, Crime in Seventeenth Century England, 65-66.

¹¹Thomas Dekker, The Seven Deadly Sinnes of London (New York: Houghton Mifflin Company, 1922), 50-59.

¹²Sharpe, Crime in Seventeenth Century England, 67-68.

¹³John Wright, An Ordinance of...Parliament for the Apprehending...all such Lewd Persons as shall Steale, Sell, Buy...any Little Children (London: Parliament, May 9, 1645).

¹⁴Sharpe, Crime in Seventeenth Century England, 63-65.

¹⁵A.D.J. Macfarlane, "Witchcraft in Tudor and Stuart Essex," Crime in England 1550-1800, ed. J.S. Cockburn (London: Metuen and Co. Ltd., 1977), 54.

¹⁶Gamini Salgado, The Elizabethan Underworld (London: J.M. Dent & Sons Ltd., 1977), 87-90.

¹⁷Sharpe, Crime in Seventeenth Century England, 117-121.

¹⁸J.A. Sharpe, "Crime and Delinquency in an Essex Parish 1600-1640," Crime in England 1550-1800, ed. J.S. Cockburn (London: Methuen and Co. Ltd., 1977), 99.

¹⁹Sharpe, Crime in Seventeenth Century England, 71-88.

²⁰Sharpe, Crime in Early Modern England 1550-1750, 111-114.

²¹Samaha, 21.

²²Emmison, 99.

²³Thomas Dekker, The Guls Hornbook and the Belman of London (London: J.M. Dent & Sons Ltd., MCMXXVIII), 3.

²⁴Ibid., 33.

²⁵A.V. Judges, The Elizabethan Underworld (London: George Routledge & Sons Ltd., 1930), 179-180.

²⁶Ibid., 135.

²⁷Ibid., 149.

²⁸Salgado, 29-30.

²⁹Ibid., 46-47.

³⁰Michael Dalton, Countrey Justice 1619 (London: Professional Books Ltd., 1973), 55-56.

³¹Ibid., 55.

³²Sharpe, Crime in the Seventeenth Century, 54.

³³Ibid., 72-74.

³⁴Salgado, 151-162.

³⁵Ibid., 47.

³⁶J.H. Baker, "Criminal Courts and Procedure at Common Law 1530-1800," Crime in England 1550-1800, ed. J.S. Cockburn (London: Methuen and Co., Ltd., 1977), 44.

³⁷Salgado, 14.

³⁸Ibid., 15.

³⁹Ibid., 14.

⁴⁰Dekker, The Guls Hornbook, 61.

⁴¹Baker, "Criminal Courts and Procedure," Crime in England, ed. J.S. Cockburn, 38-40.

⁴²T.A. Critchley, A History of Police in England and Wales (Montclair: Patterson Smith, 1972), 10-11.

⁴³Joan R. Kent, The English Village Constable 1580-1642 (Oxford: Clarendon Press, 1986), 25.

⁴⁴Cyrus H. Karraker, The Seventeenth Century Sheriff (Chapel Hill: The University of North Carolina Press, 1930), 58-59.

⁴⁵Michael Dalton, Officium Vicecomitum: The Office and Authoritie of Sherifs (London: Professional Books Ltd., 1985), letter.

⁴⁶Sharpe, Crime in Early Modern England, 23.

⁴⁷J.H. Gleason, The Justices of the Peace in England 1558-1640 (Oxford: Clarendon Press, 1969), 96.

⁴⁸Baker, "Criminal Courts and Procedure," Crime in England, ed. J.S. Cockburn, 28.

⁴⁹Ibid., 29.

⁵⁰Ibid., 28.

⁵¹James Heath, Torture and English Law: An Administrative and Legal History from the Plantagenets to the Stuarts (Westport: Greenwood Press, 1982), 121-130.

⁵²Pike, 87-88.

⁵³Salgado, 178.

⁵⁴Ibid., 178.

⁵⁵Heath, 121-147.

⁵⁶Baker, "Criminal Courts and Procedure," Crime in England, ed. J.S. Cockburn, 19.

⁵⁷Ibid., 19.

⁵⁸Ibid., 33.

⁵⁹Ibid., 18.

⁶⁰Ibid., 18.

⁶¹Ibid., 23.

⁶²Ibid., 36-38.

⁶³William Lambard, Eirenarcha or the Office of Justice of Peace (London: Professional Books Ltd., 1972), 415.

⁶⁴Baker, "Criminal Courts and Procedure," Crime in England, ed. J.S. Cockburn, 18.

⁶⁵Ibid., 40-41.

⁶⁶Lambard, 454.

⁶⁷Ibid., 455.

⁶⁸Baker, "Criminal Courts and Procedure," Crime in England, ed. J.S. Cockburn, 42.

⁶⁹Ibid., 42.

⁷⁰Ibid., 23.

⁷¹Sir Thomas Skyrme, History of the Justices of the Peace (England: Barry Rose and the Justice of the Peace, 1991), 176.

⁷²Salgado, 24.

⁷³Baker, "Criminal Courts and Procedure," Crime in England, ed. J.S. Cockburn, 43.

⁷⁴G.R. Elton, "Introduction: Crime and the Historian," Crime in England 1550-1800, ed. J.S. Cockburn (London: Methuen and Co., Ltd., 1977), 1.

⁷⁵Samaha, 59-60.

⁷⁶Sharpe, Crime in the Seventeenth Century, 92, 147-148.

⁷⁷Samaha, 61.

⁷⁸Sharpe, Crime in the Seventeenth Century, 24.

⁷⁹Baker, "Criminal Courts and Procedure," Crime in England, ed. J.S. Cockburn, 44.

⁸⁰Ibid., 44.

⁸¹Salgado, 193-199.

⁸²Sharpe, Crime in Seventeenth Century England, 92.

⁸³Abbott E. Smith, "The Transportation of Convicts to the American Colonies in the Seventeenth Century," The American Historical Review 2 (January 1934): 232-249.

⁸⁴Smith, Colonists in Bondage, 93.

⁸⁵Ibid., 94.

⁸⁶Ibid., 89-94.

⁸⁷Baker, "Criminal Courts and Procedure," Crime in England, ed. J.S. Cockburn, 44-45.

⁸⁸Skyrme, 173-176.

⁸⁹M.J. Ingram, "Communities and Courts: Law and Disorder in Early-Seventeenth-Century Wiltshire," Crime in England 1550-1800, ed. J.S. Cockburn (London: Methuen and Co., Ltd., 1977), 116.

⁹⁰Salgado, 169-174.

⁹¹Ibid., 169.

⁹²Ibid., 163-199.

⁹³John Tyler, The Praise and Virtue of a Jail and Jailers (1623), quoted in Gamini Salgado, The Elizabethan Underworld (London: J.M. Dent & Sons Ltd., 1977), 181-182.

⁹⁴Salgado, 191.

⁹⁵Ibid., 53.

⁹⁶Ibid., 178-180.

⁹⁷Sharpe, Crime in Seventeenth Century England, 141.

⁹⁸Baker, "Criminal Courts and Procedure," Crime in England, ed. J.S. Cockburn, 27.

⁹⁹Lambard, 63.

¹⁰⁰J.A. Sharpe, "Crime and Delinquency," Crime in England, ed. J.S. Cockburn, 104.

¹⁰¹Ingram, "Communities and Courts," Crime in England, ed. J.S. Cockburn, 110.

¹⁰²Baker, "Criminal Courts and Procedure," Crime in England, ed. J.S. Cockburn, 22.

Annotated Bibliography

Primary Sources

Bridgeman, Sir John. Reports of the Grave and Learned Judge Sir John Bridgeman Knight Serjeant at Law Sometime Chief Justice of Chester. London: Thomas Roycroft, 1659.

Judge Bridgeman summarized the proceedings heard in his court. With handwritten notes in the margin and tables reviewing the outcome of each case in an appendix, this book, written in old English, Latin terms, and calligraphy presented a good look at the different cases heard and sentences handed down by one of the common law justices.

Cockburn, J.S. A History of English Assizes 1558-1714. Cambridge: Cambridge University Press, 1972.

Cockburn's history of English assize courts showed the process of criminal proceedings, and discussed the persons and officials involved in the trials. This source also included maps of the court circuits.

Cockburn, J.S., ed. Western Circuit Assize Orders 1629-1648: A Calendar. London: Butler & Tanner Ltd., 1976. vol. 17.

This work provided short descriptions of the cases tried on the Western Circuit Assizes. The descriptions included an explanation of the sentence and the resolution of the case.

The Compleat Clerk in Court; or Practising Solicitor, in all our Courts. London: E. & R. Nutt & R. Gosling, 1726. pp. 282-384.

This original manuscript presented cases tried by solicitors in all of the seventeenth century courts. This work was also a guidebook for solicitors in the courts.

Dalton, Michael. Countrey Justice 1619. London: Professional Books Limited, 1973.

This reproduction of Dalton's original manuscript was written in old English with a smattering of Latin phrases. Included in this work were definitions of crime and the theory behind the working of the criminal justice system in Dalton's time.

Dalton, Michael. Officium Vicecomitum: The Office and Authoritie of Sherifs. London: Professional Books Limited, 1985.

This reproduction, also in old English with Latin and French phrases describing the law, depicted the duties associated with the job of sheriff. This source was good for determining the perceived duties, official and non-official, of the sheriff and his deputies.

Dekker, Thomas. The Guls Hornbook and the Belman of London. London: J.M. Dent & Sons Ltd., MCMXXVIII.

A reproduction of the original 1608 manuscript, this satirical manual provided instructions for the perfect criminal. Dekker, a contemporary of the time, discussed the manner and variety of crime and criminal found in London in the early seventeenth century. Found within this text are colloquial expressions, translated by a selection of explanatory notes at the end of the book.

Dekker, Thomas. The Seven Deadly Sinnes of London. New York: Houghton Mifflin Company, 1922.

This primary source presented a general portrait of the atmosphere in seventeenth century London. Dekker's satire provided a list of bibliographical notes as well as notes on the text.

Execution of Justice 1583. London: [1583].

This reproduction of the original manuscript, written in old English with notes in the margin, detailed the necessary steps for criminal action in sixteenth century courts.

Judges, A.V. The Elizabethan Underworld. London: George Routledge & Sons Ltd., 1930. pp. 119-491.

Pamphlets written by many contemporaries of the sixteenth and seventeenth centuries were compiled in this collection of crime and punishment. An introduction to the text, notes within the text, and a glossary explaining the cant expressions found within each pamphlet made this a good source.

The Justices of the Peace in Wales and Monmouth 1541 to 1689. Cardiff: University of Wales Press, 1975.

This work offered a list of justices on commission as well as lists of sheriffs and acting officials. Each entry also provided the dates of election, retirement, and re-election.

Lambard, William. Eirenarcha or the Office of Justice of Peace. London: Professional Books Limited, 1972.

This reproduction of an original manuscript offered instructions to all justices. Lambard described the qualities necessary for a justice as well as the powers available to justices, in his handbook. Lambard also detailed the court and the powers available to one or more justices working together.

Wake, Joan, ed. Quarter Sessions Records of the County of Northhampton. Hereford: Privately Printed, 1924. vol. I. pp. 1-100.

This collection of court proceedings was highlighted by notes concerning the cases as well as notes describing the development of the Quarter Sessions. The court's records followed the proceeding from indictment to sentencing.

Wright, John. An Ordinance of...Parliament for the Apprehending ...all such Lewd Persons as shall Steale, Sell, Buy...any Little Children. London: Parliament, May 9, 1645.

Parliament drafted this piece of legislation in response to increased kidnappings. The original manuscript described the punishment to be received by all criminals who steal children.

Secondary Sources

Cockburn, J.S., ed. Crime in England 1550-1800. London: Methuen and Co. Ltd., 1977. pp. 15-71, 90-134.

Cockburn included a critical bibliography in this collection of scholarly essays. The essays covered many aspects of crime and punishment in England in the sixteenth, seventeenth, and eighteenth centuries.

Cockburn, J.S. and Thomas A. Green, eds. Twelve Good Men and True: The Criminal Trial Jury in England 1200-1800. Princeton: Princeton University Press, 1988. pp. 117-181.

This collection of essays dealt specifically with the trial jury. Illustrations, graphs, and tables within the articles enhanced the information. The book ended with a section of notes profiling each contributor.

Critchley, T.A. A History of Police in England and Wales.
Montclair: Patterson Smith, 1972. pp. 10-17.

A discussion of the duties and problems associated with the job of constable, from this expansive history of the development of the modern police force, proved helpful. Critchley included a list of references and a selected bibliography in this work.

Emmison, F.G. Elizabethan Life: Disorder. Essex: Cullingford & Company, Ltd., 1970.

Emmison focused on crime in the middle of the sixteenth century. Many anecdotes and illustrations highlighted the discussions of the various forms of crime to be found in England. Several appendices with tables and a large bibliography accompanied this work.

Gladwin, Irene. The Sheriff: The Man and his Office. London: Victor Gollancz Ltd., 1974. pp. 283-322.

This history of the sheriff illustrated the duties performed by the sheriff through stories of the sheriffs in England. Appendices detailing the different holders of the sheriff's office in the American colonies, Scotland, Wales, and England along with a list of references can be found at the conclusion of this work.

Gleason, J.H. The Justices of the Peace in England 1558-1640. Oxford: Clarendon Press, 1969.

Gleason discussed the duties of the Justices of the Peace in this work. A list of all of the justices of the peace in England in the different counties, as well as a list of other local officials, provided specific dates of entrance and dismissals from the offices.

Green, Thomas A. Verdict According to Conscience. Chicago: University of Chicago Press, 1985. pp. 105-152.

Green discussed the changing relationship between the judge and the jury as well as the changing aspects of the criminal trial. Included in this work were two indexes.

Heath, James. Torture and English Law: An Administrative and Legal History from the Plantagenets to the Stuarts. Westport: Greenwood Press, 1982. pp. 109-167.

With a great many examples of torture warrants and cases, Heath discussed torture and its use in English common law.

Herrup, Cynthia B. The Common Peace: Participation and the Criminal Law in Seventeenth Century England. New York: Cambridge University Press, 1987.

Herrup focused on Sussex in this county study of participation in the common law. Maps, charts, and graphs emphasized points made in the text. A glossary and several appendices detailing the occupations of participants, definitions of legal terms, and a sampling of the courts and court cases enhanced the value of this work. Also included in this work was a large bibliography.

Karraker, Cyrus H. The Seventeenth Century Sheriff. Chapel Hill: The University of North Carolina Press, 1930. pp. 3-62.

This collection of illustrative documents detailed each specific duty and aspect involved in holding the position of sheriff. Karraker compared the job of an English sheriff to that of a sheriff in the American colonies.

Kent, Joan R. The English Village Constable 1580-1642. Oxford: Clarendon Press, 1986.

This work was a good source for a complete description of the village constable and his office. The discussion covered the constables' duties, social status, personalities, requirements for office, and problems.

Knafla, Louis A., ed. Crime, Police, and the Courts in British History. London: Meckler Corporation, 1990. no. 1 pp. 107-149.

Knafla compiled a collection of scholarly essays which dealt with crime, police, criminal policy, and the court system from medieval to nineteenth century England.

Pike, Luke O. A History of Crime in England. London: Smith, Elder & Company, 1876. vol II. pp. 73-77, 81-93, 109-111, 118-123.

This two volume discussion of crime chronologically covered crime in England through 1874. Stories of different crimes offered insight into the criminal justice system. Pike included a list of references and notes on the text.

Rumbelow, Donald. I Spy Blue: The Police and Crime in the City of London from Elizabeth I to Victoria. Bath: Cedric Chivers, 1971. pp. 25-58.

This work offered general background information on the development of a police force in England. Rumbelow dealt mainly with the later seventeenth and eighteenth centuries.

Salgado, Gamini. The Elizabethan Underworld. London: J.M. Dent & Sons Ltd., 1977.

Salgado offered information on every aspect of crime and punishment in the mid- to late sixteenth century. Anecdotes furnished the information with meaning and a list of terms defined the legal aspects of criminal action.

Samaha, Joel. Law and Order in Historical Perspective. New York: Academic Press, 1974.

This comprehensive study of crime, criminal justice, law officials, and court proceedings was further improved with tables and graphs in the text. Appendices of charts and graphs detailed crime and punishment in England.

Sharpe, J.A. Crime in Early Modern England 1550-1750. New York: Longman Group Limited, 1984.

Sharpe's addition of tables and charts detailed his comprehensive study of crime and society in England. The work contained a large section of notes and references, divided by chapters, as well as bibliographical notes on the text.

Sharpe, J.A. Crime in Seventeenth Century England. New York: Cambridge University Press, 1983.

Sharpe's use of anecdotes and graphs highlighted vital facets of the criminal justice system in England. Tables of various statistics in the appendix provided useful information. Each chapter was extensively explained in a large section of notes.

Skyrme, Sir Thomas. History of the Justices of the Peace. England: Barry Rose and the Justice of the Peace, 1991. pp. 163-219.

This three volume work traced the origins of the justice of the peace through to present day. Skyrme also outlined the duties inherent to the position of justice of the peace. Also included was an annotated list of works cited.

Smith, Abbott E. "The Transportation of Convicts to the American Colonies in the Seventeenth Century." The American Historical Review vol. XXXIX, no. 2 (January 1934): pp. 232-249.

This helpful article contained much information about the transportation of convicts from England to the American colonies especially in the early Seventeenth century.

Smith, Abbott Emerson. Colonists in Bondage: White Servitude and Convict Labor in America 1067-1776. Chapel Hill: University of North Carolina Press, 1965. pp. 89-110.

Smith discussed the entire spectrum of servitude available in the American Colonies. Life as a servant, especially as a convict servant, was detailed by Smith. Tables and illustrations completed this broad study of white servitude in America.