

## **In what ways and for what reasons did patterns of recorded crime change in the 16th and 17th century England?**

The early modern period in England saw great differences in the harshness of penal codes and the regularity with which these penalties were actually enforced. As with all times, it is of course very hard to tell with any degree of certainty the actual figures for the numbers of crimes committed, since many will never have been reported, let alone further action taken. Edward Hext in Somerset in 1590 reckoned that only one in five crimes in his native county were reported, a figure which is just as nebulous as the one in ten which was the figure reached by Patrick Colquhoun for London in 1796. However it is undeniable that the very difficulty of initiating prosecutions, added to the fact that they were invariably the prerogative of the plaintiff proved an effective disincentive to the universal usage of the courts as the primary means of attaining justice. The expense of doing so was compounded by the many fees to be paid. A clerk of assize alone could expect to receive between 2 shillings and 16s 8d for every indictment presented before him.<sup>1</sup> On the other hand, every effort was often made by the defendant to avoid having to face a formal prosecution in the open. Blackstone for instance in the early part of the eighteenth century recorded that 'It is not uncommon...for the court to permit the defendant to speak with the prosecutor, before any judgement is pronounced... This is done to reimburse the prosecutor his expenses, and make him private amends, without the trouble and circuitry of a civil action.'<sup>2</sup> Another example of this feeling comes from a case in 1698 in which a Gloucester thief offered 'Seaven pounds in money in leiu of the money as was lost out of his house if he would not send her to gaol and prosecute her.'<sup>3</sup> So acceptable was the practice of settling out of court that not only did justices of the peace habitually attempt to repair relationships on a local level, but that even the procedures of the court could be sacrificed as and when private transactions took place. A letter sent to a Staffordshire clerk of the peace in 1598 explained why Francis Heanshaw was absent from the session, saying he did not realise he must continue to attend 'the matter being compounded and agreed upon betwixte him and the other parties who were at difference with him.'<sup>4</sup> Justices of the peace and other court officials could try to create informal agreements, such as a theft in Warwick in 1580 for which it was recorded of the plaintiff that 'he woold not procede against him by law, but was content to forgive him so as he comytted no more the like.'<sup>5</sup> One of the complicating factors in cases such as these, was that private agreements could only be available in cases of theft or other offences against property. For homicides or other crimes more against the moral order of society, it was harder for arrangements to be made, even though it is quite clear that the response of the community was by no means limited recourse to law. The charivari for example, though generally going unrecorded, formed a noisy and cathartic informal community response to moral crimes such as mismatched marriages, cuckolded husbands and scolding wives. Admittedly, such unsanctioned actions were easily able to trigger further and more official court proceedings. For example, in 1609 a countryman of Abingdon leered at William Fulbrooke that 'Fulbrooke hath longer horns than my cow, dost thou know what I mean by it?' and found himself in court for his pains. In a more serious case in 1619 the Star Chamber heard of William and Mary Cripple, who were overtaken by a charivari which threw the 'dourte and mier of the streets at them' and subsequently 'pissed upon their heads.'<sup>6</sup>

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<sup>1</sup> Sharpe: *Crime in early modern England* p.64

<sup>2</sup> Sharpe: *Crime in early modern England* p.65

<sup>3</sup> Sharpe: *Crime in early modern England* p.67

<sup>4</sup> Sharpe: *Crime in early modern England* p.65

<sup>5</sup> Sharpe: *Crime in early modern England* p.67

<sup>6</sup> Sharpe: *Crime in early modern England* p.125

However, for quantitative purposes it proves impossible to rely on these accounts solely for our understanding of crime and justice in the early modern period. Instead, we must rely on the records of courts and jails in order to observe several facts about the pattern of criminality. Firstly it must be noted that there did not appear to be a great deal of geographic differences between the proportions and types of crime reported to the tribunals from one area of the country to another. For example we can take the records of assizes from different parts of the country and compare them. The Sussex Assizes between 1559-1625 show that 74% of the cases heard were offences against property, and 10% homicide or infanticide; in the same way, the Hertfordshire assizes of 1559-1625 show 86% property offences and 3% homicide; the Cheshire Court of Great Sessions between 1580-1709 show 74% property offences, 16% homicide; finally, the Essex assizes of 1620-1680 show 81% property offences, 11% homicide.<sup>7</sup> In this case it seems fairly even across the country to find that somewhat over three-quarters of the cases appearing at the assizes or quarter-sessions were based around theft of some description. In some ways this is not surprising, since many other types of crime would have been dealt with either in a more informal manner or in a different court entirely. In urban areas, however, it is noticeable that there were a larger number of indictments for felonies against property, e.g. Middlesex assizes 1550-1625 which saw 93% of all cases being property offences, with only 5% being of homicide.<sup>8</sup> The implication is therefore that in the expanding towns of southern England at least, the fierce competition for resources and compact town-houses increased the likelihood of theft occurring. However, the number of indictments for felonies against property fell after a high-point in the 1620s, despite the apparent continuity in population rise. There were on average 650 property cases per annum in Cheshire Court of Great Sessions 1620s, yet only 180 by 1680s. In Devon there were 250 cases per annum between 1598-1640 at the assizes, yet only 38 cases per annum by 1700-9.<sup>9</sup>

This fall in numbers of property cases mirrors the number of cases in general, as well as a reduction in the numbers of death-sentences per conviction. Elizabethan Essex for example saw a percentage of 26.4% of convictions resulting in an execution, Middlesex 29% and Cheshire 22%. By 1700-9 this pattern had halved, such that Cheshire saw 10% of convicted felons executed, Devon 8% and London approximately 10% - all of this despite the fact that adultery was made in 1650 into a felony without benefit of clergy, while burglary, horse-theft, highway robbery and cut-pursing had been denied the benefit of the clergy for a long time.<sup>10</sup> A reduction in the number of executions ordered in absolute terms followed on from the reduction in convictions leading to a death-sentence, yet the change could be quite dramatic. Cheshire's Court of Great Sessions through the 1620s ordered 166 executions yet only 10 in the years 1700-9. Devon ordered 250 executions between 1600-9 yet only 30 for 1700-9. London in Jacobean period executed 150 per year, yet only 20 per year in the first decade of the eighteenth century.<sup>11</sup> The small numbers of witchcraft trials - 4% in the Essex assizes for the dates given about being a high point - suggest that witchcraft never formed a significant part of the legal pre-occupations of the individuals who were responsible for prosecutions.

Much of the impetus for this reduction admittedly must come from the fact that the assize courts were not so well used at the end of the period as they had been somewhat earlier, however it cannot be denied that judges frequently showed leniency in sentencing as much as juries did in mitigating the charges brought against one of their number. A good example of this in practice comes from that of John Aston of Myddle, Shropshire, described as 'a sort of silly

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<sup>7</sup> Sharpe: *Crime in early modern England* p.80

<sup>8</sup> Sharpe: *Crime in early modern England* p.80

<sup>9</sup> Sharpe: *Crime in early modern England* p.86

<sup>10</sup> Sharpe: *Crime in early modern England* p.92

<sup>11</sup> Sharpe: *Crime in early modern England* p.92

fellow, very idle and much given to stealing of poultry and small things.' His small-scale thieving clearly was tolerated by the community for some time, and even when he was indicted before Shrewsbury assizes, the jury promptly undervalued the poultry he had stolen at 11d - a penny below the shilling boundary separating petty larceny and grand larceny with its death-sentence as an official punishment. The case against Aston again highlights a factor in the attitude towards criminality on a general scale, a belief that human nature was flawed meaning that 'a law without room for mercy and forgiveness would have been a mockery of justice.'<sup>12</sup> To a great extent therefore, law-enforcement was about differentiating hardened criminals from merely errant brethren, who could be rehabilitated into society. An example of how this principle translated directly into sentencing can be seen from the fact that in East Sussex, none of those who pleaded guilty to the less-serious felonies between 1592-1640 were hanged; while even in serious ones denied benefit of the clergy only 20% of highway robbers were hanged, 62% of convicted burglars, 67% of cut-purses. - yet 95% of horse-thieves. As Herrup says, 'only a hardened criminal could deserve a punishment that protected the community but ignored the convict's soul.'<sup>13</sup> If even plaintiffs 'woold not procede against him by law, but was content to forgive him so as he comytted no more the like'<sup>14</sup> - as in a theft in Warwick in 1580 - godly mercy could clearly be seen as a contributing factor to the comparatively lenient stance taken by the courts in this period. Admittedly, there were new opportunities to spare convicts the rope, despite the declining importance of the benefit of the clergy - transportation to the colonies as one example provided an easy way to rid the community of a threat without executing the miscreant.

On the other hand, religious influences also saw many other sinful factors leading to crime, and felt obliged to try to clear up such social evils, and fear of sinfulness often led to a lack of differentiation between the idle and the dishonest. As Ben Jonson described it half-humorously in *Eastward Ho!* in 1605: 'Of sloth comes pleasure, of pleasure comes riot, of riot comes whoring, of whoring comes spending, of spending comes want, of want comes theft, of theft comes hanging.'<sup>15</sup> In a more official capacity, the Court of Great Sessions in Chester 1654 issued an order against alehouses since their disorders were 'to the great dishonour of Almighty God, scandall of all good government, hardening and encouragement of wicked and licentious persons in their vicious courses and endangeringe the publique peace.'<sup>16</sup> It does not seem surprising that in this atmosphere the courts of archdeacons became noticeably more frequently used, to regulate all manner of social problems, and the escalating number of moral cases in the early seventeenth century. For example, one third of all the cases of bastardy presented in Terling, Essex between 1570-1699 came in the years 1597-1607, with another notable cluster between 1613-6.<sup>17</sup> At this time the church courts were receiving particular support from the central government as part of the official enforcement of the Reformation, yet the number of cases must reflect a wider movement in the countryside - cases to archdiaconal courts as with assizes were primarily brought by individuals or groups of individuals.

Yet another reason why local moral courts also became more important was because of the growing fact that population rise and inflation strained the fabric of village society, separating the notables who stood to gain from rising prices from the poorer members of society. The former increasingly dominated local judicial posts, since all householders were able to become parish constables, trial jurors & grand jurors; householders were invariably the witnesses and victims of crime against property, while the poor needing food were the most likely to turn to theft in order

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<sup>12</sup> Herrup: *Law and Morality in seventeenth century England*

<sup>13</sup> Herrup: *Law and Morality in seventeenth century England*

<sup>14</sup> Sharpe: *Crime in early modern England* p.67

<sup>15</sup> Herrup: *Law and Morality in seventeenth century England*

<sup>16</sup> Sharpe: *Crime in early modern England* p.6

<sup>17</sup> Spufford: *Puritanism and Social Control?*

to meet their needs. Therefore despite the fact that village officerships might be spread over a mixture of gentry, yeomen, husbandmen & artisans, criminal behaviour became increasingly to be regarded as a characteristic prerogative of the poor. The new system of poor relief tended to reinforce that, since it made newcomers and poor figures of suspicion. It seems no surprise to discover that the increased number of vagrants and bad feeling towards them came soon after the introduction of parish rates. In Acomb in Yorkshire, the manor court was filled with cases against parishioners charged with aiding and abetting vagrants. In 1598 Robert Wright was charged with lodging pedlars without the constable's consent; in 1623 John Wilkinson was presented for taking a Thomas Waite into his house without entering bonds securing the township against his claims for poor-relief. In 1600, three men were presented 'for entertaining, receiving and keeping in his house a woman evilly-disposed in her body.'<sup>18</sup> Yet vagrant crime was almost universally opportunistic, as seen by a case in Kent in the 1560s, in which a vagrant replied to the judge's suggestion that she get a job by saying 'God help! How should I live? None will take me into service. But I labour in harvest time honestly.'<sup>19</sup> Vagrant and other criminal mobility - Dick Turpin moved from Essex to Yorkshire for example - tended to complicate the picture still further. The very landlessness of vagrants and other poor members of the community meant that they inevitably suffered most greatly from economic downturns in the export market for manufactured goods and poor harvests and further strained relationships with those well able to benefit from scarcity.

In conclusion, the pattern of criminality seemed to suggest that crime figures were decreasing through the seventeenth century, following a peak in the economically disastrous years of 1597-1607. Swifter though more informal justice by means of the justices of the peace may have helped settle many disputes, though we must not discount a general reduction in criminal behaviour, possibly helped by the attitude of the more religiously-minded members of the community. Although many were convicted of all sorts of felonies, mercy and discretion increasingly marked the sentencing process. However, although the more respectable members of society became more respectable, criminals committed tended to come disproportionately from the most vulnerable section of the community.

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<sup>18</sup> Sharpe: *Crime in early modern England* p.117

<sup>19</sup> Sharpe: *Crime in early modern England* p.146