CRIME, GENDER AND SOCIAL ORDER IN EARLY MODERN CHESHIRE

Thesis submitted in accordance with the requirements of the University of Liverpool for the Degree of Doctor in Philosophy

by

Garthine Melissa Walker

June 1994

Garthine Walker

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ABSTRACT

Chapter One: **Introduction** falls into two main sections. The first of these deals with crime and gender, discussing the reasons why recent social histories have been inadequate in integrating a study of female agency and criminality into studies of crime and social order. The second section is concerned with issues which arise from the historiography of order and disorder in early modern Cheshire. It is in this context that Cheshire and its courts are discussed. Aspects of the conceptual and methodological bases of this present work are described and explained in both sections.

Chapter Two: **Non-Lethal Violence** explores the prosecution and dynamics of non-lethal violence. I examine actions and words which allegedly resulted in and threatened physical harm and explore the bearing of sexual difference on the ways in which violence was reported before magistrates. Scolding and barratry are also discussed. Notions of order are shown to be mutable; thus culpability for violence was measured upon a sliding scale which might not seem in strict accordance to the degree of physical harm inflicted. Significant differences in the manner in which male and female violence was presented to the courts are explored. A discussion of continuities and discontinuities over the course of the seventeenth century is located within recent historiography.

Chapter Three: **Homicide** is concerned with the prosecution, punishment and representation of acts of murder, manslaughter and infanticide. An analysis of judicial decision-making shows that culpability in homicide was mitigated by notions of justifiable or excusable killing. Constructions of acceptable violence were not merely gauged by their relationship to mutable notions of social order; they were also distinctly gendered. The vocabulary and thereby the very concept of righteous violence was masculine. Models of acceptable violence were virtually nonexistent for women. It was, therefore, not only difficult for women to justify their own violence, but in the absence of a social or legal language of righteous feminine violence, the law in practice could not operate

similarly for both sexes.

Chapter Four: **Theft and Related Activities** offers a detailed discussion of the role of gender in shaping the nature and extent of involvement in property offences and related activities such as receiving stolen goods. Judicial decision-making in prosecutions for offences against property is analyzed, and it is argued that common assumptions regarding the differential treatment of men and women before the courts are often misleading. I show that women and men had different patterns of criminal activity, both in the types of goods they stole, and in their choice of partners in crime, but not necessarily those which have largely been accepted by historians. Women are shown to have been active within female networks of social transmission as both breakers of the law and as the informal agents of its enforcement.

Chapter Five: **Authority, Responsibility and the Law** develops the themes of authority and responsibility which have been raised in previous chapters, and considers the role of the law in the lives of ordinary people. In some respects, the law can be seen to have been an agency of elite authority; in others it was, like the notion of order, subject to redefinition and notions of lawfulness could be used to sanction behaviour which might seem to be, or which were, unlawful. The legal process offered both men and women a language and a set of shifting concepts of order, honesty and lawfulness which they could draw upon in order to invest their own words and actions with some kind of authority. These, however, were not necessarily the same. Women's relationship to the law is shown to have been more complex than has been traditionally assumed.

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ACKNOWLEDGEMENTS

During the course of researching and writing this thesis I have incurred many debts. First, I should like to thank my supervisors, Jenny Kermode and Brian Quintrell. Jenny Kermode has offered me intellectual support and friendship which far surpasses the most that one could hope for in a PhD supervisor. I have greatly benefitted from Brian Quintrell's expertise and judgement; his comments and criticisms have led me to consider more fully the mechanisms of the administrative process, and the importance of not taking legislation at face value (although I am sure that there is less evidence of this in the pages which follow than he might have wished). Anthony Fletcher and Tim Meldrum have each read drafts of certain chapters; their comments and encouragement are much appreciated. Elizabeth Danbury kindly permitted me to attend her palaeography classes, and she and John Harrop were extremely helpful in deciphering illegible or incomprehensible latin during the initial stages of my research. Jack Butler and Clare Ellis-Jones are responsible for having fostered my early academic pretensions, and while I was an undergraduate at Liverpool, Jenny Kermode, Brian Quintrell and Mike Power each provided the inspiration for my becoming an early modernist. Di Ascot, Marilyn Barker, Bernard Capp, Emma Francis, Judy Haag, Paul Hemmings, Angela Hemmings, and Brendan Smith have all provided support of various kinds, for which I am very grateful. I would also like to thank my family - Milly, Tom and Matt Walker, Colin Scott, and Veronica Murphy - for their enthusiasm for and interest in my work. But my greatest thanks must go to Andy Wood. During our term as Research Fellows at the Institute of Historical Research, his perceptive criticism and encouragement were extremely valuable. Since then, he has provided invaluable intellectual and emotional support; he has read and commented upon drafts of the entire thesis; without him, the past few months during which the thesis was completed would have been far less gratifying.

CONVENTIONS

All dates are in the old style, but the year is taken to begin on 1 January.
Spelling, capitalization and punctuation in quotations from primary sources are usually presented as they appear in the manuscripts. Occasionally, however, they have been modernized for the sake of clarity.

CHAPTER ONE

INTRODUCTION

During the past twenty-five years, the "new" social history has been characterized by major historiographical accomplishment. Social historians have brought to the discipline a variety of new perspectives and methodologies and a rigorous reappraisal of diverse aspects of historical enquiry and interpretation. Two of the most stimulating areas of study for early modern England have been those of crime and of women. Within this literature, assertions have been made regarding differences in the behaviour of and attitudes towards men and women. Little attempt, however, has been made to integrate these claims, or indeed to test them, in a comprehensive study of the dynamics of social interaction. Yet such a study would illuminate the ways in which concepts of gender and social order interrelated and informed the activities and experience of men and women.

In this introductory chapter two fundamental themes will be considered. The first of these embraces the historiographical and methodological background to the study of crime and gender. I shall discuss the reasons why recent histories have been inadequate in integrating a study of female agency and criminality into studies of crime and social order. In doing so, I shall outline an alternative methodology which is employed in this thesis, and which, I shall argue, allows crucial questions to be posed and answered. Discussion in the second section of the chapter revolves around some of the historiographical and conceptual issues which have arisen from historical work on order and disorder in Cheshire itself. Cheshire's judicial and administrative system will be described and discussed in the context of lawlessness and law enforcement. Then, following a brief description of the economic structure of the county, I shall consider the problematic nature of the attempts of historians of crime to link economic and social phemonena. Finally, a short summary of the contents of the thesis will be presented.

Crime and Gender

Court records are amongst the most illuminating of all early modern historical sources, and offer a vivid insight into the nature of social interaction and diverse aspects of early modern social life. It is no accident that the two currently standard textbooks on the social history of the period - Keith Wrightson's English Society and J.A. Sharpe's Early Modern England - are written by historians whose own research interests originally lay in this sphere.[1] Yet the issue of gender has been dealt with unsatisfactorily in studies of crime. The experience of ordinary women who came before the courts as defendants, plaintiffs and witnesses has remained largely obscure. Within studies of litigation, gender has rarely been dealt with *per se*.[2] Assumptions about women have been made with little regard to gendered meanings and representations save only for the most obvious which imbue our own culture, and which may or may not have had similar resonances in the early modern period.[3]

Analysis of court records of various jurisdictions has provided vital evidence for our understanding of a variety of social and political relationships. Historians have sought to identify changing patterns of prosecution and punishment which they have then attempted to explain in terms of economic, religious and political phenomena. Connections have been made between processes of fundamental religious and economic readjustment and an increase in intrusive regulation and legislation. The obvious conclusion that legislation led to increased litigation itself suggests that a society becoming accustomed to institutional intrusion would increasingly turn to litigation to settle festering

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[1] Keith Wrightson, English Society 1580-1680 (London, 1982); J.A. Sharpe, Early Modern England. A social history, 1550-1760 (London, 1987).

[2] Important exceptions include J.H. Beattie, 'The Criminality of Women in Eighteenth-Century England', Journal of Social History, 8 (1975), pp. 80-116; Barbara Hanawalt, 'The Female Felon in Fourteenth Century England', Viator, 5 (1974), pp. 253-68; Robert B. Shoemaker, Prosecution and Punishment. Petty crime and the law in London and rural Middlesex, c.1660-1725 (Cambridge, 1992), pp. 207-216.

[3] See for example, Carol Z. Wiener, 'Sex-roles and Crime in Late Elizabethan Hertfordshire', Journal of Social History, 8 (1974-5), pp. 174-5; Frank McLynn, Crime in Eighteenth-Century England (Oxford, 1991), chapters 6 & 7.

personal disputes, to establish social boundaries, and to make individual statements.[4] It is now accepted that the law itself did not clearly establish immutable principle and considerable discretion existed in categorizing behaviour as unlawful. Local and regional studies have illuminated aspects of the dynamics of inter-personal disputes and have stressed the participatory and consensual nature of the legal process, locating it within community norms. The business of courts of church, state and manor has been seen as the product of a consensus for orderly life and the maintaining of preferred behavioural standards. While prosecution has correctly been seen to reflect wider social issues, albeit in a form manipulated and defined according to law and legal procedure, crime itself has been recognized as the outcome of constantly shifting definitions of what was acceptable behaviour.[5]

Keith Wrightson's notion of "two concepts of order" - that of the legislators and governing magistracy on the one hand, and that of groups of villagers on the other - has proved extremely influential. Yet Wrightson himself perhaps did not develop his argument far enough: he is undoubtedly correct in saying that the language of legality and order might mask a *multiplicity* of meaning as it might have markedly different implications in different situations; but this itself suggests that there were many more than two concepts of order at play.[6] There has as yet been little attempt to move beyond a highly deterministic framework of analysis in which social stratification retains a central place. However, that much litigation was between people of similar social status, and that ordinary people were involved to varying degrees in both litigating and in

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[4] Douglas Hay, et al. (eds), Albion's Fatal Tree. Crime and society in eighteenth-century England (London, 1975); Keith Wrightson and David Levine, Poverty and Piety in an English Village: Terling 1525-1700 (New York, 1979), ch. 5.

[5] Anthony J. Fletcher and John Stevenson, 'Introduction' in idem. (eds), Order and Disorder in Early Modern England (Cambridge, 1985), pp. 1-40; Cynthia B. Herrup, The Common Peace: Participation and the Criminal Law in Seventeenth-Century England (Cambridge, 1987); Martin Ingram, Church Courts, Sex and Marriage in England, 1570-1640 (Cambridge, 1987).

[6] Keith Wrightson, 'Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-Century England' in John Brewer and John Styles (eds), An Ungovernable People: the English and their Law in the Seventeenth and Eighteenth Centuries (London, 1980), pp. 21-46. This point is developed below, pp. 50-52.

administering the legal system, must lead us to qualify the entire notion of consensus in simplistic or binary terms.[7] Yet despite the recent emphasis upon the broad participatory base of the legal system, any real consideration of what this meant for women has been conspicuously absent.[8]

What little published work exists concerning female crime has tended to emphasize women's dependant social position in early modern society. Dependancy on husbands, fathers and the community has been used not only to explain the low rate of female prosecution, but also as evidence of the minor types of offences which they committed.[9] Women's status in legal, institutional and conventional terms was indeed derivative, defined in terms of their subordinate relationship to men and the status and occupation of their menfolk. Their social identity was also bound up with the life-cycle. Women were described in formal discourses as daughter, wife, widow of "x". Although they could claim an independent identity as spinster, spinsterhood rarely offered opportunities in which women would be offically recognized in formal documentation. Once married, as *femes covert*, they lost much of their legal capacity for independent action under common law with regard to property, including their own clothes as well as real estate; they were technically unable to sue, be sued or contract on their own behalf; and they were disadvantaged in disputes over custody and access to their children. Widows were entitled to only one third of their husbands' real property by common law, which was often not enough to maintain their self-sufficiency. While they constituted a great number of those receiving poor relief, they are less often found as independent traders in urban records, and despite the stereotype of the merry widow, the majority of widows of middling status remarried. Since women were excluded from most

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[7] J. A. Sharpe, 'The People and the Law', in Barry Reay (ed), Popular Culture in Seventeenth-Century England (London, 1988), pp. 244-70.

[8] For examples, see Fletcher and Stevenson, 'Introduction'; Herrup, The Common Peace; Ingram, Church Courts, Sex and Marriage); Sharpe, 'The People and the Law'; Wrightson, 'Two Concepts of Order'.

[9] For example, see J.A. Sharpe, Crime in Seventeenth-Century England. A County Study (Cambridge, 1983) [hereafter, Essex], p. 101; Wiener, 'Sex-roles and Crime', passim.

skilled work it was not usual for them to claim an occupational ascription of their own, and because their wages were usually significantly lower than those of men doing similar work, much work done by women was automatically of lower status and was labelled unskilled by default, no matter what degree of skill was actually involved. Less visible but perhaps even more powerful, were attitudes towards women's daily conduct derived from gendered constructions of what constituted appropriate and acceptable behaviour.

By framing female criminality within the strictures of women's formal legal position, many social realities are obscured. Women were of economic and legal significance in early modern England. Amy Erickson's pioneering work on women and property shows that generalizations based on the common law are misleading. Daughters in ordinary families were not universally disadvantaged by inheritance compared with sons, although they were more likely to receive bequests of personal property than land, and despite legal coverture, wives maintained substantial property interests of their own. Widows, too, appear to have been far better off than is suggested by their legal rights to marital estate alone, although too much optimism about their material well-being would be misplaced.[10] The reality of family life and the immediate value of domestic management in lesser households has also been confronted. Even after domestic chores ceased to include the manufacture of saleable goods, women continued to provide essential services and research has confirmed the sizable economic contribution that women made to the family. By re-defining work to include non-waged employment, it becomes clear that women occupied a central position in managing the family's survival.[11] Historians of later periods are becoming increasingly aware of the enormous importance of women's labour in the process

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[10] Amy Louise Erickson, Women and Property in Early Modern England (London, 1993), pp. 19, 61-2, 157, 224-6, 202-3, 221-2, 199, and passim.

[11] L. Charles and L. Duffin (eds), Women and Work in Pre-Industrial England (London, 1985); Mary Prior, 'Women and the Urban Economy: Oxford 1500-1800', in Mary Prior (ed), Women in English Society, 1500-1800 (Oxford, 1985), pp. 93-117; Michael Roberts, 'Women and Work in Sixteenth-Century English Towns', in Penelope J. Corfield and Derek Keene (eds), Work in Towns, 850-1850 (London, 1990), pp. 86-102.

of industrialization.[12]

Studies of crime have tended to adopt the essentialist view of much women's history and have delegated female criminality, and therefore female agency, to a subsidiary position relative to "real", male criminality; or, they have labelled behaviour for which women were disproportionately prosecuted as peculiarly "female", with witchcraft, infanticide and scolding being cases in point.[13] There has until recently been little attempt to conceptualize or contextualize the gendered differences in either the behaviour itself or the meanings of such behaviour. For example, because more women were prosecuted for infanticide than men, and because infanticide constituted a relatively large proportion of female homicide, it has been labelled as a peculiarly female crime. It is undoubtedly true that infanticide was heavily gender-related for reasons of social, economic and biological import. It is also the case that an act of 1624 made it exclusively a female crime: only the "lewd" mother of a bastard child could be prosecuted, and then for concealment of a stillbirth rather than causing the child's death.[14] Nevertheless, the apparent peculiarity of the offence to both women and the early modern period tends to give an inadvertently distorted impression of female criminality.

One historian has remarked that in early modern England, more women were probably executed for infanticide than they were for witchcraft. This is a

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[12] Pat Hudson and Maxine Berg, 'Rehabilitating the Industrial Revolution', Economic History Review, 2nd ser., 95 (1992), pp. 35-38; Maxine Berg, 'What Difference Did Women's Work Make to the Industrial Revolution?', History Workshop Journal, 35 (1993), pp. 22-44.

[13] The most infamous example of this is witchcraft, although historians of crime cannot be held culpable in this instance. Recent work on witchcraft has been fruitful in its attempts to contextualize the role of women in witchcraft prosecutions. For example, see: Malcolm Gaskill, 'Witchcraft and Power in Early Modern England: the Case of Margaret Moore', in Jenny Kermode and Garthine Walker (eds), Women, Crime and the Courts in Early Modern England (London, forthcoming); Annabel Gregory, 'Witchcraft, Politics and Good Neighbourhood in Early Seventeenth-Century Rye', Past and Present, 133 (1991), pp. 31-66; J.A. Sharpe, 'Witchcraft and Women in Seventeenth-Century England: some Northern evidence', Continuity and Change, 6 (1991), pp. 179-99; J.A. Sharpe, 'Women, Witchcraft and the Legal Process', in Kermode and Walker (eds), Women, Crime and the Courts. For scolding, see David Underdown, 'The Taming of the Scold: the Enforcement of Patriarchal Authority in Early Modern England', in Fletcher and Stevenson (eds), Order and Disorder, pp. 116-3, cf. Martin Ingram, 'Scolding Women "Cucked or Washed": a crisis in gender relations in early modern England?', in Kermode and Walker (eds), Women, Crime and the Courts.

[14] 21 James I, c. 27.

legitimate view. Nevertheless, we are talking about a very small number of prosecutions: it is widely acknowledged that early modern court records are not saturated with evidence of infanticidal mothers. For Cheshire, Sharpe found that there were fewer than 125 prosecutions over a period of 130 years (1580-1709), and of these only 33 resulted in hanging. In eastern Sussex, Cynthia Herrup counted only 15 cases of infanticide in her twenty-two sample years between 1592 and 1640, with only eight convictions. J.M. Beattie's study of late seventeenth- and eighteenth-century Surrey shows that the number of women prosecuted on homicide charges is more than tripled if one takes infanticide into account, but the total number of women prosecuted in the 95 years of his sample was only 62, a mere nine of whom were convicted. The significance of these figures as regards the *nature* of female *criminality* is therefore questionable.[15]

By defining certain offences as feminine, we are arguably creating and perpetuating an image of a "typical" female offender. In doing so, we are implicitly defining those offences which are not so labelled as "masculine". Yet "female" crimes are typical neither of female behaviour nor of female prosecution in any straightforward sense. Although recorded criminal activity was, on the whole, a masculine activity, women did participate in most categories of crime. In the fifteen years sampled in this study of Cheshire there were, for instance, a total of 19 women prosecuted for infanticide. In contrast, 175 women were prosecuted on charges of assault, and 458 were bound over to keep the peace or to be of good behaviour.[16] It seems fairly safe to assume that far more women were thus committing "male" crimes than they were "female" crimes. Most criminal acts, however, are not explicitly gendered in historical or criminological studies. There is, after all, no such concept as men's legal position. Male criminality is "normal" by implication, for the vast majority of criminal acts are

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[15] J.A. Sharpe, Crime in Early Modern England (London, 1984), pp. 61-62; Herrup, Common Peace, pp. 173, 175; Beattie, Crime and the Courts, pp. 114, 118-24. I am not arguing here that these historians have themselves treated the historical incidence of infanticide in a sensationalist manner. See also, Peter C. Hoffer and N.E.H. Hull, Murdering Mothers: Infanticide in England and New England, 1558-1803 (New York, 1981); Keith Wrightson, 'Infanticide in Earlier Seventeenth-Century England', Local Population Studies, 15 (1975), pp. 10-22.

[16] See chapters 2 and 3, below.

perpetrated by males.[17] Those activities for which the label "male" has been applied overtly tend to be those which are thought to involve a certain degree of courage, initiative and physical strength. Thus, highway robbery is a "male" crime, not only because virtually all persons prosecuted for the offence were men but because our image of the successful highway robber encompasses positive and exciting male attributes.

Conversely, such characterizations tend to curtail useful discussion of those women who committed crimes other than the "female" ones. Assault, and homicide have been characterized as "overwhelmingly" male activities.[18] Women's lesser involvement in violent crime has been associated with their inherent socially or biologically induced passivity and non-violent nature.[19] If the relatively fewer prosecutions of women than men for violent activity is taken as evidence for such a view, what is one to do with those women who did become involved in brawls and scraps with their neighbours? Physical violence perpetrated by women either has been dismissed without a considered analysis, or it has been sensationalized: if male crime and male violence is implicitly "natural", women's is presumably "unnatural". A recent account of crime in the eighteenth century, for instance, refers to "demons in female form" and "psychopathic brutality" when describing female violence, yet emotive and judgmental language does not set the tone of the corresponding chapter on male violence.[20] Part of the problem stems from the noted aversion of many of those working within the field to both theory and conceptualization,[21] along with a general failure to acknowledge the gendered construction of many formal sources and a less than rigorous degree of contextualization. Consequently, it will be

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17 Frances Heidenson, Women and Crime (London, 1985), pp. 2, 7; Allison Morris, Women, Crime and Criminal Justice (Oxford, 1987), pp. 52, 55.

18 Sharpe, Crime in Early Modern England, pp. 108-09.

19 Wiener, 'Sex-Roles and Crime'.

20 McLynn, Crime in Eighteenth-Century England, chapters 3 and 7.

21 John M. McMullen, 'Crime, Law and Order in Early Modern England', British Journal of Criminology 27 (1987), p. 264; J.A. Sharpe, 'The History of Crime in England, c.1300-1914: An Overview of Recent Publications', British Journal of Criminology, 28 (1988), pp. 124-37.

argued in the following chapters, the nature of female criminality has been misrepresented.

Another factor which has greatly contributed to the unsatisfactory manner in which female criminality has been considered is the widespread adoption of a methodology which is largely inappropriate for the study of female crime. Quantification of the formal records of courts has been the central method of analysis for social historians of crime, and has allowed them to demonstrate patterns in levels of prosecution, conviction and sentencing which has been explained in terms of changes over time, ideological and social phenomena peculiar to specific periods and geographical areas, and the dynamics of social differentiation. Such an approach has proved gratifying, and remains so in many ways.[22] Nevertheless, it is of limited value as a central methodological tool for examining the criminality of women and the treatment they received within the criminal justice process.

This is partly due to the previously mentioned phenomenon of a low female "crime rate". Various studies of the county courts of Assize and Quarter Sessions, which were the courts which dealt with the great bulk of criminal proceedings, have shown that women constituted the minority of those prosecuted for most categories of criminal offence. This appears to have been a constant over time and place.[23] The unfortunate consequence is that women have been counted alongside men, and then discounted. For example, in cases of theft, it has often been said that women tended to steal things of less value than men, whilst at the same time, it is asserted that the lower the value of the item stolen, the lower the likelihood of the theft being reported. The logical conclusion, that if women were

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[22] See J.A. Sharpe's critique and reappraisal of this approach: 'Quantification and the History of Crime in Early Modern England: Problems and Results', Historical Social Research, 15 (1990).

[23] See, for example, Beattie, 'The Criminality of Women', pp. 80-116, & Table 2; Beattie, Crime and the Courts, p. 82, 237-243, 436-9, & Table 3.1; G.R. Elton, 'Introduction' to J.S. Cockburn (ed), Crime in England, 1500-1800 (London, 1977), p. 13; James Given, Society and Homicide in Thirteenth-Century England (Stanford, 1977), pp. 134-137; Hanawalt, 'The Female Felon'; Sharpe, Crime in Early Modern England, pp. 108-9; Shoemaker, Prosecution and Punishment, pp. 207-216; Wiener, 'Sex-roles and Crime', pp. 38-60.

prone to stealing items of less value than men, their criminality would therefore have been under-reported, has been ignored. Moreover, such assertions are invariably made upon the basis of samples which are too small for women's involvement to be successfully analysed in a quantitative manner. In one study of 298 cases of grand larceny brought to trial, only 35 of the defendants were women. It seems unfeasible to make even an informed assertion about the *nature* of the difference between male and female activity on the strength, or rather the weakness, of a sample of this size.[24] Beyond the obvious point that women were not prosecuted in comparable numbers to men, quantification tells us little about women's crime. Concluding that women tended to steal items of immediate use and little value, even when socio-economic factors are offered by way of an explanation for this, is not going far enough. Whatever the value of items stolen by women, there were far more men stealing things of similarly little worth, and there were some women who stole things of far greater value than some men. The dynamics of the social and interpersonal contexts of criminal activity are not elucidated by quantification. An approach must therefore be developed which can begin to analyze the ambiguities and contradictions of the mutable and variable detail which cannot be easily assimilated into broad generalization.

Aggregation inevitably raises interpretative difficulties which are illuminated by (although not restricted to) the study of women's crime. Broad theories based largely upon a quantitative methodology applied to the formal records of the courts, by definition, neglect the dynamics of human interaction and deny agency to historical actors. To locate a gender analysis within a predominantly statistical overview is to deny social reality. "Woman" was not a homogenous category; women's experience was not uniform. This naturally applies to "man" too; the trend of categorizing men by addition is fraught with difficulties. Distinctions by status mask a multiplicity of experience and social and economic positions. As regards women, the most that has been done is to categorize women as wives, widows or spinsters. A breakdown of female status

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[24] Herrup, Common Peace, p. 150.

of this sort would be far more valuable if the social or occupational groups of the women concerned could be gleaned from the sources; but they rarely can. With the possible exception of wives, there is no point of comparison with other "groups". Arguably, in searching for statistical patterns, historians have often categorized and compartmentalized criminal activity, whilst glossing over crucial elements in understanding it. Female activity is marginalized if it is measured only against male criminality; only by considering women's actions in context does their significant role in the legal process become evident. The very fact that women do not appear in the records in comparable numbers to men renders a simple, quantitative, binary comparison problematic. Paradoxically, in the case of female criminality, a quantitative methodology which results in broad overviews has tended to restrict rather than facilitate our point of access to the past.

Moreover, the conventional sources chosen for quantification are often inappropriate for the study of women's role within the legal process. Recent research has highlighted the extent to which women used forms of prosecution other than the indictments upon which so many studies have been based. Prosecuting by recognizance, for instance, was an alternative way in which women entered the legal process as plaintiffs at quarter sessions and assizes, although the popularity of this practice may have varied regionally.[25] Not only was it a cheaper method of litigation than indictment, but even married women could use this method of prosecution on their own behalfs.[26] The church courts,

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[25] The nature and shortcomings of indictments and recognizances and other sources will be discussed as they apply to different categories of criminal behaviour in the following chapters. Briefly, an indictment was both the legal process and the document bringing a public criminal accusation against an individual. Presentments by a justice of the peace or the grand jury had the force of an indictment. If the grand jury found that there was sufficient supporting evidence for a case to proceed to trial, they would return the indictment as billa vera, meaning a true bill; if not, they would return a verdict of ignoramus, and the case would proceed no further. A recognizance was a bond to perform a specified condition on pain of a fine, most commonly £40 - a considerable sum in early modern England. Recognizances were used to secure attendance at court, to bind individuals to keep the peace or to be of their good behaviour, and to enforce personal contracts. Normally, two other persons would also enter bonds for a lesser amount, as sureties, to ensure that the person bound over did meet the stated condition. For a description and general discussion of indictments, presentments and recognizances see Sharpe, Essex, 1983), pp. 9-12; J.S. Cockburn, 'Early Modern Assize Records as Historical Evidence', Journal of the Society of Archivists, 5 (1975), pp. 215-31.

[26] Shoemaker, Prosecution and Punishment, pp. 207-216.

too, provided a legal arena in which women could participate.[27] By shifting the focus away from indictments, it can be seen that women took recourse to the courts over a wide range of issues.[28]

It is becoming increasingly apparent that qualitative material can tell us far more about the activities and attitudes of ordinary people than can aggregates of litigation alone.[29] This is true for both men and women, but it is particularly pertinent to any study of women's relationship to the courts and the law. By closely examining the context of cases the dynamics of interpersonal disputes can be revealed; the reconstruction of recorded words and actions is an important preliminary to deciphering the encoded social, cultural and individual meanings which informed court actions. A more intensive and closely focused examination of historical phenomena can qualify the impression which quantiative studies have made as regards what constituted "typical" criminality. Even so, we are left with the perennial problem confronting all social historians as to exactly what we have measured and how typical it is. One way of negotiating this is to stop holding up typicality as a yardstick of historical worth. Women's crime is, after all, atypical if we compare the sheer numbers of prosecutions of men and women, but it is surely as valid an indicator of human experience as any other. It is, after all, often within the abnormal that the construction of norms themselves can be understood. Equally important, however, is the consideration of quantitative and qualitative evidence in tandem.

An intensive, even microscopic, study of the source material may well provide us with a greater insight into interpersonal and gender relations. Such a study, following on from Giovanni Levi's recent discussion of microhistory, would take place within the functionalist framework of a normative system of

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[27] Laura Gowing, 'Gender and the Language of Insult in Early Modern London', History Workshop Journal, 35 (1993), pp. 1-21; Laura Gowing, 'Language, Power and the Law: Women's Slander Litigation in Early Modern London', passim., in Walker and Kermode (eds), Women, Crime and the Courts.

[28] Kermode and Walker (eds), Women, Crime and the Courts, passim.

[29] For example, Natalie Zemon Davis, Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France (Oxford, 1987), and the work of Laura Gowing cited in n.27 above.

early modern culture, but would highlight its contradictions by examining the disparate nature of interpersonal disputes.[30] In this way, the habit of categorizing offenders, offences and judicial outcomes into easily quantifiable groups based on one or several common factors would be replaced by a more fluid and open interpretation of social context, and therefore would allow the plurality of meanings in a particular historical event to indicate the complexities of historical reality. In order to do this, I have adopted an approach which is both quantitative and qualititative. Instead of enlarging the scope of the study to create a greater database from which general patterns may be shown, I have chosen to reduce the scale of observation. By examining in detail individual sittings of the courts, and individual cases, it becomes possible to identify contradictions and anomolies in the broader view which otherwise tend to be overlooked or subsumed into an oversimplified historical model. Reconstructions of reported incidents in material such as examinations, depositions, petitions and letters, in which the Cheshire sources are particularly rich, allow me to modify the broad and general patterns discerned by quantification alone. This type of narrative evidence can and should be used as sources in their own right, rather than to provide a bit of colour or to exemplify a certain point. Rather than being mere examples or anecdotes, such sources are taken here to be the very substance of historical evidence. As Sharpe has said, if narrative material is subjected to scrutiny on an analytical rather than a purely descriptive level, "the isolated social event or individual...can be used to provide a pathway to a deeper understanding of...society".[31] Adopting such a methodology allows the historian to ask new questions, and it is invaluable for a study of crime and gender.

At a fundamental level, an analysis of qualitative sources raises questions about the reliability of quantitative data. Problems arising from the "dark figure" of unrecorded crime are widely recognized and do not need to be rehearsed here. It may have been the case, however, that in general terms women's behaviour

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[30] Giovanni Levi, 'On Microhistory', in Peter Burke (ed), New Perspectives on Historical Writing, pp. 93-113.

[31] J.A. Sharpe, 'History from Below', in Burke (ed), New Perspectives on Historical Writing, p. 35.

was less likely to result in prosecution than men's. There are many, many cases of a male being officially prosecuted alone despite the alleged involvement of women in the unlawful act.[32] There are many possible reasons for this. There is the matter of cost: it was often more expensive to have several persons bound over by recognizance, for example, than just one - a consideration which applies equally to incidents in which more than one man was involved. Attitudes towards women may also have played a part: was unlawful behaviour on the part of women considered to be less serious or less harmful? In addition, there is the notion of social or familial control: one has to at least consider the possibility that women might have been thought to be more receptive to informal sanctions; and that if one controlled the husband, he might control his wife or other members of his household. This brings us back to the notion of the *feme covert vis-a-vis* criminal prosecution. The notion that in the eyes of the law husband and wife were but one person - that person being the husband - is well-known. Indeed, in 1632 one legal commentator wrote that "A married woman perhaps may doubt whether shee bee either none or no more than half a person".[33] Yet in criminal and civil cases, this was largely a legal fiction. There are simply too many cases where both husband and wife were prosecuted together, and indeed where wives were prosecuted by themselves. However, from indictments alone, it is impossible to deduce the nature and extent of a wife's involvement, although cases in which she was convicted and her husband aquitted might suggest that she rather than her spouse was held culpable for her own actions. Again, the particular contexts of individual case, as given in additional narrative material in the court files are far more likely to contain clues for the historian of women's crime, and perhaps of crime generally, than are the broad and general patters discerned by means of quantification.

This thesis, however, is not simply a study of women's crime, although that indeed constitutes one strand of the inquiry. My intention is rather to

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[32] See for example, [Cheshire Record Office] QJF 89/2, f. 188, Examination of Gilbert Trayer; QJF 89/2, f. 167, Recognizance of Thomas Blackshawe.

[33] T.E., The Lawes Resolution of Women's Rights (London, 1632), p. 6.

investigate the interrelation of concepts of crime, gender and order in the late sixteenth and seventeenth centuries. Thus, it is also in part a study of the dynamics of social interaction and the role of gender as a dynamic force. In employing gender as a category of historical analysis, as Joan Scott has stated,

> we need to deal with the individual subject as well as social organization and to articulate the nature of their interrelationships, for both are crucial to understanding how gender works, how change occurs. Finally, we need to replace the notion that social power is unified, coherent, and centralized with something like Foucault's concept of power as dispersed constellations of unequal relationships, discursively constituted in social "fields of force". Within these processes and structures, there is room for a concept of human agency as the attempt (at least partially rational) to construct an identity, a life, a set of relationships, a society with certain limits and with language - conceptual language that at once sets boundaries and contains the possibility for negation, resistance, reinterpretation, the play of metaphoric invention and imagination.[34]

The conceptual category of gender limits the extent to which "women's" history can be considered in isolation from women's relation to men; it discourages the treatment of women as an homogenous group with a common interest, viewpoint and experience; it challenges the supposed unity of the household; and it forces the historian's attention to focus more critically upon the relative power of women and men. The manner and extent to which ideologies of gender are woven into our presumptions are far harder to uncover and disentangle than political or religious bias. Gender may indeed be everywhere, but its ubiquity often makes it imperceptible. In order to understand gender in its historical context, it is therefore crucial that the functional is distinguished from the constructed, and that the constructed is in turn contextualized.

It is axiomatic to my study that perceptions of sexual difference in particular historical contexts are socially and culturally, but also physically, constructed. Another fundamental organizing principle is that as far as possible, the men and women whose words and actions are recorded in the documents selected for this study should be allowed to speak for themselves. The adoption

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[34] Joan W. Scott, 'Gender: A Useful Category of Historical Analysis', American Historical Review, 91 (1986), p. 1067.

of this methodology has had two significant consequences. First, it has led to the analysis and presentation of a great deal of narrative evidence. Whilst the analysis is often conceptual and linguistic, it is located and interpreted within a larger historical context. Secondly, this results in a shifting of perspective in accordance with the demands of each object of study: the way in which one reads an account of interpersonal violence is necessarily different from the analytic strategy brought to bear on accounts of involvement in theft. In employing such a methodology, a complex and instructive view of gendered experience is revealed. A consideration of gender can in turn highlight crucial aspects of the legal process, and can extend our perception of the concept of order in early modern England. Social relations in the period are shown to be fluid and negotiable, both before and during the formal legal process. The conventional language of social description, predicated upon patriarchal and hierarchical norms, cannot be taken at face value.[35]

Order and Disorder in Early Modern Cheshire

Cheshire has been selected as the geographical location for this study for its unrivalled, rich, and extensive criminal court records. The main primary sources are those of the county quarter sessions and Palatinate great sessions. Quarter Sessions Books [CRO QJB], which survive from 1559, contain a record of indictments, presentments, certified recognizances and orders. Quarter Sessions Files [CRO QJF], which start from 1571, contain examinations, depositions, informations, warrants and letters, indictments which were returned ignoramus, and recognizances which were discharged before the sessions, as well as the original documents of those items entered in the court books. The Great Sessions Crown Books [PRO CHES 21] in effect calendar the business of each session, whilst the Gaol Files [PRO CHES 24] contain indictments, presentments,

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[35] See Keith Wrightson, 'The Social Order of Early Modern England: Three Approaches', in Lloyd Bonfield, et al. (eds), The World We Have Gained: Histories of Population and Social Structure (Oxford, 1986), pp. 177-202; Peter Burke, 'The Language of Orders in Early Modern Europe', in Bush (ed), Social Orders and Social Classes (London, 1992), pp. 1-14.

coroners' inquisitions, calendars of gaol deliveries, mainprizes, and supporting documents. Unfortunately, a full set of depositions has not survived for the great sessions. The quarter and great sessions material has been supplemented by that of other courts. The City of Chester enjoyed a separate jurisdiction from 1507, and therefore held its own quarter sessions. The Sessions Files [CCRO QSF] are incomplete, and subsequently have not been used to the same extent as those of the courts already mentioned. Their contents, however, are similar to those of the county quarter sessions. I have also examined the Diocese of Chester Consistory Court Papers [CDRO EDC 5]. Due to the sheer volume of primary source material,[36] I have confined the survey to alternate years of selected decades: the 1590s, 1620s, and 1660s. The 1620s were chosen because in Cheshire, as in many other areas of England, that decade saw an increase in litigation. It was also characterized by a run of bad harvests and economic strains. As I wished to consider possible changes over time, the most sensible comparisons would be made with other decades in which social and economic tensions might be considered present: thus the 1590s and 1660s were selected.

Cheshire has traditionally been seen as a "dark corner of the land" due to the alleged isolation caused by the county's palatinate status, its geographical location as a north western border county, and its supposed economic and social character as an upland pastoral region. In other words, it has been generally assumed that early modern Cheshire was conspicuously underdeveloped, politically, economically and socially.[37] I shall consider this view with regard to the administrative and legal, and then the economic, structures of the county in turn. In the ensuing discussion, wider historiographical issues will be addressed.

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[36] In the fifteen years of this study, almost 5,000 people came before the courts as defendants.

[37] J. Beck, Tudor Cheshire (Chester, 1969), pp. 1-3; A.R. Myers, 'An Official Progress Through Lancashire and Cheshire in 1476', Transactions of the Historic Society of Lancashire and Cheshire, 115 (1963), p. 3; G. Barraclough, 'The Earldom and County Palatine of Chester', Transactions of the Historic Society of Lancashire and Cheshire, 103 (1951), p. 24; Dorothy J. Clayton, The Administration of the County Palatine of Chester, 1442-1485, (Manchester, 1990), pp. 215-216; B.E. Harris (ed), Victoria History of the Counties of England. Cheshire [herafter, VCH Cheshire, Vol. II, pp. 31-32. ; H.J. Hewitt, Cheshire Under the Three Edwards (Chester, 1967), p. 11; J.T. Driver, Cheshire in the Later Middle Ages, 1399-1540 (Chester, 1971), pp. 5, 17. Cf. T. Thornton, 'The Integration of Cheshire into the Tudor Nation State in the Early Sixteenth Century', Northern History, 29 (1993), pp. 41-44, and see chapters two and three, below.

Cheshire became a County Palatine in the middle ages. By the early modern period, some aspects of relations between central and local government in Cheshire were still particular to the Palatinate. The terms of military service for Cheshire knights were not exactly the same as those pertaining to knights in other counties, for example. Aspects of Cheshire's financial system and administrative and judicial institutions were likewise particular to the county: the Cheshire tax, the Mize, was still collected throughout the period in question; Cheshire had its own Exchequer Court which dealt with (among other things) business which elsewhere would have been sued in Chancery at Westminster; and the Palatinate Court of Great Sessions was held in lieu of the Assize courts which met in other counties. However, by the period of this study, Cheshire's palatinate status gave it only a nominal independence. The City of Chester and the County returned Members of Parliament from 1543 onwards; a royal Lord Lieutenant was in office by the later sixteenth century; the judicial and administrative business of the county had been under the supervision of Justices of the Peace appointed by the Crown since 1536; the Port of Chester had been absorbed into the national customs system in 1559; and, following the creation of the diocese of Chester in 1541, Cheshire was subject to routine ecclesiastical administration also.[38]

At the level of the county elite, links with central government and the rest of the political nation were hardly obscure. A few examples should suffice to make this point. Sir Ranulphe Crewe, the Cheshire knight, became Lord Chief Justice of King's Bench in January 1625. Sir Thomas Savage became the Queen's Chancellor in the 1620s, and although the duties of his post often kept him away from Cheshire thereafter, his son John remained active in Cheshire affairs. The

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[38] Barry Coward, 'The Lieutenancy of Lancashire and Cheshire in the Sixteenth and Seventeenth Centuries', Transactions of the Historic Society of Lancashire and Cheshire, 119 (1969), pp. 39-64; R.N. Dore, Cheshire (London, 1977), pp. 12-13; G.P. Higgins, 'The Government of Early Stuart Cheshire', Northern History, 12 (1976); G.P. Higgins, 'County Government and Society in Cheshire, c. 1590-1640', M.A. thesis, University of Liverpool, 1973, p. 12; ; Alfred Ingham, Cheshire: Its Traditions and History (Edinburgh, 1920), p. 78; E.W. Ives, 'Court and County Palatine in the Reign of Henry VIII: the Career of William Brereton of Malpas', Transactions of the Royal Historic Society of Lancashire and Cheshire, 123 (1972), p. 1; Annette Kennett, Archives and Records of the City of Chester (Chester, 1985), p. 34; J.S. Morrill, Cheshire 1630-1660: County Government and Society during the English Revolution (Oxford, 1974), passim.; Dorothy Sylvester, A History of Cheshire (London and Chichester, 1971, 2nd edn, 1980), p. 60; Thornton, 'Integration of Cheshire', pp. 40-63.

Cestrian Sir Thomas Egerton, knighted in 1593, was made Master of the Rolls in 1594, Lord Keeper in 1596, and Lord Chancellor in 1603. His son, John Egerton, Earl of Bridgewater (a title which allegedly cost him over £20,000) was a member of the Privy Council from 1626, President of the Council of Wales, and Lord Lieutenant of the North and South Wales from 1631.[39] Sir Urian Legh, an active justice of the peace in the early seventeenth century, was knighted for his bravery at the seige of Cadiz. The Cheshire lawyer John Bradshaw, who later became Chief Justice of Cheshire, was one of the Commissioners of the Great Seal in 1646, and was made President of the short-lived Court of Justice which was created on the last day of the Long Parliament. Another Cheshire man became Lord Mayor of London in 1641. And, whilst he had evidently resided in London for some years, he retained his links with his home town of Nantwich. In 1638, he established almshouses there to provide six poor, local men aged over 50 years with shelter and clothing.[40]

In wider terms, too, it is clear that Cheshire was not wholly isolated from the affairs of the nation. The port at Chester meant that the county enjoyed an important strategic position. After the Throckmorton plot of 1583 and the Babington conspiracy of 1586, Chester city authorities followed the instructions of the Earl of Derby to collect money for the purchase of powder and match, and selected inhabitants were provided with portable guns and shot in order to defend not only the city and county, but the realm. By the following year, one hundred soldiers were being maintained for the city's defence. Cheshire was also privileged by more than one royal visit: James I visited in 1617; Charles I was in Chester in 1642 and reputedly again in 1645. The anti-episcopal petition of 1641 was sponsored by the Cestrian Sir William Brereton, and many of the signatures were those of Cheshire men; Brereton, of course, became an important

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[39] Although neither Thomas nor John Egerton were resident in the county, it should not be assumed that they had no links with the Egertons who remained.

[40] Legh was consequently the hero of a Cheshire ballad entitled "How a Spanish Lady Woo'd a Cheshire Man". James Hall, A History of the Town and Parish of Nantwich (Manchester, 1972 edn)., pp. 126-27, 365-71; Higgins, 'County Government', pp. 20, 18-19, 28, cf. p. 14; Ingham, Cheshire, pp. 238-39, 240, 241-42, 276. See also, Thornton, 'Integration of Cheshire', pp. 46-53.

parliamentary commander in the English civil wars. Another Cestrian, Sir George Booth was likewise a prominent parliamentary military man, and later led the well-known rising of 1659. During the wars, in addition to three important battles at Nantwich, Middlewich and Rowton Moor near Chester, there were many other smaller battles and military engagements in the county. The ordinary men and women of Cheshire played a significant role in the civil wars.[41] The assumption that Cheshire was not integrated into the affairs of the nation seems not to be well founded.

Although Cheshire's Palatinate status did mean that county administration was slightly different from that of most other counties, its criminal justice system operated in much the same way as it did elsewhere. The main difference which must be noted for our purposes was that the local equivalent of the assizes was the Court of Great Sessions, presided over by a chief justice and his deputy who usually remained in their positions for several years rather than travelling around England's assize circuits as assize judges did. Sir Henry Townshend, for example, held his post for over forty years.[42] Nevertheless, the Chief Justices were royal appointees, and although they were officially independent from the Westminster courts, they were certainly neither socially nor professionally isolated from the Westminster judges.[43] They appear rather to have been very much part of England's legal elite which congregated in the Sergeant's Inn.[44] Indeed, the Lord Chancellor's speech on James Whitelocke's appointment

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[41] Simon Harrison, Annette M. Kennet, Elizabeth J. Shepherd and Eileen M. Willshaw, Tudor Chester: A Study of Chester in the reigns of the Tudor Monarchs, 1485-1603 (Chester, 1986), p. 31; Hall, Nantwich, p. 121; Royal Commission on Historical Manuscripts. Sixth Report, (London, 1877), pp. 64, 85, 135, 435, 438, 470.

[42] VCH Cheshire, Vol. I, p. 37. The Chief Justice of Chester was additionally assigned to preside over sessions in three of the Welsh counties (Flint, Denbigh, and Montgomery) in the Chester Circuit upon the establishment of the Welsh Courts of Great Sessions in 1541: 34-35, Henry VIII, c. 26.

[43] Cf. Steven Hindle, 'Aspects of the Relationship of the State and Local Society in Early Modern England: with special reference to Cheshire, c.1590-c.1630', unpublished PhD thesis, University of Cambridge, 1993, p. 80; J.S. Morrill, The Cheshire Grand Jury, 1625-1659: A Social and Administrative Study (Leicester, 1976), p. 7.

[44] For example, both Thomas Chamberleyne and James Whitelocke were transferred to serve at King's Bench in the 1620s.

instructed that one of the chief justice's duties was to "keep good quarter with Westminster halle".[45] The great sessions were held bi-annually, each session lasting for two to six days. Although the great sessions had both civil and criminal jurisdiction in combining that of ordinary assize courts with that of the superior courts at Westminster, the great part of the recorded business of the great sessions relates to the business of criminal trials for felony and misdemeanour, just as one finds in the records of assize courts. It was at the great sessions that virtually all felonies prosecuted in the county were brought. The second inquest which was sworn in at the great sessions was not found in the majority of assizes, but it was not restricted to the palatinate. Both Staffordshire and Lincolnshire, for example, had similar practices. Given that there were sufficient regional variations in the character and operation of assize courts throughout the realm, Cheshire's great sessions cannot be held up as unique, or even especially unusual. As J.S. Morrill has pointed out, "every county developed a distinctive pattern of local government". The Court of Great Sessions was, in fact, a far less distinctive palatinate institution in practice than the Exchequer of Chester.[46] The County Palatine Exchequer Court, which met in Chester Castle as the great sessions did, had a considerable jurisdiction in equity, and thus dealt with suits which would otherwise have come within the scope of Chancery. Much of the business of the Exchequer overlapped with that of the city portmote and pentice courts, which will be discussed below, which led to some friction between the officers of city and palatine courts.[47]

Quarter Sessions in Cheshire were held at four of five towns each year: the Epiphany sessions were held at Chester, the Easter sessions at Knutsford, the Trinity sessions at Nantwich, and the Michaelmas sessions alternated between

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[45] James Whitelocke, Liber Famelicus, ed. John Bruce (Camden Society, 1858), p. 80.

[46] Morrill, Grand Jury, pp. 6, 42, quotation at p. 6; VCH Cheshire, Vol. I, p. 38. For assize courts see, for example, Beattie, Crime and the Courts, p. 5; Herrup, Common Peace, pp. 43-51, 62-65. Cf. Sarah Mercer, 'Crime in Late-Seventeenth-Century Yorkshire: an Exception to a National Pattern?', Northern History, 27 (1991), pp. 106-109.

[47] Harrison et al., Tudor Chester, pp. 11-12; Morrill, Grand Jury, p. 7; VCH Cheshire, Vol. I, p. 38.

Northwich and Middlewich. The county's palatinate status appears not to have affected the theoretical or practical functions of these courts. Just as Cynthia Herrup found in eastern Sussex, along with "economic regulations and...many ill-defined, but pressing, problems of local life", Cheshire justices of the peace had to deal with most sorts of criminal complaints other than the more serious felonies at quarter sessions.[48]

The County of Cheshire had seven large administrative units, or hundreds: Bucklow, Macclesfield, Northwich and Nantwich on the eastern side of the county, and Wirral, Broxton, and Eddisbury in the west. Unlike many counties, Cheshire did not have hundredal juries, but whilst the lack of this feature was unusual, it was unique neither to Cheshire nor indeed to those counties with palatinate jurisdictions. Hundredal organization in Cheshire was nevertheless efficient and important to local government: by the 1590s, local justices held regular meetings in their hundreds, and indeed strong hundredal organization provided the basis for the implementation of much of the financial and social policy of the county.[49] The county was further divided into smaller units: it had 75 parishes, excluding nine others in the City of Chester, and a few extra-parochial liberties, which included Chester Castle, Shotwick Park, and Stanlow (the latter being "formerly an Abbey is now in no Parish, nor hath it any Constable: but is a Priviledged place"). As in other northern counties, the Cheshire parishes were generally large: eight parishes contained over 15 townships, the parishes of Great Budworth and Prestbury having a record 34 and 32 respectively; a further four contained more than ten townships. At the other end of the spectrum, excluding the city parishes, only 11 had a mere one township within their boundaries.[50] But administrative units extended beyond the

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[48] Herrup, Common Peace, pp. 42-45. See also, Beattie, Crime and the Courts, pp. 283-288.

[49] F.I. Dunn, The Ancient Parishes, Townships and Chapelries of Cheshire (Chester, 1987), pp. 7; Morrill, Grand Jury, pp. 41-42, 9, 30-31.

[50] Dunn, Parishes, Townships and Chapelries, pp. 5, 35, 38-39, and passim.; Higgins, 'County Government', pp. 196-98; Dorothy Sylvester, 'Parish and Township in Cheshire and North-East Wales', Journal of the Chester Archaeological Society, 54 (1967), pp. 23-35. Cf. Hindle, 'State and Local Society', p. 89. Hindle has found only 70 Cheshire parishes in the mid-seventeenth century. He further asserts that the county's parochial structure was "ramshackle" as a consequence of the size of the

parish. Seventeenth-century Cheshire had between 250 and 300 manors, and it seems that many manorial courts were still in regular bi-annual business, although in a number of manors the courts leet and baron had already merged.[51]

There were two incorporated boroughs in Cheshire: both Congleton and Macclesfield had their own internal administrative and judicial mechanisms. In these towns, as in the city of Chester, the county JPs had no official power, although sheriffs and deputy-lieutenants did have normal powers. This, however, did not prevent the inhabitants bringing suits at county quarter sessions. Nor do local miscreants appear to have completely disregarded the county magistrates. Several seigneurial boroughs likewise had a particular administrative and judicial status. Nantwich, Knutsford, Altrincham, Middlewich, Northwich, Over, Frodsham, Tarporley, Halton, Malpas and Stockport all fall into this category, and in the period under consideration, their borough courts appear to have been operating effectively. In Stockport, for instance, the primary locus for civil and criminal jurisdiction was the lord's court, although the business of the court was presided over by the mayor. Stockport did not obtain a resident JP until 1634, when the lord, Edward Warren, requested that one be appointed.[52]

The City of Chester was allocated a special jurisdiction from 1300, to "hold pleas of our Crown relating to matters which may have arisen within the same liberty to be pleaded before the Mayor and Bailiffs of the said city". As a consequence of Chester's special county status, it held its own quarter sessions independently of the county from 1506. The mayor and any alderman who had previously been mayor were empowered from that date to act as JPs. The county of Cheshire did not hold quarter sessions until 1536, when its justices of the

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parishes and the number of townships therein.

[51] One such court for which records have survived was the Nantwich Barony Court; others are the manorial courts of Stockport, Macclesfield, Bromborough, and Kinderton. Dorothy Sylvester, 'The Manor and the Cheshire Landscape', Transactions of the Historic Society of Lancashire and Cheshire, 70 (1960).

[52] Warren nominated his own steward rather than the mayor as the new magistrate. Cheshire, 1660-1780: Restoration to Industrial Revolution (Chester, 1978), pp. 98-101; J.S. Morrill, Cheshire, p. 6; C.B. Phillips and J.H. Smith, Lancashire and Cheshire from AD 1540 (London, 1994), pp. 30-35.

peace were created. In the sixteenth and seventeenth centuries, the city quarter sessions dealt with criminal and administrative business, and were presided over by the chief city magistrate, the mayor of Chester, as were two of the other city courts: the crownmote and portmote. The other city courts were those of the pentice and the passage, in both of which the city sheriff was the chief officer. Before 1506, however, the trial of felonies and misdemeanours committed within the city took place at the crownmote; and capital felonies continued to be tried there instead of being sent to the great sessions which heard serious crimes committed in the county. As a result, late sixteenth- and seventeenth-century material pertaining to the business of both quarter sessions and crownmote are filed together.[53]

By the early modern period, the portmote court was concerned with registration of land transactions, and the collection of tolls on horses sold at local markets and fairs, but along with the pentice court, it also acted as a tribunal before which suits of trespass, covenant and debt could be brought and tried before juries. The penalty for those found guilty was usually a fine, and occasionally imprisonment. Both the pentice and portmote usually met on Mondays, twice or three times each month. Cases which had not reached a successful conclusion in the pentice could be transferred to the passage court, in which juries were likewise impanelled to pass verdicts. During the sixteenth century, the passage court met about eight times annually, but by the end of the seventeenth century, its meetings had become quarterly. The mayor and sheriffs were also responsible for many other city administrative duties which would otherwise have come under the direction of the county bench. These included the publication and enforcement of central government directives, such as those concerning trade and taxation, poor law, and the regulation of the assize of ale and bread. In addition, the mayor headed the city Assembly, which consisted of

[53] Kennett, Archives and Records, pp. 88-89.

two sheriffs, a recorder, 24 aldermen, and 40 common councilmen.[54] Chester was also the home of the ecclesiastical courts for the diocese of Chester, which, of course, included the county of Cheshire within its jurisdiction. In 1541, Chester Cathedral was created from the former St Werburgh's Abbey which had been closed the previous year: its seventeenth century consistory court room has survived intact to this day.

City criminals or dangerous suspects were not incarcerated in the Castle Gaol as their county counterparts were, but in the Northgate, which was flanked by towers with a prison over it, and dungeons cut out of the rock below. A new gaol was not built until 1807. The city sheriff, however, was responsible for arranging the execution of felons condemned by the city courts and the palatinate great sessions. Chester was the site of the original House of Correction in the county, established in 1576, with accommodation for about forty people. A second house was set up in Altrincham in 1611, but running two houses proved financially unfeasible and in 1614, the county bench decided that one House of Correction should be established at Northwich in the centre of the county. Presumably due to its troublesome nature (much administrative time at quarter sessions throughout the 1620s was spent on its inadequacies), in 1631 it was ordered that two Houses were to be set up at Chester and Knutsford instead. However, further administrative difficulties inherent to Chester Castle meant that Northwich was soon the site of Cheshire's House of Correction once more.[55]

The number of courts in operation in Cheshire indicates how unhelpful the concept of the "county study" actually is for the social history of crime and the courts in early modern England. Any "county study" of crime or the legal process would necessarily have to take account of the various jurisdictions within which a wide variety of suits could be brought. In addition to those courts discussed

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[54] Kennett, Archives and Records, pp. 17, 19, 22-31; Harrison, et al., Tudor Chester, p. 24; Simon Harrison, Annette M. Kennet, Elizabeth J. Shepherd and Eileen M. Willshaw, Loyal Chester: A Brief History of Chester in the Civil War Period, (Chester, 1984), p. 14.

[55] Harrison, et al., Tudor Chester, p. 25; Higgins, 'County Government', pp. 94-95; Hindle, 'State and Local Society', pp. 441-449.

above, Cestrians prosecuted suits at a range of central courts at Westminster. These would also have to be considered.[56] The same is true for other counties. Only if we could analyze *all* prosecutions in all operative legal arenas would a county-based study of prosecution for various types of social conflict, or indeed of the legal process itself, be comprehensive. Over a decade ago, L.A. Knafla demonstrated that, for example, whilst property offences prosecuted at the Kent assizes in the early seventeenth century constituted 74% of the total number of prosecutions, this figure was reduced to a mere 10% if prosecutions at quarter sessions and other local courts were taken into account. More recently, Sarah Mercer has pointed to the discrepancies which occur between "crime rates" calculated not only from different courts but also in different regions. As she suggests, simply comparing prosecutions of one jurisdiction, such as that of the assizes, may be fundamentally flawed as not all assize courts in England necessarily dealt with a similar cross-section of unlawful behaviour.[57] Whilst comparisons between studies of a limited cross-section of courts in particular counties may be worthwhile for a number of reasons, the results of such comparisons cannot be taken to be comprehensive as regards either patterns of behaviour or litigation in those geographical areas. Moreover, even if the sources and resources were available for a truly comprehensive study to be undertaken - which they are not - an acknowledgement of the "dark figure" of unrecorded crime, as well as the interpretative problems inherent in early modern legal sources, would leave us with little hope of a reliable comparison of crime and

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[56] The Public Record Office, London, holds the vast amount of documentation generated by these courts. Very few of these records have been used by historians of crime. Historians of county studies of crime tend to be concerned with those courts which possess an overt criminal jurisdiction. For the most part they have shown a disinterest in or ignorance of central Westminster courts. Nor have they paid much attention to the multiplicity of local courts: courts baron, urban borough courts of requests or their equivalents, local small claims courts, along with the quasi-legal institutions set up to regulate trade or industry. Consequently, there has as yet been no attempt to write a comprehensive social history of the law; rather what has been achieved is a limited social history of crime. Moreover, given the way that interpersonal disputes could be played out in a multiplicity of ways in any number of jurisdictions, such "county studies" are not reliable studies of behaviour and litigation within counties.

[57] L.A. Knafla, '"Sin of all sorts swarmeth": Criminal Litigation in an English County in the early Seventeenth Century', in E.W. Ives and A.H. Manchester (eds), Law, Litigants and the Legal Profession (1983), pp. 50-67. Sarah Mercer, 'Crime in Late-Seventeenth-Century Yorkshire', pp. 106-119. I do not share Mercer's view that ecclesiastical and manorial causes should not be considered alongside criminal causes. Whilst it is undoubtedly true that the court in which a suit was initiated affected its outcome, the incident or set of events which resulted in a suit might easily be prosecuted in one of several jurisdictions. There is no convincing argument for the historical study of crime and the law to be restricted to that of legal and not social phenomena.

criminality between counties.

Despite the plethora of courts in which the inhabitants of Cheshire could initiate actions, it has been suggested above that the judicial and administrative structure of the county indicates that the county was neither isolated nor particularly underdeveloped. Indeed, Steven Hindle has chosen to focus exclusively upon Cheshire in his recent study of the relationship between the central state and the localities in early modern England.[58] In such a study, which seeks to broach the political and social history of the period, and attempts to reintegrate the disparate historiographries of the centralizing tendencies of the Tudor and Stuart state, the increase in the extent and nature of local administration, and rising levels of litigation, one might expect to find a departure from the traditional view of Cheshire as a "dark corner of the land". Paradoxically, however, Hindle appears to take Cheshire's reputation of lawlessness and disorder at face value. The county's Palatine status and special administrative structure apparently "enabled late medieval and Tudor Cheshire to ignore established, centralized authorities". He goes on,

> Even after the Tudor reforms, this was less a "much-governed" society, and rather one in which overlapping allegiances, identities, and responsibilities almost encouraged the contempt or manipulation of law.

According to Hindle, this was indeed "rather lawless borderland country", with a "longstanding tradition of lawlessness". It was a county in which "the widespread use of binding-over only just managed to contain the manifest tensions of this highly contentious, conflict-ridden society".[59] Yet neither in terms of the county elite, as discussed above, nor in terms of the levels of seventeenth century disorder and litigation lower down the social scale, as we shall see later, is Hindle's characterization of the county borne out. In the sixteenth-century, too, as Tim Thornton has recently shown, "neither local people nor the central authorities appear seriously concerned about Cheshire crime".[60] Hindle's own

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58 Hindle, 'State and Local Society', passim.

59 Hindle, 'State and Local Society', p. 83 & n. 156, pp. 364-65, 361 & n. 101, pp. 1, 288.

60 Thornton, 'Integration of Cheshire', p. 44.

evidence likewise serves to undermine the validity of the county's "lawless" reputation: he found little variance, for example, between national and Cheshire figures for allegations of violence in Star Chamber suits, but a relatively high incidence of allegations of "crimes against justice" initiated by Cestrians.[61] After all, a preoccupation with "crimes against justice" such as perjury, abuse of legal proceedings, contempt, conspiracy and subordination, might denote lawfulness as much as it does lawlessness.

The persistence of the stereotype of Cheshire as "lawless" is in accordance with accepted historiographical tradition. Speaking of "regional variations in obedience and orderliness that undoubtedly existed" in early modern England, Anthony Fletcher and John Stevenson's examples of such "pockets of persisent disorder" included, "the Scottish borders...isolated stretches and parts of the coast in [certain counties]...the proto-industrial 'frontier'...". Cheshire would qualify for entry into the "disorderly" category on every criterion.[62] Much of the social history of early modern England has been predicated upon the notion that, in general terms, disorder is a concomitant of the lack of deference likely to have been produced in pastoral, upland regions, which were subject to greater or lesser degrees of industrialization, and which were characterized by "open" parishes and a lack of manorial control. In such areas of supposed "persistent disorder", landlord/tenant conflict is expected to have been rife. In contrast, settled arable areas are associated with the continuance of "feudal" relations between landlord and tenant, in which the former was paternal and the latter deferential as a consequence of "closed" parishes, resident lords and tight manorial control.

As a crude generalization, this paradigm may be legitimate. It is not applicable, however, as a means of explaining patterns of crime, levels of disorder or deference, class or gender relations, notions of order, or popular

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61 Hindle, 'State and Local Society', pp. 118-121, and tables 2.2 and 2.3.

62 Fletcher and Stevenson, 'Introduction', p. 39.

political allegiances, although repeated attempts have been made to do so.[63] The reason for this twofold. Firstly, the historiographical construction and application of the model predisposes that these economic and social distinctions were static. Whilst Cheshire, for example, might be broadly classified as a pastoral vale region, "at any one instant in time, the exact detail of farming in physically distinct parts of the region can differ".[64] Moreover, individual lords had particular relationships with their tenants in accordance with a variety of shifting factors. In the north west of England, for instance, an upland, pastoral, industrial region where customary tenure which granted tenants "a reasonable measure of autonomy" was the norm, some landlords did mount aggressive attempts to gain greater control by introducing leases. Others, however, did not. Whilst the Talbot tenants at Glossop in the late sixteenth and early seventeenth centuries were engaged in an ongoing struggle against higher entry fines and twenty-one year leases, established tenant families on William Blundell's land in Crosby were given more favourable terms than newcomers.[65]

Secondly, the characteristics described above are only applicable on a very local level. A county, or even a sub-region of a county such as the north-east of Cheshire, is simply too large an area, with too great a diversity of economic and social relations, for such distinctions to be accurate. In this sense, too, the way in which social historians of crime have organized their work around the notion

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[63] The most comprehensive example may be found in David Underdown, Revel, Riot and Rebellion: Popular Politics and Culture in England, 1603-1660 (Oxford, 1985); cf. N. Davie, 'Chalk and Cheese: "Fielden" and "Forest" Communities in Early Modern England', Journal of Historical Sociology, 4 (1991), and J.S. Morrill, 'The Ecology of Allegiance in the English Revolution', Journal of British Studies, 26 (1987). But see also, Fletcher and Stevenson, 'Introduction', in Fletcher and Stevenson (eds), Order and Disorder in Early Modern England; Herrup, Common Peace, esp. ch. 2; Christopher Hill, The World Turned Upside Down: Radical Ideas During the English Revolution (London, 1972), esp. chs. 1-4; Ann Hughes, Politics, Society and Civil War in Warwickshire, 1620-1660 (Cambridge, 1987); Ann Hughes, 'Local History and the Origins of the Civil War', in Richard Cust and Ann Hughes (eds), Conflict in Early Stuart England: Studies in Religion and Politics, 1603-1642 (London, 1989); Brian Manning, The English People and the English Revolution, 1640-1649 (London, 1976), esp. Introduction; A.L. Morton, The World of the Ranters: Religious Radicalism in the English Revolution (London, 1970); Joan Thirsk, 'Seventeenth Century Agriculture and Social Change', Agricultural History Review, 18 (supplement, 1970); Joan Thirsk, The Agrarian History of England and Wales. Vol V.i.: 1640-1750. Regional Farming Systems (Cambridge, 1984).

[64] Phillips and Smith, Lancashire and Cheshire, p. 28. See also Hindle, 'State and Local Society', p. 88 and n. 169.

[65] Hindle, 'State and Local Society', p. 89; Phillips and Smith, Lancashire and Cheshire, pp. 26-27.

of the "county study" is problematic. In geographical, economic and broad social terms, there is nothing which is *inevitably* inherently cohesive within the spacial entity created by the administrative boundaries of the "county".[66] The Cheshire gentry may have tended to marry each other rather than eligible persons from neighbouring counties, but there is no evidence to suggest that this is related in any way to the landscape, the local agricultural profile or the degree of deference shown towards them by their tenants.[67] Yet it is commonplace for students of Cheshire to attribute the county's alleged sense of isolation and "cultural backwardness" to its "natural" boundaries. Thus G.P. Higgins has asserted that the county was enclosed by the Welsh mountains and the river Dee to the west, the Pennines to the east, the river Mersey and its tributary, the Tame, in the north, and the "hummocky terrain" of north Shropshire in the south. Consequently, he maintained, movement was restricted in and out of Cheshire, making it "remote"; it was "this degree of remoteness that contributed greatly to the production of a distinctive character amongst the inhabitants of the county".[68]

To privilege Cheshire's natural boundaries is, in fact, to proceed in the face of geological, as well as economic and social reality. In the north-east of the county, much of Macclesfield hundred is indistinguishable from western Derbyshire. Indeed, the "peak countrey" begins in the terrain around Romiley with Werneth Low rising behind the township. The large parish of Mottram in Longdendale and the north-western parts of Stockport parish together form a peninsula which in economic and social composition differs little from that of south west Lancashire. The agricultural profile of the Wirral peninsula in the north east of the county has more in common with Lancashire's West Derby hundred than in does with the rest of Cheshire, despite the Mersey coming

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66 This point has been made regarding allegiances and local identities by Clive Holmes and Anne Hughes. Clive Holmes, 'The County Community in Stuart Historiography', Journal of British Studies, 19 (1980), pp. 53-74; Ann Hughes, 'Warwickshire on the Eve of the Civil War: A "County Community"?', Midland History, 7 (1982), pp. 42-72.

67 Higgins, 'County Government', ch. 1.

68 Higgins, 'County Government', pp. 1, 14, 60-61.

between them. "Hummocky terrain" in the south does not itself constitute a boundary if it is found, as it is, on both sides of the county border. And there is virtually no characteristic which makes south east Cheshire either inaccessible to, or visibly distinct from, the adjacent parts of Denbighshire and Flintshire; the same can be said of the eastern region of the county which borders on Staffordshire.

Before discussing in more depth historians' attempts to provide corrolations between the regional economy and social structure with levels of litigation,[69] it is incumbent upon me to describe the general economic structure of Cheshire itself in some detail.

In very general terms, Cheshire's agrarian profile allows it to be described as one of "pastoral vale country". A clay-based soil and heavy rainfall on the county's central plains produced rich pasture land, which was far more appropriate for keeping cattle than for growing corn. Cheshire was well-known both for its cheeses and its cattle rearing and fattening. Cheese production was most common in the south and west of the county, and although much cheese was marketed in London and the Home Counties, the greatest part of Cheshire's cheese was sold locally. Large scale beef production was also important to the county's economy, with thousands of cattle being sold on the Midland and Home Counties markets after being reared and/or fattened in north Cheshire. Only in the Wirral, the peninsula in the north west of the county, did arable land form a major determinant of the local economy. Around the county borders in the east there were areas of moorland, hence the preponderance of marl pits in that area. And there were small areas of wood-pasture land dotted throughout the county, as well as the important forests of Delamere and Macclesfield and large heaths such as those at Knutsford and Rudheath. In the north east of the county and

[69]Similar unproven assumptions have been made about the relationship between the physical location and geographical configurations of eastern Sussex and the level of violence and disorder in that county: Herrup, Common Peace, pp. 11, 13, 25, 29-30, 32, 37-8, 41.

Macclesfield forest, sheep, horses and pigs were additionally important.[70]

Chester was the only major urban conurbation in the county with 4,000 or 5,000 inhabitants in the mid-sixteenth century. By 1664, its population may have increased to almost 10,000; by then, the population of Nantwich was just under 3,000, and that of Macclesfield was over 2,500; Congleton and Stockport had between 1,500 and 2,000 inhabitants. The remaining Cheshire towns were smaller, with less than 1,000 inhabitants each.[71] There were 13 market towns in the county for which Chester acted as the distributive centre: Nantwich, Macclesfield, Congleton, Knutsford, Middlewich, Northwich, Altrincham, Stockport and Sandbach were all situated in the south and east of the county. In western Cheshire, only Frodsham, Malpas, Halton and Tarvin are worthy of note. Each of these towns was important to the local market economy, holding busy markets each week and at least one annual fair day. Nantwich held a vibrant three-day fair in August, and Stockport had three day-long fairs. Chester held markets on Wednesdays and Saturdays, and enjoyed two annual fairs: a three day fair at Midsummer and another at Michaelmas. In addition to the towns, a number of populous townships were scattered throughout eastern Cheshire. For example, Rainow near Bollington, Sutton near Macclesfield, and Bollin and Pownall Fees in Wilmslow parish were not large enough to form towns as such, yet all were integrated and industrializing communities in the seventeenth century.[72]

Chester's port was an important trading route for both locality and nation in the early modern period. The city's merchants had prospered in the latter half of the sixteenth century when trade with Ireland had entered a period of rapid growth. Fish, hides, tallow (used in the tanning trades) and linen yarn were all

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[70] Dore, Cheshire, p. 13; Higgins, 'County Government', pp. 3-4; Hodson, Cheshire, p. 93; Ingham, Cheshire, pp. 263-65; Phillips and Smith, Lancashire and Cheshire, pp. 28-29; Joan Thirsk, England's Agricultural Regions and Agrarian History, 1500-1750 (London, 1987), pp. 38-9, 41-4.

[71] Hodson, Cheshire, p. 93.

[72] Hall, Nantwich, p.81; Harrison, et al., p. 18; Higgins, 'County Government', pp. 11-12; Hodson, Cheshire, pp. 93-94.

important imports from Ireland, while leather goods, salt, hardware and coal were all exported. French wines, Spanish oil and iron, and grain from the Isle of Man, passed through the port, as well as trade with America. During this period, the volume of shipments of coal, especially that from the Mostyn colliery in north Wales, increased four or five times. However, during the fifteenth century, the River Dee had begun to silt up; by the 1590s, the process was considerably advanced. Between 1590 and 1640, when the cloth trade expanded significantly, Chester was only one of several ports licensed to import wool, although the New Haven at Neston and the use of several harbours on the Wirral coast of the Dee estuary permitted the city to retain its economic significance as a port. By the end of the seventeenth century, however, Chester had been overtaken by Liverpool as the major port in the north-west. Nevertheless, in the 1630s shipments of coal from Chester, at 4,000 tons, were more than twice the size of those passing through Liverpool, an advantage which Chester managed to retain until at least the end of the century.[73]

The port was also important as a main point of embarkation of troops, travellers, mail and supplies to and from Ireland. Throughout the 1580s, many hundreds of troops passed through Chester on their way to quell the Munster Rebellion; during the following decade, the Earl of Tyrone's rebellion resulted in further large numbers of troops being sent via Chester; and during the Civil Wars, troops from Ireland are believed to have landed at Neston to supplement the city garrison. In 1594, "certen younge striplinges of England...who had in purpose to transport themselves beyond the seas to places of popishe religion", were apprehended at Dublin and sent back to Chester. Throughout the period Irish immigrants arriving at Chester were thought by central and local government to pose a threat to the order of the city and county. The constables of one city parish, in the 1580s, presented "the mansche [Manx] and Iryshe dwellinge within the....warde eith all Idell roges and vacaboundes at typpling howses and of ther

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[73] John Hatcher, The History of the British Coal Industry, Vol I, Before 1700 (Oxford, 1993), pp. 131-3; Higgins, 'County Government', pp. 10-11; Harrison, et al., Tudor Chester, pp. 33; Kennett, Archives and Records, p. 34; Thornton, 'Integration of Cheshire', p. 44.

misdemeanors". In 1628, the Privy Council directed the City Customer, William Singleton, to take recognizances from the masters and owners of all ships passing between Chester and Ireland, the condition being that they would not bring "any beggars or loose persons" with them.[74]

By the early seventeenth century, there were about sixty different crafts or occupations in Chester although these were predominantly related to the provision of food, clothes and domestic equipment for local markets. Chester was the largest centre for the Cheshire leather trades. Leather craftsmen formed the largest male occupational group in the city - roughly 20% of all freemen were engaged in branches of the trade. The leather trades also thrived in Congleton, where the main leather market was held, and Macclesfield. Even in Nantwich and Sandbach, where there were fewer tanneries, a large number of the local inhabitants got their livings in the various trades associated with the leather industries. Tanners, shoemakers, cordwainers and cobblers were all prominent in Nantwich, along with glovers, who constituted a smaller specialist group of artisans. Whilst in 1656, a pair of men's shoes might cost something in the region of 3*s*, a pair of gloves was of less practical and greater monetary value. Tanning could be a lucrative trade: Hugh Worthington, a Wilmslow tanner whose inventory was proved in 1669 was worth £1,200 when he died. His goods and chattels included 20 cattle, £189 in ready gold and silver, and £275 in leather. And in Congleton, too, tanners and skinners figured prominently amongst the more substantial taxpayers.[75]

Another industry for which the county was renowned was salt. Nantwich was the centre of the salt industry up until the later seventeenth century. In the late sixteenth century, there were over 200 salt houses in Nantwich alone, with about 100 in both Northwich and Middlewich. Only after 1670, when the

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[74] Harrison, et al., Loyal Chester, p. 12; Harrison, et al., Tudor Chester, pp. 24, 30-33; Higgins, 'County Government', pp. 91-92; Sylvester, History of Cheshire, p. 66.

[75] Hall, Nantwich, pp. 270-271; Harrison, et al., Loyal Chester, pp. 10-11; Higgins, 'County Government', pp. 4-5; Hodson, Cheshire, pp. 75, 140; Phillips and Smith, Lancashire and Cheshire, pp. 46-47.

discovery of rock-salt in Northwich led to the development of a more commercially viable method of creating salt than the boiling and evaporation of sea water, did Nantwich lose its central importance in the trade. Women rarely "occupied" the wich houses: in the early seventeenth century, only two of seventy-one occupiers in Nantwich were female, and only four of thirty-two in Middlewich. Women were, however, employed alongside men as wallers in the salt industry, an occupation that entailed heavy and dangerous work: they gathered salt from the bottom of large barrels of boiling sea water with wooden rakes, and then deposited it into wicker baskets from which the surplus water could drain leaving a residue of salt at the bottom. The sheer number of single women living in the salt towns suggests that the industry did provide major female employment.[76]

The weaving and stocking trades were common in the south and east of the county, although in the city of Chester those craftsmen involved in textiles and weaving were amongst the most substantial freemen, along with merchants and ironmongers often holding the office of mayor in the early seventeenth century. The linen industry was especially associated with Stockport (a town also renowned for its hat manufacture) and Wilmslow. The cloth trades in general were well represented in Cheshire by the early seventeenth century, although it never developed into a major textile centre. It has been estimated that in the late sixteenth and early seventeenth centuries, nearly a third of the Cheshire population were employed in domestic industry and piece-work, spinning and weaving flax and hemp. Since the sixteenth century, silk and mohair buttons were manufactured in Macclesfield. Whilst "skilled" male workers produced the button moulds and metal backs in small workshops, most of the work was undertaken by women and children under the putting-out system.[77]

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[76] Hall, Nantwich, pp. 254-55; Higgins, 'County Government', p. 9; William Camden, Britannia, pp. 56, 44; Phillips and Smith, Lancashire and Cheshire, pp. 50-52.

[77] Hodson, Cheshire, pp. 145-50, 138; Gail Malmgreen, Silk Town: Industry and Culture in Macclesfield, 1750-1835 (Hull, 1985), p. 10.

There was also some small-scale coal mining in the north and east of Cheshire, into which part of the north-west coalfield extended, such as at Worth in Poynton and Stockport. In addition, the Neston area in the north east constituted one end of the north Wales coalfield. While Cheshire's coal production did not approximate anything like that of Lancashire and north Wales, its existence was important in local terms.[78]

On the whole, akin to other northern counties like Lancashire and Yorkshire, Cheshire appeared relatively poor. It consistently had one of the lowest taxation rates in England: in the Poll Tax of 1641, only seven English counties had a lower assessment rate, and for Ship Money, only six. And, with two-thirds of the gentry being worth less than £500 *per annum* in the early seventeenth century, the average Cheshire gentleman was worth half as much as many of his counterparts in the south-east. Nevertheless, over the first half of the century, the lower gentry and wealthier yeomen of the county do seem to have improved their lot, prospering through cattle farming as the prices of milk, cheese, meat and hides rose, along with the rental value of land. Despite their poverty relative to the gentlemen of other areas of England, Cheshire gentlemen were the major landowners in the county. For example, Sir Henry Delves' probate inventory, filed in June 1663, shows that he was the sole landowner in 17 of the 18 townships of Wybunbury parish.[79]

During the same period in which some members of the gentry were becoming more affluent, other middling sort of people and the lower orders suffered from the economic climate. One study of the parish of Mottram-in-Longdendale in the north-eastern tip of the county, has shown that between 1570 and 1680 cattle herd sizes became increasingly smaller. Rising inflation and a decline in real wages caused especial difficulties in the industrializing pastoral areas of eastern and north-eastern Cheshire. Given that there was very little arable

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[78] Hatcher, British Coal Industry, p. 118; Hindle, 'State and Local Society', p. 89; Phillips and Smith, Lancashire and Cheshire, pp. 47-48.

[79] Higgins, 'County Government', pp. 45, 37-39, 49-50, 235; Hodson, Cheshire, pp. 73-74.

land in the county, it is not surprising that Cheshire appears to have suffered from the dearth of the 1590s which affected so many parts of England. After the run of bad local harvests from 1595 to 1597, the clerk of one Cheshire parish noted in the register that:

> This year was a great Dearth of corne and other vittuls Generally throughout this Lande...the scarsety was soe great that many poorer people were a Famished, and sondrey of good account were utterly impoverished.

Richard Wilbraham, a local man of note, wrote in his journal that "[famine] punyshede all degrees, especially the pore householders, soe that greate syckness by Famyne ensued and many poore dyed thereoff". And indeed, the burial register recorded over twice as many deaths than was usual in 1597, and three times as many the previous winter of 1596-97. The 1597 wage assessment for the City of Chester also noted "the greate dearth and scarsetie of thinges at this present". The early 1620s were likewise touched by harvest failure. Following a Royal Proclamation in 1623 for erecting granaries in London and 15 other ports, including Chester and Liverpool, the justices of the peace in at least one hundred of the county reported to Sir Thomas Smith, the high sheriff, that they had complied with instructions to provide certificates of the available corn (although they noted that there was "very little surplus"). On other occasions the JPs insisted that they had obliged people to take their corn to market towns, to attend the markets to ensure that the poor were supplied for the first couple of hours at a lower price, to suppress all unnecessary alehouses, and to limit the sale of barley for making malt. By the middle of the decade, however, the harvest had recovered.[80]

A comparison of Cheshire prices recorded by contemporaries for 1597 and the "plentiful" year of 1625 is instructive, especially if we bear in mind the low wage rates. Wheat cost from a dramatic 43 shillings [£2 3*s*] to an even greater

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[80] Parish Register of Nantwich, cited in Hall, Nantwich, p. 111-12; Richard Wilbraham's Journal [Wilbraham MSS], cited in idem; Harrison, et al., Tudor Chester, p. 18; Joyce Powell, 'The parish of Mottram-in-Longdendale, 1570-1680', Local History Certificate dissertation, University of Manchester, 1976, cited in Hodson, Cheshire, p.76. For other local commentators on the hardness of the times, see idem., pp. 111-113; Higgins, 'County Government', p. 56.

4 marks [£2 13*s* 4*d*] per bushell in 1597, but a mere 3 shillings and 8 pence in 1625. Listed prices for equal measures of other commodities in the respective years are: rye at 42-44*s* and 2*s* 8*d*; peas and beans at 24-32*s* and 2*s* 8*d*; malt at 35-40*s* and 4*s*; barley at 28-30*s* and 2*s* 6*d*; oats at 20*s* and 2*s*; and ale at 4*d* in 1597 and only 2*d* a quart in 1625. At the same time, a Cheshire labourer might earn something in the region of 6*d* daily with food and drink, or 10*d* daily without; a woman in service, even "of the best sort", probably earned less than 40*s per annum* (the City of Chester wage assessment stated that a female servant of "the thirde sort" should earn only 20*s* annually); and even the wages of an artisan have been estimated at a mere 7*d ob*; in the City of Chester, in 1597, the highest annual wage rate - for master craftsmen - was £5. No wonder the 1597 prices were described as "verie fearefull".[81] Nor is it surprising that at least one historian has asserted that throughout the late sixteenth and first half of the seventeenth centuries, a great part of the Cestrian population lived only marginally above the basic level of subsistence.

In the post-Restoration period, poverty was still a problem in the county. Roger Wilbraham recalled that in 1663, the poor in Nantwich increased almost daily as strangers "stole in upon us". A survey was taken in response, and a list of 782 poor was submitted to the justices of the peace at the Trinity Sessions of that year. Other towns reported similar problems, and a lay mize was charged upon the entire county for the relief of the poor in market towns. At a time when between three and five hearths were necessary for a household to be considered comfortably off, 94% of Congleton households in 1673 had two hearths or less, and 45% were exempt from the hearth tax altogether. In Chester, 41% of households were too poor to be taxed. Of those which were not exempt, 46% had only one hearth, and a further 21% had only two.[82]

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[81] Even if these prices are not entirely accurate, the discrepancy between those recorded for 1597 and for 1625 is so great that it is safe to assume that some marked degree of difference existed. It should be noted, however, that 1621-1623 were similarly years of dearth in the north west of England. Hall, Nantwich, pp. 111-12, 113, 122; Harrison, et al., Tudor Chester, pp. 18, 24; Higgins, 'County Government', pp. 56-57; Hindle, 'State and Local Society', pp. 393-398, & 393, n. 16.

[82] Hodson, Cheshire, pp. 95-97; Roger Wilbraham, cited in Hall, Nantwich, p. 207.

No attempt has been made in the chapters which follow to relate the nature and incidence of prosecutions at Cheshire quarter sessions and great sessions to the economy of the region, except in the most general terms. The economic background of an area as large as the county of Cheshire is simply too diverse, and the impulses for prosecution too various, for a detailed correlation to be made. Only when the historian chooses to focus on a much smaller unit, such as a parish or township, might the particular economic profile of a community be accurately assessed and successfully linked to the dynamics of social life.[83] Yet, as has already been seen, historians have persisted in relating levels of litigation and the nature of disorder to simplistic and broad regional typologies.

One of the earliest studies which can be described as a social history of crime in the tradition of the "new" social history should have alerted subsequent scholars to the hazards of such an approach. The doctoral work of T.C. Curtis, completed over two decades ago and specifically concerned with prosecutions at quarter sessions in seventeenth-century Cheshire and Middlesex, is hindered by his uncritical acceptance of rigid economic models and a crude methodology. It was, however, a pioneering study which must have proved extremely useful to the generation of historians who continued in his footsteps.[84] Curtis's thesis is inevitably of limited value to the social historian of crime who is writing so long after its completion. It is worth discussing here his findings and approach in some detail for two reasons. Firstly, as it was in part a study of crime and criminality in Cheshire, certain of Curtis's findings may be of relevance to the present study. Secondly, there are aspects of his work which, if considered in the context of more recent studies, demonstrate both the positive and negative developments of the historiography of crime in early modern England.

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[83] See, for instance, K.W. Wrightson and D. Levine, Poverty and Piety in an English Village: Terling, 1525-1700 (New York, 1979), and idem., The Making of an Industrial Society: Whickham, 1560-1765 (Oxford, 1991).

[84] T.C. Curtis, 'Some Aspects of the History of Crime in Seventeenth-Century England, with Special Reference to Cheshire and Middlesex', unpublished PhD dissertation, Manchester University, 1973.

One of Curtis's primary lines of inquiry is to consider the extent to which economic factors such as inflation and commercial and industrial fluctuation corresponded to cases brought before quarter sessions in the 1610s and the first half of the 1680s. He found, however, that neither falling nor rising prices, nor depressions in trade were paralleled with a consistent or significant fall or rise in litigation.[85] This is hardly surprising when we consider the conceptual and methodological premises upon which Curtis's analysis is based. First and foremost, Curtis's analysis is based upon a misunderstanding of the early modern economy. For instance, citing a Privy Council Register entry for 24 January 1620, Curtis considers the hypothesis that low prices could cause as much anxiety to government as high prices, as low prices could generate unrest among producers rather than consumers. He therefore seeks a correlation between rising crime rates and falling prices, especially in areas which he defines as being without heavy concentrations of landless wage-earners, but which are dominated rather by agricultural producers.[86] Such an area, he contends, was Cheshire, "a relatively settled rural, agricultural area", which was "essentially different" from the "expanding urban, industrial area" of Middlesex.[87] Conversely, he goes on to seek a correlation between the condition of English trade, which nationally was "good" in 1610-15 and again in 1618-19, and "bad" in 1616-17, with the pattern of litigation. This time, Middlesex is singled out as the appropriate locality for analysis.[88]

Leaving aside a range of methodological inconsistencies for the time being, there are four aspects of this assumption which serve to demonstrate the unhelpfulness of broad generalizations about the early modern economy. First, as we have seen, Cheshire did not have a homogeneous economic profile. Indeed,

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[85] Curtis, 'History of Crime', pp. 31-134. The following discussion will be concerned primarily with Curtis's findings for Cheshire rather than for Middlesex.

[86] The correlation proved to be elusive. Curtis incorrectly cited the Privy Council Register entry as being on 19 January 1620. Curtis, 'History of Crime', pp. 95-8, 101.

[87] Curtis, 'History of Crime', pp. 94, 1.

[88] Curtis, 'History of Crime', pp. 104-134. Yet again, no statistical relationship emerged: pp. 127-28, 134.

the north-east of the county was an increasingly industrialized area *with* heavy concentrations of poor wage-earners. Secondly, landless or poor wage-earners and agricultural producers are not mutually exclusive types of inhabitant: prosperous sorts of the latter presumably employed varying numbers of the former. Thirdly, falls and rises in prices - whether of grain or industrial goods - are not uniform. The prices of various commodities affect particular social and occupational groups differently. Moreover, the fluctuations in London prices of industrial goods do not necessarily reflect the prices of those goods in the locality of their production. Nor do national estimates of harvest quality necessarily correspond to the prices of grain in any one particular province. Although Curtis reaches the conclusion that the economic situation may have been "more flexible than [W.G.] Hoskins' simplistic account" suggested, he does not question the deterministic nature of the general economic model upon which his analysis is based. Rather, he suggests that producers and consumers might have been able to survive economic changes to a great enough degree that their hardship was not manifest in criminal activity,[89] and raises the possibility that informal charity might also have played a major role.[90]

Curtis does, however, question the extent to which lawlessness can be associated with particular geographical areas. Citing Joan Thirsk's now rather tired tripartite model of lowland, highland and forest areas, Curtis examined the geographical distribution of crime in Cheshire, paying particular attention to the eastern upland and forest zone of the county where, according to the model, the population ought to have been more "lawless". Curtis reaches the conclusion that

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[89] This conclusion does not, however, deter him from going on to analyze the affects of commercial disruption on crime figures by isolating groups of workmen who were engaged in "the more advanced industries" and who were over-represented as defendants in his Middlesex sample. He finds that bakers, brewers, butchers, tailors and victuallers fitted this category, but does not raise the point that economic pressures on other occupational groups may have affected the trade of many of the above. Furthermore, it is not at all clear why or how Curtis expected economic pressures to have been responsible for many of the crimes which resulted in the above groups being identified as over-represented. The relationship between commercial disruption and threatening to murder someone, raping a minor, committing adultery, visiting a brothel or getting drunk surely cannot simply be a direct one. See Curtis, 'History of Crime', pp. 112-27, and table 12.

[90] Curtis, 'History of Crime', p. 102. Curtis's dependence upon W.G. Hoskins' estimates of harvest quality is discussed further below, p.44.

Thirsk's model does not satisfactorily explain the regional distribution of crime in Cheshire, for no consistent statistical pattern emerged which correlated with her typology.[91] Yet he does not entirely reject the notion that the eastern zone of the county was more "lawless" than the lowland zone. Having discovered that recorded crime in *some* eastern parishes was less than that in selected parishes in the south of the county, he contrarily states that:

> It might thus be argued that here is a clear pattern of "lawlessness" in that the control of the law enforcement agencies operated less effectively in the more outlying districts.[92]

Curtis does modify this view, as this was applicable to only two of the eastern parishes which he studied, those being Gawsworth and Taxal. Yet it is somewhat perplexing to suppose that the lawlessness of the inhabitants of Cheshire might equally be denoted by a low level of litigation as by a high one.

The main problem with Curtis's analysis is not, however, his interpretation but rather the means by which he reaches his conclusions. Although he acknowledges that he has neither "accurate" information regarding land utilization in the county nor a detailed account of its social structure, he assumes that there is no reason to suppose that either is significantly different from that suggested by Thirsk. Moreover, Curtis's analysis is based upon a comparative incidence of crime in selected parishes for which he has estimated population density. Population is estimated from the Hearth Tax Returns of 1664; the method of compilation "was simply to count all the persons named as having hearths, both chargeable and non-chargeable". Thus his figures are "not totals of population, but the ratios of population from parish to parish are the same and the basis of the argument...is not affected".[93] Such a methodology is spurious for two vital reasons. First, it assumes that the Hearth Tax Returns of 1664 constitute a reliable source of population for both the 1610s and the 1680s. Curtis argues that there is every reason to suppose that the population of the county remained

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91 Curtis, 'History of Crime', pp. 167-171, 184.

92 Curtis, 'History of Crime', p. 182.

93 Curtis, 'History of Crime', pp.174-176, tables 18/19; quotation at p. 176.

"approximately constant" over this period. There were, he maintains, no major causes of population redistribution within the county, no major plague disaster, no new industries created which might have caused population drift, and no widespread enclosure. Even allowing for the fledgling state of demography for the early modern period in 1973, this is an astounding assumption. The Cambridge Group for the History of Population and Social Structure may not have been in a position to publish their findings, but their project was surely not obscure. The notion that the seventeenth century was a period of demographic growth was hardly unheard of at the time that Curtis was writing.[94] Secondly, Curtis's analysis is based on the equally flawed assumption that household size was likely to be the same in proto-industrial Taxal or Mottram in Longdendale as it was in Nantwich, and that the average household in each was the same size as that in an arable parish like Malpas in the south of the county. Given that Curtis's starting point was a model in which sub-regions within the county were subject to differing settlement patterns, it is odd that his means of testing the model is based on its antithesis.

It has recently been estimated that in 1563, the county's population was probably something in the region of 146,000; by 1664, it may have risen to more than 240,000. The most dramatic population growth within Cheshire occurred in the north-east of the county, with the parishes of Prestbury, Cheadle and Alderley (all in the hundred and deanery of Macclesfield) estimated to have increased their population by over 200%, and much of the remaining area of Macclesfield deanery coped with growth of over 100%. The other more densely populated areas were the deaneries of Frodsham, Middlewich and Nantwich, though of these only the latter grew at anything like the supposed national average of 68%. Individual parishes, though, as the figures for Prestbury, Cheadle and Alderley suggest, could have witnessed far greater demographic growth than estimates of a whole deanery might suggest. The Wirral, the smallest, and most sparsely

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[94] See for example, J.D. Chambers, Population, Economy, and Society in Pre-Industrial England (Oxford, 1972), esp. pp. 111-112, and figure 4; G.S.L. Tucker, 'English Pre-Industrial Population Trends', Economic History Review, 2nd ser., 16 (1963). Chambers estimated a national increase in population from approximately 4 million to 5.5 million between 1600 and 1680.

populated deanery and hundred in the county, was less well placed with an arable economy which was less conducive to inciting the scale of immigration which must have contributed to expansion in the Macclesfield area.[95]

Further methodological problems in Curtis's work can be highlighted if we consider in more detail the manner in which he sought to correlate specific economic factors and the incidence of prosecution. For instance, in seeking a correlation between rising grain prices and levels of litigation, Curtis depends upon W.G. Hoskins' national estimates of harvest quality which were in turn based upon the Beveridge price series "supplemented by [Hoskins'] enquiries among many borough records up and down the country". Not only, as Curtis points out, is there is no evidence to suggest that Hoskins covered Cheshire in his enquiries, but urban records are obviously a flawed source by which to deduce rural prices.[96] Thus, Hoskins' figures are not a reliable source of price fluctuations in any single locality or region, and especially not those in Cheshire. This makes dubious Curtis's claim that it should be possible to draw "rough conclusions" from this data. A second methodological problem arises from Curtis's comparison of the total numbers of defendants brought before quarter sessions with the quality of harvests suggested by Hoskins.[97] An analysis which includes *all* persons indicted, presented or bound over to keep the peace or to be of their good behaviour is unlikely to produce a significant correlation with harvest quality, as the price of grain cannot be supposed to have had a comparable bearing on every type of unlawful behaviour and interpersonal dispute for which prosecutions could be brought. This would be so even if an accurate gauge of prices for Cheshire (and Middlesex) were available. Curtis attempted to broach this problem by comparing the incidence of "types" of crime prosecuted with the quality of harvests. Again, no correlation was apparent either for offences against the peace, theft and burglary or for a broader category of

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95 Phillips and Smith, Lancashire and Cheshire, pp. 5-10; Higgins, 'County Government', p. 12.

96 Curtis, 'History of Crime', p. 33.

97 Curtis, 'History of Crime', pp. 33-34, and tables 1-3, pp. 36-37.

"property crime". The latter category included such disparate offences as forcible entry, trespass, and unlawful possession, and were found to "not even correlate with each other". The precise nature of the hypothetical relationship between these activities and high grain prices, which led him to seek a correlation, is not clarified.[98]

The problem is further compounded by the fact that only prosecutions at quarter sessions are considered: the analysis is therefore based on incomplete data. This is especially relevant as regards property offences, which in Cheshire, tended to be prosecuted at Great Sessions. Annual prosecutions at quarter sessions for theft in the 1610s range from between 15 and 26; there were only two cases of burglary brought before that court in the 1610s, and only one in 1680-1685. If Curtis *had* discovered a correlation between quarter sessions prosecutions of theft and burglary the result would have been statistically untenable.[99] Hindle's much more recent attempt to relate economic pressures to criminal prosecution in Cheshire is potentially more helpful as he considered the incidence of indictments for corn theft during the years of harvest failure of 1595-97. It may be instructive that within these three years 15 individuals were indicted for felonies involving grain, whereas in the first ten years of the seventeenth century there were, indeed, a mere eight such prosecutions. However, given the small number of such prosecutions, the significance of what Hindle describes as a "sharp increase" is arguable.[100]

Nor was Curtis's attempt to find a correlation between rising prices and the prosecution of particular occupational groups any more successful. He found no evidence which suggested that price rises led to labourers (that is, the occupational group which he supposed would be most dependent upon purchase for their supplies of food) committing more offences. There are, however,

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98 Curtis, 'History of Crime', pp. 89-93.

99 Curtis, 'History of Crime', pp. 91-2, and table 6, pp. 59-60.

100 Hindle, 'State and Local Society', pp. 333-34.

problems in identifying persons styled in legal documents as "labourers" as one occupational group for this purpose.[101] Not only, as Curtis noted, can the accuracy of such ascriptions not be relied upon, but many persons in other occupational groups in a region such as Cheshire might have been equally sensitive to economic hardship in times of dearth. Moreover, economic pressure might equally have been related to the likelihood of a person choosing to prosecute.

One of the fundamental problems exemplified in Curtis's work, is that of adopting a theoretical position rather than historical evidence as one's analytical starting point.[102] His chapter in which Kai T. Erikson's boundary maintenance theory is considered may be taken as a case in point.[103] Curtis argues that the boundary maintenance hypothesis is helpful in understanding why men of certain occupations and status are disproportionately prosecuted. Thus, the 5-7% of offenders brought before Cheshire quarter sessions who were styled as gentlemen was disportionately "high" for no other reason than Peter Laslett's national estimate that gentlemen constituted 4-5% of the seventeenth-century English population. Curtis explains that this fits into the Erikson hypothesis "reasonably well":

> Given the crucial role allocated to sections of the gentry in preserving the local government machine in particular and social stability in general it is not surprising to find a slightly higher degree of concern than normal about their activities.[104]

Curtis neither defines what he believes constituted a "normal" degree of concern, nor considers who is supposedly so concerned about the activities of gentlemen. In other words, it is unclear to which social or political group Curtis attributes this "understandable" concern.

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[101] Curtis, 'History of Crime', pp. 36, 54, and table 4, pp. 36-53.

[102] Curtis, 'History of Crime', pp. 31-32, 104, 135-36, 185-6.

[103] Kai T. Erikson, Wayward Puritans: A Study in the Sociology of Deviance (New York, 1966), pp. 6-13 and passim.

[104] Curtis, 'History of Crime', pp. 190-91.

According to Curtis, the "quite remarkable discrepancy" between proportions of husbandmen and craftsmen appearing at quarter sessions in the two counties can also be explained by the Erikson hypothesis. In Middlesex, craftsmen were proportionately more likely to be prosecuted than husbandmen; in Cheshire the reverse was true. Given that Curtis himself selected Cheshire and Middlesex for his study as they represented respectively an agricultural area and a metropolitan one, a discrepancy of this kind might be expected. But Curtis interprets this evidence as "a quite remarkable lack of concern" with the activities of husbandmen in Middlesex compared with Cheshire. Conversely, we are told that due to the influx of immigrants into Middlesex, of whom many were wage-earning artisans, the community defined behavioural patterns for the newcomers, with the result that "we find a good deal of attention directed towards the activities of those associated with these developments". Curtis appears to interpret his evidence in order to fit the theory. Labourers are under-represented as defendants because in preserving boundaries the authorities were more concerned with the behaviour of people of some significance, "people who would matter in the community". A disproportionate number of millers prosecuted in Cheshire is explained by their important role in providing connections and communication throughout the region, therefore rendering them suitable people to be surveilled by both the community and "the police". Shoemakers, who also stand out as defendants, are similarly suspect due to their apparently being one of the sources of news and rumour from outside the district "in an age where news and rumour could be inflammable". The disproportionate prosecution of weavers is, however, explained by neither peripatetic factors nor a developed textile area within the county which would provide a cause for concern. Therefore, weavers "can surely be viewed only as the exception that proves quite a clear cut rule".[105] Such an interpretative stance certainly is in line with Erikson's boundary maintenance theory. But little empirical evidence is offered to support these views.

Moreover, the evidence from which he chooses to extrapolate appears to

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[105] Curtis, 'History of Crime', pp. 191-92, 193-95.

be highly selective. His treatment of female defendants may serve as an example. As women constitute only about a third of those prosecuted, Curtis surmises that there must have been a "much greater degree of concern about the activities of the male population". This is surely a reasonable assumption for Curtis to have made. However, he makes no reference to the fact that there is a 400% increase in the average annual number of women prosecuted between the 1610s and the 1680s. Given his earlier assumption that the population of Cheshire was static during the seventeenth century, it seems somewhat strange that he does not see fit to consider this evidence in the light of Erikson's hypothesis.[106]

The extent of the problems raised by Curtis in his analysis of crime in seventeenth century Cheshire and Middlesex is rarely evident in more recent work within the field. Nevertheless, the discussion in the first section of this chapter of the problems which arise from a quantitative approach to early modern crime indicates that historians have tended to adopt similar methodologies, although they may have asked a different set of questions. In fact, Curtis appears to have been far more sceptical of the merits of quantification that many of his successors, although given the nature of his enquiries, his conclusion may have been reached for the wrong reasons.[107] Advances have also been made regarding the use of qualitative material. Writing in 1973, Curtis takes his narrative evidence at face value and employs it merely as "example and counter-example". Twenty years on, a different problem may be emerging: perhaps historians, in their newly acquired analytical sophistication, are so concerned not to interpret narrative evidence at face value that they tend towards stripping it of any material worth whatsover. We may consider Hindle's work on Cheshire as a case in point. One of the ways in which Hindle says that litigation (at Star Chamber) might be read was "the strategy", by which he means "the rhetorical device used to embellish the action in the plaintiff's favour". This is a similar interpretative position to that upon which much of the discussion in this present work is based. Yet Hindle

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[106] Curtis, 'History of Crime', pp. 188-89.

[107] See for example, Curtis, 'History of Crime', pp. 101-102, 106-111.

takes this stance to an extreme: "In these terms, Star Chamber bills were simply products of the art of political disguise, and should be interpreted accordingly". No matter how rich the sources might be, the nature of documentary evidence from Star Chamber, quarter sessions, or any other court is such that it is no more possible to suppose that the claims of early modern protagonists were *simply* "the art of political disguise" any more than they were *simply* a factual relation of the incident in question. In adopting such an approach the danger exists of replacing one unproblematized orthodoxy with another. Thus, of claims made to magistrates in the 1590s of three separate conspiracies to murder, Hindle says that whether genuine or not, "such allegations were commonplace in the mesh of abuse and indignation constituted by petitioning". Such allegations, however, were far from commonplace. There are qualitative differences between claims that one's adversary has threatened to kill one (whether or not the context of a heated argument is suggested) and detailed accounts of conspiratorial, murderous intent. Just as the historian of crime in the period has moved on from Curtis's acceptance of the "truth" of such claims, we cannot assume that we are dealing instead with malicious or completely fabricated tales with no other purpose than to impugn an opponent's reputation.[108]

Curtis had to grapple with a large volume of material, the time-consuming nature of transcription, interpretative difficulties, and missing data, all of which problems he notes in his introductory chapter, just as others were to do subsequently.[109] Yet in terms of the conceptual parameters of his study Curtis has long been superceded. Ironically, though, it is in his most cautious discussion - of sectional interests in the final chapter of his thesis - that Curtis's findings have been most enduring. His belief that "the study of the persistent offender and his neighbour might well be enlightening" has been sustained by more recent studies, although the historiography has developed sufficiently to make such a study less relevant to the examination of "the criminal class", and more the study

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108 Hindle, 'State and Local Society', pp. 133, 249-51, quotation at p. 251.

109 Curtis, 'History of Crime', pp. 2-5.

of social interaction within communities. In many respects the social history of crime has become as much concerned with the dynamics of cohesion as it once was with disruption. Hindle's recent work on Cheshire and my own study exemplify historiographical developments in that both are to some extent involved in reconstructing contemporary notions of order rather than disorder through an examination of the records of criminal and other courts. There are, nevertheless, differences between the two studies in the way that order is conceptualized.

Hindle persuasively sets forth the view that the "state" and "society" should not be seen as binary oppositions, but rather that both should be seen as points on a continuum of interest and identity: the state cannot be seen as wholly separate from society as it is "embedded in the social order". Yet we are told that local officers - justices, head and petty constables and churchwardens - were standing at the interface of state and civil society, and that the public responsibilities of local officers "were representative of state power". Even Sir Richard Grosvenor's distinction between the role of private gentleman and public magistrate is cited to make the point.[110] Hindle repeatedly, and presumably inadvertently, reinforces the notion of "two concepts of order", even if these are differently located to those referred to by Keith Wrightson in the article in which the phrase was coined. Thus, whilst Hindle offers a sophisticated definition of the nature of "government" in which it is imagined as less an event than a process, "a series of multi-lateral initiatives to be negotiated across time and space and through the social order", his analysis of the social dynamics of what he terms "the localization of state authority" remains based upon a binary conceptualization of that relationship. Indeed, "multi-lateral" government itself is characterized by dualisms: "cultural hegemony" is offset by "popular participation"; "due process" by "malicious litigation"; and "exemplary punishment" by "discretion". He cites E.P. Thompson's understanding of the law as an arena for struggle in which "alternative notions of the law were fought out", but tends to limit those alternatives to only two, despite his claims to the contrary. Two alternatives, for

[110] Hindle, 'State and Local Society', pp. 29, 31-2, 37-38, 39.

example, are offered in his analysis of recognizances to keep the peace or to be of good behaviour. One is to see binding over as "a crucial mechanism through which state authority was either invited, or chose to intrude, into the multi-lateral process of protecting the peace". The other is predicated upon "local" concerns for order, or threats to the peace.[111]

Where ordinary people are said to have "their own informal 'concept of order'", it is presented in terms of resistance or opposition to that of the governing magistracy.

> The 'alewyves', minstrells and bearbaiters...of early modern Cheshire developed their own strategies of resistance: mockery, drunkenness, music, intimidation, and abuse. Their scorn for magisterial activism arose from the conceptions that pastimes were theirs to be employed, and that...their constable, should defend them against the officiousness of 'young magistrates'. This was their own informal 'concept of order'.[112]

Thus contemporary notions of order are presented in terms of another binary relationship, this time between elite and popular culture. Similarly, complaints made by petitioners to the bench at quarter sessions are described as being about behaviour which *either* they genuinely regarded as anti-social, *or* which at the very least they expected the bench to abhor. Hindle continues:

> Even though complainants often told the magistracy what they thought it might want to hear, their informations reflect *the penetration of multi-lateral conceptions of order into* the fabric of English society.[113]

His conceptual model of the relationship between state and local society in the period appears to have been influenced by that suggested by Anthony Fletcher and John Stevenson. "Local communities", they wrote, "were penetrated ever more deeply by a process of administrative and cultural integration which brought

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[111] Wrightson, 'Two Concepts of Order', pp. 21-46; Hindle, 'State and Local Society', pp. 37, 40, 36, 38, 49-50, 542, 240-41.

[112] Hindle, 'State and Local Society', p. 538.

[113] Hindle, 'State and Local Society', p. 252. My italic. An argument for "the penetration of multi-lateral conceptions of order" within rather than into "the fabric of English society" would have been more tenable. For a similar stance to that adopted by Hindle, see James Sharpe, 'The People and the Law', in B. Reay (ed), Popular Culture in Seventeenth Century England; cf. Andy Wood's critique of Sharpe in P. Griffiths, A. Fox and S. Hindle (eds), The Experience of Authority in Early Modern England (London, forthcoming).

them into national standards and fashions".[114] Despite the sophistication of Hindle's definitions of state and society and the relationship between them, his analysis hinges upon a rather crude conceptualization of order which suggests that "the fabric of English society" - in other words, the middling and lower orders, or so it is implied - has no inherent conceptions of order save those injected or imposed from, or otherwise shared with, the political nation. "Symbolically", he writes, "the early modern state really did impose an all-embracing authority upon the governed, 'reaching down into the very threshold of their experience'". The proviso that "it only did so only in the context of a legal system that allowed them significant access to that authority" reinforces rather than modifies the point.[115] Yet, as Hindle says elsewhere, "the structures of authority were elastic, multi-lateral and had both geographical extent and social depth".[116] If one interprets the nature of such structures in terms of their potential plurality rather than polarity, notions of authority, law and order are seen to be accordingly mutable and multi-faceted. It is this, rather than the position of local officers at the "interface" of state and civil society as Hindle contends, which is crucial to the understanding of the experience of authority in early modern England. The fluid and multiple meanings of order and disorder and the law itself are recurring themes in the chapters which follow.

This thesis, whilst also examining criminal court records for early modern Cheshire, attempts a more complex reconstruction of historical reality than that found in the work of either Curtis or Hindle. It is, in part, a study of women's crime and the relationship of women to the law in the period. Yet it is also concerned with both the interrelation of early modern concepts of gender and order, and the manner in which those concepts informed perceptions of unlawful behaviour and the administration of criminal justice.

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[114] Fletcher and Stevenson, 'Introduction', p. 3.

[115] Hindle, 'State and Local Society', p. 541.

[116] Hindle, 'State and Local Society', p. 36.

In chapter two, the prosecution and dynamics of non-lethal violence are explored. I examine actions and words which allegedly resulted in and threatened physical harm and explore the bearing of sexual difference on the ways in which violence was reported before magistrates. Scolding and barratry are also discussed. Notions of order are shown to be mutable; thus culpability for violence was measured upon a sliding scale which might not seem in strict accordance to the degree of physical harm inflicted. I outline the common strategies which were employed by men and women, arguing that each of these, alone or in combination, could mitigate or exacerbate the consequences of violent behaviour. In narrative accounts, there were both marked gender differences in the reconstruction of violence, and subtle changes in tone over time. Quantitative evidence similarly suggests changes over time in the treatment of offenders and in the behaviour of plaintiffs. The evidence is discussed in the context of recent historical work which broaches significant continuities and discontinuities during the course of the seventeenth century.

Chapter three is concerned with the prosecution, punishment and representation of acts of murder, manslaughter and infanticide. An analysis of judicial decision-making shows that culpability in homicide was mitigated by notions of justifiable or excusable killing. Legal language and formulae provided a range of pejorative phrases and concepts which underpinned societal attitudes towards violence. Thus, constructions of acceptable violence were not merely gauged by their relationship to mutable notions of social order; they were also distinctly gendered. The vocabulary and thereby the very concept of righteous violence was masculine. Models of acceptable violence were virtually nonexistent for women. It was, therefore, not only difficult for women to justify their own violence, but in the absence of a social or legal language of righteous feminine violence, the law in practice could not operate similarly for both sexes.

The role of women in theft and related offences is the subject of chapter four. Judicial decision-making in prosecutions for offences against property is analyzed, and it is argued that common assumptions regarding the differential

treatment of men and women before the courts are often misleading. I show that women and men had different patterns of criminal activity, both in the types of goods they stole, and in their choice of partners in crime, but not necessarily those which have largely been accepted by historians. This is explained by considering the role of gender in creating distinct but overlapping preoccupations for men and women in social and economic life. Women are shown to have been active within female networks of social transmission as both breakers of the law and as the informal agents of its enforcement. They had a developed and distinct investment in certain types of moveable property which was different from men's and which bears little correlation to legal categories of ownership. Notions of order are shown to be far less fluid and ambiguous with regard to moveable property than they were to violence.

Chapter five develops the themes of authority, responsiblity and the law raised in previous chapters, and considers the role of the law in the lives of ordinary people. In some respects, the law can be seen to have been an agency of elite authority; in others it was, like the notion of order, subject to redefinition and notions of lawfulness could be used to sanction behaviour which might seem to be, or which were, unlawful. The legal process - as an arena in which various kinds of conflict were played out - offered men and, more importantly, women a language and a set of shifting concepts of order, honesty and lawfulness which they could draw upon in order to invest their own words and actions with some kind of authority. Women's relationship to the law is shown to have been more complex than has been traditionally assumed. Notions of the law were not exclusively "male". Rather, they were mutable, however insignificant women's involvement in litigating or administering the law might have been.

CHAPTER TWO

NON-LETHAL VIOLENCE

The involvement of women in violent offences which did not result in death has been neglected by historians of crime. Non-lethal violence has been categorized along with murder and other serious felonies as an "overwhelmingly male activity" without further discussion. This is partly because discussions of violence have tended to focus upon homicide and infanticide, and partly because women constituted a minority of those indicted for assault.[1]

The number of defendants prosecuted for offences which have been categorized as violent and non-lethal is 3,545.[2] The category includes indictments for various types of assault, barratry and scolding, words of sedition, and common disturbances of the peace, along with recognizances to keep the King's peace or to be of good behaviour.[3] In selecting the quantitative data the term 'violence' has been used in a wide sense: denoting not only the actual harm inflicted, but also the intentions of the perpetrator and the accompanying emotion; in most instances, verbal and physical abuse are not treated as distinct activities

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[1] J.A. Sharpe, Crime in Early Modern England (London, 1984), p. 109. Where non-lethal violence has been considered, gender has been a minor issue: T.C. Curtis, 'Quarter Sessions Appearances and their Background: A Seventeenth Century Study', in J.S. Cockburn (ed), Crime in England 1550-1800 (London, 1977), pp. 135-154; Cynthia Herrup says little more than that grand juries were less kindly disposed towards disruptive women than they were to women accused of theft, The Common Peace: Participation and the Criminal Law in Seventeenth-Century England (Cambridge, 1987), pp. 118, 151-3, 203; Alan Macfarlane and Sarah Harrison, 'Introduction: The rediscovery of Violence', The Justice and the Mare's Ale. Law and Disorder in Seventeenth-Century England (Cambridge, 1981), pp. 1-26; J.A. Sharpe, Crime in Seventeenth-Century England: a County Study [hereafter, Essex], (Cambridge, 1983), pp. 115-123, 189-191; Carol Z. Wiener, 'Sex Roles and Crime in Late Elizabethan Hertfordshire', Journal of Social History, 8 (1974-5), pp. 38-60; Robert B. Shoemaker, Prosecution and Punishment. Petty crime and the law in London and rural Middlesex, c.1660-1725, (Cambridge, 1991), p. 213. Female participation has however been discussed by Andrew Finch, 'Women and Violence in the later Middle Ages: the evidence of the officialty of Cerisy', Continuity and Change 7 (1, 1992), pp. 23-45.

[2] See table 2.1. In addition to the figures contained in the table , there were 31 recognizances to keep the peace or to be of good behaviour filed at great sessions in the 1590s - 25 men (80.6%) and 6 women (19.4%) - and 59 persons indicted for assault - 53 men (89.8%) and 6 women (10.2%). The above total includes those about whom complaints were made but for whom no indictment or recognizance exists.

[3] Recognizances for appearance only and for incidents involving theft or other specific non-violent activities are excluded from this analysis.

here. This is the most appropriate use of the term in the light of early modern legal categories and the nature of the sources.[4]

Table 2.1 Individuals Prosecuted for Offences Against the Peace at Quarter Sessions and Great Sessions.[a]

Quarter Sessions 1590s	MEN	%	WOMEN	%	TOTAL
Recognizance	476	87.8	66	12.2	542
Indictment					
Assault	99	86.8	15	13.2	114
Barratry/Scolding	1	25.0	3	75.0	4
Disturbing Peace[b]	-	-	2	100.0	2
Total Indictments	100	83.3	20	16.7	120
Sub Total	**576**	**87.0**	**86**	**13.0**	**662**
Quarter Sessions 1620s	MEN	%	WOMEN	%	TOTAL
Recognizance	597	81.9	132	18.1	729
Indictment					
Assault	415	78.9	111	21.1	526
Barratry/Scolding	27	77.1	8	22.9	35
Disturbing Peace	13	68.4	6	31.6	19
Total Indictments	455	78.4	125	21.6	580
Sub Total	**1052**	**80.4**	**257**	**19.6**	**1309**
Great Sessions 1620s	MEN	%	WOMEN	%	TOTAL
Recognizance	41	97.6	1	2.4	42
Indictment					
Assault	79	79.0	21	21.0	100
Barratry/Scolding[d]	10	62.5	6	37.5	16
Seditious Words[c]	12	100.0	-	-	12
Total	89	76.7	27	23.3	116
Sub Total	**142**	**83.5**	**28**	**16.5**	**170**

table 2, continued/

[4] For a useful discussion of the relative uses of the terms "aggression" and "violence" in criminological and sociological work, see John Archer and Barbara Lloyd, Sex and Gender, (Cambridge, 1985), ch. 5.

/table 2, continued.

Quarter Sessions 1660s	MEN	%	WOMEN	%	TOTAL
Recognizance	729	74.5	249	25.5	978
Indictment					
Assault	175[c]	89.3	21	10.7	196
Barratry/Scolding	13	81.2	3	18.8	16
Disturbing Peace	16	80.0	4	20.0	20
Total Indictments	204	87.9	28	12.1	232
Sub Total	**933**	**77.1**	**277**	**22.9**	**1210**
Great Sessions 1660s	MEN	%	WOMEN	%	TOTAL
Recognizance[f]	23	85.2	4	14.8	27
Indictment					
Assault	48	98.0	1	2.0	49
Barratry	6	85.7	1	14.3	7
Seditious Words[g]	20	95.2	1	4.8	21
Total Indictment	74	96.1	3	3.9	77
Sub Total	**97**	**93.3**	**7**	**6.7**	**104**
GRAND TOTAL	**2800**	**81.0**	**655**	**19.0**	**3455**

[a] Alternate years sampled for the 1590s, 1620s and 1660s.
[b] Includes one woman indicted for scandalous words.
[c] Includes two men for speaking words of treason: one was committed and the other bailed; neither was prosecuted by indictment. The remaining ten were prosecuted for abusive words against Justices of the Peace and other of the King's officers: eight were bailed to appear and answer, one was committed to the House of Correction and one was indicted for trespass.
[d] Includes two women presented for formal cursing within the context of "scolding", and general disorderly and abusive behaviour.
[e] This figure includes 38 male defendants indicted together for a riotous assault over the illegal importation of Irish cattle. If they are excluded as atypical, men and women constitute respectively 86.7% and 13.5% of individuals prosecuted for assault; 85.6% and 14.4% of total indictments; and 76.4% and 23.4% of total prosecutions.
[f] Includes four men bailed to appear and answer for seditious words for whom no indictment was filed.
[g] Includes four men indicted for abusive words against JPs, etc.

As in other counties, the great majority of those prosecuted for abusive behaviour in Cheshire were male. Men constituted just under 80% and 90% of defendants indicted for assault in the 1620s and 1660s respectively. If we take recognizances into account, the male-female ratio does not alter much in the earlier period, but the proportion of female defendants in the later period is inflated. Twenty-five per cent of those prosecuted by recognizance in the 1660s

were women. The shortcomings of the sources, however, render a quantitative assessment of the extent and nature of aggressive behaviour problematic. The formulaic wording of indictments was prescribed not only by legal convention, but also by the way in which actions were construed by complainants, and doubtless sometimes by the clerk who drafted the document. Theoretically, a simple assault did not require actual bodily harm - merely to strike at or to offer to strike at someone. Assault and battery did supposedly involve physical violence.[5] Yet in practice, an indictment for assault or indeed for assault and battery might mean anything from raising a fist in anger to beating someone senseless with a cudgel.[6]

Recognizances often prove to be a more useful source although they too encompassed a wide range of behaviour. Sometimes drawn to a standard formula, recognizances were not subject to the same strictures of legal categorization and form, and therefore offer a more detailed, more discursive and potentially more representative account of unacceptable behaviour than do indictments. As approximately five times as many Cheshire defendants were prosecuted by this method than by indictment, they probably present a more accurate indication of the respective levels of male and female involvement in violent activity. Moreover, examinations related to the Cheshire recognizances survive in far greater numbers than they do for indictments.

Most instructive of all, however, are contextual documents in the form of examinations, depositions, informations, petitions, warrants, and letters. Evidence of this sort survives for approximately 750 of the defendants at quarter sessions, and it is on this that much of the following analysis is based.[7] These sources

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[5] M. Dalton, The Countrey Justice, (London, 1635 edn.), p. 177.

[6] Shoemaker, Prosecution and Punishment, p. 52. Over a third of Shoemaker's sample of indictments for simple assault which had linked recognizances in fact involved either physical violence, the use of a weapon, or an additional offence.

[7] Additional information survives for 300 or so of the defendants in the 1620s sample and 450 in the 1660s sample. There is unfortunately no similar wealth of material accompanying relevant indictments and recognizances prosecuted at the great sessions, nor for either court in the 1590s' sample.

often provide crafted versions of events which are influenced by both convention and concept. Natalie Zemon Davis's definition of the "fictional" in early modern testimonies is a useful one, drawing as she does on the "broader sense of the root word *fingere*", and emphasizing "their forming, shaping and molding elements: the crafting of a narrative". The "stuff of invention" was, after all, an integral part of popular culture.[8]

Apart from the practical problems inherent in the source material, semantic factors create further difficulties in assessing the gravity of violent offences. As a historian of violence in medieval England has recently remarked, violence is ambiguous.[9] The process of categorizing acts as violent or non-violent, and those deemed violent as serious or minor is hazardous for the historian. Assigning meanings to those acts is perhaps even more perilous. The early modern concept of order was dependent upon unfixed and fluid notions of acceptable and unacceptable (or "just" and "unjust") violence. Violence *per se* was not necessarily considered "wrong". Indeed, some forms were allowable as a means of upholding the social order. Seventeenth-century manuals for Justices of the Peace delineated such distinctions: it was, for instance, considered no breach of the peace and entirely lawful for the parents, relatives or friends of a mad or "frantic" person,

> to take and put him into an house, to bind or chaine him, and to beat him with rods, and to do any other forcible act to reclaime him, or to keep him so as he shall do no hurt.[10]

Within the household and family, husbands, masters or mistresses and parents were permitted a considerable degree of justifiable violence as a means of correcting their wives, servants or apprentices and children;[11] in the wider sense

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[8] Natalie Zemon Davis, Fiction in the Archives (Stanford, California, 1987), pp. 3, 111-12; Peter Burke, Popular Culture in Early Modern Europe (London, 1978), pp. 91, 108-112.

[9] Philippa C. Maddern, Violence and the Social Order. East Anglia 1422-1442 (Oxford, 1992), p. 12.

[10] Dalton, Countrey Justice, p. 179.

[11] Dalton, Countrey Justice, pp. 179-181. Lawrence Stone, The Family, Sex and Marriage (abridged edn, London, 1979), pp. 116-18, 256-60; cf. Ralphe A. Houlbrooke, The English Family 1450-1700 (London, 1984), pp. 140-45. There was no fixed consensus about either the degree or the

of community and national order, the sanctioned treatment of rogues and vagabonds and the execution of felons are cases in point.[12] In addition, the rhetoric of both political and household order was mutually dependent upon an analogy between the state and the household.[13] The moral structure of violence thus underpinned the conceptual system of a godly, hierarchical social order. It is this which renders the formal documents of the courts particularly opaque. The motivation for and contexts of allegations have therefore to be considered with all their ambiguities and complexities if contemporary notions of violence and its role in early modern society is to be understood.[14]

In this chapter I shall discuss the incidence and social dynamics of prosecutions for non-lethal violence, addressing questions of gender difference in the extent and nature of the alleged abuse.[15] The chapter falls into four main parts. First, I shall consider the issue of "seriousness", and how gender was indeed one variable which influenced the perception and reception of violent behaviour. Secondly, I will discuss verbal abuse which was prosecuted as scolding or barratry. Thirdly, particular attention will be paid to the ways in which gender informed the construction of the tales which men and women told to magistrates and the courts. And finally, I shall discuss changes in the perception and reception of violence and its reconstruction before the courts

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justification of violence, of course. For a case in which one early modern parent was sufficiently unimpressed by the punishment of his child by a schoolmaster to assault the teacher, see PRO STAC/189/8; I am grateful to Andy Wood for this reference. For a useful discussion of advice literature, see Kathleen M. Davis, 'Continuity and Change in Literary Advice on Marriage', in R.B. Outhwaite, Marriage and Society: Studies in the Social History of Marriage (1981), pp. 58-80.

[12] A.L. Beier, Masterless Men. The Vagrancy Problem in England 1560-1640 (London, 1985), pp. 9-13, 149-50; Douglas Hay, 'Property, Authority and the Criminal Law', in D. Hay et al. (eds), Albion's Fatal Tree. Crime and Society in Eighteenth-Century England (London, 1977), pp. 17-63.

[13] For discussions of the ideology of family and state see Susan Dwyer Amussen, An Ordered Society. Gender and Class in early Modern England (Oxford, 1988), pp. 1-3, and Ch. 2, passim.; Jonathan Goldberg, 'Fatherly Authority: the Politics of Stuart Family Images', in Margaret W. Ferguson, Maureen Quilligan & Nancy J. Vicers (eds.) Rewriting the Renaissance, (Chicago, 1986), pp. 3-32, especially pp. 3-8; G.J. Schochet, Patriarchalism in Political Thought: the authoritarian family and political speculation and attitudes especially in seventeenth-century England (New York, 1975).

[14] *The inherent difficulties in interpreting willful violence are discussed by* Maddern, Violence and the Social Order, pp. 7-13, 110.

[15] *Finch employs a similar approach in* 'Women and Violence', pp. 23-45.

during the seventeenth century.

The Nature and Gravity of Violent Offences

Cheshire is a particularly appropriate county for a study of non-lethal violence. Almost one and a half times as many indictments for assault were recorded at the Cheshire quarter sessions in the fifteen years of this study than there were at the Essex quarter sessions in an entire sixty-year period from 1620 to 1680; and four times as many at the Cheshire great sessions than at the Essex assizes respectively. Comparing some twenty years sampled for late sixteenth- and early seventeenth-century eastern Sussex with the fifteen years sampled for seventeenth-century Cheshire, the number of cases in the latter outnumbered the former by 4 to 1.[16] This rather alarming trend appears to be reinforced by a glance at J.A. Sharpe's comparison of indictments for homicide, an area of activity which by definition is probably more representative of incidence. Sharpe's figures suggest that Cheshire had a higher rate of violent death than did the other eight counties he examined, both in absolute terms and relative to other offences.[17] However, on further investigation it does seem more likely that Cestrians were a particularly litigious lot. There was a long tradition of using recognizances to resolve, or indeed to exacerbate or prolong, interpersonal disputes in the county.[18]

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[16] For the period 1620-1680 there were 579 indictments for assault recorded at the Essex quarter sessions, 52 at the assizes, and 21 at King's Bench: Sharpe, Essex, pp. 115, 49-50. Herrup found 273 indictments for assault, riot and illegal assembly at the courts of quarter sessions and assizes in four five year samples 1597-1640, The Common Peace, p. 27. Cf. Tables 1-5; for alternate years in the 1590s, 1620s and 1660s there were 836 persons named on bills of indictment for assault, riot and illegal assembly filed at the quarter sessions, and 208 at the great sessions. Even the fact that that the Essex sessions records are incomplete for the 1630s, apparently as a consequence of a succession of indifferent clerks of the peace does not undermine the considerable differences in prosecutions there and in Cheshire. Similarly, allowing for the fact that the Cheshire figures are somewhat inflated as the unit of calculation is the defendant rather than indictment, and include those for riot and illegal assembly, there remains a vast discrepancy between the numbers of prosecutions brought in Cheshire relative to other counties.

[17] Sharpe, Crime in Early Modern England, p. 55. Direct comparisons cannot be made as the selected periods for each county differ chronologically and in size.

[18] Dorothy Clayton, The Administration of the County Palatine of Chester, 1442-85, (Chetham Soc. 3rd ser. xxxv, 1990). Clayton offers the most recent published discussion of Cheshire's historical reputation as a lawful rather than a lawless county. See also Steve Hindle, 'Aspects of the Relationship of the State and Local Society in Early Modern England: with special reference to Cheshire, c. 1590-1630', Cambridge PhD thesis, 1993, pp. 22-28, 118-19: Hindle found that the proportions of violent

One might expect this especial turbulence, if it existed, to be reflected in the nature of criminal allegations. But the nature of violence in Cheshire does not appear to have been particularly heinous. Of the 526 quarter sessions indictments in the 1620s sample, for example, only 10 included an indication of the measure of harm inflicted, and even these allow for only a vague interpretation of events.[19] According to one victim, a man had "pierced his belly with a sword, wounding him perilously"; another received "divers maims of his limbs" although no weapons were cited. A married couple "grievously" struck a man with a pickel, but as in most cases with multiple defendants there is no indication of which of them wielded it. Two men assaulted a woman and "greviously hurt her eyes", yet the manner in which they did so is not given. The other cases specify either bloodshed or a serious wound.[20] Indictments alone cannot tell us much about the dynamics of interpersonal violence. Nor can any valid generalization be made about the relative behaviour of men and women from these ten cases, though it might seem typical that only one woman features among the seventeen defendants.

The Cheshire indictments show that roughly a third of both the male and female defendants were allegedly armed; in fact in the 1620s a slightly higher

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Cheshire cases sued at Star Chamber was only one per cent higher than the national average. A discussion of the relative incidence of homicide in Cheshire may be found in chapter 3, below. Following a common model one might postulate that as a Palatinate county on the Welsh border "hence on the margins of English society", with a woodland-pasture economy, the inhabitants of Cheshire were less civilized than elsewhere. But this would be a somewhat rash assumption. Whilst violence may have been accepted as a legitimate part of early modern life by contemporaries, there is no evidence to suggest that any greater recourse to violent behaviour in Cheshire was due to the physical or indeed the economic environment creating more brutal and sadistic personalities. Macfarlane, The Justice and the Mare's Ale, pp. 23, 9, 11, 14-19, 180; Eugene Weber, Peasants into Frenchmen: the Modernization of Rural France, 1870-1914 (1977), p. 54. For a further discussion of these matters, see above, pp. 17, 27-31, and below, pp. 108-112. My intended post-doctoral work on a greater range of courts where such behaviour could be prosecuted, such as manorial and borough courts, will explore the issue more thoroughly.

[19] Of these ten cases, only one woman was named as a defendant along with her husband; six men acted alone; and there were three cases of two or more men acting together. Of 196 indictments in the 1660s' sample only two contained comparable information: a woman was unsuccessfully prosecuted for striking her son on the neck, inflicting a wound from which he allegedly later died; and a man had his arm broken by another man, although no weapons were cited. The great sessions indictments are similarly uninformative.

[20] QJF 55/3, f. 3; QJF 55/4, f. 26; QJF 55/3, f. 99; QJF 51/1, f. 28; QJF 49/1, f. 9; QJF 51/1, f. 20; QJF 53/1, f. 6; QJF 53/2, f. 4, QJF 55/1, f. 20; QJF 55/4, f. 94.

proportion of the women were involved in such cases.[21] As two-thirds of these women were prosecuted *with* men it is possible that many of them might not actually have wielded the weapons, a point which applies equally to men who acted in groups.[22] This is clear in some cases prosecuted by recognizance. Elizabeth Gandy petitioned to have three men and one woman bound over as they "greatly abused and revyled" her and her daughter. She maintained that all four laid violent hands upon her, and "threw her down under them and trode upon her with their feete in most barbarous and uncivill manner", she being great with child "at her Countes end". But the extent of the woman Anne Robinson's involvement is unclear. What is explicit is that one of the men, Raphe Holland, was the most violent of them all and the only one of the assailants who apparently used a weapon. He not only called Elizabeth and her daughter "whores", but "spurned [Elizabeth] on her belly, theighes, and legs, and did much hurt unto her, and put her in much danger of her life, and stroke her daughter with a great staffe over her back so that she fell downe to the ground, and was like to have broken her backe".[23]

But other evidence substantiates the view that female violence was often little different from male violence in form. Armed incidents which resulted in recognizances also show a relative parity between men and women.[24] Likewise,

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[21] Fifty-seven indictments were for armed assault involving 122 male (76.7%) and 37 (23.3%) female defendants. Proportionately, these account for 29.9% and 33.3% of all male and female defendants respectively. Twenty-three men and four women were indicted without accomplices; 49 men with other men, and nine women with other women; and 50 men and 24 women in groups including at least one person of each sex.

[22] Only 37 of 111 female defendants were allegedly armed.

[23] QJF 53/3, f. 98, Petition of Elizabeth Gandy. In many cases it is impossible to tell which of the defendants were most culpable. Lucy Whitmore in complaining about her husband's brother and his wife and another man merely says that in "most violent and riotous manner" they assaulted, beat and wounded her, "casting stones at her and therewith hurting her", QJF 49/4, ff. 63, 64. See also QJF 53/3, ff. 103, 104, 49 for an incident involving three men and two women, for which petitions of both parties imply that the women played a minor role using only verbal abuse whilst the men used physical force.

[24] Andrew Finch found a similar parity in proportions of men and women using weapons in fouteenth and fifteenth-century Cerisy: 'Women and Violence', p. 29. See also J.M. Beattie, 'The Criminality of Women in Eighteenth-Century England', Journal of Social History, 8 (1974-5), pp. 82-3. Shoemaker found that women were responsible for only a fifth of assaults involving violence or the use of a weapon, but his conclusion is based on formal documents rather than on discursive material,and therefore may underestimate the rate of female violence, Prosecution and Punishment, p. 213. For an earlier opposing view see Wiener, 'Sex-Roles and Crime', pp. 39, 47, 49. On women's domestic

in cases of unarmed physical abuse there were few distinguishing factors in male and female methods. By the 1660s a few men are said to have pulled punches; but the common methods of kicking or treading on victims, pulling and pushing them, pulling their hair, or otherwise striking them do not seem to have been gendered. Nor do the less frequent descriptions of scratching and biting: both men and women fought in this way. The issue of degree however is more problematic: the language of description was itself ambiguous. Words like "striking" are imprecise and could equally denote a slap with the back of a hand as a punch with a clenched fist. A further complexity is that particular language might have had multiple meanings informed among other variables by gender.

Nevertheless, women were rarely prosecuted for acts which were characteristically blatant displays of machismo, however one might interpret the evidence. No female case came before the courts which was comparable to that of James Fitch who plucked the head off Henry Trevys's falcon "in very vyle spyteful and disdaynfull manner without any Cause or occasion given to him...And [who afterwards] Carried the same hawke's head and shewed yt in divers companies affirming that he will carry the same head in disgrace of the said Henry Trevys" in order to cause Trevys "to overrun him forth of the fielde".[25] The concern with male honour was bound up with physical prowess in a way which was incommensurable for women.[26]

References in indictments to the use of specific weapons cannot be taken at face value. The phrase "swords and staves" on indictments for armed assault was already a legal commonplace and arguably a legal fiction by the early

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violence see Margaret Hunt, 'Wife Beating, Domesticity and Women's Independance', Gender and History, 4 (Spring 1992), pp. 19-20; cf. Lyndal Roper, The Holy Household (Oxford, 1989), pp. 189-191.

[25] QJF 53/2, ff. 141, 175. Examples of similar cases are CCRO [Quarter Sessions and Crownmote Files] QSF 79/2, f. 88, Examination of Thomas Eddowes; CCRO QSF 73/1, f. 26, Examinations of Christopher Donnald and Thomas Cooke; PRO [Great Sessions Gaol Files] CHES 24/104-1 (unfoliated), Examination of William Byrom.

[26] Macfarlane, The Justice and the Mare's Ale, p. 15.

fifteenth century.[27] In seventeenth century Cheshire about two-thirds of indictments which specify the use of arms were drafted to this standard formula, although often with the inclusion of a third weapon.[28] Notwithstanding the undoubted manual dexterity of certain individuals, it seems extremely unlikely that many assailants would have wielded a stave, a sword and a pitchfork simultaneously during an attack. If the additional weapon is taken to be a more accurate reflection of the means of assault, the most common items were knives or small daggers, and farm implements, notably bill-hooks or pitchforks. A similar impression is gained from indictments which deviate from the standard formula. Both men and women seem to have used whatever was to hand, from candlesticks to smithy hammers to fire-tongs. With the exception of swords, which were the sole weapon cited in a small number of cases where the assailant was male, there is no great disparity in the types of weapons men and women employed. Male defendants were slightly more often accused of using farm implements, and women seem to have favoured knives, no doubt reflecting opportunity as much as disposition. Even stone-throwing was not the preserve of women. There were of course idiosyncracies: one woman threw boiling water in the face of a man who came to collect a debt. But boiling water was not considered a weapon as such, and her indictment was for simple assault. In only a very few cases do the implements used suggest premeditation: staves which had been sharpened into "arrow points"; or a list of weapons which included items which the protagonists are unlikely to have been carrying around for the benefit of their daily occasions, such as as in one case, "firearms, canons, swords, shields, small daggers and iron bars". Every one of such allegations was against a group of defendants, and every one included at least one woman.[29]

The use of weapons is not the most useful indication of the perceived

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[27] Maddern, Violence and the Social Order, p. 29.

[28] A preliminary survey of Star Chamber cases for Cheshire suggests the same formulaic terms being deployed: PRO STAC 5; PRO STAC 8.

[29] QJF 51/1, f. 98; QJF 51/2, f. 10; QJF 51/2, f. 11; QJF 53/3, f. 2; QJF 49/2, f. 117, QJF 55/2, f. 24, QJF 55/2, f. 13; QJF 55/2, f. 14, QJF 55/2, f. 16.

gravity of an offence. Nor is the measure of physical harm inflicted.[30] People neither committed nor viewed acts of violence in a cultural vacuum. The level of "seriousness" ascribed to any act could be influenced by a number of factors. On 1 May 1620, Adam Cragge and a bailiff went to serve a warrant from Over Court on some cattle belonging to Raphe Nixon alias Buckley, for an unpaid debt. On the way they met Raphe's wife Margaret, who according to Nixon, took hold of the bridle of Cragge's horse as they passed,

> and desired him with pitifull Requestes to turn again and not to serve [the warrant], but her Requestes were nothing regarded but very rudely [he] rode over her and all to tore her clothes and hurt her body with his horses foot, and she being conseved with child with this Rude and ill useration and offer, when she would have saved her cattle from serving, the said Adam Cragge drew his sword and did wound her and strive her ill, and cut off one of her fingers on her right hand to her great hinderance and caused the conseved seed to swarve in her womb and she stood in great danger of her life the same night.

Cragge also "wounded and struck" Nixon, who was unarmed except for "a little walking staff about a yard long" with which to defend himself. When Nixon protested, Robert Buckley, a fellow of Cragge's, replied that both Nixon and his wife "should be worse dealt with yet, and worse used"; and Cragge said among other reproachful words that Margaret Nixon "had a stout heart but...we will have her Broken".[31]

Whether or not Margaret Nixon did indeed miscarry as a result of Cragge's abuse, that her finger had been amputated was surely a less ambiguous claim. One might suppose that it was a grave affliction. Yet when she petitioned the bench at the next quarter sessions to have Cragge and Buckley bound over to keep the Peace towards her, that request was refused. Rather than her claim that her finger had been severed being a gross exaggeration (for she did successfully prosecute Cragge by indictment at the following sessions), it seems that the extent of her injury was secondary to other factors. Cragge and Buckley happened to be

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[30] Nor can the seriousness of an assault be guaged by the heaviness of the fine, as they tended to be adjusted to the paying capacity of the guilty party. Sharpe, Essex, pp. 118-9.

[31] QJF 49/2, f. 171, Petition of Raphe Nixon.

servants to Sir Randle Mainwaring, a notable Justice of the Peace who conveniently was sitting at the sessions. The debt for which Cragge sued Nixon at Over Court was for rent in arrears owed to Nixon's landlord, and Cragge's employer, none other than the same Sir Randle Mainwaring. And, Buckley had a vested interest in the lands which Nixon held. In addition the Nixons were discredited by several witnesses, charged with being "not of good fame, nor honest conversation, but evil doers, riotters and perturbers of the Peace". The Nixons were consequently bound over to be of their good behaviour towards Cragge.[32] The fact of the violence itself was only one consideration in a whole web of subjective influences.

This case exemplifies all three of the most common strategies used by victims, witnesses and defendants of both sexes in their telling of violent events to magistrates. These will be evident time and time again in the following pages. The most popular tactic was to discredit one's adversary by portraying him or her as a common barrator, drunkard or other such disorderly person. The second stragegy was to claim that one had given "no just cause" to one's assailant. What was construed as "just" was open to interpretation; the phrase usually implied that the victim offered no immediate provocation in word or action whatever the extent of previous provocation. The third common tactic was to gain the moral highground by drawing on specific issues of morality and honesty. Raphe Nixon did this, unsuccessfully, in telling the Justices that Cragge had broken a promise to allow him three weeks in which to pay the debt if he pleaded guilty at Over Court. Nixon had therefore been wronged by Cragge going "secretly" for his warrant after the hearing. Each of these methods alone or in combination could mitigate or exacerbate the consequences of violent behaviour. And each was dependent upon the fluidity of the contemporary concept of order.

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[32] QJF 49/1, f. 152; QJF 49/1, ff. 92, 93; QJF 49/1, f. 24; PRO [Palatinate of Chester Crown Books] CHES 21/3 ff. 42r., 46r.; PRO CHES 24/115-3; PRO CHES 24/115-4. Mainwaring appears to have played a similar part in other cases too: see below, pp. 224-225. For other incidences in which the character of the defendant or complainant informed the way in which the violent behaviour was received see QJF 55/1, f. 97, QJF 49/3, f. 80, QJF 89/3, f. 31.

Such strategies were central to the narratives which men and women constructed for magistrates. Women however were able to use an additional device which was unavailable to men: claiming that they were pregnant as Margaret Nixon did. Many women asserted that physical abuse had resulted in miscarriage. Pregnancy was also used as proof of a woman's inability to commit acts of physical harm.[33] Women thus constructed personae of blameless and defenceless creatures, the moral depravity of their assailants being exaggerated by the notion of an assault on the person of the unborn child who was utterly beyond either culpability or self-defence.

The perceived significance of overt acts of violence was not merely determined by social and economic relationships as it largely seems to have been in the Nixon case. Individual actors and observers were also subject to personal value judgments. William Bennet and his wife Jane were witnesses to circumstances which resulted in Mary Jeynson being bound to keep the Peace towards Jane Cornell in July 1667. Both the Bennets agreed that Jeynson acted "in very violent manner" and gave Cornell ill and threatening language, saying she "could find it in her heart". But their descriptions of the act suggest differing responses: William deposed that Jeynson took Cornell by the arms and shook her, so that she fell down. Jane swears that Jeynson shook Cornell and then "threw" her down, which is not quite the same thing.[34] Whilst their differing perspectives might be due to numerous factors, one such might indeed have been the gender of the observers. Men were more ambivalent in their descriptions of female violence whatever its actual extent as we shall see later. William Bennett's deposition suggests that he thought Mary Jeynson's behaviour to be less "violent" than his wife did.

Just as the perceived gravity of physical abuse depended upon various

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[33] For example, QJF 51/3, f. 103, Petition of Elizabeth Sutton; QJF 55/2, f. 121, Petition against Robert Scragge; QJF 89/2, f. 262, Petition of Ellen Dod. This ploy was not solely the preserve of married women, as the case of the spinster Mary Warton shows: QJF 89/1, f. 87, Warrant for Richard Fling and Richard Burghall.

[34] QJF 95/2, ff. 98, 93.

factors, one of the ways in which the language of violence was itself given potency was by the capacity and likelihood of the alleged antagonist to carry out his or her threat. In relating intimidating words to magistrates, complainants regularly used the strategies outined above to depict a dissolute and turbulent person of whom they had every reason to be afraid. This is perhaps what one would expect. What is interesting though, is that in doing so complainants often legitimized the anger of their adversary. In a somewhat extreme manifestation of this, Arthur Whitmore requested in 1620 that William Chauntler be imprisoned for threatening to kill and maim him. No actual bodily harm had been committed. Whitmore portrayed Chauntler as a hardened criminal with a motive. First, he established that Chauntler was the type of person capable of heinous crime: he was frequently drunk and disorderly and a keeper of bad company, especially one Henry Heys who had murdered Whitmore's brother; he was a suspected burglar and highway robber; and he was a convicted horse-thief who had been saved from hanging by the King's pardon, who was subsequently bound to his good behaviour, "which good behaviour he saith he cares no more for, then a grasse that growes under his foote".

Whitmore then charged Chauntler with the daily brandishing of a potential murder weapon: "a very long staffe, with a payre of pykell graynes in the end of yt". Chauntler was therefore a natural suspect when two horses and a cow of Whitmore's had recently been "thrust and gored *as yt were* with a pyke staff or pickell".[35] Whitmore offered further circumstantial evidence which attributed Chauntler with intent: he often loitered outside Whitmore's house at night-time. And he invested Chauntler's action with motivation: he had compacted with Henry Heys, and "they two daily menace and threaten...to kill and to be revenged of [Whitmore]".[36] The concept of revenge illuminates the subjectivity of the prevalent notional moral order. Paradoxically, intimation of the possible legitimacy of an adversary's intention did not undermine the complainant's moral

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[35] My italic.

[36] QJF 49/1, f. 153. For other cases where loitering around complainants' houses at night-time were taken seriously see QJF 49/3, f. 78 and QJF 49/4, f. 116.

superiority and inculpability. Rather, it implied ill-intent and premeditation on the part of the avenger - that he had an axe to grind - for which there was no excuse. As long as the alleged victim offered no immediate provocation, past wrongs did not justify threats or actions on the grounds of vengeance. This applied equally to women as to men, but painting a picture of threatening and dangerous women was itself highly problematic for complainants, as will be discussed below.

Scolding and Barratry

The language of violence and the way in which it was received deserves attention as a means of evaluating the potency of male and female aggression. For the most part, no clear distinction can be made between verbal and physical abuse, which are generally compounded in this chapter. Merely uttering a threat could be sufficient cause for litigation, and most acts of physical violence were of course preceded and accompanied by provoking words. Throughout the seventeenth century both the motivation for, and the contexts of the majority of secular prosecutions for verbal and physical abuse seem to have been similar, with the possible exceptions of sexual slander,[37] and seditious words.[38]

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[37] Defamation cases had been regularly brought before the secular courts since about 1500, but the church courts remained the primary tribunal at which they were heard until their dissolution in 1642. In the post-Restoration period many more cases of defamation as defined in canon law were brought before the Cheshire quarter sessions. This is presumably because potential plaintiffs had become used to the criminal courts as a regular arena in which such cases were heard during the Interregnum, and therefore continued to prosecute a considerable number of such cases there after the reestablishment of ecclesiastical jurisdiction in 1660. On the church courts generally, see: Ralphe Houlbrooke, Church Courts and the people during the English Reformation, 1520-1570, (Oxford 1979); Ronald A Marchant, The Church Under the Law: Justice, Administration and Discipline in the Diocese of York, 1560-1640, (Cambridge, 1969). For defamation and sexual slander: Laura Gowing, 'Gender and the language of insult in early modern London', History Workshop Journal, 35 (1993), pp. 1-21, and 'Language, power and the law: women's slander litigation in early modern London' in Jenny Kermode & Garthine Walker (eds.) Women, Crime and the Courts in Early Modern England (forthcoming); Martin Ingram, Church Courts, Sex and Marriage in England 1570-1640, (Cambridge, 1987), pp. 292-320; Tim Meldrum, 'A Women's Court in London? Defamation at the Bishop of London's Consistory Court, 1700-1745', unpublished Paper, 1993; J.A. Sharpe, Defamation and Sexual Slander in Early Modern England: the Church Courts at York, Borthwick Papers, 58 (York, 1980). S.F.C. Milsom discusses the secular prosecution of defamation and its affinity with that of assault in Historical Foundations of the Common Law (2nd edition, 1981), pp. 379-388.

[38] This is obviously more appropriate for cases brought in the 1660s. There was only one prosecution at great sessions for treasonable or seditious words in the 1590s, two in the 1620s, and 21 in the 1660s. During the 1620s, there were several prosecutions by recognizance at quarter sessions.

One type of verbal abuse which has been viewed as gender-specific, both in terms of the offensive behaviour itself and popular conceptions of that behaviour, is scolding. Although studies of defamation prosecuted in the church courts and studies of secular criminality have demonstrated that verbal abuse was not a predominantly female activity, the notional polarization of words with women and deeds with men has died hard.[39] Indeed, that vituperative women were the counterparts of physically violent men has become something of a cliche. Whilst the archetypal scold was certainly female, it is rash to assume that the behaviour itself was peculiarly feminine as most historians have done. According to J.A. Sharpe, scolding not only contains "important clues to contemporary views on harmony and order, but also on attitudes to differences between the sexes". Indeed, David Underdown has argued that prosecutions of scolds reached "epidemic" proportions in the late sixteenth and early seventeenth centuries, reflecting a supposed "crisis in gender relations" at that time; and that scolds were especially assertive women. However, not only has Martin Ingram recently demonstrated that the alleged increase in official prosecutions has been greatly exaggerated, but the distinctions between scolding and other types of unacceptable behaviour were blurred.[40] This is especially true with regard to the relationship between scolding and barratry, which has also been neglected as a topic of serious study.[41] Whilst the representation of scolding women in popular

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[39] For example, David Loades, Mary Tudor: A Life (Cambridge, 1989), p. 5; Diane Hutton, 'Women in Fourteenth Century Shrewsbury' in Lindsey Charles & Lorna Duffin (eds), Women and Work in Pre-Industrial England (London, 1985), pp. 97-8.

[40] Sharpe, Crime in Early Modern England, p. 89. Martin Ingram, '"Scolding Women Cucked or Washed": A Crisis in Gender Relations in Early Modern England?' in Jenny Kermode and Garthine Walker (eds), Women, Crime and the Courts in Early Modern England (forthcoming); David Underdown, 'The Taming of the Scold: the Enforcement of Patriarchal Authority in Early Modern England', in Anthony Fletcher and John Stevenson (eds) Order and Disorder in Early Modern England, (Cambridge, 1986), pp. 127, 136.

[41] Although scolds were more frequently dealt with at manorial and ecclesiastical courts, prosecutions were brought to the criminal courts in this period. Scolding has been vastly under-researched. Such studies as exist have interpreted it as an unproblematic gendered category. David Underdown, 'The Taming of the Scold', pp. 116-136; Raymond Gillespie, 'Women and Crime in Seventeenth-Century Ireland', in Margaret MacCurtain and Mary O'Dowd (eds), Women in Early Modern Ireland (Dublin, 1991), pp. 43-45; Susan D. Amussen, An Ordered Society: Gender and Class in Early Modern England (Oxford, 1988), pp. 103, 122-23, 132. Popular historians persist in making alarming, anachronistic assertions: E.J. Burford and Sandra Shulman maintain that the seventeenth century was "an age when any woman offering an opinion would be called a scold", Of Bridles and Burnings. The Punishment of Women, (London, 1992), p. 19. J.H. Baker makes reference to scolding and barratry in one footnote only in An Introduction to English Legal History, (2nd edition, London, 1979), p. 577 n. 29. He says merely that after the fourteenth century 'some of the vague 'common' offences lived on as

literature tells us something of societal attitudes towards gender, distinctions must be made between literary stereotypes and the dynamics of interpersonal disputes which resulted in court action.

Scolding and barratry were ostensibly separate offences and have usually been treated as such by historians.[42] Whilst scolding barely existed as a legal category, barratry did have an acknowledged legal existence. Repeated malicious litigation or the detention of land over which there was disputed possession could be prosecuted as barratry. But every one of the Cheshire barrators was of a third sort: disturbers of the Peace, common quarrellers or fighters, maintainers of quarrels and affrays amongst other people, and inventors and sowers of false reports which caused discord amongst their neighbours.[43] The wording of indictments for barratry were almost identical to those for scolding. Usually the only difference was in the choice of either *barractator* or *objurgator*.[44] This alone casts doubt on the supposed peculiarity of scolding as a female activity.

Neither offence was frequently prosecuted at the Cheshire quarter sessions or great sessions.[45] Surprisingly perhaps, in the earlier quarter sessions sample, five of the men were prosecuted as common scolds, and a sixth man was accused of being a common barrator, "a busy-body and a gossip".[46] Only one of the male scolds, Richard Skerrott, a Moston husbandman, was successfully prosecuted and fined. His indictment was drafted according to the standard formula, but either the prosecutor, one Thomas Walley, or the clerk, thought fit

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misdemeanours: e.g., being a common night-walker, common barrator, or common scold'.

[42] See, for instance, Sharpe, Crime in Early Modern England, p. 88.

[43] Dalton, Countrey Justice, pp. 36-37. A very few Cheshire barrators were additionally said to be litigious: for example, QJF 55/2, f. 120, Petition against Hugh Henshall et al.; QJF 55/2, ff. 27, 122, Indictment and Petition against John Turner. But some others were blatantly so, being involved in cluster cases brought before the courts.

[44] For "barrator" and "scold" respectively.

[45] See Table 2.1. There were no prosecutions for either offence at the great sessions examined for the 1590s.

[46] Underdown has also found male "scolds": 'Taming of the Scold', p. 120.

to embellish the general accusation of "common defamer" with the particular. Written into the indictment is a specific alleged slander by Skerrott of Walley. It might have been this which led to the successful conclusion of the bill.[47] The grand jury threw out the indictments of the other four male scolds. Given that bills of indictment could be returned *ignoramus* if they were incorrectly or insufficiently drawn,[48] it is possible that an accusation of scolding rather than barratry led to this end. Whatever the case, there was no perceivable difference in the alleged activity which can be attributed to gender.[49] Indeed several sets of husbands and wives were prosecuted for barratry and scolding respectively, for their involvement in the same incidents.[50]

The difference may have been one of legal convention. Men and women might have exhibited similar behaviour which was considered equally abhorrent, yet were prosecuted by a different legal course. The decision ultimately lay with the prosecutor as to which path he or she would take, although the clerk who drafted the indictment may well have provided advice. As with all indictments, there is the endemic problem of how one interprets a formulaic document. Yet in the vernacular and often detailed presentments by local officials and in neighbours' petitions, the two offences are often indistinguishable. Indeed, contemporaries appear to have compounded the legal categories as well as the reported behaviour. Alice Meyre was indicted as a scold in 1620, but when her neighbours petitioned against her at the same sessions, they referred to her prosecution as that of barratry. Similarly, a note on Elizabeth Adams' indictment for barratry states that the prosecution rests upon information given by one John

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47 QJF 55/3, f. 9, Indictment of Randle Skerrott; [CRO] [Quarter Sessions Books: Indictments and Presentments] QJB 2/5, f. 78v.

48 In other words, grand juries could reject bills which they considered did not convey a prima facie impression of a case to be answered.

49 For example, see QJF 53/2, ff. 153, 152, 88, Petitions against Richard Metyer; QJF 53/2, f. 92, Warrant for idem.; QJF 53/2, f. 188, Indictment of idem; and QJF 55/1, ff. 24, 25, 26, 27, Indictments against Thomas and Mary Cole; QJF 55/1, f. 65, Letter to the Clerk of the Peace; QJF 55/2, ff. 8, 18, 23, 151, 159, 161, Indictments concerning the Coles. See also Hindle, 'State and Local Society', p. 256.

50 QJF 55/1, f. 21, Indictments of Thomas and Mary Cole; QJF 95/1, ff. 13, 19, Indictments of John and Mary Tomlinson; QJF 95/1, ff. 21, 22, Indictments of Randle and Margaret Forster.

Burges that she is a common scold; a petition against her also labels her as a scold, among other things.[51]

As has been mentioned above, litigants regularly denounced their opponents of both sexes as scolds and barrators without officially prosecuting them as such. Moreover many defendants dealt with by recognizance allegedly displayed behaviour which neatly fits the description of barratry or scolding, despite neither offence being mentioned. Richard Platt, for example, was presented in 1669 for he

> is a common abetter and setter of mischeef and debate between neighbour and neighbour, and insomuch at unquietnes that by his means and procurement hath caused dissension between his own son John Platt and Mary his wife.[52]

The problem remains to ascertain the criteria upon which complainants labelled defendants as scolds and barrators. Undoubtedly this was sometimes solely a method of denigration. The cost of prosecution must have been another factor in favouring a recognizance over an indictment for the offence. But the key seems to be in the nature of the offence itself. Neither scolding nor barratry were tangible offences. The very vagueness of a "common" offence permitted a considerable degree of flexibility in interpretation, and were to some extent categories which could be manipulated by complainants as easily as could the category of assault.[53] As such, they often tell us far more about the nature of a specific quarrel or feud which was played out in the courts than they do about either the supposed anti-social character of an individual, or the supposed anti-social nature of a particular offence.

At the Easter quarter sessions of 1626 Thomas Cole and his wife Mary were indicted and found guilty of barratry and scolding respectively. These

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[51] QJF 49/1, f. 15, Indictment of Alice Meyre; QJF 49/1, f. 141, Petition against Alice Meyre. QJF 49/3, f. 13, Indictment of Elizabeth Adams; QJF 49/3, f. 81, Petition against Elizabeth Adams.

[52] QJF 97/2, f. 39, Presentment by John Hunt.

[53] Although "common" offences technically involved behaviour which was repeated many times rather than a single offence, the Cheshire indictments for scolding and barratry refer to only one incident on a particular day, with the additional clause "and at many other times before and after".

prosecutions, like so many others for the same, cannot be assessed as a specific category of behaviour. The Coles were in the midst of a dispute with one George Poole; the quarrel took the form of accusation and counter-accusation over several months. Mary was also indicted for assaulting Poole and his fellow William Morris (separately); Thomas for causing a nuisance by leaving his hedges open. At the following sessions in July, Cole successfully prosecuted Poole for barratry and unsuccessfully for trespass and damage. He also filed indictments against Poole's daughter Jane for scolding, Morris and a kinsman for assault, and two other men together for trespass. Poole, for his part, attempted to indict the constable who let the Coles go free before they had found sureties to keep the peace towards him. Thomas and Mary Cole and George and Jane Poole were all bound over, the Coles towards the Pooles and *vice versa*.[54]

It is not possible to extricate scolding and barratry from the other offences in this type of compound case. The evidence may suggest that the Coles were litigious and quarrelsome, and that therefore the labels are appropriate and unproblematic. But the Coles prosecuted Poole and his daughter for these offences as a response to the earlier prosecutions against them, whoever was most culpable before the argument became manifest in official action. Unfortunately, no examination or petition stating Poole's position remains in the court files, but the petition of Thomas and Mary Cole suggests that barratry as a specific anti-social category was not the concern underlying their prosecution of Poole for that offence. Two-thirds of their petition is aimed at discrediting Poole. The Coles inform the bench that he is an active recusant, keeping recusant tenants, and persuading others to convert to catholicism. They charge him with harbouring recusant women, "suffering them to be brought to bed in his house and so to returne backe the Child being neither christened nor they Churched, unless by some popish priest". As regards barratry, they briefly mention that he is a

[54] QJF 55/1, ff. 24, 25, 26, 27, 29, Indictments; QJF 55/1, f. 65, Letter to the bench; QJF 55/2, ff. 8, 18, 23, 151, 159, 161, Indictments; QJF 55/2, ff. 83, 84, 95, Recognizances.

common sower of sedition amongst his neighbours,[55] but they do not privilege this charge above his alleged taking of partridge eggs, "setting them under his owne hens to be hatched". Perhaps most telling are the charges of his abuse of the Coles themselves. George and Jane Poole have

> with most uncivil and opprobrious speeches called [Cole] theefe and Cuckold, his wyfe a whore and a murderer, and their children foxes with many more slanderous and undecent termes...[56]

Prosecutions for barratry and scolding at the secular courts were one way of dealing with defamatory words, especially when those words were spoken within the context of a wider dispute.[57] That wider context might also encompass religious tensions within a neighbourhood, as this case suggests, either as the sources of tension or to cloak other matters.

Rather than scolding and barratry being distinct and gendered activites then, a more pertinent distinction may perhaps be drawn between *a priori* prosecutions for verbal disorder and those which exploit the category as part of a quarrel about an entirely separate issue in much the same way that indictments for trespass were often intrinsically about disputed property rights.[58] Men and women who were accused of barratry or scolding were indeed portrayed as quarrelsome, verbally abusive persons, yet this was not gender-specific. Martin Ingram has suggested that some scolds were a particular type of disorderly woman. This may have been so, but there is little evidence of this in the Cheshire court files examined here. It is true, however, that the courts of quarter sessions and great sessions were not the legal tribunals in which prosecutions of scolds were commonly brought. In order to understand more fully the dynamics and implications of prosecutions for scolding and related offences substantial research

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55 This is done in the manner of the majority of petitions involving cases within the category of those against the peace or of non-lethal violence.

56 QJF 55/2, f. 118, Petition of Thomas and Mary Cole. George Poole took the oath of allegiance at the Michaelmas sessions: QJB 1/5 f. 166r.

57 See also the ongoing feud between Robert Steele and Richard Jolly and his wife Joan: QJF 53/3, f. 84, QJF 53/4, ff. 49, 102, QJF 55/2, ff. 112, 120, QJF 55/4, ff. 89, 90, QJB 2/5 f.130v.

58 See also, Hindle, 'State and Local Society', p. 255.

must be undertaken in all jurisdictions where the offence was prosecuted. A cross-court survey may illuminate diverse applications of the term. It may be that the category was used differently in each legal arena, but I suspect that the terms "scold" and "barrator" as used in official prosecutions were sometimes those of convenience; they were potent and inclusive terms, especially that of "scold", which could be used to the advantage of complainants with relative ease. After all, a heated quarrel in an ongoing dispute was, by definition, likely to produce behaviour typical of scolds and barrators.

In Cheshire, at the quarter sessions and great sessions at least, the behaviour attributed to scolds does not seem to have been considered peculiarly female. Nor does it appear that the scolding women who were prosecuted at these courts were looked upon very much differently from their male counterparts.

Historians have tended to take prosecutions for scolding at face value. If we are to examine the offence further we must consider the conceptual implications of contemporary labelling. A distinction must be made not merely between rhetoric and actuality, but between prescriptive, expected and apparent behaviour with all the anomalies and complexities which consititute historical reality.

The Gendered Construction of Narratives of Violence

Although the actual degree of physical violence employed is almost impossible to ascertain in most cases,[59] it is possible to reach conclusions about the nature of male and female violence and the ways in which it was perceived. Concentrating on the details of individual cases cannot demonstrate what may or may not have been typical behaviour, but it can illuminate the normative.

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[59] Even cases where the wounded party was supposedly languishing cannot be taken at face value. Peter Cauldwell's wife was accused of adulterating his urine to fool the surgeon into certifying that he was far more dangerously hurt than he actually was. QJF 95/4, ff. 98, 142, 144, 145, Examinations, Petitions and Certificates against Peter Cauldwell and Deborah his wife.

Regardless of the actual behaviour which led to prosecution, one can examine the role of gender in informing the narrative constructions of violence before the courts.

Bearing in mind that the actors in such cases were usually male, I shall use cases involving only men as a point of departure. Men used the strategies outlined earlier in this chapter to promote their own causes; they emphasized the degree of physical harm inflicted by focusing on the degree of self-defence it necessitated; they called on conventions of male honour to justify their actions and responses. Many of their brawls appear to have been fights between men after drinking, over debt, and so on. In other words, all-male violence was described in ways which are unsurprising.[60]

Cases involving male aggressors and female victims differ from the common picture of all-male fracas. This may be as much a reflection of the reluctance of female victims (and witnesses deposing on their behalf) to present women to the court as having fought back, as it is a reflection of an actual lack of resistance. The concept of the violent woman was problematic. As Davis found for sixteenth-century France, women were reluctant to express feelings of anger to the court.[61] One way of dealing with this problem in male reconstructions of the event was by carefully effacing the woman's role according to a particular rhetorical convention of female passivity.

When Richard Poole met with Bridget Wood on Friday 13 June 1628, he allegedly violently assaulted her "and did sore wound her in the face, and divers other places, and did then wound her in the forehead with his knife, in very dangerous or desperate manner". Her neighbours report that:

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[60] Violence between men is discussed in greater detail in chapter 3, below. The common contexts and motivations of assault are discussed in Curtis, 'Quarter Sessions Appearances', passim., and in Sharpe, Crime in Seventeenth-Century England, pp. 122-3. Studies of violence in early modern and/or rural societies have demonstrated the large role of male youths in perpetrating such acts: Olwen Hufton, 'Attitudes Towards Authority in Eighteenth-Century Languedoc', Social History III, no. 3 (October, 1978), pp. 287-9, 300; Weber, Peasants into Frenchmen, pp. 50-51.

[61] Davis, Fiction in the Archives, pp. 79, 81-3.

> we do verily think, yf companie had not come in and rescuewed her, he would then have murdered her, and after he was kept from striking her, she being then all blood, and it was thought wounded to death, and lying upon the ground in a trance, as though she had been dead...[62]

Without the intervention of others then, Bridget was apparently no match for a man like Richard Poole. The seven men and one woman who put their names to the information depict an unjustifiable attack on a woman whose passivity and defencelessness is implicit. All the action mentioned is either Poole's or to a lesser extent, her neighbours'. Bridget neither speaks nor acts in self-defence; she merely exists as the object of violence, her silence re-enforced by her falling into a trance.

Although this summary of events might have been true, the informants (of whom her husband Henry was one) naturally composed their tale in order to achieve the desired effect: to have Poole committed to prison or bound over by recognizance. They informed the bench that immediately beforehand Poole "in friendly manner, called and entised [one of the Woods' dogs] unto him and then stabbed him with his knife...in most violent manner", and "sore wound[ed] and hurt him". "Not so contented", Poole then assaulted Bridget, which suggests the possibility of premeditation. If Bridget was aware of what he had done it is extremely unlikely that she would not have had something to say to him. Whilst the informants say that she gave Poole no "just cause", a verbal diatribe against a man who had horribly wounded one's dog may well have been considered "just". Even if Bridget had not then been aware of the dog's fate, reporting any words spoken by her would not have fitted the particular construction of this story. As with so many petitions, what was omitted is as important as what is included.[63]

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[62] QJF 57/2, f. 78, Information of inhabitants of the parish of Wibunbury.

[63] The Woods and Pooles may have been in economic competition. Both Poole and Wood are described as alehouskeepers on their recognizances; on the indictments Henry Wood is referred to as yeoman, and Richard Poole as innholder. The Information begins with a detailed account of Poole as an unfit person to keep an alehouse: he is referred to directly as an alehousekeeper, and along with other discrediting remarks it is said that he "Keepeth unlawful gaming in his house, by night and day, Receiteth and keepeth whores, beggers, wandering Rogues, Tinkers, and pedlars, and hath harboured together married men, and his own servant woman, divers days and nights together".

While the informants stress Poole's breach of his promise to find sureties "in great contempt of his majesties laws", thus reinforcing the image of Poole as a dangerous figure outside the control of the community,[64] they are silent about the fact that Bridget too was bound to keep the peace towards him at the time of the incident. Moreover, she was indicted and convicted along with her husband, their daughter and another man (one of the informants) for assaulting Poole on that same day, Friday 13th. These facts necessitated the denial of any agency to her within the information. Drawing attention to her behaviour towards Poole would have undermined the crucial element of unjustifiable action by him. The construction of the passive woman as victim is of central importance in this narrative. She has to be beyond involvement for it to operate successfully.[65]

The construction of the passive woman is also used in cases where the defendant abused both a man and a woman. When John Stevenson ran at both John Pott and his wife with a pitchfork, over a disputed tithing of hay in 1624, Pott defended himself with his pitchfork, but there is no mention of his wife doing anything in her own defence. She was saved by a third man who took hold of the pitchfork and "plucked out the grayns thereof and threw them over a hedge".[66] In the account, Pott is seen to defend himself and therefore his honour; his wife, however, is presented as defenceless, thereby showing Stevenson's action to be all the more unacceptable.[67] The construction of female incapacity as a strategy (although no doubt authenticated by lived experience in

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[64] Indeed, it is ostensibly to promote the King's peace that the information is filed, hence an information rather than a petition: those who offer the evidence are not supplicants but informants.

[65] QJF 57/2, f. 78, Information of inhabitants of the parish of Wibunbury; QJF 57/2, f. 73, Recognizance of Martha Poole; QJF 57/2, f. 74, Recognizance of Bridget Wood, daughter of Henry Wood; QJF 57/2-76, Recognizance of Henry Wood and Bridget his wife; QJF 57/2, f. 75, Warrant to attach Richard Poole; QJB 1/5 f.214v; QJB 2/5, ff. 32, 33 Indictments.

[66] QJF 53/3, f. 73. For further ramifications of this case see QJF 53/3, ff. 48, 92, 100. Pott does describe his wife's involvement in that it was her and Stevenson shouting which initially drew his attention to the fact that something was wrong.

[67] For another encounter between a man and a woman where the woman was rescued by her husband see QJF 53/2, f. 170, Petition of Hamnet Warburton, and QJF 53/2, f. 163, Petition of Henry Pertington.

many cases) was employed by male narrators to describe incidents in which the victim was female and the defendant male, and laid a particular concept of blame at the feet of the defendant.

When women themselves complained to magistrates, they did not draw on this model of femininity, but rather emphasized their moral superiority over the defendant. This is a strategy also employed by men. Nevertheless, there were ways in which women drew upon implicit assumptions and gendered norms in their accounts of male aggression towards them. They did this not by invoking images of passivity, but by manipulating the general theme of defencelessness and vulnerability, underpinned by specifically sexual connotations.

Fleeing from one's assailant was neither passive nor essentially female. Men ran away too. Jane Minshull, a widow from Nantwich, appropriated the moral highground when she depicted Thomas Cawdell's attempted attack on her as burglary by invoking that offence's crucial components: violation and darkness.[68] She says that around midnight he broke two of her doors, implying entry by force, i.e. house-breaking. That he had earlier that day broken her window but had returned implies premeditation; darkness introduces the element of surprise, which gives the "burglar" the advantage over his victim, reinforced by the fact that she was in bed and did not have time to dress before taking flight.[69]

Central to the concept of burglary as summarized by Cynthia Herrup, was that "on the most basic level, [it] violated physical security"; it "struck at both private property and personal vulnerability".[70] Jane's assertion that she was in bed carries the implication that she was not only personally vulnerable, but as a

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[68] J.H. Baker, Introduction to English Legal History, pp. 604-05.

[69] QJF 89/3, f. 176, Examination of Jane Minshull. For other references to darkness being an actual or potential source or exacerbator of disorder and violence, see for example, QJF 49/3, f. 80; QJF 49/3, f. 78; QJF 49/2, f. 51; QJF 49/2, f. 152.

[70] Herrup, The Common Peace, pp. 170-171.

woman, sexually vulnerable too. Her partial nakedness emphasizes this, both within her own house with an intruder present, and outside as she runs to a neighbour for protection. The association of proprietorial and sexual violation is underlined in the depositions of Jane's neighbours. They depose that he has sexually slandered her, calling her a whore, and has threatened to "ruinate" her house. One man heard Cawdell say ambiguously just that he would ruin her.[71] Cawdell's intent is described in terms of damaging her property and potentially damaging her sexual reputation. The vulnerability of a widow respectable enough to have had at least one glass window maximised the unacceptable nature of Thomas Cawdell's alleged actions against her.[72]

Gendered manipulation of "fictions" did not always follow sexual lines. In cases where women related tales of male aggression, they often emphasized the greater physical strength of men, playing on notions of female vulnerability, but also emphasizing their thwarted resistance. The strategy depended upon a detailed account of male violence, in which women were driven to ineffectual physical retaliation. This was a tactic similar to that used by men when they complained that they had no weapon with which to defend themselves when attacked by an armed man.

Elinor Gorst employed this strategy in 1665 in describing an attack on her by Thomas Huet. She said that the iron staple embedded in a door post to which she was clinging was wrenched out of its place by the sheer force of his tugging and pulling on her. A witness however said that Elinor told her that his violence "had forced her to take up an iron staple". Whilst Elinor's actions remain reactions in both versions, and the staple still represents the discrepancy in the strength of the two parties, the witness's account implies active response rather

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[71] QJF 89/3, f. 177, Examinations of Thomas Lambe, Thomas Sproston, Peter Leigh and Margaret Savage.

[72] The fact that Minshull did not report the incident until six or seven weeks after the event suggests that her quarrel with Cawdell was ongoing. She does not mention any other incident having taken place, but her witnesses do not fix a time on their accounts of his slandering her. She presumably chose that particular event as the one which would most ensure that Cawdell was bound over; the length of time between the fact and the report suggests that she was indeed using a strategy for her own ends.

than active resistance. Elinor's own examination contains a motif of justifiable failed resistance: she visually depicts him strangling her, saying he "took her by the neck with both hands"; she tried to "thrust" him off. She gives a detailed account of his subsequent actions. The tacit connotation of attempted murder legitimates her physical retaliation in self-defence; the considerable detail of his violence bolsters the notion of her reponse to him being pardonable.[73] Unlike the passive Bridget Wood, it is only after putting up a struggle that Elinor Gorst's relative helplessness culminates and is embodied in the image of her lying senseless outside.[74]

Another woman projected her own inculpablility in a similar manner when she said that she fell into a swoon after "overmuch struggling" to escape from a man who attempted to sexually assault her.[75] As a strategy, failed response, albeit a weaker version of failed resistance, did not carry the same extent of utter blamelessness and was therefore not as effective. These "unequal" attacks broached the notion of acceptable violence upon which the seventeenth-century concept of order was partially based. What is interesting is that as a construct of gender difference, it appears to have been more common after the Restoration than it was earlier in the century.

Female victims, and witnesses deposing on their behalf, could obviously not use the sorts of narrative structures outlined above when recounting violence done to them by other women. Not only could they not manipulate notions of physical difference between victim and offender, but there were no readily available conventions for them to draw upon in order to give weight to their testimonies.[76] Only for witchcraft, familial homicide and vituperative language does a rhetorical tradition of the violent woman exist. Those of witchcraft and

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[73] Verdicts of killing in self-defence resulted in an automatic pardon; Baker, Introduction to Legal History, pp. 600-601.

[74] QJF 93/3, f. 71, Examination of Elinor Gorst.

[75] QJF 91/4, f. 54, Examination of Ellen Howley.

[76] This issue is discussed in Davis, Fiction in the Archives, pp. 98-104.

murder are largely ruled out as a framework for non-lethal violence (although not as a framework for slander of course). Consequently, women emphasized the language of violence which accompanied assaults by women, especially that of sexual slander. When Elizabeth Gregory requested that Bridget and Alice Hurleston be sworn to the peace at the Trinity sessions in 1620, her emphasis was on the fact that they had slandered her with witchcraft. That they had struck her and threatened to take her life was additional evidence of their malice and disorderly behaviour.[77] Gregory desired to have them bound over both as a punitive measure and as a way of discrediting their claims.

The potency of sexual insult aimed *at* women as compared with physical abuse *by* women is clear.[78] When, in 1661, Thomas and Joan Dod both "fell upon" their neighbour Ellen Dod,

> knowing [her] husband to behave himself harshly and sternly to her...the said Joan struck her sore being great bellied, and Thomas [in the hearing of Ellen's husband] called her Robert Smith's whoore.

Although Joan Dod had hurt her, and the physical abuse of a pregnant woman was considered to be particularly shameful, it was the slander which had the greatest import. As a direct consequence of Thomas's words, Ellen's husband beat her with a cudgel so hard that it broke, and then

> cast her out of doors to her noe little sorrow and shame being most basely and wrongfully both used and accused by them [Thomas and Joan]...as the marks they have given her in her body will testify.[79]

The physical blows are secondary in damaging her. Yet the marks left by her beating are presented as the outward manifestation of the greater wrong done to her by marring her reputation. Whether the marks she speaks of were those inflicted by her husband or Joan, it is Thomas and Joan who are held to be

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[77] QJF 49/2, ff. 164, 165, Recognizance, Examination of Elizabeth Gregory.

[78] Laura Gowing has shown that defamatory words prosecuted at the church courts in the early seventeenth century not only operated upon differing concepts of honesty for men and women, and that the place of sexual behaviour in these two kinds of honesty was not the same, but also that "the words of defamation use these meanings to develop an idiom of personal abuse entirely dependant on this difference, in which the implications of men's and women's sexual behaviour are not only disparate, but hardly comparable"; Gowing, 'Gender and the Language of Insult', p. 3.

[79] QJF 89/2, f. 232, Petition of Ellen Dod.

equally culpable: Thomas by speaking the defamatory words and Joan by striking her on her pregnant belly, again linking the outward signs of sexual conduct with the notional. It is the sexual context of the episode which invests Joan's physical violence with significance.

When sexual insult was absent it was far more difficult for female victims of other women to construct compelling tales. This appears to have been especially so in the earlier period, when women often gave limited detail of actual violence in their examinations and petitions, or presented a rather flat account of the episode which was weighed down by the extraneous and commonplace. In October 1620 some of Elizabeth Adams' Congleton neighbours (11 women and 2 men) petitioned to have her bound to her good behaviour for scolding. Along with the usual stock phrases which framed the offence such as that she was of evil life and conversation, a common scold, fighter and quarreller, a daily disquieter of her neighbours by "taylinge cursinge and other ignominous speeches" and so on, they report that she was given to drunkenness and threatened to "stick them with hir knyfe upon no occation given unto her". Even though she would have carried her knife with her, and was successfully prosecuted at the same sessions for an ambush and assault and battery on Margaret Rylance, the threat of physical violence is not reported in the context of fear of her carrying out the threat. It is the fact that she uttered the threatening words rather than their content which indicates the extent of her disorder.[80]

Whatever the motivation of her neighbours, Elizabeth's sexual reputation appears to have been related to her assault on Margaret Rylance. In the same month, Elizabeth deposed at the Consistory Court that Margaret had accused her of "playing the whore" with Margaret's husband Hugh Rylance.[81] Although the

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[80] QJF 49/3, ff. 81, 12. For the standard interpretation of the importance of sexual reputation to women see Keith Thomas, 'The Double Standard', Journal of the History of Ideas, 20 (1959). The issue of reputation is discussed more fully in Sharpe, 'Defamation and Sexual Slander'. For an alternative view see Martin Ingram, Church Courts, Sex and Marriage, p. 303.

[81] [CDRO, Chester Consistory Court Papers] EDC 5(1620)13, Elizabeth Adams c. Margaret Rylance.

precise chronology of events is unclear, Elizabeth's suit against Margaret might have been one of the unspecified incidences of "taylinge" and "ignominous speeches". Alternatively, the physical assault might have been a direct response to Margaret's defamation of her character. Either way, her neighbours privilege Elizabeth's verbal abuse over her physical violence.

In the 1660s, female supplicants and deponents generally related their tales with greater precision. And, lacking rhetorical devices with which to demonize their female assailants, what they could do, and did, was to turn the focus in upon themselves and depict their own terror. The 18 year old Elizabeth Leicester told a magistrate in 1660 that

> she is credibly informed by good and sufficient witnesses that Joan, wife of Thomas Bradshaw of Bradshaw Brook, yeoman, hath threatened and vowed to dash her Brains against a post, and also that if ever she met with her she would be even with her and mischief her.

Elizabeth's examination contains a crescendo of fear; the repetitive language reinforces and amplifies Joan's intention to do her physical harm or even to bring about her destruction or ruin. She goes on to say that

> Joan came to the house of Captain Thomas Deane where she...liveth as a servant...and did in such sort threaten her that she was constrained to take into a chamber, lock the dore, and secure herself from the said Joan who did at that time with a knife endeavor to pick the lock of the said chamber door and did then also say, threaten and menace [her], that if she could get in or if she ever met her, she would mischeif her, by reason whereof she goes in dread and peril of her life by her...

Joan's knife is out - leaving unsaid but in no doubt as to how she might have used that knife had she successfully broken in. Joan was duly sworn to the peace.[82]

This type of account is necessarily subjective. In narratives about physical feminine violence, this appears to be a new strategy. Elizabeth's examination evokes her emotional response to Joan rather than presenting Joan as a dangerous offender by the common devices, other than in investing Joan's actions with

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[82] QJF 89/2, f. 189, Examination of Elizabeth Leicester; QJF 89/2, f. 171, QJB 3/1, f. 27v., Recognizance for Joan Bradshaw.

motive. She does not discredit Joan as such; instead, she assumes credit for herself by shifting responsibility for the origins of her story onto "good and sufficient witnesses", and by her self-inclusion on the "right" side of neighbourly values. She places herself in the context of her social position. The encounter occurred in her place of work as well as her home, thus implying that it was not she who went in search of trouble, or who transgressed social and moral norms. The offender as "other" is still represented, but by the victim placing herself at the centre of the narrative.

Male plaintiffs who accused female defendants had a similar problem in the absence of a convention of female violence. The distinction between verbal abuse which is slanderous and that which offers an actual threat may be a key to understanding differences in the implications of violent language aimed at men and women.[83] Each chose to privilege aspects of abuse in a way which shows a clear discrepancy in the value invested in different types of language as a tool of violence. Just as women manipulated the idea of damage to sexual reputation, men spoke of damage to their property. Both strategies carried greater potency than damage to the person by female offenders.

When William Beckett complained against Mary Wright in April 1622 he discredited her by reminding the bench that she had previously been indicted as a common scold, but informed them that she "is noe wyse reformed for the same", still chiding and railing "with most greevos oathes", thereby dishonouring God and vexing "her honest neighbours" of whom he of course was one.[84] But contrary to the means employed by contemporary female complainants he privileges her actions over her abusive language. The central theme of his examination is that her threats of physical harm - such as to set his house on fire - should be taken seriously. He gives his testimony credence by precise detail,

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[83] Despite being prosecuted in the same way at the secular courts, these were nevertheless separate types of disorder.

[84] The strategy itself of course is not gendered. Women regularly employed it. See for example QJF 51/3, ff. 47, 46.

explaining how she "wickedly" tried to pull his house down around his head "by endeavouring to stryke out certen great pynnes and stayes which hold up his left floore"; her intention, he is "verily persuaded" was "to murder him and his children".[85] The following January Beckett petitioned again, as before bolstering his account of her abuse of his property with an account of her ill-behaviour in her daily railing, cursing and threatening him.[86]

In the spring of 1669 four men, including the complainant Robert Cleaton, portrayed Margaret Thorniley as an extremely violent woman. But without an appropriate tradition of female violence on which to draw, their narratives verge on the comic despite their very real concern. In Henry Pott's lengthy deposition the repetition, both within the structure of the tale and within the narrative as she runs to and fro, reduces Margaret's behaviour to farce. He deposes first that his wife told him that Margaret Thorniley "ran swearing and cursing up her own field, and cursed Robert the shepherd's cattle who were got into her field". Then Pott saw her from the window

> chasing some cattle...[with] a pickell in her hand, with which he saw her picke at one of the cowes, and he saw the the pickell stick in the cow, whereupon the cow came roaring downe the hill...

When he went to fetch Cleaton, he saw her "still running after the cow and swearing that she wold not loose her pikell soe, and she bid the Divell goe with her [the cow] for she wold have her pikell again". And finally he says that he has seen her "several times chase at and run after" Robert Cleaton's cattle "or any other cattle...with a club staffe with a pike in it and stabbe at the cattle".[87] The repetition evokes inconsequence and incompetence. She loses her pickel, cannot catch the cow to get it back, has twice to ask Pott to help her retrieve it, and at times has had to resort to throwing her piked club staff at the cattle when they do not allow her near enough to stab them.

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[85] QJF 51/1, f. 123, Petition of William Beckett.

[86] Although this was a successful move in that she was bound to be of her good behaviour as a consequence, his two attempts to prosecute her by indictment for hedgebreaking failed: QJF 51/4, ff. 159, 172, 173.

[87] QJF 97/2, f. 140, Examination of Henry Pot.

These and other offences against Cleaton's property are described in great detail in his examination. He also tells of how she entered his house, and

> hath assaulted him and pulled him by the haire of the head, and severall other tymes hath assaulted him...by casting stones at him and running at him with a Goose broach and giving him provoking language calling him theefe and rogue and threatening to be his death.

Despite this, her threats make him only

> afraid she will do...some bodily harm to his children, or mischeefe to his cattle, and he dare not send his children (being butt young) about his occasions as formerly he hath done least she...should meet with them.[88]

This woman is not presented as a bodily threat to Cleaton, only to his little children and dumb beasts. Cleaton does not depict fear on his own behalf.

A distinction between rhetorical convention and possible actuality can be seen in the examinations. Whilst undermining Margaret Thorniley's ability to inflict real harm on adult men, two of the deponents, including Henry Pott, discredit her by relating tales of her several attempts to murder her husband Thomas, which were so "real" that "he durst not live with her" and had consequently fled. These included trying to cut his throat while he slept, on which occasion he had been forced to run half naked into Pott's house during the night to escape from her, and running at him with a spit.[89] Margaret Thorniley is the epitome of the most dangerous sort of woman, who subverts the social order in attempting to murder her husband. But this image was used to illuminate her extreme disorderliness, not to indicate how real a threat she might pose to a male adversary. This denial of female effectiveness is typical of the post-Restoration period when this case was prosecuted, when men were even less disposed to portray women as criminally dangerous than they had been in the 1620s.

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[88] QJF 97/2, f. 141, Examination of Robert Cleaton.

[89] QJF 97/2, f. 140, Examination of Henry Pot; QJF 97/2, f. 141, Examination of John Thorniley. The fact that Thorniley's husband was in bed and therefore vulnerable, mitigates the extent of blame which could be laid on him for having such an uncontrollable wife; yet his running away from her during the incident and afterwards emphasizes how dangerous she was.

The fact that the grievances of William Beckett and Robert Cleaton were rooted in violence against property rather than against their persons exemplifies difference in gendered constructions of violence. Although this is partly bound up with ideas of male honour, at root both of these cases were about property; that was the concern of Mary Wright and Margaret Thorniley too.[90] What is suggested in male and female testimonies is the acknowledgement of a discrepancy between rhetoric and actuality. Women regularly came before the courts for having vehemently protected property they deemed to be theirs, even though it technically belonged to their husbands. Female participation in resisting distraint on goods, and in rescues of distressed goods indicates that understanding notions of property ownership merely in terms of legality is highly misleading. But only in accounts like Jane Minshull's, the widow who used the analogy of burglary to link the violation of her property and her person as a means of establishing her defencelessness and Thomas Cawdell's opprobrium, did female victims privilege notions of property over person and those of physical damage over damage to reputation in their narratives. In Minshull's case, remember, the two were inextricably linked.

The one exception to this pattern is in cases of domestic violence where economic and sexual damage are again linked.[91] The cases are too few for much to be made of this quantitively,[92] but the manner of portraying such incidents is suggestive of changing attitudes to violence and gender. In the 1620s there was

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[90] Mary Wright's husband had leased the cottage and land to Beckett. Mary evidently disagreed with the wisdom of this, and had quarrelled with Beckett as a consequence. Robert Cleaton had leased the lands in question from Margaret's former husband Robert Wigan.

[91] More cases of familiar and household violence came before the secular courts in the 1660s than in the 1620s. Of the four cases in the 1620s for which there is contextual information, all the defendants were male. The complainants were: two mothers, QJF 51/1, f. 119 & QJF 51/2, f. 117; a wife and her mother, QJF 55/2; and a wife, QJF 53/1, ff. 53, 64. A brother and a son-in-law of male defendants also lodged complaints, QJF 49/2, f. 146, QJF 53/2, f. 63, QJF 53/4. In the 1660s sample there were fifteen such cases. The victims of male defendants included five wives, four mothers, one mother-in-law, and a father. Two complaints were made against women who allegedly abused their children, and two wives who beat their husbands. These figures do not include every case of spousal abuse which was used as a means of discrediting the defendant. Nor do they include assaults by siblings.

[92] Violence between spouses was undoubtedly under-reported. Informal mediation by justices or customary rituals such as charivari were more likely to be the methods by which domestic violence was dealt. J.A. Sharpe, 'Domestic Homicide in Early Modern England', Historical Journal, 24 (1981), pp. 31-2; Underdown, 'Taming of the Scold', pp. 121, 127, 129-31.

an ambivalence in women's complaints about violent members of their families. Although it was accepted that a woman could demand surety of the Peace against her husband "if he threatens to kill her or outrageously beat her, or if the wife has notorious cause to fear he will do so", the extent of a husband's right to physically chastise his wife was unclear.[93] Masculine violence could be legitimized as a means of correction. The rhetoric of female subordination (even when inclusive of notions of wife as "helpmeet") proscribed the successful use of otherwise common strategies. In prosecuting their menfolk women were themselves notionally transgressing the boundaries of orderly behaviour; in intervening in marital or household disputes the secular authorities were likewise undermining the very values they wished to uphold.[94] The place of gender in the hierarchical model of order undermined the position of *all* women, not only wives, in prosecuting adult male members of their families.[95]

Female relatives of male aggressors therefore emphasized the breach of economic as well as familial values. In the only case in the 1620s where a woman accused her husband of overt ill-treatment, Katherine Stokes portrays her husband as destroying the economic well-being of the household: his violence threatens her life, but his general behaviour threatens her living.[96] She reiterates an actual threat to her life no less than six times in the course of her petition. In doing so she repeatedly compounds a request for physical and economic relief, "that shee maye lyve in safegarde of her lyffe, her said husband having consumed and made away his lyvinge". She tells the bench that she has "noe meanes in the world unto

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[93] Dalton, Countrey Justice, p. 163. Dalton is silent on the lawful correction of wives, although he mentions the like for servants, pupils and lunatics, pp. 179-181. See also William Whately, A Bride-bush, or A Direction for Married Persons (1623), pp. 106-7; William Gouge, Of Domesticall Duties: Eight Treatises (3rd edition, 1634), p. 396.

[94] Maddern, Violence and Social Order, pp. 98-9, 232; Lyndal Roper, The Holy Household: Women and Morals in Reformation Augsburg (Oxford, 1989), p. 193.

[95] Puritan literature on the moral ordering of the household is discussed in S.D. Amussen, 'Gender, Family and the Social Order, 1560-1725', in Fletcher and Stevenson (eds) Order and Disorder in Early Modern England, pp. 196-205, and R. Hamilton The Liberation of Women: a Study of Patriarchy and Capitalism (London, 1978), pp. 56-63.

[96] Stokes may be using a complaint of physical violence to give weight to her wish for economic independence rather than vice versa. Whatever the case, the construction of spousal violence remains the same.

lyve and bringe up her charge of six Children", and asks them to "take order " with her husband and to allow her to continue to "use the selling of Ale as she has done". She places his physical abuse within a specific economic context: he recently had "most violently come after her with his drawn knyffe" intending to murder her because she refused to give him money out of her purse to go drinking elsewhere. After his continuous "Cruell and inhumane dealing" she is "enforced" to seek redress "of her miserable estate". Even her rescue by strangers who "came travelling there awaye" has economic undertones, implying that her alehouse is aptly situated. Her husband's violation of her physical and economic security is reinforced by her absolute, or sexual, vulnerability as a woman, as in Jane Minshull's case: "for the safegarde of her lyffe [she] was enforced to come out of her house as naked as ever she was borne or else the truthe ys shee had loste her lyffe". Katherine Stokes' husband was sworn to keep the peace towards her.[97]

Wives had a further means of emphasizing the disruption of productive relations of the household: allegations of adultery. Just as women generally emphasized sexual slander rather than physical violence, the wives of abusive men could privilege the sexual dynamics of marital relationships by depicting the destruction of the sexual union of husband and wife, which was the nub of protestant views of the economic well-being of the family.[98] Mary Jones prosecuted her husband George in 1665 after he had beaten and abused her. Her grievance is justified in her examination by the intimation that the female order within the household had been subverted. She closely details George's adultery with a woman who lives with them. Mary, as the mistress of the house is usurped by Dorothy bringing George a posset in bed, and feeding it to him before

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97 QJF 49/2, f. 146, Petition of Katherine Stokes.

98 No such case was prosecuted in the criminal courts in the earlier part of this study; nor do any appear in the surviving consistory court cause papers for Cheshire in the 1620s, CRO EDC.5. Given the rarity of spousal prosecutions by women, however, it would be short-sighted to suggest that this was a peculiarly late-seventeenth century phenomenon. Lyndal Roper discusses similar cases in sixteenth century protestant Augsburg in The Holy Household, pp. 167-70, 195-199. Adultery, violence or economic deprivation were all alleged in the 15 cases suits for divorce by women in the Norfolk church courts from 1560 to 1725 - only one was based solely on adultery: S.D. Amussen, 'Gender, Family and Social Order', p. 209 n. 44.

undressing and joining him in the bed where Mary should rightfully have slept. This point is forced home: George "has never put of[f] his clothes to lie with her since Dorothy Walklate [*sic*] came to live in the house". Moreover, Mary was turned out of her house after her beating. The physical manifestation of George's emotional abuse of Mary was his reaction to her threat that she would tell their neighbours that he lay with Dorothy.[99] A husband's adultery validated his wife's decision to prosecute his physical ill-treatment of her.[100]

Mothers of violent men could stress the subversion of natural order in ways that wives, daughters and sisters usually could not. Yet reporting maternal abuse was likewise problematic. When the widow Margaret Clayton petitioned in 1622 to have her son bound to the peace, she focused upon the issue of damaged property rather than assault. The fact that he "abused her...both by unseemly wordes and by strykinge her and drawing blood upon her verie uncivilly and unaturally", and that he later violently "punched" his brother "with his feete" is used only to demonstrate his general ill-behaviour. In 1626 Richard Deane had allegedly "unaturally beated his own mother and stricken forth four of her teeth". Again, the "unnatural" nature of the act is used to substantiate the case of the complainant, Richard's brother John whom he also assaulted; and again the quarrel is apparently over disputed inheritance.[101] In neither case was the physical abuse of the women portrayed as the main point of contention. Violence against women by male relations was not prosecuted *per se*.[102]

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[99] QJF 93/4, f. 83, Examination of Mary Jones; QJF 93/4, f. 111, Recognizance of George Jones.

[100] Although the sexual regulation of the Interregnum may have given an additional resonance to the violent behaviour of husbands based on adultery which continued to be drawn upon after the Restoration, adultery appears to have been a legitimizing notion for wives' complaints in early modern Europe generally.

[101] QJF 51/1, f. 119, Petition of Margaret Clayton; QJF 51/2, f. 117, idem. QJF 55/2, f. 135, Petition of John Deane. For further ramifications of the incident see QJF 55/2, f. 137, Information against John Deane, and QJF 55/2, f. 138, Petition of Richard Dayne. See also PRO CHES 24/117-2, Petition of Elizabeth Griffyn.

[102] Men too faced problems in reporting the insubordinate behaviour of female relatives. In the only such case in the 1620s sample a husband complained that his wife and mother-in-law had been prevailed upon by his wife's uncle to accuse him of theft which had resulted in him being bound over. He thereby conveniently laid responsibility for their actions on another man. His petition suggests that his wife may have been attempting to separate from him; her grievance was typically expressed in a tale about property. QJF 53/1, f. 53, Recognizance of John Meakyn; QJF 53/1, f. 64, Information and

By the 1660s a change had occurred in the manner in which intra-familiar violence was sometimes reported. Rather than it being used to bolster claims of an ill-disposition, evidence of general bad behaviour was sometimes used to substantiate cases of alleged domestic abuse.[103] In June 1669 six witnesses testified against Randle Furnifall the yeoman constable of Church Hulme. The examinations depict him defaming another young woman on several occasions; refusing to keep the peace in his capacity as constable in an alehouse fight; and frequenting alehouses and being commonly drunk. But he is bound to be of his good behaviour towards his wife Ellen and his maidservant Katherine Lingham. His violence towards them is depicted with economic undertones - his wife, seeing that he was drunk, tried to take from him a flagon of beer which he was filling for strangers lodging at their house - but his general demeanour and his specific actions are described in the manner of non-domestic incidents. Both Katherine Lingham and a manservant tell of how Ellen tried to get the flaggon from him,

> Whereupon [he]...struggled with her and threw her down, and when she got up again Randle struck Ellen upon the head with the flaggon...

When Katherine stepped between them she received a blow intended for Ellen, the flagon cutting into her nose and making it bleed.[104] The violence itself is presented as unacceptable, and no special circumstances are necessary to legitimate the complaint other than those applicable to unrelated female victims.[105]

Nevertheless, the lack of a suitable convention of domestic violence on which to draw remained, however much deponents openly abhorred it. When Mary Stretch was beaten by her alleged husband in August 1669 it was her 23

Petition of John Meakin.

[103] Even in cases at the consistory court in the 1620s domestic violence was an additional slander rather than a primary issue. There is no extant cause paper in which a wife complains of spousal violence in these years.

[104] QJF 97/2, f. 121, Examinations against Randle Furnifall; QJF 97/2, f. 165, Recognizance of Randle Furnifall.

[105] See also QJF 95/4, f. 42, Warrant for Thomas Woodfaine; QJF 95/4, f. 41, Recognizance of idem.

year old daughter Mary who had her stepfather George Deakin bound over. Mary junior legitimized her case by displacing him in the narrative thereby removing any justification on his part for "correcting" her. She introduces him as the man "who says [her] mother is his wife", and ends by reporting that she has heard her mother say "she durst not goe live with him for she was afraid that he would kill her". Thus framed, the details of his violence are presented out of a household context. Interestingly, she describes the violence as a physical struggle for a place in the household: he came and turned her out of her mother's house; she came in again; he thrust her out once more, saying "she should not be there where he was" for she would testify against him. Her two younger siblings had "runn out for fear" that he was killing their mother, calling neighbours for help. The incident ended with all three being locked out of the house, and their mother lying on the floor inside having been thrown down by Deakin.[106]

Both Ellen Furnifall and Mary Stretch senior are appropriately passive in these examinations. They themselves appear not to have deposed against their husbands. Mary Stretch says only that she took Deakin to husband by the laws of God and not by the Bishop's laws.[107] She appears in the narratives of the three other deponents only in her silent prostrate state. Ellen Furnifall offers some resistance but no active response is ascribed to her. Although she struggles to take the flagon away from Furnifall, and gets up after he knocks her down, she too is firmly placed on the floor at the end of the story. In this sense, these narratives are similar to those involving unrelated female victims and male aggressors discussed above. The model of the passive woman was adopted in witnesses' testimonies of spousal abuse, and again appears to have been more popular in the later period. Again, its success depended upon the silence of the injured party; these tales are always told by a third person.[108] In their own testimonies wives

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[106] QJF 97/3, f. 83, Examination of Mary Stretch; QJF 97/3, f. 82, Recognizance of George Deakin.

[107] QJF 97/3, f. 84, Examination of Mary Stretch, widow.

[108] In early eighteenth century London wives who were allegedly beaten by their husbands likewise portrayed themselves as passive victims: Hunt, 'Wife Beating', p. 24.

were forced to play on other models, namely that of the disruption of household relations.

However, Ellen Furnifall's witnesses infer that violence within the home was unacceptable,[109] and this may be indicative of a wider change in attitudes towards violence and social order. The analogy between the household and the state incorporated a plurality which was not lost upon the middling sort who entered into litigation. Accordingly, in cases of familiar violence in the 1660s there does seem to have been a shift in the tone of testamentary material. Not only was such violence prosecuted *per se*, but for instance, when sons were accused of abusing their mothers, although damage to her property and person were still compounded, the "unnaturalness" of the act was no longer mentioned.[110]

In addition the 1660s saw the rare prosecution of a wife by her husband.[111] John Coddington excuses his lack of control over his wife by telling the bench that he is aged 72, diseased with many infirmities and "unable to goe or ride". In his enforced emasculated state he is easy prey for this "most troublesome, turbulent woman" of whom "he is daily afraid of his life, being assaulted by her with stones and other weapons". He wants the bench to intervene to enable him "to live his last days without danger of his life in regard of this unreasonable cruell unconscionable woman". Although Coddington's wife was not

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[109] Hunt has identified a discursive shift in seventeenth-century denunciations of wife beating, moving from objections based on its unchristian and counterproductive nature and the link between familiar and social disorder to the demonization of the perpetrators of domestic violence: 'Wife Beating', pp. 24-26. Also, E.P. Thompson has shown that in the eighteenth century violent husbands became a more common focus for charivari than dominant wives: Customs in Common (London, 1991), ch.8 passim.

[110] For example, see QJF 89/3, f. 199, Examinations against George Hale & QJF 89/3, f. 180, Recognizance of idem; George Hale was bound over for abusing his mother again six years later, QJF 95/4, f. 37, Examination against idem.; QJF 89/3, f. 232, Petition of Lucy Mottershed & QJF 89/2, ff. 34, 35, Recognizances of Thomas and Ann Motterhead; QJF 95/2, f. 150, Petition of Elizabeth Croton. For similarly portrayed abuse of a mother-in-law see QJF 89/4, f. 43, Warrant for Thomas Ledsam.

[111] Abusive wives were more likely to be dealt with by customary procedures such as charivari; contemporary ideas of male dominance proscribed the frequent recourse to legal action by men against their wives: see above, and Sharpe, 'Domestic Homicide', pp. 31-2; Underdown, 'The Taming of the Scold', pp. 121, 127, 129-31.

bound over or committed, the case was referred to the next month's meeting of the nearest JPs who were "to give relief unto the petitioner".[112]

Coddington's story was taken seriously because his age and infirmity inverted the healthy power relations within marriage. Moreover, he portrayed himself as a "good" husband undeserving of his wife's contempt:[113] he had tried to please her by living in eight different places, and in an attempt to "purchase his peace" had "compounded with her to give what she demanded". She had gone along with their agreement for a while, but had later rejected it. By denying his own culpability in allowing such behaviour to occur, his wife's violence could be taken seriously. Not only was the notion of her moral "right" lacking but her history of commmitals to the House of Correction, "bad carriage and ill-behaviour" gave his tale further credibility.[114] Without such confirmatory circumstances a husband was in a far more difficult position.[115] Margaret Thorniley's husband, for instance, did not report her to the secular authorities - he simply fled.

The manner in which local officials depicted violent offenders also indicates the changing interaction of gender and violence during the seventeenth century. Their role as upholders of the moral order in the name of the King was usually stressed, but they generally reported violence by men in much the same way as non-officials did. When a Congleton constable Francis Orme told Justices in 1624 how he had been abused by Robert Rodgers after an alehouse fight, during which Rodgers had badly bitten another man's finger, he described in detail how he had initially put Rodgers into solitary confinement in the "little

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[112] QJF 91/1, f. 130, Petition of John Coddington.

[113] Gouge, Of Domesticall Duties, pp. 188-90, 260, 270-1.

[114] Hunt suggests that in the absence of a moral justification for husband abuse it was considered a more serious breach of order than wife beating: 'Wife Beating', p. 18. Roper, The Holy Household, p. 189.

[115] This is also true of violence by sons towards their parents when the father was still alive. Only widows prosecuted their disorderly sons. The male head of the household was deemed responsible for the behaviour of his children; when fathers did file complaints they too drew on their incapacity as John Coddington did.

ease", and had subsequently moved him to the stocks when he almost broke down the doors and walls. Although Orme was assisted by several persons in the manoeuvre, Rodgers escaped at least once before he was locked in. All this time, Orme says, Rodgers was

> swearing and railing in such vyolent and outragious manner (that he would pull his beard of[f] his face, and would either kill or be killed before he would go to the stockes) that almost the whole towne was gathered together and woundered to see such disorder and such abuse of any of his Majesties Officers.[116]

In a similar incident in 1661, again after a fight in an alehouse, Robert Grantham got hold of the constable who charged him to keep the King's Peace by the hair of his head, and said he would beat him so badly that he would be unable to go out of the town. Again a detailed account of the offender's physical and verbal abuse is given; including him striking at the constable with an axe, and punching him in the face so hard "that blood issued forth from his mouth". At one point when Grantham had drawn his knife, he was so fierce that apparently not one of the three men present dared to go near him.[117]

Constables and bailiffs emphasized the degree of resistance involved; it was often this which resulted in male defendants being prosecuted by recognizance at the quarter sessions. If Grantham had merely calmed down when the constable had commanded him to keep the peace, this particular episode would have been at an end, as would Rodger's if he had not tried to break out of the "little ease". Although some women were evidently capable of putting up a good fight, it is likely that many would have been less able to offer a similar degree of physical resistance. If this was so, situations like those cited above would not have escalated in the same way. But more importantly, the perception of female violence was confused by the way that gender, social status and notions of order inter-related. Whatever the degree of resistance offered by women, officials too drew on established models of feminine disorder rather than

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[116] QJF 53/2, ff. 52, 53, Examinations concerning Robert Rodgers.

[117] QJF 89/4, ff. 55, 59, Recognizance, and Examinations concerning Robert Grantham.

emphasizing the physical manifestations of their abuse.

When in 1622, Raphe Cheney, a constable of Northwich, complained to magistrates that Anne Percivall had tried to prevent him taking goods in lieu of money for the relief of orphans which she and her husband had refused to pay, he told them that she gave him

> many threatening and reproachful speeches, tending to [his] great disgrace and impeachment of his credit vyolently strykeing him in the hand, that forced the mony he had therein to fall upon the earth.

Although he describes this as "Contemptuous and Uncevill cariage", and says that she is "infamous for her ordinary Contempt and abuse" of the officers of Northwich, his tale builds up to the cause of the problem: that she is a common scold, who had since slandered his wife. Anne's general verbal abuse becomes the focus of the tale and it is as much this which "terrifies" other members of the community and disturbs the peace as her specific contempt. Her violence is nevertheless portrayed as real.[118]

As women in the 1660s used the notion of ineffectual physical resistance to construct narratives of difference between themselves and men who abused them physically, so officials manipulated the same construct. When two bailiffs, William Steele and John Wolmer, went to distrain goods belonging to John Lessonby, it was his wife Jane who offered the greatest resistance. According to Steele, John refused to give them the goods; but Jane said that if they tried to take anything she would either kill or be killed, an example of a women appropriating the male language of physical challenge which again was more common in the 1660s than earlier. In attempting to stop them, she offered to take up a pair of iron tongs to strike Wolmer, but was prevented from doing so by Steele. He describes his interception in a very different tone from that used to describe women like Anne Percivall in the 1620s and from that used to describe male offenders in both periods: he "took hold of her and civilly

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[118] QJF 51/1, f. 133. Anne Persivall is also involved in litigation in the Michaelmas sessions of 1624, and the Easter sessions of 1626: QJF 53/3, f. 41, QJF 55/1, f. 36.

persuaded her to forbear to strike". Jane responded by pulling Steele by the hair of the head, grabbing Wolmer to prevent him from leaving the house with the goods, and when he did so, by throwing stones at him. The actual extent of Steele's "civility" is questionable, but irrelevant. She may have been terrifying, although the fact that the bailiffs were successful suggests that she was not. The point, however, is that as a violent and angry woman who was perverting the course of the law, Jane Lessonby was not portrayed by the bailiff as a dangerous person, despite the reported violence being physical and aggressive. She was not even bound over by recognizance. Her husband was - for verbal abuse and throwing a large stone at the fellow who had sued them.[119] In another case a constable deposed that he was "so amazed" when three female Quakers rescued a male relative from him after a sectarian meeting.[120] This negation of woman as notionally criminally dangerous which is so apparent after the Restoration is central to understanding the ways in which gender informed the perception, reception and reconstruction of violence.

Changes Over Time

A comparison of narratives of violence in the 1620s and 1660s indicates changes in the manner in which female violence is portrayed. In the 1660s, women manipulated positive female stereotypes in a more inventive way; they placed themselves at the centre of their narratives and focussed on their own responses; they furnished their tales with more detail. Paradoxically, men appear to have drawn on similar rhetorical ideals of femininity in denying women agency in violent encounters; and they attributed a far greater degree of inconsequence to female action. It is instructive that more easily quantifiable evidence also suggests changes.

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[119] QJF 95/4, f. 58, Examinations of William Steele and John Wolmer.

[120] QJF 93/3, f. 96, Examination concerning conventicles.

It can be seen in table 2.1 that women constituted roughly a fifth of defendants prosecuted by both recognizance and indictment at quarter sessions in the 1620s. Of all the male defendants, 56.7% [597] were prosecuted by recognizance, and 43.3% [455] were prosecuted by indictment. The respective figures for female defendants are 51.4% [132] and 48.6% [125]. So whilst men were prosecuted in greater numbers, there was some but no great disparity in the type of procedure chosen to prosecute men and women. In the 1660s, however, this was no longer the case: women then constituted a quarter of those prosecuted by recognizance, but only 10% of those against whom indictments were filed. And whereas the recognizance was chosen over the indictment as a form of prosecution for this type of offence for defendants of both sexes, the trend is far greater for women.[121] Of all the defendants, 78.1% [729] of the men and 89.9% [249] of the women were prosecuted by recognizance, and 21.9% [204] of the men and only 10.1% [28] of the women by indictment. We might conclude that during the 1660s, women and men were not receiving as comparable treatment as they had been in the earlier period.

Table 2.2 Plaintiffs prosecuting by Recognizance at Quarter Sessions.

Named Complainants	Male		Female	
Defendants[a]	Men	Women	Men	Women
1620s	370	71	140	54
1660s	396	81	181	119

[a] These figures are less than the total numbers of defendants prosecuted as some recognizances did not specify any particular individual to whom the peace or good behaviour was to be kept.

Table 2.2 shows the numbers of men and women bound over by recognizance by male and female complainants. In the 1660s, women were making proportionately more use of the courts than in the 1620s: moreover, they were proportionately far more likely to prosecute women than men; in the 1620s, only 28% of those prosecuted by women were female, as opposed to 40% in the

[121] The recognizance was not only a cheaper and more immediate method, but it also allowed the plaintiff to retain a considerable amount of control over the process. Sharpe, Crime in Early Modern England, p. 90; Shoemaker gives a comprehensive account of the relative procedures of prosecution in Prosecution and Punishment, pp. 140-143, 201-210.

1660s. Although female complainants in the 1620s prosecuted more men than women, their male adversaries constituted just over a quarter of the men bound by recognizance in the sample. In contrast, 43.2% of female defendants were prosecuted by women. After the Restoration, female plaintiffs were responsible for almost a third of the male defendants and an even greater proportion [60%] of female defendants.[122] In both periods the majority of those prosecuted by men were male: 84% and 83% respectively. These figures might indicate that men were either not taking female violence seriously, or that they found it difficult to admit that women posed a physical threat towards them.

In the 1620s, both male and female complainants ensured that about a fifth of their male adversaries were continued bound to a subsequent court session. Contrarily, women were more prone to releasing female defendants at the first sessions after the recognizance was taken; only 12% procured a continuation of the bond against other women. But over a fifth [21.1%] of women prosecuted by men had to make a further appearance. In the 1660s, the behaviour of male complainants towards women had not changed much: 22.2%. Yet the behaviour of female complainants was markedly different. In the later decade, women were very unlikely to have the recognizances of defendants of either sex continued until a subsequent session: only 3% of the women they bound, and 6% of the men.

Tables 2.3 and 2.4 show the disposition of recognizances. On the face of it, men and women had roughly comparable treatment in the 1620s. Women prosecuted for violent offences do not seem to have been the recipients of leniency or special treatment. But in the 1660s, women were more likely than men to be discharged at the first sessions following their bond. Both men and women may have become more obedient in terms of fulfilling their obligation to appear at court. This remains true for women even if all those for whom the outcome is unknown are taken to have broken their bond. If we do the same for the men, they have become less so - but most of these were probably released.

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[122] Shoemaker found that over half of the female defendants in his sample were prosecuted by women also, Prosecution and Punishment, p. 214.

Quantitative evidence from recognizances suggests that women were receiving more lenient treatment within the criminal justice process in the post-Restoration period than they had been in the 1620s. The disposition of indictments indicates a similar trend. Grand juries in the 1620s indicted 73.7% [306] of the male defendants and 78.4% [87] of the female defendants. Of those prosecuted as solitary defendants, all but one of the 24 women were indicted as opposed to 73 of the 94 men [77.7%]; but the figures for women are too small for any meaningful conclusion to be reached in this regard. This applies also to the later period, when only 6 of the women prosecuted were without accomplices. Obviously one cannot make too much of the disposition of only 21 indictments of women in the 1660s compared with 137 men [see Table 2, note b], but it may be indicative of a general trend that over half of the bills against women were returned *ignoramus*, and less than a quarter of those against men.

Table 2.3 Disposition of Recognizances at Quarter Sessions: 1620s

	Men	%	Women	%
Released Before Sessions	176	29.5	32	24.2
Released At Sessions	228	38.2	50	37.9
Continued/Bound Anew	112	18.8	24	18.2
Did Not Appear	54	9.0	16	12.1
Unknown	21	3.5	5	3.8
Other	6	1.0	4	3.0
TOTAL	597		132	

Table 2.4 Disposition of Recognizances at Quarter Sessions: 1660s

	Men	%	Women	%
Released Before Sessions	74	9.3	25	10.0
Released At Sessions	482	60.9	177	71.1
Continued/Bound Anew	114	14.4	22	8.8
Did Not Appear	36	4.5	5	2.0
Unknown	60	7.6	15	6.0
Other	26	3.3	5	2.0
TOTAL	792		249	

So what can one make of all this? There are several contexts in which we might locate an explanation for the changes over time outlined here. Converting statistical data into cultural analysis is invariably fraught with difficulties. Parity of treatment in allegations of non-lethal violence in the 1620s might be a consequence of women being perceived as equally threatening as men.[123] This could be a reflection of contemporaries' fears that they were in the midst of a crime wave. The 1620s was a decade of increased litigation in many parts of the country, Cheshire being no exception.[124] Or, given the relatively low level of female prosecution, their subsequent treatment might imply that when women did engage in such acts they were considered to subvert the natural order of things, to be behaving in a way unbecoming to a woman, and were therefore not given any special or lenient treatment when they misbehaved. The parity of treatment of male and female defendants might go some way towards substantiating David Underdown's argument for a crisis in gender relations in the early seventeenth century.[125] Not until further research is undertaken which focuses on the dynamics of gender relations *vis-a-vis* female criminality, will Underdown's claim be thoroughly tested. But Martin Ingram's persuasive critique has demonstrated that much of Underdown's central evidence must be treated sceptically.

The relative lenience shown to women in the 1660s could, by the same token, be interpreted in the light of the thesis currently being put forward by Anthony Fletcher. Following on from Thomas Laqueur, and building upon David Underdown's argument for a crisis in gender relations, Fletcher has argued that a new ideology of patriarchy emerged later in the century, in which female passivity was emphasized to a far greater extent than it had been hitherto. Thus the Cheshire evidence might reflect the changing attitudes exemplified in the a

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[123] Shoemaker has suggested that as fewer women were accused, grand juries were less likely to view them as potential criminals, and therefore more likely to return ignoramus bills: Prosecution and Punishment, p. 149. By the same token, if jurors had to deal with greater numbers of women their verdicts may have altered accordingly.

[124] Sharpe, Crime in Early Modern England, pp. 57-60, 63-65, 171-172. See table 2.1, above.

[125] Underdown, 'The Taming of the Scold', passim. Cf. Ingram, '"Scolding Women Cucked or Washed"', passim.; above, pp. 70-77.

one-sex model being replaced by a two-sex one, as well as developing notions of civility and so on.[126] If this was so, then Cheshire would seem to be at the cutting edge of the assimilation of new ideas and concepts, which would be surprising to say the least.

However, much of the Cheshire evidence presented here might be seen to substantiate Patricia Crawford's recent reiteration of the view that the upheavals of the English civil wars and Revolution "enhanced female self-confidence, ...and increasing assertiveness" after the Restoration in response to which "men sought to restrict female independence and female access to a public voice". There is indeed post-Restoration evidence which suggests both a new level of female self-confidence *and* that female action was circumscribed by male presence. On being denied entry into another woman's field as a short-cut, Anne Heaynes retorted that "no woman wuld have hindered her from going where she intended", and wished that she had carried a cane, presumably with which to have beaten her. She boasted afterwards that if the woman's husband had not been present, she would have "had a bout" with her, and threatened that she would have the blood of the woman or vice versa.[127] Again, we hear the combative language of "male" challenge which was virtually absent in cases involving women in the 1620s. In a case which reveals something of class relations as much as the place of women in post-Restoration society, Elizabeth Blackamore so terrorized her mistress Amy Robinson, that she "durst not stay in her own house for fear". Elizabeth swore that she would mischieve her or her children if Amy appointed her work to do, wished that Amy was hanged, and said that she would "let her alone as she was great bellied, but when she the said Amy was delivered she would order her...and other menacing speeches". Amy's mother made the point

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[126] Anthony Fletcher, 'Reading the Body: Gender, Patriarchy and Sexual Difference in England 1500-1900', unpublished paper delivered at the 'Gender in Question' conference, University of Essex, 1993; Anthony Fletcher, 'Men's Dilemma: the future of patriarchy in England 1560-1660', unpublished paper delivered to the Royal Historical Society, 1993. Thomas Laqueur, Making Sex, (Harvard, 1990), chs. 2 & 3.

[127] QJF 91/1, ff. 101, 118, 120, Examinations against Anne Heaynes. Although this could be a "fiction" to discredit her as much as a representation of her actual words or behaviour, such challenging rhetoric appears to have been rarely attributed to women in the earlier period.

that the threats were made when Amy's husband was not present.[128] Both Anne Heaynes and Elizabeth Blackamore were threatening their social superiors. However, the evidence is problematic and contradictory; and the changes in narrative constructions are subtle.

Historians' arguments for and against an increased feminine self-awareness and confidence has focussed too heavily upon the actual involvement of women in sectarian activity and on women's published writings. Little attempt has been made to relate this to the lives of women generally.[129] Although Crawford places the female legacy of the Revolution in the realm of ideas, she states that "in symbolic terms, the execution of the King, which could be described as the death of the patriarch, probably did not affect women's lives".[130] But it is precisely in symbolic terms that changes in perceptions of social order and the relative position of men and women is manifest. In the 1660s, narratives of domestic violence, for instance, suggest that notions of "right" violence have become more complex, more ambiguous. There is paradoxically more emphasis on the opprobrium of actual harm caused, and less on the "unnatural" nature of such acts. In the 1620s female relatives of male aggressors emphasized the breach of economic rather than familial values. Even mothers of violent men and the witnesses who deposed on their behalf, who stressed the subversion of natural order in their sons' behaviour, couched their complaints in economic terms. Violence by male relations was not prosecuted *per se*. In the 1660s, however, witnesses inferred that violence within the home was unacceptable; the main point of contention was the physical abuse itself; and the unnaturalness of assaulting one's mother was no longer mentioned. This may in part have been a direct consequence of the ideas and justification for regicide and republican rule, rooted

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[128] QJF 91/2, ff. 55, 57, Examinations against Elizabeth Blackamore.

[129] Crawford, 'The Challenges to Patriarchalism', in J.S. Morrill (ed), Revolution and Restoration (London, 1992), pp. 119-128. For the view that the revolutionary period had little effect on women who were not directly involved, see: Christopher Durston, The Family in the English Revolution (London, 1989), pp. 6, 161-164, 173; Ralphe Houlbrooke, The English Family, 1450-1700 (London, 1984), pp. 34-5, 114; Keith Thomas, 'Women in the Civil War Sects', Past & Present (1959), passim.

[130] Crawford, 'The Challenges to Patriarchalism', p. 127.

as it was in the rhetoric of the family.[131]

It seems not as Susan Amussen has argued, that the social stablility of Restoration England resulted in order being no longer dependent upon "the reiteration of an ideal of the family as the only apparently unchanging institution, as it had in the earlier seventeenth century".[132] Rather, the events and phenomena of the 1640s and 1650s permitted plurality of meaning to inform notions of order; in political discourse the "family" itself underwent change, and it was this which is exemplified in the linguistic constructions of gender in the post-Restoration testimonies. This is a third possible location in which to find an explanation for the Cheshire evidence. That is, that female self-confidence aside, the upheavals of the 1640s and 1660s - civil war, regicide and restoration - had profound consequences on, among other things, the rhetoric in which the values of ordered society were propounded. Gender was not only a crucial component of that rhetoric, but a desire to represent positive images of the passive woman may be a common theme in post-war periods. Cultural constructions of gender are, after all, constantly contested, reaffirmed and redefined over time.[133] If one is searching for tangible evidence of change in the ways in which men and women related to each other as a consequence of the English Revolution, any conclusion will be elusive in a study which does not itself focus on the the 1640s and 1650s. But whilst the prosecution and dynamics of interpersonal violence in this study cannot demonstrate an unequivocal shift, it can indicate some of the ways in which men and women internalized and manipulated received notions of order which in the post-Restoration period were subject to an increased degree of plurality of meaning and a heavier dependence upon female adherence to prescribed behaviour.

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[131] It was beyond the scope of this study to examine in detail the evidence for the 1630s, 1640s and 1650s. I intend to do so as part of my post-doctoral work. Until then, this hypothesis is necessarily tentative.

[132] Amussen, An Ordered Society, p. 186.

[133] Mark S.R. Jenner, 'Beyond Women on Top', unpublished paper delivered at the 'Gender in Question' conference, University of Essex, 1993.

CHAPTER THREE

HOMICIDE

Cheshire's historical reputation has revolved around two main factors. It has been famous for its fine cheese and infamous for its violent and turbulent population. In the fifteenth century the county was apparently far more "notorious" than elsewhere for its violence and disorder "which evidently reached startling proportions by comparison with the rest of the kingdom". It had "a population used to war and violence". And we are told that by the eighteenth century, the men and women of Cheshire, along with those of Sussex, were "as contemptuous of the the law as they were unimpressed by the threat of the hangman's rope".[1] Whilst ecological theories of social conflict might suggest a correlation between the nature of Cheshire's cheese-making economy and its supposed unlawfulness,[2] the supposition that Cestrians had a greater propensity to disorder and violence than elsewhere must be questioned.

In the previous chapter we saw that Cheshire does appear to have had a relatively high rate of prosecution for non-lethal violence. This appears not to have been due primarily to the inherent disorderliness of Cestrians, but rather seems to be a reflection of the way in which ordinary people utilized and sometimes manipulated the law to settle their own disputes or to undermine their adversaries. In this respect, the cases coming before the Cheshire courts suggest

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[1] A.R. Myers, 'An Official Progress Through Lancashire and Cheshire in 1476', Transactions of the Historic Society of Lancashire and Cheshire, 115 (1963), p. 3; G. Barraclough, 'The Earldom and County Palatine of Chester', Transactions of the Historic Society of Lancashire and Cheshire, 103 (1951), p. 24; Dorothy J. Clayton, The Administration of the County Palatine of Chester, 1442-1485, (Manchester, 1990), pp. 215-216; B. E. Harris (ed), Victoria History of the Counties of England. Cheshire [hereafter, VCH Cheshire], Vol. II, pp. 31-32.; Christopher Hibbert, The Roots of Evil. A Social History of Crime and Punishment (London, 1963), p. 41. See also, G. Barraclough, 'The Earldom and County Palatine of Chester', Transactions of the Historic Society of Lancashire and Cheshire, 103 (1952), p. 24; J. Beck, Tudor Cheshire (Chester, 1969), pp. 1-3.

[2] See for instance, D. Underdown, Revel, Riot and Rebellion: Popular Politics and Culture in England, 1603-1660 (Oxford, 1985). For other examples, see above, p. 29, n. 63.

a developed plebeian understanding of and relationship to the law.[3] Yet figures suggest that Cheshire might have had a higher rate of homicide than other counties did.[4] Presumably, this cannot be explained by compulsive litigiousness.[5] We also saw in chapter two that early modern concepts of order which underpinned legal sanctions were both fluid and mutable, and that representations of culpability were dependant upon the shifting boundaries of contemporary notions of order and of gender.

In this chapter, I intend to examine the bearing which such concepts had on the prosecution, punishment and representation of acts of murder, manslaughter and infanticide. I shall consider the disposition of verdicts and sentences in homicide cases in which the suspected slayers were male and female separately. Attention will be paid to the manner in which culpability was ascribed by jurors, coroners and the Chief Justices of Chester as well as by witnesses and the defendants themselves.[6]

During the years of this study 184 people, of whom 147 were principal offenders, came before the Palatinate court of Great Sessions on suspicion of perpetrating homicides.[7] Figures presented by J.A. Sharpe suggest that indictments for homicide comprised a greater proportion of total felonies in

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[3] See also Andy Wood, 'Custom, Identity and Resistance: English Free Miners and their Law, 1550-1800', in Paul Griffiths, Adam Fox and Steven Hindle (eds), The Experience of Authority (forthcoming); chapter 5, below.

[4] Sharpe, Crime in Early Modern England (London, 1984), pp. 55, 57, & table 1.

[5] Indictments for homicide are probably fairly representative of the actual incidence of such crimes. J.S. Cockburn, 'The Nature and Incidence of Crime in England 1559-1625: a Preliminary Survey', in J.S. Cockburn (ed), Crime in England (London, 1977), p. 55.

[6] On the office of the coroner, see R.F. Hunniset, 'The Importance of Eighteenth-Century Coroners' Bills', in E.W. Ives and A.H. Manchester (eds), Law, Litigants and the Legal Profession (London, 1983), pp. 126-39; J.A. Sharpe, Crime in Seventeenth-Century England: A County Study [hereafter Essex] (Cambridge, 1983), pp. 33-34.

[7] See table 3.1. Unless otherwise indicated homicide includes infanticide.

Cheshire than in any other county in his study.[8] Moreover, just over one-fifth of those accused of homicide were women. This low involvement of women in homicide appears to be universal, although the figures suggest that Cheshire women constituted a larger proportion of suspected killers than they did in other areas.[9]

Table 3.1 Men and Women Accused of Homicide.

		MEN	WOMEN	Total
1590s	P[a]	26	5	31
	A[b]	2	-	2
1620s	p	61	15	76
	A	17	5	22
1660s	P	30	10	40
	A	10	3	13
TOTAL		146	33	179

[a] P = Principals.
[b] A = Accessories.

However, it remains to be ascertained whether or not this evidence implies that the men and women of Cheshire were committing relatively more homicides than the inhabitants of other counties. One way in which this might be done is by estimating a homicide rate for the county, and comparing it to those estimated for

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[8] Homicide and infanticide constituted 16% of total indictments for felony in Cheshire. Compared with indictments for felonious property crimes in the county, almost 18% were for homicide. The other "high" homicide scorers are Devon and Cornwall. At first glance one might suppose that the evidence suggests that contemporary perceptions of the north and the west as the violent and unruly "dark corners of the land" might be accurate, but the matter is complicated by figures for Northumberland and Cumberland, both of which appear to have had a low proportion of homicide indictments (9% and 6% respectively). Sharpe, Crime in Early Modern England, pp. 55, 57, and table 1.

[9] See, for instance: J.M. Beattie, 'The Criminality of Women in Eighteenth-Century England', Journal of Social History, 8 (1974-75), Table 2; J.M. Beattie, Crime and the Courts in England, 1660-1800 (Oxford, 1986), p. 82, & Table 3.1; Angela Browne and Kirk R. Williams, 'Exploring the Effect of Resource Availability and the Likelihood of Female-Perpetrated Homicides', Law and Society, 23, No. 1 (1989), pp. 76-94; Martin Daly and Margo Wilson, Homicide (New York, 1988), pp. 146-9, & Table 7.1; James Given, Society and Homicide in Thirteenth-Century England, (Stanford, 1977), pp. 134-137; Barbara A. Hanawalt, 'The Female Felon in Fourteenth-Century England', Viator, 5 (1974), p. 257; Frances Heidensohn, Women and Crime (London, 1985, 1990 edn), p. 8; Carol Z. Wiener, 'Sex Roles and Crime in Late Elizabethan Hertfordshire', Journal of Social History, 8 (1974-5), p. 45, & p. 57 n.54. Women usually consititute less than 15 per cent of those accused of homicide. For a discussion based upon evolutionary theory of why so many more men than women kill, see Daly and Wilson, Homicide, passim., and especially ch. 7.

elsewhere.[10] I have estimated that the homicide rate for Cheshire in the 1590s was 5.8 per 100,000 population. The corresponding figures for Kent in that decade and for Elizabethan Essex were 5.3 and 6.7 respectively. This does not suggest that Cestrians were peculiarly prone to killing each other. Indeed, estimates for some other counties are much higher.[11] In the 1620s, Cheshire's homicide rate was much higher at 9.7 per 100,000; that of Kent was in contrast a mere 3.4. By the 1660s, Cheshire's homicide rate was 5.1 per 100,000 population, whilst Surrey's was 6.1 and Kent's 3.6.[12] The marked difference between the homicide rates for Cheshire and Kent in the 1620s and 1660s would appear to reflect two phenomena, neither of which necessarily suggest that Cheshire had an extremely high rate of homicide overall. Firstly, the 1620s was an atypical decade nationally, and in Cheshire, at least twice as many indictments for homicide were brought in that decade than in any other from 1580 to 1710, with the exception of the 1610s. Even in the latter decade, markedly fewer indictments were brought than in the 1620s.[13] Comparisons between Cheshire and other counties based on figures for the 1620s are, therefore, misleading. Secondly, the discrepancy between Kent and Cheshire may reflect an oddly low

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[10] Homicide rates for Cheshire have been calculated from the annual average number of indictments in the sampled decades and from estimates of Cheshire's population in those decades. Cheshire's population has been assumed to have expanded at the same rate as the national average as calculated by Wrigley and Schofield. The population estimate for the county for 1563, derived from the ecclesiastical census for that year, has been used as the base figure. C.B. Phillips and J.H. Smith, Lancashire and Cheshire from AD 1540 (London, 1994), p. 7, table 1.1.; E.A. Wrigley and R.S. Schofield, The Population History of England, 1541-1871 (London, 1981), pp. 208-9, table 7.8. The entire business of estimating rates of population increase and thereby estimating crime rates is fraught with difficulties. No more reliance should be attributed to my homicide rate for Cheshire than to any other. The method of calculating Cheshire's population for all three decades cannot be assumed to be reliable for the following reasons. The 1563 census may not itself be reliable, especially as its unit of calculation is the household rather than the individual. Moreover, it is likely that Cheshire's population history between the 1560s and the 1660s differed from that of the nation as a whole. However, this thesis is not a study of demographic change in early modern Cheshire, and the method adopted here is employed in order to produce a guestimate figure. The point of the exercise is merely to ascertain whether Cheshire's supposedly violent characteristics appear to have been reflected in its estimated homicide rate. See also above, pp. 42-44.

[11] Homicide rates for Hertfordshire and Sussex have been estimated at approximately 16 and 14 per 100,000 population respectively. Gurr, 'Historical Trends in Violent Crime: A Critical Review of the Field', Crime and Justice, 3 (1981), p. 307.

[12] For Surrey, see J.M. Beattie, 'The pattern of crime in England, 1660-1800', Past & Present, 62 (1974), p.61; for Kent, see J.S. Cockburn, 'Patterns of Violence in England', Past and Present, 79 (1991). pp. 78-9; for Essex, see Gurr, 'Historical Trends', pp. 308-9.

[13] Sharpe, Crime in Early Modern England, p. 61, fig. 3.

crime rate in the former county rather than a high one in Cheshire. J.S. Cockburn's figures for Kent correspond far less to the broad national pattern of crime suggested by J.A. Sharpe than do those for Cheshire.[14] On the basis of this limited evidence, it would be foolish to suggest that Cheshire had an exceptionally high homicide rate.[15] The inhabitants of Cheshire appear not to have been the wild, backward, lawless creatures supposedly produced by such a "dark corner of the land".

Another factor which must be considered is the nature of Cheshire killings and the rate of acquittal and conviction of those prosecuted. If Cheshire people were particularly disorderly and violent, one might expect to find that the county had a relatively high conviction rate. This appears not to have been the case.[16] Nor may this be explained by an acceptance of brutality amongst Cheshire jurors. If this were so, there would surely have been a noticable degree of disagreement or tension between juries and the bench. The Chief Justices, after all, spent their time between sessions at the Sergeants' Inn in London along with the judges who perambulated the assize circuits. Yet there is no evidence to suggest that such disagreement or tension was rife. The discussion below suggests that criminal justice in the county was administered in a sophisticated and ordered manner.[17]

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[14] Sharpe, Crime in Early Modern England, pp. 57, 60; Cockburn, 'Patterns of Violence', Past and Present, 104 (1991), pp. 77-9. For wider problems of calculating national patterns, see chapter 1, above, and Sarah Mercer, 'Crime in Late-Seventeenth-Century Yorkshire: An Exception to a National Pattern?', Northern History, 27 (1991), pp. 106-119.

[15] Nor does homicide appear to have been endemic in Cheshire in the earlier sixteenth century. Thornton, 'The Integration of Cheshire into the Tudor Nation State in the Early Sixteenth Century', Northern History, 29 (1993), pp. 42-43.

[16] Sharpe, Crime in Early Modern England, p. 65.

[17] In fact, there appears to have been a greater degree of bad feeling and disagreement created by Justice Whitelocke's harsh criticism of the county magistrates for the lackadaisical manner in which they conducted what was supposed to be a tight campaign against unlicensed alehouses, than there was over sentencing policy. G.P. Higgins, 'County Government and Society in Cheshire, c.1590-1640', unpublished M.A. thesis, University of Liverpool, 1973, pp. 108-09.

Male Felons: Verdicts and Sentences

If one believes contemporary literary representations of homicide, one might be forgiven for supposing homicide to be the most heinous and culpable of crimes.[18] But homicide itself was a heterogenous offence. Culpability as regards violence, as we have seen in the previous chapter, was not measured upon a static scale. Culpability was measured by its relation to other slippery notions: order, morality, and desert, and not merely by fact. Whilst it seems not to have been widely believed that culprits should go unpunished, beliefs about the nature and extent of their deserved punishment does seem to have been determined on a sliding scale on which all marks might be subject to subtle and at times dramatic repositioning. In measuring culpability, then, *actus reus* might often be of less significance than *mens rea*.

In legal and social terms alike, the primary distinction between murder and manslaughter was found in the matter of intent. The development of the law of homicide had made this clear in theory,[19] but in practice intent was presumably often difficult to assess. Even regarding modern homicides, criminologists have stated that intent is a matter of "rank speculation".[20] The historian is faced with greater problems in reaching a verdict than the contemporary juror. Despite the difficulties, believed or assumed intent (whether reflecting fact or not) must be considered if we are to come to any conclusion about the manner in which notions of order informed verdicts.[21] Other

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[18] Peter Lake, 'Deeds against Nature: Cheap Print, Protestantism and Murder in Early Seventeenth-Century England', in Kevin Sharpe and Peter Lake (eds), Culture and Politics in Early Stuart England (London, 1994), pp. 257-84; Garthine Walker, '"Demons in Female Form: Representations of Women and Gender in Murder Pamphlets of the Late Sixteenth and Early Seventeenth Centuries', in William Zunder and Suzanne Trill (eds), Writing in the Renaissance (forthcoming).

[19] Baker, Introduction to Legal History, p. 602; Thomas A. Green, 'Societal Concepts of Criminal Liability for Homicide in Medieval England', Speculum, 47 (1972), p. 669; J.M. Kaye, 'The Early History of Murder and Manslaughter', Law Quarterly Review, 83 (July and October, 1967), pp. 365-95, 569-601.

[20] Martin Daly and Margo Wilson, Homicide (New York, 1988), p. 13.

[21] It remains the case that, as Cynthia Herrup points out, "the idiosyncratic pressures of acquaintance and dependence, of prejudice and superstition, are largely unrecoverable"; The Common Peace (Cambridge, 1987), pp. 142-44, quotation at p. 142. Such limitations necessarily restrict the

difficulties present themselves: the facts as presented to jurors and coroners could themselves be as much embellishments or manipulations of the truth, just as they sometimes were in non-lethal cases of violence. Given the shortcomings of the sources, it is not the purpose of this study to attempt to ascertain the extent to which the guilty were acquitted, or innocents led to the gallows. What the sources can offer is evidence of how notions of culpability and liability informed and influenced the decisions upon which an individual's life might rest. An analysis of the verdicts and sentences of individuals accused of homicide in Cheshire can indicate the ways in which the law itself and those participating in the legal process accepted and drew upon established legal and societal criteria which categorized homicide. The sources do not provide sufficient evidence for the events or the trials to be reconstructed. Nevertheless, general conclusions can be reached.

Table 3.2 shows the numbers of men and women who stood trial for homicide, together with their verdicts and the sentences they received.[22] Taking the sample as a whole, nineteen of the eighty-one men who went to trial were eventually hanged.[23] The first characteristic of those men who were hanged was that about half were convicted of murder.[24] Conversely, it may also be said that those convicted of murder were unlikely to receive anything less than capital punishment. Murder was considered as a most grave form of homicide, striking as it did against the fundamental concepts of order. It involved malice, deliberation, and premeditation. It smacked of dishonourable conduct. And it was underlined by the notion of unequal attacks. According to law, the only punishment available to the convicted murderer was to be hanged by the neck

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scope of this study. It is, however, believed that the recorded information for many individual cases permit an analysis of judicial decision-making on the basis of the construction of culpability, regardless of the actual or perceived guilt or innocence of the defendant.

[22] Total verdicts were: 48 (59.2%) for manslaughter; 11 (13.6%) for murder; 22 (27.2%) acquitted.

[23] This figure is roughly comparable to that for other counties. Forty-one of 190 (21.6%) men tried for homicide in Essex were hanged. Sharpe, Essex, p. 124, table 12.

[24] Nine of the 19 men who were hanged for their offences were accused and convicted of murder.

until dead.[25] In early modern England, it seems that cases which led to a conviction for murder were commonly those in which the presence of malice and premeditation was clear.[26]

Table 3.2 Disposition of Jury Returns and Sentences for Principals in Homicide.

Verdict/ Sentence	1590s M	1590s F	1620s M	1620s F	1660s M	1660s F	Total % M	Total % F
Ignoramus	2	-	6	3	7	2	15.6	21.7
True Bill	19	4	40	6	22	8	84.4	78.3
Hanged	4	1	10	3	5	3	23.5	38.9
Branded	4	-	17	-	3	-	29.6	-
Pardoned	8	1	3	1	6	1	21.0	16.7
Guilty	16	2	30	4	14	4	74.1	55.6
Not Guilty	3	2	10	2	8	4	25.9	44.4
Total	21	4	46	9	29	10	(96)	(23)

John Warton, for instance, was found guilty of attacking Thomas Leene with a cudgel. That he did this at night, and that he had attacked Leene from behind exaggerates the element of surprise which suggests unfair play. Warton was allegedly in league with Leene's wife Ellen, who was also executed for her part in instigating the murder.[27] In a similar case, John Boulton was hanged for shooting John Liverpool, and Liverpool's widow was burnt at the stake for petty treason as Ellen Leene had been.[28] In cases such as these, malice aforethought was obviously considered to be present by both jurors and judge. Moreover, they were characterized by stealth, betrayed trust and unfair advantage being taken of

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[25] For definitions of murder, see Baker, Introduction to Legal History, pp. 602-3; Thomas A. Green, 'Societal Concepts of Criminal Liability', p. 689-94; Milsom, Historical Foundations of the Common Law (London, 1981), pp. 370-71.

[26] Beattie, Crime and the Courts, pp. 77-8, 97; Philippa Maddern, Violence and Social Order. East Anglia, 1422-1442 (Oxford, 1992), p. 128; Sharpe, Essex, p. 123.

[27] PRO CHES 21/3, f.126r.; PRO CHES 24/118-3, Indictments, Recognizance, Jury Return.

[28] PRO CHES 21/5, ff. 59r., 61r.; PRO CHES 24/135-5, Coroner's Inquisition Indictment, Indictment, Recognizances. See below, p. 142.

the victim, all of which were thought to be especially reprehensible.[29]

Murder during a robbery or burglary, along with petty treason, might also seem even more heinous than more common cases of killing with malice aforethought alone. Whilst petty treason was singled out for particular punitive measures by the law itself, juries might recommend, and judges might order particular treatment for murderous thieves and highwaymen. In 1593, for example, William Gayton was found guilty of committing a highway robbery and murdering one James Finlyson who was returning to Chester from Manchester where he had been engaged in business. Before Gayton made off with 26 yards of cloth and £160, he butchered Finlyson with his sword, giving him many deep and fatal wounds to his head and body.[30] A note on the jury return states that Gayton was "to be hanged where the fact was"; it was later added that he was to be hung there "in chains". Deeds like this were considered to be one of the "grosser", more terrifying forms of murder. This is partly because motivation for the offence was bound up with greed and self-interest, partly because the victim was seen as an innocent and had presumably done nothing to the offender to deserve an attack, and partly because such killings could be seen as "sadistic".[31] Whilst these sorts of murders might have seemed extremely fearsome, other less spectacular factors in combination with malice aforethought could also exacerbate the perception of the deed. Hugh Stringer, for instance, was hanged after he confessed to having murdered not once but twice, his victims being Anne Cranage and her daughter Cicely.[32] In another case, William Dalyale fatally stabbed a man in the breast. Both the location of the wound and the method by

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29 Maddern, Violence and Social Order, p. 99; Herrup, Common Peace, pp. 172, 173.

30 PRO CHES 21/1, f.167v.; PRO CHES 24/103-3, Indictment, Jury Return.

31 Beattie, Crime and the Courts, pp. 78, 97-8; Cockburn, Introduction to the Assize Calendars (London, 1985), p. 99; Hanawalt, Crime and Conflict in English Communities, 1300-1348 (Cambridge, Mass., 1979), p. 272; Sharpe, Essex, p.125. For a detailed examination of a survivor of vicious highway robberies, see PRO CHES 24/103-3, Deposition of Lewes ap Jenkyn.

32 PRO CHES 21/1, ff. 192v, 193v., Indictment, Jury Return.

which it was inflicted would have compounded the heinousness of the killing.[33] Societal and legal definitions of murder clearly placed the act within a category of culpable homicide; convicted murderers were invariably sentenced to hang.[34]

If criminal liability for homicide was deduced according to a tightly ordered concept of righteous and wrongful acts, one might expect perpetrators of manslaughter to be universally regarded as less criminally liable than murderers. That ten men were in fact executed for manslaughter makes a monolithic understanding of early modern concepts of order problematic. It seems that the application of the law was not the blind, logical "perfection of reason" that Coke claimed it to be. Douglas Hay has maintained that the law was able to operate so efficiently in early modern England in part because of the random and arbitrary nature of verdicts and punishments. "Irrationality", Hay has argued, "...pervaded the entire administration of the law".[35] Yet one has to distinguish between the theoretical underpinnings of the law and the practical application of criminal justice. In the former, there was no better example of "irrationality" to be found than in the ability of convicted felons to escape the hangman's noose through the act of reciting the neck verse. Yet in the latter, benefit of clergy was often used as a lesser punishment in accordance to the degree of criminal liability ascribed to the defendant. As we have seen, the criteria upon which culpability was deduced appears to have been rational and specific, not irrational and random. It

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[33] PRO CHES 21/5 ff. 86[a]r., 86[a]v.; PRO CHES 24/136-3, Indictment, Coroner's Inquisition Indictment. Stabbing was in fact a special category of homicide, and will be discussed below, pp. 119, 120-120.

[34] Green, Verdict According to Conscience, p. 107. Cf. Cynthia Herrup's remark that jurors "were generally more lenient in crimes carrying punishments over which they had less control, even if the threat to local peace was more severe". She supports this contention in part with the assertion that juries were more reluctant to return convictions for offences which were considered particularly heinous, such as homicide, than they were for petty larceny. Yet Herrup's own evidence demonstrates neither that defendants charged with homicide were subject to particularly lenient treatment, nor that jurors were more likely to acquit defendants for non-clergyable crimes. Murder, in fact, had the highest conviction rate after petty larceny in Herrup's sample, jointly with theft without clergy. Manslaughter and grand larceny, which according to Herrup's account should have had higher conviction rates than murder and non-clergyable theft, in fact had slightly lower and significantly lower conviction rates respectively. Herrup, Common Peace, pp. 144-45, and table 6.2.

[35] Douglas Hay, 'Property, Authority and the Criminal Law', in Douglas Hay et al., Albion's Fatal Tree (London, 1975, repr. 1988), p. 40.

is therefore of some significance that of the ten men executed for manslaughter, three had unsuccessfully claimed benefit of clergy.[36]

Bearing in mind the relative ease with which men passed the reading test, such as it was, it seems likely that this was a policy decision on the part of the bench. Two of these men, Thomas Spruce and Robert Wade were denied clergy at the great sessions held in May 1624.[37] Both the Chief Justice James Whitelocke, and the deputy, Marmaduke Lloyd had been appointed to their positions two years previously, and they may have wished to flex their judicial muscles - perhaps with royal approval. Moreover, Whitelocke was under pressure to move to King's Bench at this time, and may consequently have been particularly scrupulous. At the May 1624 sessions, two of the three men who pleaded benefit of clergy after homicide convictions were unsuccessful, and a fourth who was branded at the previous sessions was hanged apparently because "the King denies his reading".[38] In addition, whilst three men convicted of property offences were branded, a fourth was unsuccessful and sent to the gallows. In fact, only one man was successful in his plea at the May sessions of 1624. The only other man who was denied clergy for a violent offence in the years studied here was William Bott whose trial took place two years later in 1626, also under the direction of Whitelocke and Lloyd.[39] It seems that these convicts were not picked at random. Each of the men convicted of manslaughter who were denied benefit of clergy had been found to have acted with accomplices. Accessories could make the killing seem unequal and the defendants

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[36] On benefit of clergy, see Cockburn, Introduction, pp. 117-121; and below, pp. 186, 190, 192-93.

[37] PRO CHES 21/3, ff. 97r., 100r.; PRO CHES 24/117-2, Indictment, Coroner's Inquisition Indictment, Recognizance [Thomas Spruce]. PRO CHES 21/3, ff. 97r., 100r.; PRO CHES 24, 117-2, Indictment, Coroner's Inquisition Indictment, Recognizance [Robert Wade].

[38] John Bruce (ed), Liber Famelicus of Sir James Whitelocke (Manchester, 1858), pp. 95-6. On the Home Circuit between 1618 and 1624, only nine men were unsuccessful in claiming benefit of clergy. It may be no coincidence that all nine cases occurred in 1623. Cockburn, Introduction, pp. 120-121. See also p. 193, n. 61 below.

[39] PRO CHES 21/3, f. 131r.; PRO CHES 24/118-3, Coroner's Inquisition Indictment, Recognizance.

might thereby seem more culpable.[40] Thus, whilst from the outside the administration of the law might seem irrational, from the inside a certain logic attended on sentencing.

In general, men who received the death sentence for manslaughter appear to have transgressed the boundary between excusable and inexcusable violence. At its most basic, manslaughter or felonious killing was set apart from murder in law by the mere absence of malice aforethought. Yet societal attitudes to homicide might deem a particular act murderous even when premeditation was absent.[41] According to law, a man convicted of manslaughter was eligible for a plea of benefit of clergy. There were, however, certain conditions which precluded the plea. Manslaughter was non-capital only if it was a first offence; for a second, the convict was to be hanged. Moreover, from 1603, the act of stabbing to death an individual who was either unarmed or who had no weapon drawn was added to the list of crimes for which benefit of clergy could not be drawn. Such actions compounded notions of unjust and unequal violence with issues of malicious intent at the time of the incident whatever the slayer's predisposition might have been.[42]

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[40] In the 1620s, only six men convicted for murder or manslaughter allegedly had accessories. William Bott's accessory was likewise denied clergy and hanged; Robert Wade's accessory had fled; but both of the two men who aided Thomas Spruce were acquitted, one being "only present". However, Wade and Spruce were originally accused of murder. It may have been that the chief justice (and indeed the trial jury) disagreed with the grand jury decision to alter the indictment to one of felonious killing. Three other principals who allegedly had committed the killing with the aid of accomplices were convicted. In 1620 Robert Walker alias Blomyley was branded along with William Redynges after it was apparently unclear which of the two men was responsible for the killing of Robert Didsbury. PRO CHES 21/3, ff. 45r., 46v.; PRO CHES 24/115-4, Indictment, Coroner's Inquisition Indictment, Jury Return, Recognizances. George Baguley and his accessory Thomas Hough were both hanged for murder in 1624. Only in William Machyn's case, was a principal who had acted with accessories branded rather than hanged. His two accessories were discharged as "the principal read as a clerk". PRO CHES 21/3, ff. 146v., 147v.; PRO CHES 24/118-4, Indictment, Coroner's Inquisition Indictment, Jury return. In the 1660s, three men were indicted along with their alleged accessories. In only one case was the accusation against the accomplice sustained by the trial jury: the accessory was branded in the absence of the principal who had fled. PRO CHES 21/4, ff. 418r., 418v., 423v.; PRO CHES 24/133-1, Indictment, Coroner's Inquisition Indictment, Jury Return, Recognizances [Andrew Rodes/Edward Rodes].

[41] Baker, Introduction, p. 602; Beattie, Crime and the Courts, pp. 77-9; Green, Verdict According to Conscience, pp. 121-2; Kaye, 'Early History of Murder and Manslaughter', pp. 588-89, 590-92. Cf. Zachary Babington, Advice to Grand Jurors in Cases of Blood (London, 1676, 1680 edn), pp. 137-42.

[42] 1 Jac. I, c.8. Baker, Introduction, pp. 602-3; Green, Verdict According to Conscience, pp. 106-7; Babington, Advice to Grand Jurors, pp. 175-77. The Statute appears to have reflected commonly held assumptions about the nature of culpable violence. Allegations against men whose victims languished but recovered often leave no doubt about the liability of the assailant by drawing upon similar images and

Six of the ten men in question were indeed accused of having stabbed their victims. Regardless of whether the victim was unarmed or unprepared, the issue of intent is clearly bound up with judicial decision-making. In 1620, Raphe Lingard not only stabbed his victim, but did so with such force that his pocket dagger was deeply embedded in six inches of flesh. Moreover the deed was done in darkness, which implies that the victim may have been taken by surprise. Robert Wade was likewise convicted of manslaughter in 1624, after the grand jury had altered the indictment from one of murder. But he too had stabbed his victim to death, again in darkness - it was 1 a.m. on an October morning - and had inflicted mortal wounds with his knife on Thomas Baker's belly and testicles, from which Baker allegedly instantly died. Many years later, Hamnet alias Hamlet Ashton killed John Wilbraham with his rapier. He had allegedly cut Wilbraham's throat, after having followed him up an alley next to the Crown Inn in Nantwich and into a court behind the inn.[43] Neither the coroner nor the prosecutor accused him of premeditated murder, and petty jurors were not in the habit of finding defendants guilty of more heinous crimes than those for which they were indicted. But even if Wilbraham had also drawn a sword, a verdict of manslaughter might not have resulted in Ashton being considered a suitable candidate for benefit of clergy. The fact that he had followed Wilbraham into the court suggests that his victim had no easy escape, and therefore smacks of inequality; it also might have suggested stealth; and to cut one's victim's throat was also indicative of intent to kill at the time of the incident, whatever Ashton's prior intent or lack of it may have been. Ashton was not accused of killing with malice aforethought, but his actions as charged were such that, in accordance with early modern social and legal notions of culpability, hanging was the logical and appropriate punishment.[44]

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language. See for example: PRO CHES 21/3, f. 154v.; PRO CHES 24/102-3, Indictment [Richard Harcourt].

[43] PRO CHES 21/3, ff. 97r., 100v.; PRO CHES 24/117-2 Indictment, Coroner's Inquisition Indictment, Jury Return [Robert Wade]. PRO CHES 21/5, ff. 2r., 5r. PRO CHES 24/134-1, Indictment, Coroner's Inquisition Indictment, Jury Return [Hamnet alias Hamlet Ashton].

[44] Culpable homicide had included both murder and manslaughter in medieval England too, though the distinction was not drawn in Statute law. Green, 'Societal Concepts', p. 672. For the four men who were hanged for manlaughter after stabbing their victims, see: PRO CHES 21/3, ff. 45r., 46v.; PRO

In early modern England, culpability for homicide was understood in terms of degree. Although manslaughter was not considered so terrible a crime as premeditated murder, the line drawn between the two was not fixed. Nor was it so between manslaughter and cases of what we may describe as true self-defence as we shall see presently. Nevertheless, the claim that the lines which demarcated degrees of homicide, culpability and punishment were blurred is perhaps misleading. It was not so much a blurring of boundaries which permitted judicial mitigation and discretion. Rather it was due to the shifting of boundaries which themselves remained distinct. Verdicts of manslaughter may have been returned because the facts of the case did not fit within the parameters of the legal category of murder. As Thomas Green says, the legal categorization of manslaughter "fitted the entire universe of cases which did not fit the two other more ancient categories" - those of murder and true self-defence.[45] It is thus to be expected that some types of behaviour which were so categorized might be considered appropriately heinous for the defendant to be deserving of capital punishment.[46]

In the remaining thirty-eight cases which resulted in verdicts of felonious killing, twenty-four men were branded upon pleading benefit of clergy and sixteen were pardoned. Just as felonious killing was the most common verdict returned in homicide cases, branding was the most common punishment that men convicted of homicide received. The large proportion of such verdicts and

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CHES 24/115-4, Indictment, Coroner's Inquisition Indictment, Jury Return [Raphe Lingard]. PRO CHES 21/3, ff. 108r., 111r.; PRO CHES 24/117-3, Indictment, Coroner's Inquisition indictment, Jury Return, Recognizance [John Pulford]. PRO CHES 21/4, f. 319r.; PRO CHES 24/133-1, Indictment, Coroner's Inquisition Indictment, Jury Return [Thos Hardinge]. Cuthbert Parker, however, was hanged for stabbing his victim ten years before the Statute: PRO CHES 21/1, ff. 167v., 168v.; PRO CHES 24/103-3, Coroner's Inquisition, Jury return [1593]. There is no way of knowing whether or not these cases complied with the Statute. Wade, Pulford and Parker were originally accused of murder. The tenth man who was executed on a manslaughter charge was Edward Shelmardine, who used a pickaxe (or a half pick) to kill outright Thomas Graves. Although he was indicted and convicted of manslaughter, he not only fled after the act, but having been captured eighteen months later, he escaped from the constables whilst being conducted to the gaol. Such determination to avoid trial would have endeared him neither to the bench nor to the jury when he was finally captured a second time. PRO CHES 21/5, ff. 6v., 7r.; PRO CHES 24/134-1, Coroner's Inquisition Indictment; PRO CHES 24/135-2, Indictment, Jury Return.

[45] Green, Verdict According to Conscience, p. 126 n. 82.

[46] This appears to have been the case elsewhere. Herrup, Common Peace, pp. 172-73.

sentences reflects the nature of fatal incidents and the relative degree of culpability ascribed to the perpetrators of this type of violence. Most killings appear to have resulted from quarrels which developed into fights that simply went too far.[47] For example, two days after Robert Benison and John Meakin had been fighting, Benison was bound by recognizance to appear at the next great sessions for he had "dangerously hurt and wounded" Meakin who was now "in danger of death". Meakin died a further two days afterwards. Benison confessed to having inflicted the mortal wounds, and was duly convicted of manslaughter and branded.[48]

The lethal weapons in manslaughter cases suggest too that many of the incidents were spontaneous. The most common implements were those which men carried or used in the course of their daily occasions: agricultural tools such as pitchforks, shovels, and various types of staff.[49] The few which do not fit this pattern nevertheless suggest that the killings were not intended, let alone premeditated. For instance, although John Lowe's weapon was a sword, Stephen Fullilove's injuries were not apparently severe and he did not die until a fortnight after they had fought. Moreover, they had clashed in the day-time in the market street in Macclesfield where the fracas could be witnessed by many passers-by.[50]

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[47] This seems to have been the most common basis of felonious killing from the thirteenth to the eighteenth century. Baker, Introduction To Legal History, p. 601; Beattie, Crime and the Courts, pp. 79-80; Cockburn, 'The Nature and Incidence of Crime', p. 57; Ted Robert Gurr, 'Historical Trends', p.306; Sharpe, Essex, pp. 128, 131, 133; Sharpe, 'Domestic Homicide in Early Modern England', p. 34.

[48] PRO CHES 21/3, f. 179v., 180r.; PRO CHES 24/119-4, Coroner's Inquisition Indictment, Recognizance.

[49] See also Cockburn, 'The Nature and Incidence of Crime', p. 57; Gurr, 'Historical Trends', p. 306; Sharpe, Essex, pp. 128-29.

[50] PRO CHES 21/3, ff. 108v., 111r.; PRO CHES 24/117 3, Indictment, Coroner's Inquisition Indictment, Jury Return, Recognizance. Only in two other cases which resulted in branding for manslaughter were arms used. In 1590, John Blackwall, a tailor from Sandbach, used a sword: PRO CHES 21/3, ff. 42r., 43v.; PRO CHES 24/115-3, Indictment, Coroner's Inquisition Indictment, Jury Return. At the sessions held in 1661, William Langley was prosecuted for killing a man styled as gentleman with a halbard: PRO CHES 21/4, ff. 418r., 419r.; PRO CHES 24/133-1, Coroner's Inquisition Indictment, Indictment, Jury Return. Cases in which the alleged murder weapon was "a knife" were of course ambiguous. The latin cultellus on an indictment might signify anyting from an arming dagger to a mundane utensil. Thus we we might place the butcher William Savage in this category too: the knife he used may have been a butcher's knife, but could certainly have been a formidable weapon. Nevertheless, Savage was the only man granted his clergy on a charge of manslaughter who was said to have wielded a knife. See below, pp. 125, 126.

The length of time which passed between the actual assault and the death also appears to have been pertinent. The longer a victim languished, perhaps becoming dangerously ill only after his wounds became infected, the less murderous intent and liability for the death might be found on the part of the assailant. On April 15 1661, Robert Garstyd assaulted a Lancashire tinker, James Stevenson, with a pitchfork, who died a month later.[51] As in so many cases, Garstyd's motive is elusive: we simply are not told what the tinker might have been doing to provoke such an assault. But whatever the case, the injury had allegedly not been the direct or immediate cause of death. Garstyd was branded as a manslayer.

It was evidently understood that deaths which were produced from behaviour of this type were not so heinous that the culprit should be executed. Social order was disturbed, but not undermined by morally ambiguous violence such as that between equals.[52] In fact, such was the expectation that non-capital punishment was the most likely outcome, that some prosecutions might have taken the form of fictional depictions of death by stabbing in attempts to see the killer hanged. The indictment which was filed by James Ratcliffe's relatives after he had been killed by Thomas Webster alleges that he stabbed Ratcliffe. However, at the Coroner's Inquest it was deduced that Ratcliffe had met his death

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[51] PRO CHES 21/4 f. 416v.; PRO CHES 24/133-1, Indictment, Recognizance. Thirty-two of the thirty-eight victims had languished for a period of at least a few days or at most several months after the assault. A prolonged period of supposed languishment also increased the likelihood of the coroner finding that the death had been caused by a "visitation of God", which in turn corresponded to either the grand jury throwing out the bill of indictment or the petty jury acquitting the defendant. For example, see: PRO CHES 21/3 f. 111r., PRO CHES 24 117-3, Coroner's Inquisition, Indictment, Recognizance [Randle Smallwood - three months]; PRO CHES 21/5, ff. 4r., 5v.; PRO CHES 24/134-1, Indictment, Coroner's Inquisition Indictment, Jury Return [Richard Gesling - fifteen days]. Smallwood's case was further strengthened by the fact that the father of the languishing John Jackson had not sought to have Smallwood bound to appear in the event of Jackson's death until two and a half months after the fight had allegedly taken place. Although Gesling's victim died a fortnight after the assault had occurred, he had not used any weapon, and the allegedly lethal blows had been caused by him striking Henry Heywood "on the head, chest and secret members, bruising them".

[52] See also Hanawalt, Crime and Conflict, p. 61; Maddern, Violence and Social Order, p. 126; Sharpe, Essex, p. 128. Moreover, it was extremely rare for victims' families to be involved in further legal wranglings with convicted men who had been branded for manslaughter. This may suggest that the punishment was seen as just. For an exception, see PRO CHES 24/104-2, Petition of George Denis. Thomas Gibbons was branded and discharged after killing George Denis's son. Denis wished to have him continued bound to his good behaviour, and based his description of Gibbon's actions towards him on the prerequisites of murder: ambush, stealth, and malice aforethought. Other exceptions may be found in the cases of Richard Pattrick and William Savage, discussed below, p. 125, 126.

not by being stabbed but by being assaulted with a stake. The petty jury thus convicted Webster for manslaughter and he was branded. The widow of James Stevenson had originally claimed that Robert Garstyd had killed her husband by stabbing him in the right eye; by the time she came to prosecute the indictment his death had apparently been caused by a blow to the head with a pitchfork. The altered story might have been due to her fear that Garstyd would be acquitted rather than hanged for stabbing a tinker; or perhaps her original tale was a fiction inspired by a desire for revenge.[53]

It appears that there was little disagreement between trial jurors and judges in their interpretation of the law *vis-a-vis* homicide. The same might be said of grand jurors. Societal and legal attitudes towards violence seem to have dovetailed in the courtroom in a largely unproblematic way.[54] On only eight indictments did grand jurors alter the charge to a lesser one. Decisions taken by grand jurors to dismiss or alter charges against a suspect was always multifaceted; as Herrup says, "each case was unique, each aggrieved victim approached his situation differently, each panel of grand jurors provided a particular combination of education, values, sympathy and disapproval".[55] Given the fluidity with which liability was ascribed, and given the fact that the defendant's demeanor and reputation were instrumental in judicial decision-making, it is hardly surprising to find that patronage played some part in reaching verdicts and sentences. Moreover, given the unequal nature of early modern society, in character testimony the word of a man of property carried the greatest weight.[56]

In two cases where grand jurors found bills of indictment for murder true only of manslaughter the defendants appear to have had influential friends. Richard Pattrick was an under-sheriff to Sir Robert Cholmondley, and apparently

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[53] PRO CHES 21/3, ff. 41v., 43r.; PRO CHES 24/115-3, Indictment, Coroner's Inquisition Indictment.

[54] See below, p. 168.

[55] Herrup, Common Peace, pp. 110-11.

[56] Hay, 'Property, Authority and the Criminal Law', p. 42.

was released from prison in order to continue his duties. The petition which requests his release refers to business which he was to attend to in London at the Westminster Exchequer Court, and various other matters of urgent business. At this distance, we cannot discover what the jury believed his intent to be. Nevertheless, the facts of the case as given on the indictment and coroner's report - his victim died a good three weeks after the event, the lethal weapon was a stave, which Pattrick would have legitimately carried, and it is not beyond the bounds of possibility that the assault occurred while Pattrick was carrying out his duties as under-sheriff[57] - suggests that the charge may have been reduced on the merits of the case and not as a result of patronage. Furthermore, quarter sessions juries evidently had no difficulty in returning true bills against him for a variety of other offences, and James Whitelocke, the chief justice, refused to release Pattrick from his bond to be of good behaviour until five years later.[58]

The appropriately named William Savage, a Nantwich butcher, was likewise indicted in 1622 for felonious killing upon a charge of murder. According to law, he might have been denied clergy: he had stabbed Richard Blythe in the chest causing immediate death. He also had a history of violence. In 1619 he was prosecuted for assault after stabbing and wounding a man. Yet Savage was indicted not for murder but for manslaughter, and was allowed his clergy in spite of not only stabbing his victim, but stabbing him in the chest. Although Savage himself was allegedly of "poor estate and ability", his friends were apparently able to offer far greater satisfaction to his victim's family than he "could in any way afford". Moreover, a subsequent petition in his favour was signed by the steward of Nantwich, two constables and a bailiff. This did not, however, protect Savage from being presented for a drunkard - he paid his five shilling fine in 1624. Nor did it stop the bench from ordering him to reconcile himself with the parents of the young man he had killed, or from keeping him

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[57] If this were true, he would by law be liable only to a charge of felonious killing.

[58] PRO CHES 21/3, ff. 68r., 71v., 105v, 109v.; PRO CHES 24/116-3, Indictment, Coroner's Inquisition Indictment; PRO CHES 24/116-4, Letter, Petition; PRO CHES 24/117-2, Warrant. For the other offences, see QJB 2/5, f. 28v.; QJF 51/3-10, Indictment; PRO CHES 21/3, f. 180v.; PRO CHES 24/119-4, Presentment.

bound until 1627.[59] Venality and patronage were not indicative of an especially corrupt system, but as with any legal system in a society founded on property and privilege, having "friends" in positions of institutional authority could be advantageous. It should be noted, though, that evidence of this is rare.[60]

In other cases where grand juries altered charges from murder to manslaughter, notions of social order were prevalent in rather different ways. John Madder was initially accused of murdering his wife, but his charge was reduced to felonious killing and he subsequently claimed clergy and was branded. The matter of intent was presumably crucial here. Ellen Madder was killed in a brutal manner. Her husband had held a hatchet in both hands; the blow which she received caused a mortal wound to her head, from which she died immediately. One can conjecture that his using both hands is significant. It suggests that he did indeed intend to administer a hard blow. But we are not told whether he struck her with the sharp or the blunt end of the hatchet, only that the inflicted wound was one inch deep. This may suggest that brutal force and thus perhaps murderous intent was wanting, yet a blow to the front of the head could have broken her skull without penetrating more deeply. The depth of the wound was therefore not necessarily in Madder's favour. However, perhaps most important of all, we do not know the context of the case. Madder may have had character witnesses who testified to his healthy relations with his wife. On the other hand, it might have been that Ellen Madder was considered to be a most difficult woman who had given her husband much provocation.[61] Moreover, the ambiguity which surrounded the extent of lawful correction may have confused

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[59] PRO CHES 21/3, ff. 67r., 68r., 72r., 107r., 109v.; PRO CHES 24/116-3, Indictment, Coroner's Inquisition Indictment, Petition of Margaret Savage, Recognizance; PRO CHES 24/116-4, Petition.

[60] Sharpe found only one case in seventeenth-century Essex in which the help of influential friends was procured. Essex, p. 125.

[61] PRO CHES 24/105-4, Indictment, Jury Return. There were only two other men brought before the courts on suspicion of having killed their wives. In 1593 the coroner's inquest jury found that Margaret Eaton had died of "a certen sickness", despite the fact that neighbours or relatives might have had reason to report the death as suspicious: PRO CHES 21/1, ff. 169r., 171r. [Raphe Eaton]. Francis Adshead was presented in 1661 for having murdered his wife by putting poison "in her pot". As this was alleged to have occurred eight years previously, it was hardly surprising that the case went no further: PRO CHES 24/133-1, Presentment.

the issue still further.[62] Without a great deal more detailed information it is impossible to do more than speculate about Madder's intention and motivation.

Nevertheless, if premeditation was believed to have been absent, if Ellen Madder had offered what was considered a degree of provocation, and if the incident had developed out of a fight between the couple, then perhaps Madder was legitimately seen as not deserving capital punishment. Yet in many ways, a fight which ensued between man and wife was not comparable to those which developed between adult men. There was a tension within the concept of righteous violence. On the one hand, it was predicated upon notions of parity, equality and honour. On the other, it was based upon hierarchical values which included the infliction of violence in correction. In John Madder's case, as in other cases where men were accused of killing their wives, the two sit together uneasily.

In general, both grand and petty jurors appear to have made distinctions between motive and intent. The popular conception of motive was, of course, more appropriate to truly premeditated murders, and not to the sort of reactive, unplanned assaults which result in the majority of deaths. Such assaults have sometimes been discussed in a way which suggests that they were sudden outbursts arising from little more than the high tempers and lack of self-control thought to be characteristic of the inhabitants of early modern Europe.[63] However, this seems somewhat glib. It is not anachronistic to point out that, until recently, many criminologists were guilty of similar characterizations of male violence. If people in sixteenth- and seventeenth-century Cheshire were more prone to such behaviour, it might have been as much the result of the material

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[62] This is also discussed in chapter 2, above. Babington, Advice to Grand Jurors, pp. 178-9; Sharpe, 'Domestic Homicide', passim; cf. Beattie, Crime and the Courts, p. 86, 105-6, n. 78, and below, pp. 140-145.

[63] For instance, see Leslie Clarkson, Death, Disease and Famine in Pre-Industrial England (London, 1975), pp. 114-15; Peter Hoffer and N.E.H. Hull, Murdering Mothers: Infanticide in England and New England, 1558-1803, (New York and London, 1981), p. 133; G.R. Quaife, Wanton Wenches and Wayward Wives (London, 1979), p. 25; Sharpe, Essex, pp. 125, 132, 133, cf. pp. 137-8; Lawrence Stone, Family, Sex and Marriage in England, 1500-1800 (London, 1977), pp. 93-5, 98-9; Lawrence Stone, Crisis of the Aristocracy (Oxford, 1965), pp. 97, 108.

contexts of their lives as it was their disorderly temperaments. Violence arose out of jealousy, from conflicts within families, from economic rivalry or disputes over property, and from arguments between friends, acquaintances and neighbours. We should remember that violence (except in a few atypical cases) "arises from conflicts *about something*, difficult though it may be to pinpoint exactly what, and notwithstanding the fact that the bones of contention may be multiple".[64]

The original tripartite distinction between culpable killing which was capital, excusable killing which was pardonable, and justifiable killing which deserved acquittal clearly continued to be drawn upon in convicting and sentencing men in early modern England.[65] By the later sixteenth and early seventeenth centuries it was extremely difficult to separate the concepts of justifiable and excusable killing. There is often little in the recorded information to indicate why one man was found guilty of killing in self-defence and was pardoned, whilst another was found guilty of excusable homicide and branded, and whilst yet another was hanged for culpable homicide. But where details have survived, the conceptual boundaries which encompassed relative degrees of culpability and punishment are apparent in the framing of evidence.

Nine men accused of homicide were pardoned on convictions of having killed in self-defence.[66] We do not know how many of these were what we might call cases of true self-defence. But just as has been found for the fourteenth and early fifteenth centuries, coroners' inquest juries and witnesses appear to have

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[64] Daly and Wilson, Homicide, pp. 173-5, quotation at p. 174; Beattie, Crime and the Courts, p. 102; Hanawalt, Crime and Conflict, pp. 171-72; Hanawalt, 'Female Felon', p. 260. For the contexts of violence in early modern Cheshire, see chapter two, above, passim; T.C. Curtis, 'Quarter Sessions Appearances', pp. 135-54.

[65] Babington, Advice to Grand Jurors, sig. B4, pp. 35-6; Green, 'Societal Concepts', p. 669.

[66] Eight in the 1590s; one in 1624: PRO CHES 21/1, ff. 155v., 156r., 159r., 166v., 169r., 171r., 177r., 178v., 180r., 181v. [Humphrey Reade, Humphrey Key, Richard Vaudrey, Robert Hoapye, John Cotton, John Persivall]; PRO CHES 21/3, f. 99v. [Thomas Bratchgirdle]. The cases of the other two men, William Hulme and Lawrence Wright will be discussed below, pp. 129-133. On pardons generally, see Cockburn, Introduction, ch. ix, sects. ii & vi, esp. pp. 126-8; Green, Verdict According to Conscience, pp. 145-6.

believed that homicide was often excusable. It was accepted that the concept of self-defence as excusable homicide rested upon the maxim that mental guilt was a necessary prerequisite of criminal punishment: *reum non facit nisi mens rea.* Before the judicial distinction between murder and manslaughter finally emerged, verdicts had often been returned *se defendendo* upon evidence of the deceased's intentions rather than the defendant's mortal danger. This was so even in cases where the dead man had apparently been unarmed. It appears that such notions of liability continued to influence verdicts into the later sixteenth century at least.[67]

Some of these cases may well have been fictional constructions. William Hulme's explanation of how he had killed Raphe Wirral appears to have been moulded according to the traditional prerequisites for a plea of self-defence. Hulme claimed that Wirral had threatened to kill him, thereby suggesting that Wirral's intent was murderous. Hulme also said that it was Wirral who had assaulted him, striking the first blow, which again implied that provocation was the fault of Wirral. Moreover, Hulme said that Wirral had allegedly broken Hulme's hand with a bill, again in accordance with the notion that, in order for a verdict of self-defence to be returned, the slayer ought to have been gravely wounded by his assailant. And, he ought to have made every possible attempt to escape his attacker. It was only after the deceased had cornered him, or thrown him to the ground, and been on the point of taking his life that the slayer was permitted to have retaliated out of literally vital necessity. Hulme had presented a variation of this theme in saying that after his hand was broken, he fled back from Wirral, being afraid that he would be killed if he had turned his back. This, too, suggests Wirral's wrongful intent, and Hulme's relative helplessness: Wirral's intent allegedly prevented any efficient attempt to flee on Hulme's

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[67] Baker, Introduction to Legal History, p. 597; Beattie, Crime and the Courts, p. 87; Green, 'Societal Concepts', pp. 677-78; Green, Verdict According to Conscience, pp. 122-3; Sharpe, Essex, p. 125. Sharpe found only four verdicts of self-defence in his study of 261 male homicides in seventeenth-century Essex. For narratives of excusable violence in sixteenth-century France, see Natalie Zemon Davis, Fiction in the Archives (Oxford, 1987), ch. 2.

part.[68]

Such tales rest in part upon a conceptual inversion. Wirral's breach of the concept of righteous violence and fair play was to elevate the "just" behaviour of Hulme. William Hulme thus constructed a story which firmly placed culpability for the death with the deceased man. His point - that blame should not be attributed to him - was exaggerated by his claim that he had not in fact killed Wirral. Rather, the unfortunate and violent Wirral had himself run upon the pike which Hulme was holding in self-defence![69] In tales such as this, the "just desert" had already come to the deceased; it could not therefore be dealt out to the slayer. Theoretically, it is this that separates verdicts of excusable self-defence from those of simple felonious killing in which the parties might be held equally culpable. In cases of the latter type, the defendant was most likely to have been branded, as we have seen. There was a pattern of logic which rested upon contemporary norms of conduct behind verdicts of *se defendendo* upon which defendants were subsequently pardoned.

In 1595 Lawrence Wright killed one James Orton in what, according to a witness, Arthur Dudley, appears to have been a duel. Orton had sent Wright a letter, after which the two men had conferred together privately, before meeting in Walker Ley Wood where "they were redy to fight together".

> [But] Orton said that his dagger was nought, and therefore in stede of his dagger he would use a Crabtree Cuggle which he had then in his handes, but Wright said that...he would not fight with him unless he would take rapiere and dagger, and thereupon they agreed to Cutt the said Cuggle the just length of Wright's dagger. And thereupon Orton did hurle the said cuggle to this examinate [Dudley] to have Cutt yt, which he refused to doe, and thereupon Wright did take up the Cuggle and hurled it away over the edge, and presently thereupon Orton drew his rapier and did run at Wright, who then having his rapier at his syde did geve backe and drew his Rapier; and so they thrust at each other four or five times at which time Wright did thrust Orton into the brest with his Rapier, and then

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[68] PRO CHES 21/3, ff. 166v., 167v.; PRO CHES 24/103-3, Coroner's Inquisition Indictment, Recognizance, Examination.

[69] PRO CHES 21/1, ff. 166v, 168r.; PRO CHES 24/103-3, Examination of William Hulme. Green, 'Societal Concepts', p. 669.

> Wright asked Orton whether he had hurt him, and said "thou hast hurt me too", but Orton gave noe answere, but after as he was going away fainted, and fell downe and after dyed.

The jury returned a verdict of "not guilty of homicide but self-defence and that Orton did assault him in the foote way with an intent to have murdered him". The jury at the coroner's inquest likewise found that Orton intended to murder and draw blood on Wright on a footpath, and that Wright had killed in self-defence. But Wright's part in this was surely ambiguous. The case fits into the self-defence category only spuriously. Wright was apparently hurt, if he had not fought back he might indeed have been killed, and Orton struck the first blow. Yet Wright did not attempt to escape Orton. He stayed and agreed to fight. Both juries appear to have accepted that killing a man during a duel was excusable and was therefore open to re-interpretation as killing in self-defence. But the legitimation may not have been as simple as this would at first suggest.

We are brought back to the murky subject of intent. It is partly upon this that the verdict of self-defence appears to have been passed. Whilst Orton's intent is never made explicit, his actions are shrouded within a context of stealth, secrecy, and premeditation. Part of this is seen in the particularity with which Dudley described the dates and times of the events. On Wednesday 27 August, he entreated Dudley "to do a thinge for him and to keep it secrete". It was not till two days later, at two o'clock in the afternoon that he sent for Dudley again. Nor did he immediately acquaint Dudley with the nature of his intent; he did so only "after longe Conference...betwene them". Dudley, no doubt to ensure his own expurgation from any charge of being accessory to the fact, maintained that he had replied that "he would doe for him any thinge lawfull and reasonable that he Could". The task was indeed lawful: he had to do "noe more than to deliver a letter" to Wright, and after Wright had read it he was to return it to Orton. He made it clear that he did not know beforehand that this was to be his errand, and that he was at no time aware of the letter's contents. Moreover, he promised to do so "at the importunate suyte of...Orton". Orton's intent was again juxtaposed against Dudley's ignorance. Moreover, Orton's alleged importunity implied

considered intent on two counts: most obviously he was persistent and pertinacious in his desire that the letter should be delivered; yet he was also inopportune and untimely in his desire itself. Thus Dudley's preoccupation with time is again turned to Orton's disadvantage within the narrative.[70]

But part of the justification for such a verdict of self-defence lies also within the notional boundaries of male honour. Duelling has been discussed by historians as an elite foible. Formal challenges, disciplined violence, and the skill and expertise of fencing were part and parcel of "gentlemanlike adventure", the practice of which was associated with an aristocratic and "polite" code of honour.[71] But duelling was also connected to lawlessness. The legal scholar, John Selden, wrote that because "truth, honour, freedom, and courtesy, being incidents to perfect chivalry, upon the lie given, fame impeached, body wronged or courtesy taxed" men might seek redress or revenge "without judicial lists appointed them". Sir Francis Bacon, when Attorney General, went further in describing duelling as "that evil which seems unbridled", an affront to the law, and a false code of honour, "a kind of satanical illusion and apparition of honour".[72] The notions of honour which were formalized within the logic of the duel were not, however, confined to the elite, whatever monopoly they may have had on its practice. Nor were they inconsistent with the operation of the law, whatever the stance of some legal commentators.[73]

But notions of honour were ubiquitous as a framework for narratives of

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[70] PRO CHES 21/1, ff. 180v., 181v.; PRO CHES 24/104-2, Coroner's Inquisition Indictment, Jury Return, Deposition of Arthur Dudley.

[71] D.M. Loades, Politics and the Nation (London, 4th edn., 1992), p. 323; Lawrence Stone, Crisis of the Aristocracy, pp. 242-50.

[72] John Selden, The Duello, ch.4, Opera Omnia, vol.3, cited in Arthur B. Ferguson, The Chivalric Tradition in Renaissance England (Cranbury, New Jersey, 1986). p. 144; Francis Bacon, Charge Touching Duels, in James Spedding (ed), The Letters and Life of Francis Bacon (London, 1868-90), Vol. 4, pp. 399, 409.

[73] For the eighteenth-century see, Donna Andrew, 'The Code of Honour and its Critics: The Opposition to Duelling in England, 1700-1850', Social History 5 (1980), pp. 412-13; Babington, Advice to Grand Jurors, sigs. A8-A9; Beattie, Crime and the Courts, pp. 97-8.

male violence.[74] A code of honour explicitly informed Dudley's narrative. Dudley originally reported that when Orton said that he would use his cudgel instead of his dagger, Wright had replied that the cudgel "was too long and he would not fight with him unless he would take rapiere and dagger". It was then that the two men agreed instead to cut the cudgel. Dudley, however, retracted this remark. In his sworn testimony he implied that Wright would not fight unless the "rules" were kept - that they each have dagger and rapier. It was Orton's persistence to the contrary that provoked Wright to discard the cudgel. The notion of equality is important here. Wright apparently did not take advantage of Orton: he did not wish to fight with unequal weapons; he matched Orton's rapier with his own; nor did he strike Orton once he had wounded him. Thus the concept of righteous violence had not been breached by Wright. Dudley also ensured that his own honour was not called into question; he became involved in what seemed to be a harmless, lawful endeavour because Orton had made him promise to do so. To break his word would have been dishonourable. And although he secretly followed the men to the appointed meeting, he refused to become involved in the proceedings.[75] The practical application of the legal category of self-defence seems to have been dependent upon distinct but flexible abstractions of provocation, intent, and honour.

So it was that the coroner's inquest jury might return a verdict of self-defence which might be endorsed by the trial jury even when the evidence presented did not meet the precise legal requirements. The very nature of concepts of righteous violence means that we must not interpret it as an easy option for jurors who merely desired to save a guilty man from the gallows. Ascribed culpability, as we have seen, was determined by the perceived gravity of the act, which in turn was deduced from many factors, not least the context

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[74] James Orton appears to have been a schoolmaster. Although neither Lawrence Wright nor Arthur Dudley are given occupational or social ascriptions, they may both have been young men. Dudley was 19 years old, and Wright is referred to in the court book as Lawrence Wright, junior.

[75] PRO CHES 21/1, ff. 178v, 181v; PRO CHES 24/104-2, Jury Return, Examination of Arthur Dudley. There is no record in the court book of Wright's pardon; it is merely noted that he was discharged after being found not guilty of felonious killing but guilty of killing in self-defence.

and apparent intent of the parties involved. There were occasions when coroners' juries found the defendant pardonable on the grounds of self-defence whilst the corresponding petty jury found him pardonable on other grounds. William Cash, for instance, was found guilty of killing in self-defence at the coroner's inquest in 1591. The petty jury decided that the death had been one of misfortune. In Cash's case, it does appear that the jury's verdict was a closer reflection of the reported facts. The coroner had stated that the death was caused by Cash shooting a bow. Although he had apparently shot one Roger Cash at some distance - "two longe buttes" which was twice the distance used in target practice - Cash's presumed intent is ambiguous. If the arrow was shot in self-defence, one might suppose that he was aiming for Roger. On the other hand, perhaps he had just intended a warning shot. The distance between slayer and victim, however, does not bode well for a plea of self-defence, and does sit more easily with the verdict of accidental death. One would have to be an extremely competent archer to have killed a man purposefully at that distance.[76]

The shifting nature of the boundaries which separated excusable homicide from the inexcusable is clearly seen in cases like that of William Boulton who killed his master's son, the four year old Thomas Norcott. Thomas's father filed an indictment for murder, which the grand jury altered to manslaughter. The coroner, however, originally stated that the death was caused "by misfortune", but his jury also found the cause of death to be manslaughter. According to the coroner, Boulton accidentally wounded Thomas with a pitchfork while he was working one morning, and the child died the following day.[77] It is interesting that both the grand and coroner's juries decided upon felonious killing. Even an accidental death which suggested no intent on the part of the slayer might not exculpate the latter from all liability if the accident was thought to have been imprudent and careless.[78] Boulton was branded for causing Thomas Norcott's

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[76] PRO CHES 21/3, ff. 155v, 159r; PRO CHES 24/102-4, Indictment, Coroner's Inquisition Indictment.

[77] PRO CHES 21/3, f. 43r.; PRO CHES 24/115-3, Indictment, Coroner's Inquisition Indictment.

[78] Beattie found this was so in the eighteenth century too: Crime and the Courts, pp. 97, 86.

death. However, in the majority of cases in which verdicts of misfortune were found the defendants were pardoned.[79]

There are very few incidents for which juries returned verdicts of accidental death. This may suggest that where they do exist such verdicts are representative of a perceived truth. Along with the aforementioned William Cash, only four other men were pardoned as principals on account of misadventure. Three clothmakers, Robert Hurst, Joseph Campenet and Thomas Higham, a servant to Robert's father, were all working around a handmill in 1661 when Robert's nine year old brother Joseph was killed. Young Joseph apparently slipped and fell under the handle of the wheel as it was turning "which with speedy and rigorous motion came round and struck, crushed and wounded...his head and face". He died in his father's house the next day. Robert Hurst was held responsible for the accident and was therefore found guilty of killing by misfortune; his fellows were likewise found guilty as accessories. All three were subsequently pardoned.[80] In 1665, the same verdict was found against Richard Banner. Banner apparently missed the target he aimed at with his bow, and sent the arrow straight into the eye of an eleven year old boy who was watching him practice.[81]

In another case, also in the 1660s, Jonathon Downes rode his horse at high speed, "like a madman", and knocked over Eleanor Smeathers just after she had left Tarpurley church with other churchgoers. His horse trampled her underfoot and she died later that day from head injuries.[82] Henry Piggot was

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79 Green, Verdict According to Conscience, pp. 123-24.

80 PRO CHES 21/4, ff. 417v., 423v.; PRO CHES 21/5, ff. 3r., 11r.; CHES 24/133-1, Coroner's Inquisition Indictment, Indictment.

81 CHES 24/135-2, Coroner's Inquisition Indictment, Indictment.

82 The coroner's inquest jury found a case to be made for homicide by misfortune, but the indictment was initially found ignoramus by the grand jury. However, another indictment was filed at the next Great Sessions, this time the indictment stating that he rode like a madman on his horse, and "on account of his lunacy" he rode into Elinor Smeathers. The grand jury found the second bill true; Downes was found guilty of killing by misfortune and was later pardoned. PRO CHES 21/4, ff. 416v., 419r.; PRO CHES 21/5, ff. 3r., 11r.; PRO CHES 24/133-1, Indictment, Coroner's Inquisition Indictment, Recognizance; PRO CHES 24/133-2, Indictment. Only one case exists in which a genuine insanity plea

likewise found guilty of "improvidently and by accident" killing a woman in 1628. At nine o'clock in the evening of 12 March, Mary Ratcliffe happened to be in the dark porch of the house of William Brereton of Ashley, Esquire. Piggot was going out of the house and they "unexpectedly" ran into each other. During the collision the knife which Piggot was holding wounded her in the shoulder, causing a wound four inches deep from which Ratcliffe instantly died. There is unfortunately no information in the court files which sheds light on such questions as what Ratcliffe was doing in the dark porch, or why Piggot was dashing through with a drawn knife.[83]

It may be revealing that in four of these five cases, the victims were either children or women.[84] In such circumstances verdicts of self-defence were obviously inappropriate. Nor was the more common verdict of simple manslaughter suitable, given the fact that the vast majority of cases which were thus resolved arose from quarrels and physical fights between men. Questions of honour which helped to mould assumptions about liability were very different when applied to women and children. In fact, they operated on an entirely

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mitigated a homicide. John Bradford, being temporarily non compos mentis, attacked the widow Margaret Strethern with a knife, cutting her throat and giving her diverse other wounds, but was not put on trial. Instead it was ordered that he be referred to the custody of another man "to be kept safe from doing any unhappiness for the future of the like nature". Although the keeper was paid £8 a year by Bradford and his wife, he appears to have been somewhat lax in his role as custodian. Bradford's wife petitioned to have her husband put in the care and custody of two local Justices of the Peace instead. PRO CHES 21/4, ff. 416v., 423r.; PRO CHES 24/133-1, Coroner's Inquisition Indictment, Indictment; PRO CHES 24/134-2, Petition, Letter, Order. On the rarity of the insanity plea in the early modern period see Beattie, Crime and the Courts, pp. 82-5.

[83] PRO CHES 21/3, ff. 174^{a}r., 174^{b}r.; PRO CHES 24/119-3, Coroner's Inquisition Indictment, Recognizance.

[84] The fifth, Roger Cash, may well have been a young boy too of course. Children were the victims in three of four additional cases where a charge of accidental death was made by the coroner. Richard Gregory, a taylor, was supposedly "full of drink" at 9 o'clock in the morning, and accidentally dropped a pair of shears onto the head of his eighteen month old daughter. The grand jury returned the indictment ignoramus. PRO CHES 21/5, f. 61r.; PRO CHES 24/135-5, Coroner's Inquisition Indictment. In 1663, John Netles, a boy young enough to be "playing with a loaded pistol", shot his fifteen year old sister Ellen in the belly. The coroner's jury said that the shooting was "not malicious nor voluntary but by accident"; but he was indicted by the grand jury only to be acquitted at the trial. PRO CHES 24/135-1, Coroner's Inquisition Indictment, Indictment, Jury Return. See also the case of William Boulton, avove p. 134. The coroner's inquest jury also found that the death of Thomas Vickers, who was shot in the breast on 20 February 1661 was caused by misfortune: a soldier "being on horseback, and having a loaded pistol in his hand laden with powder and bullet, the pistol misfortunately and casually did discharge itself". An indictment was not filed against the soldier, Philip Hurry who was not required to appear at the sessions. PRO CHES 21/5, f. 423v.; PRO CHES 24/133-1, Coroner's Inquisition Indictment, Recognizance.

different basis. Concepts of righteous or wrongful violence became complicated when women and children were the victims of male violence outside the household. Although they may well have been genuine accidents, deaths like Mary Ratcliffe's may also have been classified as misadventures because there was not a social or legal language with which to categorize them in the absence of malice aforethought. If murderous intent was found wanting in homicides where both slayer and victim were male, a language nevertheless existed which could frame the incident within classes of more or less liability. This language depended upon conceptualizations of excusable or justifiable violence which were thoroughly masculine.

Culpability in homicide was, then, mitigated by notions of justifiable or excusable killing. The most widely accepted of such notions was that of self-defence, and appears to have remained so even after judicial practice no longer explicitly endorsed it. Violence in retaliation was not usually seen as "bad" violence. But attacks on one's honour, or the adultery of one's wife might also be considered "just" provocation for some sort of retaliatory violence.[85] A man's reputation, after all, rested in part upon the maintenance of a credible threat of violence.[86] The legal language and formulae of homicide provided a range of prejorative phrases and concepts which were "encorporated into everyday discourse with telling effect",[87] yet they were not universal. Constructions of unacceptable and acceptable violence were not merely gauged by their relationship to mutable notions of social order; they were also distinctly gendered constructs. The fact that a higher proportion of male defendants received pardons, and that virtually all manslaughter verdicts were found by juries in cases where men had killed other men, are cases in point.[88] J.M. Beattie sensibly attributes the predominance of male defendants in manslaughter verdicts to the fact that men

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[85] Beattie, Crime and the Courts, p. 95; Daly and Wilson, Homicide, p. 257.

[86] Daly and Wilson, Homicide, pp. 257, 176-77, 128.

[87] Maddern, Violence and Social Order, pp. 89-91.

[88] By the same token, women were almost never the victims in homicides defined as manslaughter. See also, Herrup, Common Peace, pp. 154, 155, and table 6.5.

were "much more likely than women to be in taverns, to drink too much, to think their courage slighted, and to feel compelled to give and accept challenges to fight". But he is mistaken when he states that this "simply reflects differences in patterns of life" of men and women.[89] It reflects far more than that. The assumption that women had a "narrower range of...social contacts" is itself largely a reflection of male-biased sources, and needs to be seriously challenged.[90] Moreover, the vocabulary and thereby the very concept of righteous violence was masculine. Indeed, one scholar has directly linked it to the language of chivalry: manly, rightful, worthy, fierce, courageous, and so on.[91] The unifying theme was one of honour - male honour. Women's honour was imagined entirely differently, and was in no way congruent with notions of acceptable female violence.[92] Models of acceptable violence were virtually nonexistent for women. It was, therefore, not only difficult for women to justify their own violence, but in the absence of a social or legal language of righteous feminine violence, the law in practice could not operate similarly for both sexes.

Female Felons: Verdicts and Sentences

It has been maintained that women and men received differential treatment before the courts. This has been explained in two main ways. Firstly, adherents to the view that in theory the law offered roughly equal treatment to both sexes, with the exceptions of eligibility for the benefits of belly and clergy and death by burning for women who killed their husbands, argue that differential treatment to men and women can be explained by a lenient or chivalric tendency of the

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89 Beattie, Crime and the Courts, p. 97. Beattie's assertion that women are unlikely to drink in alehouses may need to be modified with subsequent research. The Cheshire evidence suggests that many women had a hearty enjoyment of both the ale and company to be found in alehouses, and did indeed become involved in fights as a result.

90 Beattie, 'Criminality of Women', p. 84. For evidence of a wider range of social contact for women, see below, pp. 204-15; Laura Gowing 'Women, Sex and Honour: the London Church Courts, 1572-1640', unpublished PhD thesis, University of London, 1993, passim.

91 Maddern, Violence and Social Order, p. 89.

92 On female honour, see Gowing 'Women, Sex and Honour', passim.

judiciary towards female offenders.[93] Secondly, adherents to the view that the law did not provide a comparable means of mitigating the sentences of men and women argue that women often received lenient treatment because, in the absence of benefit of clergy, they could not be punished upon convictions of homicide except by death.[94] Thus, the interpretation of both schools rests upon the premise that women were treated more leniently than men.

The first of these views is questionable, as the very exceptions to the rule indubitably undermine it. The second view is also problematic. It only tacitly hints at the core of what is in fact its strongest evidence: the theoretical and ideological basis of the law of homicide was itself geared to male offenders. Furthermore, such an interpretation fails to consider adequately the different types of homicide of which men and women were commonly accused. Yet if one considers this, as we shall see, women cannot be seen to have received peculiarly lenient or preferential treatment. Rather, women's homicides were dealt with according to the wider notions of culpability in violence that we have seen was so for male homicides. In addition to the two views outlined above, there is a third view of women's involvement in the criminal justice system which stresses the latter's supposed misogynistic nature. This has gained credence outside social history, largely with reference to witchcraft prosecutions in the realm of women's studies.[95] It will be argued here that the practical application of the law of homicide precluded the comparable treatment of male and female offenders. To frame an interpretation within the parameters of notions of either overt clemency or misogyny is to misrepresent both the nature of the criminal justice system and the treatment of women within it.

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[93] Barbara Hanawalt, for instance, claims that "male jurors and judges obviously held some beliefs about the essentially gentle nature of women which inhibited them in indicting women and especially in sending them to the gallows". In fourteenth-century England, only one woman was indicted to every nine men, and only 16% of women convicted compared to 30% of men. 'Female Felon', p. 266.

[94] An example may be found in Cockburn, Introduction, pp. 114, 117, 121-23.

[95] Mary Daly, Gyn/Ecology (London, 1979, 1991 edn), pp. 178-222; Matilda Joslyn Gage, Women, Church and State (New York, 1972), p. 247. Cf. Sharpe, Crime, pp. 108, 207, n. 52.

Taking the figures of those who went to trial overall, men were found guilty proportionately more often than women.[96] But in early modern Cheshire, whilst women had a higher acquittal rate than men, proportionately more women were executed for homicide. An even greater proportion of women received the death sentence if we consider only those who were found guilty.[97] Given the small numbers of cases in the sample, if only one or two felons had received an alternative verdict the relative treatment of men and women by the courts might have looked very different. However, it is the purpose of this study to extrapolate from the particular rather than to make generalizations based upon aggregated data. For instance, that proportionately over twice as many women were acquitted as men in the 1590s could be indicative of little more than that the cases of the two women in question were based on spurious evidence, as those of the four men who were acquitted might have been. Moreover, if the seven men who were found guilty of felonious killing in self-defence and consequently pardoned are included in the comparison, then the differential in the proportion of men and women who were discharged almost disappears.[98] Yet just as we considered the nature of the homicides for which men stood trial, we must also consider the verdicts and sentences meted out to women in the contexts of the types of homicide they committed.

During the years studied here, ten women were sentenced to death, three of whom were pardoned.[99] Two of these condemned women were burnt at the

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[96] Juries returned guilty verdicts against 58 of 80 men (72.5%) and against 10 of 18 women (55.5%).

[97] See table 3.1. Of the total men and women who were tried, 23.7% (19) of the 80 men, and 44.4% (8) of the 18 women were hanged; of the total found guilty, 32.8% (19) of the 58 men and 80% (8) of the 10 women were hanged. Cf. Cockburn, Introduction, p. 121, table II. Of those tried on the home circuit, 35% of women and 41% of men were sentenced to hang.

[98] Two of the four women (50%) and four of the 19 men were acquitted (21%). If those men who received pardons on verdicts of self-defence are included, 11 of 19 men were discharged (58%).

[99] Two women were condemned in the 1590s for infanticide (one was pardoned); four women were condemned in the 1620s, one for petty treason, one for for infanticide (who was pardoned), and two for murdering relatives; four women were condemned in the 1660s, one for petty treason, and three for infanticide (of whom one was pardoned).

stake after having been found guilty of petty treason in murdering their husbands.[100] As only five women in all found themselves so accused, it is impossible to draw any statistical conclusions from the fact that two were executed. In 1626, Ellen Leene was drawn on a hurdle to the place of execution and "burnt to ashes". She was found guilty of directing one John Warton to murder her husband Thomas, which he duly did by attacking him with a cudgel from behind. Warton, as we saw earlier, was hanged for his part.[101] However, even in cases of petty treason for which evidence of guilt may have been substantial, other factors might result in the accused woman being acquitted. At the same sessions at which Ellen Leene was convicted, another woman, Elizabeth Withnail, also stood on trial for murdering her husband. Withnail was acquitted. Despite this verdict, and the fact that she had two eminent justices to vouch for her good life, conversation and carriage towards her husband while he lived, she was bailed to the next sessions "to see if further evidence can be had" against her. According to the judge she had been acquitted, not for want of proof, but because the jury was partial.[102] The absence of other conflicts between jury and judge suggests that juries were not systematically offering guilty women their freedom, at least not against the wishes of the judge. But it seems that just as there was an apparent correspondence between the perceived heiniousness of the act and the verdict and sentence received in male homicides, the same might be true of female homicides.

One factor which may have been crucial in determining the outcome of these two cases is the nature of the alleged murders. Thomas Leene had a cudgel

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[100] While heretics ceased to be burnt in 1677, the legal penalty of burning for women who had murdered their husbands continued until 1790. Spousal murder by women remained petty treason, rather than murder, until 1828. Similarly, female servants who murdered their masters were burnt, whilst their male counterparts would, like murderous husbands, be hanged. On domestic homicide, see Beattie, 'Criminality of Women', pp. 86-7; Sharpe, 'Domestic Homicide in Early Modern England', passim.

[101] PRO CHES 21/3, f. 126r.; PRO CHES 24/118-3, Indictment, Recognizance, Jury return. See above, p. 115.

[102] The court files contain a warrant "under the two judges handes that an attachment should be awarded" against the jurors for their partiality. PRO CHES 21/3, ff. 126r., 146r.; PRO CHES 24/118 3, Indictment, Petition, Certificate. This is the only case in which overt disagreement between the trial jury and the bench is evident. The testimony of Withnail's influential friends no doubt contributed to the verdict.

wound in the back of his head and it was unlikely therefore that a jury might suppose that he had died of natural causes. The husband of the other woman who was convicted of petty treason similarly died from injuries inflicted by a third party in 1667. John Liverpool had been shot, allegedly in the presence of and at the instigation of his wife Alice. He had either escaped or been left for dead, as he had died in a country lane three days after the shooting occurred, but he may have been able to inform someone of who had so wounded him just before he died. We might also assume that any turbulence within the marriage, or indeed any unseemly behaviour on the part of Alice Liverpool would have been reported to the jury. A total of 19 witnesses, eight of whom were women, testified against Alice and her associate John Boulton, the fellow who had pulled the trigger.[103]

Richard Withnail, on the other hand, had allegedly been poisoned. Poisoning was far harder to prove. Moreover, the absence of a coroner's report in Withnail's case might also have contributed to its unsuccessful prosecution, as well as her weighty character references. In 1591, Anne Williamson was likewise acquitted of poisoning her husband. Anne allegedly put arsenic in his beer, but she was supposedly in league with one Raphe Weston, whom she appears to have married shortly afterwards. With only two male witnesses to testify against them, the case might well have rested merely upon the suspicious speed of their marriage. Again, there was no coroner's inquest, which probably indicates that at the time of Williamson's death foul play was not suspected.[104] In the only other instance in which a woman appeared at the great sessions accused of petty treason, the woman Jane Marbury was not indicted. As in the previous two cases, poison was the alleged method of murder, the coroner had not viewed the body, and witnesses against her were few. Along with a relative of her deceased husband, who was bound to prosecute her, there was only one male witness.[105]

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[103] PRO CHES 21/5, ff. 59r., 61r.; PRO CHES 24/135-5, Coroner's Inquisition Indictment, Indictment, Recognizances. See also p.115 above.

[104] PRO CHES 21/3, f. 156r.; PRO CHES 24/102-4, Indictment, Recognizances.

[105] PRO CHES 21/3, f. 146v.; PRO CHES 24/118-4, Recognizance.

As regards the severity of punishment for women convicted of petty treason, two points must be made. Firstly, according to legal and societal attitudes to homicide, the death penalty itself was an appropriate penalty for an act of this kind. The characteristics of the act placed liability firmly beyond the line which demarcated non-excusable homicide from that which indicated full culpability: the presence of malice aforethought and stealth; the advantage taken of a victim who ought to have been safe within his own home; and the degree of personal treachery which was believed to have existed in such cases. When these characteristics were believed to have been present in homicides committed by men, they too were considered as deserving capital punishment. Indeed, petty treason in men (such as when a male servant murdered his master) was a non-clergyable offence.[106] The second point here, is that in spite of the first, a convicted woman did receive a sentence which was designed to cast no doubt on the fact that spousal murder by women was more heinous, more sinful, and more treacherous than by men. For a man who murdered his spouse was not a petty traitor; he was simply a murderer, and if found guilty would be sentenced to hang. The link with sin is implicit. The only crime other than treason which in England was punished by burning was heresy.[107]

Ruth Campbell writes of burning as a punishment for women that "this whole area of punishment smacks of discrimination". And indeed, it is difficult to consider this method of execution without concluding that women were dealt a far more terrible punishment than their male counterparts. Burning for women might have resulted in less indecent and public exposure than disembowelling and quartering after hanging, which was the fate of men convicted of high treason,

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[106] For petty treason, see Baker, Introduction To Legal History, p. 600; Milsom, Historical Foundations, pp. 370-71.

[107] Gender differences in severe penalties were not confined to early modern England of course. In seventeenth-century Frankfurt, women's capital punishment was by drowning or live burial while men were usually decapitated or broken on the wheel. Live burial apparently included being run through the heart with a wooden pole. However, torture patterns for women closely resembled men's both in nature and degree. See, Maria R. Boes, 'Women and the Penal System in Frankfurt au Main, 1562-1696', Criminal Justice History, 13 (1992), pp. 64-66.

according to William Blackstone's now well-known explanation.[108] But this is clearly not the case in petty treason for which men were hanged, as women were for all other capital offences. Campbell notes that execution by burning may have been likely to produce a greater degree of public exposure of the female form than hanging did. The remains of charred bodies might well be perceivable after the fire was put out. And first hand accounts of burnings defy notions of propriety: in one sixteenth-century case, one of the arms of a burning heretic fell off, his bowells fell out, and "fat, water and blood dripped out at his finger ends".[109] Moreover, although it appears to have been usual practice for the executioner to strangle the condemned woman before the fire reached her, something might go wrong. Consequently, some women, like Catherine Hayes, executed at Tyburn in 1726, were burnt alive:

> [while] being strangled in the accustomed manner...the fire scorching the hands of the executioner, he relaxed the rope before she had become unconscious, and in spite of efforts at once made to hasten combustion, she suffered for a considerable time the greatest agonies.[110]

Noting also that women were usually burnt after other condemned felons were hanged, Campbell concludes that the burning of women was both discriminatory and intimidatory: "How better to secure their subjugation!". Yet her explanation that women were "a form of property", and were therefore transgressing against property rights in effect, is misplaced.[111] Contrary to popular belief, women were never considered in common law as the "property" of men. Rather, these women were transgressing against the fundamental premise upon which social order was notionally based.

Spousal murder by wives was characteristic of almost all the conceptual

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[108] Blackstone, Commentaries, vol. 4., p. 93; Ruth Campbell, 'Sentence of Death by Burning for Women', Journal of Legal History, 5 (1984), p. 53.

[109] Henry Moore, The History of the Persecution of the Church of Rome and Complete Protestant Martyrology (London, 1809), pp. 256-7, cited in Campbell, 'Sentence of Death by Burning', p. 54.

[110] William Andrews, Bygone Punishments (London, 1899), pp. 101-2, cited in Ruth Campbell, 'Sentence of Death by Burning for Women', Journal of Legal History, 5 (1984), p. 45. It has been implied that before 1650 women were deliberately burnt alive: A.D. Harvey, 'Research Note: Burning Women at the Stake in Eighteenth-Century England', Criminal Justice History, 11 (1990), p. 193.

[111] Campbell, 'Sentence of Death by Burning', pp. 54-5.

requirements of wrongful violence. In the act of killing one's husband, the product and concomitant of disorder and disobedience were clearly seen; the principals of hierarchical authority were defied; moral law and the King's peace were utterly broken; motive and intent did not easily fit into any category of excusable or justifiable violence; the nature of the act was, by definition, treacherous; and, if it had been planned, it was also aided by deceit, trickery and stealth. Thus the law enshrined the hierarchical context of violence. Whilst the man who murdered his wife was culpable, the degree to which he had offended against the principals listed here was mitigated by his theoretical place within his household. Men who went too far in "correcting" their wives were neither encouraged nor condoned, but their actions carried a very different implication from that of their female counterparts. The reason why husband-murder epitomized "that radical disobedience to social order which spawned almost all illicit violence", and wife-murder did not, is clear. Male violence was sanctioned to uphold social order within the houshold; female violence was contrarily a subversion of that order.[112] The treachery of a wife who murdered her husband was deemed worse than that of the male servant who murdered his master because of her own position and duty in keeping household order. Perhaps in this sense too, it was legally and conceptually viable that parricide was not treasonable. Moreover, whatever popular methods of marriage prevailed, her marriage bond was taken to have been sanctioned by God. By breaking that bond in a violent and treacherous manner, she offended God's laws to a far greater degree than her manservant could have done.

A further seven women were brought before the courts on suspicion of having murdered adults other than their husbands. Two women were discharged after the grand jury had rejected the bills of indictment against them. In both of these cases the coroner had reported that the supposed victims had died of natural causes, or, to be more specific, that they had been "visited" by God. According

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[112] Maddern, Violence and Social Order, p. 98; Gowing, 'Women, Sex and Honour', pp. 163-5. For a wider discussion of how violence was viewed conceptually in fifteenth-century England, see Maddern, Violence and Social Order, ch. 3, passim.

to the coroner, divine providence had caused the "unknown sickness" from which Elizabeth Caldwell had died. However, eleven months earlier, Elizabeth had been severely beaten and struck by Rose Urmston, and perhaps also by her son Richard. Rose may have been Elizabeth's employer.[113] At that time, Elizabeth's mother was sufficiently worried about her daughter's well-being to bind Rose Urmston by recognizance to appear at the great sessions if Elizabeth should die from her injuries within the following year and a day. Elizabeth died three weeks before the year was up. Margery Caldwall went ahead with the prosecution. It is not surprising that the grand jury should have found the indictment *ignoramus*, for they regularly did in cases where the coroner had reported no evidence of homicide.[114] It is surely more likely to be this than the fact that Rose Urmston, the suspected murderer was a woman which resulted in the case not going to trial.

Four women were suspected of having poisoned their victims. Two, convicted of poisoning relatives in 1620, were found to be not pregnant by the jury of matrons, and were hanged. Elizabeth Holme was the wife of a man styled as gentleman who had allegedly murdered her brother-in-law. She mixed "an alebery of arsenick and rosane" and gave it to her victim, who took it and ate.[115] He died two days later. Joan Sharples, the wife of a man of lesser means, murdered Alice Sharples by putting "arsenik in a medycin drinke" which she then gave it to her. Alice languished for three weeks before she finally died.[116]

Neither Elizabeth Holme nor Joan Sharples were indicted alone. The husbands of both women were tried as accessories, having allegedly "incited and persuaded" their wives in the fact. Both men were acquitted. We have here an

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[113] Elizabeth was described as a spinster, and her place of abode was given as Rosthorne as was the widow Rose Urmston's. Elizabeth's mother, who prosecuted, was apparently from Thelwall.

[114] PRO CHES 21/3, ff. 72v., 73r.; PRO CHES 24/116-4, Recognizances, Indictment. See also, PRO CHES 21/3, ff. 125v, 131v. [Sybil Glegge].

[115] An aleberry was a concoction in which ale was brewed with spice, sugar and sops of bread.

[116] PRO CHES 21/3, ff. 41v, 42r, 45r; PRO CHES 24/115-3, Indictments of Elizabeth and George Holme, and Joan and James Sharples.

inversion of petty treason cases where, where the widow of the deceased was often not herself held accountable for the actual violence which resulted in death. She was usually present when a man whom she had "incited and persuaded" struck the lethal blow. In such cases, the woman was not held to be a mere accessory. She was held as culpable as her male partner. We have, then, to consider why George Holme and James Sharples were acquitted in the light of the genders of the protagonists. Although the evidence in both cases might have conclusively proven the innocence of both men, the conceptual inter-relationship of gender, order and violence suggests that women might have been disadvantaged in cases of poisoning.

Poisoning was placed high on the culpability scale. It broached the notion of unequal violence, was devious and cunning, and encompassed severe breaches of the code of righteous violence and order. Arsenic, in particular, offended against this code as it was tasteless, and when dissolved in liquid was colourless and odourless. It was the perfect poison.

> Truly...this poisoning art called *veneficium* of all others is most abominable, as whereby [crime] may be committed where no suspicion may be gathered nor any resistance made; the strong cannot avoid the weak; the wise cannot prevent the foolish, the godly cannot be preserved from the hands of the wicked; children may thereby kill their parents, the servant the master, the wife her husband so privily, so uncurably, that of all other it hath been thought the most odious kind of murther.[117]

Inherent in poisoning as a method of murder was the idea of treachery; thus its connection with petty treason. But more than this, the poisoner was attributed with characteristics which were integral to a pervasive negative female stereotype - weak, foolish, wicked. Poisoning was considered to be predominantly a woman's weapon. Reginald Scot wrote that "women were the first inventors and the greatest practisers of poysoning and more materially addicted and given

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[117] Anonymous seventeenth-century author, cited in C.J.S. Thompson, Poisons and Poisoners (London, 1993), p. 109. Edward Coke wrote that "of all murder, murder by poysoning is the most detestable". Edward Coke, The third part of the institutes of the laws of England; concerning high treason, and other pleas of the crown, and criminal causes (London, 1644), p. 47, cited in Sharpe, Essex, p. 129.

thereunto than men".[118] And indeed, the provision of victuals in which lethal substances could be transmitted to an unsuspecting victim was more likely to be done by a woman in the normal course of things. The preparation of food and drink was, after all, part of women's role in the household. Yet as the evidence presented in chapter two demonstrates, women's violence was not particularly characterized by "indirection, stealth or excessive deception".[119] We are confronted with a contradiction between the conceptual or rhetorical and the actual or real.

The fact that the husbands of Elizabeth Holme and Joan Sharples were held not to be liable in these cases might have been a negative ramification of the acknowledgement of the location of women's power and expertise. The nature of women's violence is doubly subversive in poisoning, in a connected manner to that which was exemplified by their role in petty treason. Women who killed by administering poison subverted order in several ways. Most obviously, premeditated murder was an affront to social order and the concept of righteous violence. This was obviously the case for both sexes. But as we have seen, women's violence was potentially far more problematic than men's. Women who poisoned did not only murder in an underhand way: they did so by using their very position within the household as a powerful and deadly weapon against those who expected nourishment and succour. Thus, the action is more treacherous when the hand which administers the poison is female, and when the victim is known to her. Moreover, if a woman is held to commit a subversive act in her sphere of expertise, and if she is capable of such treachery, then the assumption that her husband was the instigator of such an act does not necessarily follow.[120] The subversion of household order has already occurred in the act;

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[118] Reginald Scot, The Discoverie of Witchcraft (London, 1584), cited in Campbell, Poisons and Poisoners, p. 115. See also, Sharpe, Essex, pp. 129-30.

[119] Beattie also came to this conclusion, 'Criminality of Women', p. 83, and Crime and the Courts, p. 101.

[120] In fact, the theory that women who acted jointly with their husbands could not themselves be prosecuted appears not to have been endorsed in practice either in Cheshire or elsewhere. Cockburn, Introduction, p., 106, n. 150.

a husband of such a wife might not be held to rule her.

The allegations against Joan Sharples raise further questions. Whilst John Holme died within two days of consuming Elizabeth's alebery, Alice Sharples languished for three weeks. This suggests that if Joan had poisoned her, she gave her only a small quantity of arsenic initially, but subsequently administered further quantities. Yet this might not necessarily suggest murderous intent: arsenic was legitimately used for medicinal purposes in early modern England.[121] Not only was it difficult to detect, its symptoms might also appear to be "natural". Fevers and severe pains could easily be attributed to an "unknown sickness". Symptoms might be similar to those of illnesses such as what we would today call gastro-enteritis.[122] It is probable, therefore, that supposed poisoners would be suspected primarily when other factors existed other than the victim's untimely death.[123] This appears to have been so in both of the deaths which resulted in Elizabeth and Joan being sent to the gallows. Neither of their victims were examined by the coroner. Neighbours and relatives do not seem to have thought immediately that the deaths were suspicious. In Holme's case, this may partly have been a consequence of relatives living outside the county: the prosecutor

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[121] Indeed, many of the substances which were commonly used as cures and remedies for various ailments were poisonous, and could produce extremely unpleasant and sometimes lethal side-effects if taken in large doses. Merry E. Wiesner, Women and Gender in Early Modern Europe (Cambridge, 1993), p. 51.

[122] Although detection of poison through the symptoms alone could be elusive, suspicions might arise when several people became ill at one time. Ellen Edwards was bound to appear at the Great Sessions along with her husband in 1624,

> suspected to have conveyed and put poyson into salt, the said salt being in the house of Katherine Edwardes of Sutton, widow, so that by eating and putting of the salt so poysoned into meat, four or five persons have been dangerously sick and swelled, and some of them not as yet recovered.

Fortunately, everyone did recover. An indictment was not filed against Ellen Edwards and her husband, although relations between them and Katherine Edwards (who was named in the court book as the intended victim) may have been somewhat strained thereafter. PRO CHES 21/3, f. 110v; PRO CHES 24/117-3, Recognizance.

[123] Indeed, coroners' inquisition verdicts were sometimes of "poisoning by misfortune" with no suspect being brought before the courts in connection with the death. For example, see PRO CHES 21/1, f. 168r.; PRO CHES 24/103-3, Coroner's Inquisition [Margaret Stonyer]. Hanawalt found only one accusation of poisoning in her study of fourteenth-century England, which ended in acquittal. She assumes that the incidence was therefore rare, and suggests that women may have declined from using poison as a method of murder because the effects of deadly nightshade and poisonous mushrooms or whatever might have been too recognizable. 'Female Felon', p. 259. It is also surely the case that, by definition, poison was often difficult to detect, especially if the murderer had not given neighbours and relatives cause to suspect them.

Edmund Holme lived in Lancashire, but he had filed the indictment before the next great sessions. Alice Sharples, however, had died nearly two years before Joan and James were indicted. Given this fact, it seems even more likely that in the absence of a coroner's inquest, a considerable body of circumstantial evidence was presented to the jury which convinced them that murder had been committed.[124]

There is no evidence to suggest that women were found guilty of murder by poison merely because they were considered ideally placed for and potentially prone to such endeavours. When Margaret Furber was accused with Geoffrey Reynoldes of attempting to poison Reynolde's father William, her gender was of far less significance than the fact that William Reynoldes had broken open her trunk and stolen £95 from her, for which he was sent to Derby (where the crime had been committed) to be tried. William Reynoldes' accusation that she and his son had attempted to murder him did not come to anything. If he was well enough to be sent to the Assizes at Derby, he was presumably not in danger of death. Yet the Chief Justice of Chester kept Margaret and George bound till the next great sessions. Whether the allegations were true or malicious on either side, we will never know.[125] Nevertheless, the association between women and poisoning may well have influenced suspicions in a way which is impossible to detect in the records.

In the cases of female-perpetrated homicide which have been considered so far, a high proportion of the victims were related to their suspected killers. This proportion rises dramatically if we consider the remaining women who were accused of homicide in the years studied here. Nineteen women - nearly two-thirds of the total number of women brought before the courts for homicide -

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[124] PRO CHES 21/3, f. 42r.; PRO CHES 24/115-3, Indictment, Jury Return, Jury of Matrons' Return [Elizabeth and George Holme]. PRO CHES 21/3, ff. 41v., 45r.; PRO CHES 24/115-3, Indictment [Joan and James Sharples].

[125] PRO CHES 21/3, ff. 42r., 45v.; PRO CHES 24/115-3, Letter concerning William Reynoldes.

were suspected of having murdered their children.[126] However, only six women were convicted, and even fewer - three - were executed for the offence. Thus, whilst it appears to be true that "the 'infanticide wave', in England at least, may have resulted in more executions than the more familiar witch craze", the incidence of infanticide should not be exaggerated. Between 1580 and 1709, only 33 women were hanged for infanticides in Cheshire. In other words, an average of one hanging every four years.[127] Even in the well-populated county of Essex, where prosecutions appear to have been more common even before the Statute of 1624, there were little more than one prosecution every two years during Elizabeth's reign, and one annually during the seventeenth century. This hardly suggests that infanticide was "woefully common".[128]

Infanticide entered legal discourse only in the later sixteenth-century. By the 1590s, legal commentaries had begun to link the murder of infants with the sexual immorality of the mother.[129] By the time it entered the Statute books as a distinct offence in 1624, infanticide had been established as a sexual, as much as a violent, offence of the poor. Sexual immorality was considered to be the first step to moral deformity. Bastardy was a legal prerequisite of infanticide. The act was explicitly "to prevent the destroying and murthering of bastard children". It

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[126] A large proportion of women's victims were found to have been drawn from within the family in other studies also. See, for example, Beattie, 'Criminality of Women', p. 83; Given, Society and Homicide, pp. 56-61, 141; Hanawalt, 'Female Felon', pp.254-60; Sharpe, 'Domestic Homicide', pp. 37-38, & table II; Hoffer and Hull, Murdering Mothers, pp. xviii-xix, 98. For a discussion of male infanticide, see below, p. 161.

[127] Over the same period, only 11 persons of both sexes were hanged for witchcraft. Sharpe, Crime in Early Modern England, pp. 61-2. For infanticide as a proportion of total homicides in Eastern Sussex see Herrup, Common Peace, p. 40, n. 38. For a European comparison see Wiesner, Women and Gender, p. 52.

[128] Twenty-eight prosecutions between 1559 and 1603, Sharpe, Crime in Early Modern England, p.49; 83 between 1620 and 1680, Sharpe, Essex, p. 135; 60 between 1610 and 1665, Keith Wrightson, 'Infanticide in Earlier Seventeenth-Century England', Local Population Studies, 15 (1975), p. 11. Cf. F.G. Emmison, Elizabethan Life: Disorder (Chelmsford, 1970), p. 156. The rarity of prosecutions is also indicated by the fact that, in Terling at least, there were many more cases of bastards who were stillborn or who died before baptism than there were allegations of infanticide. Wrightson, 'Infanticide in Earlier Seventeenth-Century England', pp. 18-19. See also Hoffer and Hull, Murdering Mothers, pp. 21-4, 7, table 1.1; Wrightson, 'Infanticide in European History', Criminal Justice History, 3 (1982), pp. 6-8.

[129] It was in fact a Cheshire case of 1560 which first linked infanticide with sexual incontinence in Richard Crompton's 1584 edition of Anthony Fitzherbert's L'Office et Auctoritie de Justices de Peace. Hoffer and Hull, Murdering Mothers, p. 8. For the development of the law of infanticide, see Hoffer and Hull, Murdering Mothers, ch. 1, passim.

was passed because of a concern that "lewd women" who murdered their illegitimate progeny "do secretlie bury or conceale the death of their children", and then avoid punishment by claiming a stillbirth. So, after 1624 the law stipulated that a mother who was found guilty of concealing the death of her bastard infant "shall suffer death as in case of murther", unless she could prove by the oath of at least one witness that the child had been stillborn.[130] Infanticide does appear to have been a response to the economically and socially disadvantaged position in which young women might find themselves if they were unmarried and poor. Many such women may have desired to conceal their pregnancies in sometimes futile attempts to avoid the possible shame, loss of livelihood and punishment which bastardy might bring.[131]

Six of the 19 women who were suspected of infanticide were not officially prosecuted, two were discharged after the grand jury returned verdicts of *ignoramus*, and ten were indicted by the grand jury and so went before the petty jury.[132] Four of these women were acquitted, six were convicted, but in Cheshire only three women ended their lives on the gallows.[133] The view that "Only [the] obsession with classic crimes of horror, infanticide and petty treason, can explain the ruthless treatment of the desparate 'murdering mothers' of early

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[130] 21 James I, c. 27. Earlier bills had been debated in the parliaments of 1606-7 and 1610. Hoffer and Hull, Murdering Mothers, p. 22.

[131] It is now well-established that execution for infanticide was the most extreme result of premarital sexual activity for women, especially poor women. Even contemporaries were aware of this. When Elizabeth Cellier wrote that infanticide was the result of "the want of fit ways to conceal their shame, and provide for their children", she echoed the wording of the statute regarding shame and concealment, but additionally indicated the economic desperation of such women. Elizabeth Cellier, A Scheme for the Foundation of a Royal Hospital (1687), cited in Alan MacFarlane, Marriage and Love in England 1300-1840 (Oxford, 1986), p. 67. Beattie, 'Criminality of Women', p. 84; Hoffer and Hull, Murdering Mothers, ch.1, & p. 115, 133, 145-47; Els Kloek, 'Criminality and Gender', pp. 17-18; R.W. Malcolmson, 'Infanticide in the Eighteenth Century', in J.S. Cockburn (ed), Crime in England, pp. 187-88, 192, 207-208; Sharpe, Essex, p. 136-37; Wiesner, Women and Gender, p. 52; Wrightson, 'Infanticide in European History', pp. 6-7.

[132] In addition, one of the nineteen women was indicted by the coroner's inquest jury for the murder of her four year old son. She died in gaol while awaiting trial of a fever which claimed the lives of seven other prisoners. PRO CHES 21/1, f. 193v. [Anne Cradwall alias Mosse].

[133] It is commonly held that the 1624 Act was rigorously enforced. Hanging for infanticide has been described in terms of the wheels of justice grinding "to their inexorable conclusion": David Underdown, Fire from Heaven (London, 1992), pp. 88-89. Wiesner, Women and Gender, p. 52. The figures for Cheshire suggest that such assumptions may have to be modified, but further studies are necessary before generalizations can be made. Cf. Sharpe, Essex, p. 135.

modern Cheshire" must surely be modified.[134] Given that intent was so important in determining the outcome of homicide prosecutions, it is perhaps surprising that so few women accused of infanticide were hanged. The existence of a probable motive might have seemed clear enough if the woman had concealed her pregnancy and had no obvious means of support for the child. Moreover, if ideas about "lewd" behaviour leading to other sorts of sin and evil demeanor carried any weight amongst the men who acted as jurors, we might suppose that infanticidal mothers - who after 1624 were, by definition, "lewd" - might be perceived as just the sort of ungodly, dissolute person who would have perpetrated such a heinous and "unnatural" act.[135] However, the low conviction and execution rates suggest that an important distinction was made. Intent and motive were not synonymous. Whilst one might have a clear motive, it was not automatically taken to be evidence of intent.

It has been noted that the legal category of infanticide prosecutions compounds premeditated murder, felonious killing (perhaps on the grounds of mental disturbance), and the attempted concealment of bastard births.[136] The Cheshire cases suggest that culpability may have been measured accordingly, not by compounding these features, nor merely on the fact of concealment alone, but by distinguishing between them. This is suggested by a comparison of cases in which defendants were acquitted, pardoned and hanged.

In two of the four cases which ended in acquittal, the coroner's report expressly implied that the woman was guilty of concealment, not murder. Neither Ellen Anderton nor Emma Highfield could prove that their bastard infants were

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[134] Hindle, 'State and Society', p. 380.

[135] Zachary Babington certainly thought so: Advice to Grand Jurors, pp. 172-5. B. Lenman and G. Parker, 'The State, the Community and the Criminal Law in Early Modern Europe', in V.A.C. Gatrell, B. Lenman and G. Parker (eds), Crime and the Law: the social history of crime in western Europe since 1500 (London, 1980), p. 15; Malcolmson, 'Infanticide in the Eighteenth Century', pp. 189-190; Keith Wrightson, 'Infanticide in European History', pp. 1-2.

[136] Wrightson, 'Infanticide in Earlier Seventeenth-Century England', p. 15; cf. Underdown, Fire From Heaven, p. 89. Underdown fails to recognize the flexibility of criminal liability and asserts that capital punishment is simply the inevitable result of the "narrow terms of judicial culpability".

stillborn. The coroner reported that Anderton had given birth to a boy in the middle of the night in her bed-chamber "unknown to anyone" and could produce no witnesses to swear that the child was born alive. Yet it was asserted only that she concealed the death, and no mention was made of the child being murdered. Six witnesses, five of them female, testified to the same. Presumably they had not provided evidence which incriminated her, and the coroner had found no evidence of maltreatment to the child which suggested that he had been murdered. Ellen Anderton was acquitted despite the fact that she had attempted to escape after the allegations were made. In Emma Highfield's case, too, the coroner's jury did not mention murder. They merely said that she could not prove that the child was born dead by any witness, and that she had concealed the birth. The grand jury had thrown out an indictment for murder. As with Anderton, it seems that evidence of murder was not forthcoming. However, neither of these women were poor. Anderton and Highfield were worth £29 8*s* and £16 3*s* 6*d* respectively when their infants had died, although this did not prevent Highfield being flogged and sent to the House of Correction for a month.[137]

In the third case where the defendant was acquitted and for which information is available, Margaret Wyatt was also whipped and incarcerated in the House of Correction, in her case for six months. Whilst Anderton and Highfield had given birth in dwelling houses, which appears to have mitigated the guilt in such cases, Wyatt gave birth to her baby in a field. This alone could be enough to implicate a woman in terms of intent. Moreover, both the coroner's inquisition and the indictment against her alleged that the child had been born alive, but that she had strangled him. Yet one thing marks this case out from those in which the defendants were convicted. The coroner did not merely say that Wyatt had murdered the child with malice aforethought. She did so at "the

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[137] PRO CHES 21/5, ff. 2v., 3v., 4r., 6r., 12r.; PRO CHES 24/134-1, Coroner's Inquisition Indictment, Indictment, Recognizances, Jury return [Ellen Anderton]. PRO CHES 21/4, ff. 418v, 419r.; PRO CHES 24/133-1, Coroner's Inquisition Indictment, Indictment, Jury return [Emma Highfield]. A similar absence of allegations of murder resulted in a bill being returned ignoramus in another case. Elizabeth Beckett's child died the day after it was born and she had apparently buried it and intended to conceal the death. The indictment records that the baby "came by its death"; there is no mention of her killing it. PRO CHES 21/5, f. 67r.; PRO CHES 24/135-6, Indictment, Recognizance. For a comment on the relative wealth of infanticidal mothers, see Wrightson, 'Infanticide in European History', p. 7.

Devil's seduction". This, with the fact that the only witnesses who were called were her mother, another female relative, and one other woman, is suggestive. To bring the devil into legal explanations of infanticide was unusual, and could serve a dual purpose. On the one hand, the devil's involvement was an explicit assertion of the evil in such acts. On the other, it provided a way of removing entire culpability from the woman concerned.[138] As Anderton had done, Wyatt fled - in Wyatt's case, "because of what she had done". Paradoxically, this too might have worked in her favour. Because men who killed might justify their actions by drawing on notions of honour, into which fear and cowardice suggested by flight did not fit, any subsequent attempt to escape trial might work to their disadvantage. For women, however, it is possible that the opposite was true. Margaret Wyatt was not portrayed as a cold, calculating woman. She was portrayed as weak, and open to the Devil's seduction; but the suggestion is that having come to her senses, her action filled her with horror, hence her flight. Her acquittal, like that of Anderton and Highfield, rests upon shifting notions of culpability which were applied to actions which were prosecuted under the infanticide act, despite its appearance of narrowly defined guilt.[139] Evidence which suggested that women had concealed the death of their infants did not necessarily lead to a conviction.[140]

The rationale behind the ascription of culpability is even clearer when those cases which ended in conviction are examined. Three women were pardoned. The first of these was Margery Preston, who was tried in 1595. She was indicted for murdering her child "with her hands"; the petty jury found her guilty of "killing" but "not of murder", and presumably as a consequence of the absence of the availability of branding as a punishment for women, she was

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[138] See also the comments on demonic possession in Garthine Walker and Jenny Kermode, 'Introduction' to idem. (eds), Women, Crime and the Courts in Early Modern England (forthcoming).

[139] PRO CHES 21/4, ff. 418r., 423v.; PRO CHES 24/133-1, Indictment, Coroner's Inquisition Indictment, Recognizance, Jury Return. The fourth case was that of Alice Beck, a vagrant. PRO CHES 21/3, f. 143r.; PRO CHES 24/118-4, Jury Return.

[140] R.W. Malcolmson found this to be the case for the eighteenth century also: 'Infanticide in the Eighteenth Century', pp. 197-200.

pardoned.[141] As this was before the Infanticide Act was passed, Preston's married status would not have legally complicated the prosecution. The other two cases occurred after 1624. Ellen Hawarth was prosecuted in 1628. The coroner's inquest jury found that she had "brought forth a living child, and suffocated, strangled and murdered it with her own hands around its neck". Hawarth gave birth in the house where she lived, and the only witnesses were the householder and his wife. They may have heard the child cry. Yet she was reprieved, having been found pregnant by the jury of matrons, and was granted a pardon a year later.[142]

In 1661, Elizabeth Gee alias Venables likewise was indicted after the coroner had found marks on her dead infant daughter which suggested that she had been strangled. A bruise on the child's head was alleged to have been caused by Venables hitting it against an ovenstone. Like Ellen Hawarth, Gee alias Venables appears to have given birth inside a dwelling house, although two other women were bound to give evidence along with the householder and his wife. Unlike Ellen Hawarth, Elizabeth Gee alias Venables allegedly had an accomplice, another Elizabeth Venables, presumably a relative. Despite the coroner's verdict, the petty jury found Gee alias Venables guilty "of concealment only", and acquitted Elizabeth Venables as an accessory. In this case, it is not impossible that the existence of an accessory could have played the role of witness to testify that the baby was stillborn. Whilst it is unfortunately not possible to reconstruct the evidence as given at the trial, it may be said that in all three cases the evidence suggested does not appear to have utterly incriminated the defendants in terms of attributing malice aforethought to their acts. The manner by which the infants in question came by their deaths may be of particular importance. Suffocation and strangulation - the former may have been redefined as the latter in the light of a murder charge - appear to have been less suggestive of genuine

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[141] PRO CHES 21/1, ff. 180v., 181r., 181v., 188r.; PRO CHES 24/104-2, Coroner's Inquisition Indictment, Recognizance, Jury return.

[142] PRO CHES 21/3, ff. 172v., 174^{b}r., 178r.; PRO CHES 24/119-3, Indictment, Coroner's Inquisition Indictment, Jury Return, Return of the Jury of Matrons.

murder than other more violent and less ambiguous methods, such as drowning or beating a child to death.[143]

If we now consider the women who were not pardoned, but who were sent to the gallows, the degree of culpability which necessitated capital punishment appears to have been inescapable. On 9 May 1663, the body of a baby was found at the bottom of a pit in Ridley Green pool. There seemed no doubt that the child's death was not an accident. His neck was broken. And he was weighed down by stones which were attached to him with a neck lace which was twisted around his left shoulder; his feet were bound with a head lace, and his hands were tied with twine. The infant was identified as Thomas Dodd alias Pova, the illegitimate son of John Dodd, senior, of Crew, and Elinor Pova, spinster, variously described as being of Ridley and Castletown (in Derbyshire). The following day, 10 May, George Okes was bound to prosecute Elinor Pova for murder. It seems that originally Pova alone was "vehemently suspected" of committing the murder. Neither the coroner's inquisition nor the recognizance to prosecute mention any suspected accomplices. The coroner's jury found that the garments which had bound the baby were female attire.[144] And Elinor had abruptly removed Thomas from the house where he was being nursed with Widow Yardley in the Welsh Row at Nantwich on 1 May.[145] Elinor Pova had clearly not concealed the birth of her son. The concealment was all in the matter of his death. Fourteen people, seven of whom were women including Elinor Yardley and her daughter Elizabeth, gave evidence against her. She was committed to prison, indicted and found guilty of willful murder at the following

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[143] PRO CHES 21/3, ff. 418r., 423v.; PRO CHES 24/133-1, Coroner's Inquisition Indictment, Indictment, Recognizances, Jury Return. Wrightson, 'Infanticide in Earlier Seventeenth-Century England', p. 15, & Table 2. Cf. Herrup, Common Peace, p. 173.

[144] They might even have been identified as belonging to Elinor. This was certainly one way in which culprits might be identified. In a case of infant abandonment, the identity of the mother was deduced after the neices of a tailor recognized the waistcoat the child wore, it having been mended by their uncle. PRO CHES 24/133-1, Examinations concerning Dorothy Meadowes.

[145] Bastard children were frequently put out to nurse, although little has been written about it. For wet-nursing wealthier babies, see see Dorothy McLaren, 'Marital Fertility and Lactation, 1570-1720', in Mary Prior (ed), Women in English Society, 1500-1800 (Oxford, 1985), pp. 22-33, 43-6.

great sessions in August, and hanged at the beginning of September.[146]

Although it is impossible for the historian to draw definite conclusions about the guilt or innocence of felons in seventeenth-century Cheshire, the evidence does suggest that Elinor Pova was believed to have murdered her child. She was hanged not because she had born a bastard, nor because she had concealed the birth, but because the baby Thomas was without doubt alive and in good health when she removed it from its nurse on 1 May. A week later he was dead, having suffered violence. A verdict of murder was therefore a logical one. And given the circumstances of the death, full criminal liability would seem to preclude a pardon. Evidence from other counties suggests likewise that if women were thought to have violently killed their infants they were more likely to have been hanged, as accidental death was less plausible as an explanation. Another woman was hanged for the same offence six years later. Elizabeth Dentith had given birth in stable, which itself implied the possibility of intent to murder a child if the pregnancy had been concealed.[147] And there were nine female witnesses who testified against her. Nevertheless the petty jury found her guilty only of concealment of the death and the secret burial of the corpse. The decision of the Chief Justice not to allow her to sue for a pardon may have been partly due to the fact that Dentith's case like Pova's became complicated by the attempts of their male relatives (possibly their fathers) to incriminate others.

By the time of Elinor Pova's trial in August 1663, then, the case had become more complicated. Three accomplices were suspected to have aided and abetted Elinor in the murder. John Dodd, junior, who apparently lived in Graston, was accused along with Elinor of taking the infant in their hands and of "wreath[ing] and break[ing] his neck". John Dodd senior, Thomas's father, and Anne Billington the wife of Thomas Billington of Crew, were accused of being

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[146] PRO CHES 21/5, f. 2r., 5r.; PRO CHES 24/134-1, Coroner's Inquisition, Recognizances.

[147] Wrightson, 'Infanticide in Earlier Seventeenth-Century England', p. 15.

accessories to the fact and of having incited them.[148] In the meantime, Edward Pova a clothworker of Bowe Lane in London, was bailed to appear and answer for "scandalous report" about John Dodd of Crew. What that scandalous report may have been is not difficult to fathom, and in July, further witnesses were bound to testify - this time against Dodd. Although this may have been instrumental in procuring the prosecution of the three alleged accessories, the grand jury failed to indict either of the Dodds or Billington. The bench, however, bailed them to appear at the following sessions, when a second indictment was filed. Again, John Dodd junior was named as a principal in joining with Elinor Pova in murdering Thomas; John Dodd senior and Anne Billington were named as accessories in planning the manner and form of the death beforehand, and aiding, abetting and consorting with John and Elinor. This time the grand jury found the bill true. They were tried in July 1664. The young John Dodd was acquitted; the other two were consequently discharged.[149]

As a counter-measure in Elizabeth Dentith's case, an indictment was prosecuted by Peter Dentith against Anne Janion and Thomas Janion. Four women testified to their part in the death of the child, two of whom also testified in Elizabeth's case. Anne herself and one Richard Janion had also previously been bound to testify against Elizabeth. According to this second indictment, it was Anne Janion and not Elizabeth who had murdered the child by taking him in her hands and suffocating and strangling him until he was dead, she being aided and abetted by Thomas who apparently was present. In the light of this, the factors which led to Elizabeth Dentith's execution are perhaps more understandable. The petty jury acquitted the Janions, but the evidence presented may have firmly suggested that the child had not been stillborn and that he had been murdered. Whilst that evidence might not have been enough to convict the Janions, the jury were apparently not convinced that Elizabeth Dentith was guilty of murder either,

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[148] Anne Billington had originally been bound to testify against Elinor Pova.

[149] PRO CHES 21/5, ff. 2r., 4v., 5r., 11v., 12r., 21r., 21v., 28r.; PRO CHES 24/134-1, Indictment, Coroner's Inquisition Indictment, Recognizances; PRO CHES 24/134-2, Indictment, Examinations.

thus the conviction of concealment only. But by the same token, if the child had been born alive, in the absence of Anne Janion's conviction, the chief justice may have felt that Dentith should suffer the full penalty according to the Statute. Peter Dentith's attempt to save her may have been the very thing that brought the full force of the statute upon her neck.[150]

Suspicions might be raised about the death of infants, but motive alone was not held to be sufficient for prosecution to go ahead. Margaret Yardley, Margaret Goodall and Jane Lightfoot all appeared before magistrates after their babies had died, but indictments were not drawn up, nor were witnesses bound to appear to testify against them. Either witnesses were not forthcoming, or what they had to say did not implicate the women. In addition, the absence of coroners' inquisitions resulted in there simply being no case to be made. The fact that each of these women was suspected before the 1624 Act was passed does not imply that they were escaping justice because there was no proof that the child had been born alive: that was a question for coroners', grand and petty juries.[151] In another case, the coroner's verdict was that the infant had died through natural causes, although here the question of motive was less clear as the woman was married.[152] Nevertheless, illegitimacy alone did not implicate the mother: the baby of the unmarried Aldreda Johnson was found to have been stillborn by the coroner, and she was not summoned before magistrates in connection with the death.[153]

Moreover, allegations of infanticide could arise from a variety of contexts. It is clear that magistrates took account of these, and did not assume that bastardy

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[150] PRO CHES 21/5, ff. 92^{a}v., 92^{b}r.; PRO CHES 24/136-4, Coroner's Inquisition Indictment, Indictment, Jury Return, Recognizances. One other woman, Anne Longshagh, was hanged for infanticide, after being convicted of murdering her baby son by suffocation. No other details of her case are available. PRO CHES 21/1, ff. 177v., 178v.; PRO CHES 24/104-1, Coroner's Inquisition Indictment, Jury return.

[151] PRO CHES 21/1, ff. 167v., 169v.; PRO CHES 21/3, ff. 67v., 72r.

[152] PRO CHES 21/1, ff. 166v., 168r. [John Leigh/Jane Ashton].

[153] PRO CHES 21/1, f. 178r.; PRO CHES 24/104-1, Coroner's Inquisition. See also, n. 128, above.

was a necessary prerequisite of infant murder, even after 1624. In 1628, Margery Hunt, a maidservant, was bailed along with her master about the death of their bastard child. This case appears not to have been a simple one of infanticide, but rather a more complex case which was not aimed against Margery Hunt as much as it was against her master John Hockenhull, who was styled as gentleman. At the previous sessions he had been accused of practising sorcery and for buggery, both of which were potentially capital offences, and neither of which came to anything. Moreover, at that same sessions he had prosecuted Henry Staunton, his wife and another man, in four separate indictments of capital theft, for which Staunton had been convicted and branded. That the accusations were primarily aimed at Hockenhull seems clear, as he was committed to prison to await trial (although he was subsequently let out on bail), whilst Hunt was merely bailed.[154] Nor does the primary concern in the case against Elizabeth Wilkinson appear to be that of suspected infanticide: it was incest. Elizabeth was living with her uncle Raphe, who had appeared at the previous sessions, "for his incestuous living with his brother's daughter, and having children by her, and disobeying the orders of the ecclesiastical court". Evidently they had disobeyed the orders of the secular courts too, and had continued to live together. Thus it seems that the infanticide charge was not a serious allegation; it was part of a wider concern with Elizabeth and Raphe's dissolute living. Elizabeth was whipped and sent for a spell in the House of Correction. No indictment for infanticide was ever filed.[155]

These latter cases are interesting due to the implication of male agency in killing infants. Infanticide has been characterized as one of the archetypal female crimes, along with witchcraft and scolding.[156] In part, this understanding of infanticide makes sense, as the mothers of murdered infants were more likely to have been those responsible for the death in perhaps the majority of cases. But

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[154] PRO CHES 21/3, ff. 174[a]r., 179v.; PRO CHES 24/119-3, Indictments against Henry Staunton, Lowrie Staunton, and Raphe Hodson, Recognizance; PRO CHES 24/119-4, Recognizance.

[155] PRO CHES 21/3, ff. 128r., 143v.; PRO CHES 24/118-3, Recognizance.

[156] See for example, Sharpe, Crime in Early Modern England, p. 109.

in the later sixteenth and seventeenth centuries infanticide became "peculiarly female" according to its legal construction. Whilst both legal and societal attitudes to the killing of infants associated it with women, they did not do so exclusively. Both before and after 1624 men were prosecuted for killing infants and for aiding and abetting in infanticide cases. Although we are dealing with a small number of cases, it seems significant that about a third of those suspected of involvement in the murdering of infants were male.[157] Given the minor involvement of women in homicide generally, and the low incidence of infanticide as a proportion of homicides, care must be taken not to sensationalize this aspect of women's crime.[158] Just as we saw with scolding in chapter two, types of behaviour which have been labelled "female" do not seem particularly "female" at all. What we are confronted with is not a consequence of feminine behaviour, but a consequence of societal and legal constructions of both gender and criminality.

Only four men, however, were accused of being principals in homicide cases where the victim was an infant. One must be wary of assuming that this was a simple manifestation of the "double standard". A woman was clearly held responsible for the care and well-being of her newly-born child, and under the 1624 statute infanticide did become a gender-specific offence. If a child was suspected to have been killed in the first hours of its life, and if the death were concealed, the mother would therefore be more directly implicated than the father. Moreover, the respective responsibilities of mother and father for the infant appear to have resulted in different types of infanticide. The means by which men might have most easily got rid of unwanted bastard infants was perhaps less open to public scrutiny and subsequent prosecution.

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[157] Ten men and 19 women were implicated. Excluding those cases mentioned above in which verdicts of accidental death were returned, a further twelve men were accused of killing or attempting to kill members of their families. Their alleged victims were: wife (3), mother (2), grandmother (1), father (3), son (2), brother (1).

[158] For an example of such care not being taken, see Frank McLynn, Crime and Punishment in Eighteenth-Century England (Oxford, 1991), ch. 7.

Keith Wrightson has suggested that infanticidal nursing was one way in which the fathers of bastard children might have been culpable.[159] Infants who were killed in this way were more likely to have been starved or neglected, rather than being subject to overt violence. When such children died, neither the mother nor the father might have been prosecuted. Moreover, the practice has been linked to a high incidence of bastardy in "weakly-controlled rural areas...as in the north-west". Although Wrightson's evidence pertains to Lancashire, Cheshire had similarly large parishes where the discreet death of an illegitimate infant may have passed without much comment, especially if the child was nursed in a parish other than that inhabited by the parents.[160] Such killings are, by their very nature, largely hidden from the historian's view. Nevertheless, the association between fathers and this type of infanticide is instructive.

In 1624 Thomas Cheetham was accused along with his wife Elizabeth of murdering his illegitimate son, Raphe Cheetham alias Benison, after the child had died in their custody. According to the infant's mother, Anne Benison, Raphe had been killed as a result of "willful famishing and starving". It was Anne Benison who went to the magistrates and was bound to prosecute the bill against "Thomas or Elizabeth or both". But the grand jury were not convinced by the evidence which Benison provided, and threw out the indictment. One might be tempted to suppose that Benison's testimony held less weight than a yeoman's - she was after all the unmarried mother of a bastard - but she was considered sufficiently respectable to sit on the jury of matrons at this same sessions wherein five women convicted of property offences were found to be "not pregnant". Moreover, it was recorded in the court book that he was suspected of having poisoned the child. The indictment itself has not survived, but it may have been that Benison changed the charge from one of neglect to one of poisoning. The latter, although difficult to prove, clearly invested the defendant with murderous intent. If Thomas

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[159] The fathers of bastards were regularly responsible for the payment of nurses, especially if the mother was not to keep the child for its first couple of years.

[160] Wrightson, 'Infanticide in Earlier Seventeenth-Century England', pp. 16-17. See also, Sharpe, Essex, p. 136.

Cheetham had been found guilty he would almost certainly have been sentenced to hang. Neglect, on the other hand, was a more ambiguous charge. The point at which death through lack of care became willful murder was an evasive one, and as with the other types of indirect infanticide, the convict might have been charged with felonious killing only. As with other homicides, such ambiguity could sometimes blur matters of intent and fact to such an extent that the case was simply not clear enough for a true bill to be returned.[161] The point, however, is that Thomas Cheetham was considered by the justices at least, as having both the motiviation and the means by which to kill the baby.[162]

In infanticide cases, we again seem to be confronted with the nature of female violence being almost an opposite to that of male violence. Women who kill their babies were for the most part responding to particular social, economic and emotional circumstances. The deed is a response rather than an assertion. Precisely what was at stake for poor infanticidal mothers may have driven them to infanticide in a way which was simply incommensurable for men. The men who killed their infant bastards may well have been responding to similar economic constraints as their female counterparts; but they did not have nearly so much to lose. Their relation to the social and moral factors which contributed to the act of infanticide by women was entirely different. The boundaries and meanings of sexual morality were highly gendered.[163] Thus the position from which male infanticide occurred arguably allowed them a greater degree of "choice". Such men can be seen to have asserted their control over the economic circumstances of their lives, rather than having merely responded to a set of factors which had placed them in what must have often seemed like an impossible position. The women who committed infanticide might very well have expected to lose their livelihood, their home (if they were in service), and their reputation.

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[161] PRO CHES 21/3, f. 99r.; PRO CHES 24/117-2, Jury of Matrons Return, Recognizance.

[162] Richard Bratchgirdle and his accomplice Edward Carrington were indicted after an eight day old baby died in Bratchgirdle's custody. The indictment stated that they "famished and starved [the infant], not giving the child sufficient nourishment...with the intention of procuring its death". PRO CHES 21/3, ff. 99r., 101r.; PRO CHES 24/117-2, Indictment, Recognizance.

[163] See Gowing, 'Women, sex and honour'.

Without an agreement having been reached with the father of the child, got either by coercion through the courts or through unofficial means, a single woman was extremely unlikely to have been able to afford the upkeep of both herself and a child. The same simply did not apply to men.

The murder of children does not fit into the usual categories of excusable violence.[164] Men, even in claiming self-defence as a justification for homicide, are not responding by violence so much as asserting by violence. They assert their honour, their manhood, their right to be unmolested. Women are excluded from such assertions, although as we saw in chapter two, they might resist. So while men use violence as a means of assertion, women are driven to violence as a response.

It appears that the stringent terms of the Infanticide Act of 1624 were more likely to be circumscribed after the Restoration. This seems to have been part of a wider trend in the later seventeenth and eighteenth centuries when infanticide was regularly prosecuted. It seems that women were not necesarily receiving lenient treatment because they were women, but because the Act itself was increasingly subject to objection, based as it was on the spurious assumption that the women in question were guilty until proven innocent.[165] In chapter two it was argued that there was a perceivable change in the way in which female violence was presented to the courts after the Restoration. Where female violence was discussed with difficulty due to the absence of a language with which to describe it in the 1590s and 1620s, the events of the middle years of the seventeenth century appear to have complicated the matter further. Whilst this trend may be evident in homicide material, it is unlikely to be marked due to two factors. Firstly, the number of cases in this study of Cheshire are simply too few for the evidence to be seriously suggestive. Secondly, and more importantly, there *was* a language and set of images which could inform descriptions of

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[164] See above, p. 136.

[165] Beattie, 'Criminality of Women', pp. 84-5; Sharpe, Essex, pp. 135-6; Wrightson, 'Infanticide in European History', pp. 10-11.

women who killed: the wife who murdered her husband, the female poisoner of relatives, and the murdering mother were all well-known in popular literary and oral forms.[166]

Conclusion: Advice to Scholars in Cases of Blood

The analysis of the Cheshire cases above has demonstrated that judicial decision-making was based, to a large degree, on a shifting scale of culpability. This was theoretically applicable in cases of blood in a relatively unproblematic way. Convictions and sentences in homicide cases indicate the conceptual leeway inherent in societal and legal acknowledgements of the distinctions between excusable, justifiable and non-justifiable violence.[167] However, this raises questions about the role of juries and the nature of mitigation and mercy in early modern England.

Because the maintenance of social order was underpinned by notions of righteous violence, a vocabulary and a conceptual framework existed which could be drawn upon to differentiate degrees of culpability in violent activity. There was in fact an entire repertoire of words, phrases, images and concepts available to *sanction* violence. In contrast, although there were obviously varying degrees of heinousness accorded to crimes against property, the conceptual range within which such acts could be excused was relatively narrow. At one extreme, the degree of heinousness perceived in property offences was primarily attributed to the degree of violence which was threatened or carried out; or, related characteristics were invoked, such as stealth or unequal attacks, which also offended against notions of order.[168] At the other, there was no legal or

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[166] For a discussion of representations of homicide in contemporary popular literature, see Lake, 'Deeds against Nature'; Garthine Walker, '"Demons in Female Form"'.

[167] The work of Thomas Green has shown that similar notions of crimnal liability were widely accepted in the fourteenth century. Green, 'Societal Attitudes', passim.

[168] For example, burglary, house-breaking, cutpursing, and robbery, for all of which benefit of clergy was removed during the sixteenth century.

theoretical endorsement whatsoever of any kind of theft.

It follows that the motivation for mitigations of verdicts and sentences in homicide was often of a different nature from that in property offences. Whilst it is true for both types of crime that it is almost impossible to distinguish "sincere verdicts from those which worked as mitigations",[169] the assumption that juries reduced charges of murder to manslaughter because of their desire to offer a more lenient punishment to defendants is too simplistic. Certainly not all mitigations might have been fictions. Presumably, grand, petty and coroners' juries did sometimes recast certain cases to give the defendant a chance of some lesser punishment than hanging, even perhaps when the facts of the case seemed to prove malice aforethought on the part of the slayer. But very likely this was not always the case. Rather than mitigation being interpreted simply as leniency on the part of jurors, it appears that verdicts were often based upon a wider social norm: that a violent act might be met with a violent response,[170] and that the very ambiguity of violence invested jurors with a far greater degree of interpretation of the law (as opposed to the fact) in cases of homicide than was plausible in cases of theft.

Even in types of homicide where the letter of the law might be fundamentally at odds with prevailing social notions, the underlying premises of the law itself were not discarded. In, for example, cases of self-defence, we have seen that the issue of intent remained crucial. The law took the concept of self-defence to extremes: one had to have tried every method of escape; one had to have been cornered, thrown down, or gravely wounded; and one had to be at the point of losing one's own life if violent retaliation had not been sought. Whilst juries might have mitigated the charge in accepting self-defence as a justification for homicides which did not precisely fit the legal definition, they did not universally do so for the sake of *leniency*; societal attitudes towards violence

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169 Herrup, Common Peace, p. 144.

170 Green, 'Societal Attitudes', pp. 682-83.

required that violent persons be given their *just* deserts. "Justice" was itself open to interpretation.[171] And all the more so in cases of homicide; societal understandings of both the letter of the law and the concept of order demanded it.

It is this which explains why most of the late sixteenth-century Star Chamber cases against assize jurors for acquitting "against the evidence" had originated in homicide cases. It is this, too, which may account for the discrepancy between Thomas Green's interpretion of judge-jury relations and that of J.S. Cockburn. Cockburn is missing the point somewhat in attributing this to the implied fact that homicide cases would most likely be those that, "by virtue of their extraordinary interest to the community, generated discussion within the jury and even disagreements with the bench".[172] For it may certainly have been true that the majority of homicide cases did *not* incite the particular interest of the bench. The characteristics of social and legal attitudes towards homicide seem to have coexisted fairly peacably in early modern England, as they had done for a considerable period of time. Only in a minority of cases did juries alter the charges against defendants, and in even fewer did judges order punishment other than that which seemed appropriate for the returned verdict. Cockburn has argued that the rarity of such conflict signifies an absence of discretion exercised by the trial jury, who were subject to a great degree of domination by the bench. Yet Green's conclusion that "amid all the abuses, shortcuts, and cynicism, from the perspectives both of jurors and of the observing community, the exercise of jury-based discretion remained a part of the doing of justice" is more convincing. Although Green's emphasis is on "discretion", its connection with "justice"

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[171] Francis Bacon, 'Of Judicature' in, The Essays or Counsels, Civil or Moral, of Francis Bacon (London, 1680 edn), p. 195; Green, 'Societal Attitudes', pp. 676; Hay, 'Property, Authority and the Criminal Law', p. 40.

[172] Cockburn, 'Twelve Silly Men? The Trial Jury at Assizes, 1560-1670', in J.S. Cockburn and T.A. Green (eds), Twelve Good Men and True, pp. 179, 181. I believe that Cockburn has also misinterpreted Babington's Advice to Grand Jurors in Cases of Blood. He writes that "Babington's account of courtroom tension after the Restoration concentrates exclusively on 'cases of blood'". But the work is not about about courtroom tension per se; he mentions it only to substantiate his argument. Babington's concern is the legal distinction between murder and manslaughter. It is this which he thinks perverts what he sees to be justice.

should be stressed.[173]

Whatever the actual guilt or innocence of men and women convicted of homicide at a time when forensic knowledge was wanting and medical provision was such that one might easily die from an infected wound, early modern notions of culpability were congruous with the rationale of capital and non-capital punishment in homicide cases. The concept of order which sanctioned violence, the rhetoric of honour which underpinned it, and the ambiguity of violence itself, all allowed for the existence of mutable notions of liability which could mitigate verdicts and sentences for defendants. But we must not go too far in presenting the early modern criminal justice system as one in which justice, equity and fair play prevailed. Justifiable violence was a masculine concept. Women were thus disadvantaged; but in the great scheme of things, it was not only women who found the law and the system to be biased against them. For the majority of defendants, accused of crimes against property, there was no conceptual legitimation upon which to draw. They will be the subject of the following chapter.

> How is it possible that a man standing at the bar for his trial upon life and death, feared on the one side astonished with the sight of such a court and company set against him..., especially if he be bashful and unlearned, in so short a time as there is allotted to him for answering of his life, without help of a lawyer...that may direct, counsel or assist him in such an agony; how can he see all the parts or points that may be alleged for his defence, being never so innocent?[174]

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[173] Cockburn, Introduction, pp. 56-71, 130-34; Green, Verdict According to Conscience, pp. 106, 125-126, 126 n. 82, pp. 122, 150-52, n. 179, quotation at p. 152. For Cockburn's rejoinder, see 'Twelve Silly Men', pp. 176-80.

[174] Robert Parsons, The Jesuit's Memorial, ed. E. Gee (London, 1680), pp. 248-50, cited in Cockburn, Introduction, p. 108.

CHAPTER FOUR

THEFT AND RELATED OFFENCES

This chapter focuses upon the involvement of women in the crimes against property which constituted the most common type of prosecution for serious crime in early modern England.[1] Table 4.1 shows that as with most other offences, a minority of defendants were women.[2] Various assumptions have been made about women's involvement in this type of activity. These include notions that female criminals were not as brave as male ones, and that they were less likely to operate as solitary agents, and more likely to be accomplices to men; that they stole items of less value and more immediate use than men did; that they were on the whole less "criminally" inclined and were therefore less likely to be considered criminally dangerous by contemporaries; and consequently, that women were the recipients of generous treatment and clemency within the criminal justice system.[3] Such a view has been used as evidence for a binary model of sexual difference, in which women are inherently passive and men

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[1] J.M. Beattie, 'The Pattern of Crime in England', Past & Present 72 (1974), pp. 73-78; J.S. Cockburn, 'The Nature and Incidence of Crime in England 1559-1625: a Preliminary Survey', in J.S. Cockburn (ed), Crime in England, 1550-1800 (London, 1977), pp. 60-70; Barbara A. Hanawalt, Crime and Conflict in English Communities 1300-1348, (Cambridge, Mass., 1979), pp. 66-7; Barbara A. Hanawalt, 'The Female Felon in Fourteenth-Century England', Viator 5 (1974), p. 261; Cynthia B. Herrup, The Common Peace: Participation and the Criminal Law in Seventeenth-Century England (Cambridge, 1987), pp. 45-47; J.A. Sharpe, Crime in Seventeenth-Century England: A County Study [herafter cited as Essex] (Cambridge, 1983), pp. 91-2.

[2] For a description of these offences, see J.M. Beattie, Crime and the Courts in England 1660-1800, (Oxford, 1986), pp. 140-192; Sharpe, Essex, ch. 7.

[3] J.M. Beattie, 'The Criminality of Women in Eighteenth-Century England', Journal of Social History, 8 (1974-5), pp. 80-116; Beattie, Crime and the Courts, pp. 237-243, 436-9; G.R. Elton, 'Introduction' to Cockburn (ed), Crime in England, p. 13; R. Gillespie, 'Women and Crime in Seventeenth-Century Ireland', in M.MacCurtain and M. O'Dowd (eds) Women in Early Modern Ireland, (Dublin, 1991), pp. 43-53; Hanawalt, 'Female Felon', p. 265; Martin Ingram, 'Scolding Women Cucked or Washed: A Crisis in Gender Relations in Early Modern England?', in Jenny Kermode and Garthine Walker (eds), Women, Crime and the Courts in Early Modern England, (forthcoming); Sharpe, Essex, p. 101; Sharpe, Crime in Early Modern England, (London, 1984), pp. 108-9; Robert B. Shoemaker, Prosecution and Punishment. Petty crime and the law in London and rural Middlesex, c.1660-1725, (Cambridge, 1992), esp. pp. 207-216; Carol Z. Wiener, 'Sex-Roles and Crime in Late Elizabethan Hertfordshire', Journal of Social History, 8 (1974-5), pp. 38-60.

inherently assertive;[4] and more convincingly, for the argument that the strictures of women's social and economic position in early modern society precluded, minimized and concealed female criminality to varying degrees.[5]

Table 4.1. Property Offences Committed by Men and Women.[a]

Offence	1590s		1620s		1660s	
	Men	Women	Men	Women	Men	Women
LARCENY	108	26	229	59	76	29
HOUSEBREAKING	-	-	23	18	7	3
BURGLARY[b]	47	13	74	29	8	3
CUTPURSING	3	3	14	7	1	2
ROBBERY	9	-	6	-	8	-
HORSE THEFT	23	-	31	-	13	1
TOTAL (%)	190 (82)	42 (18)	377 (77)	113 (23)	113 (75)	38 (25)
GRAND TOTAL	232		490		151	

[a]Prosecutions at the courts of Great Sessions and Quarter Sessions.
[b]For the 1590s burglary and housebreaking prosecutions have been compounded. It is not possible to distinguish between the two offences in many cases due to the poor state of the Gaol Files.

In this chapter, I shall consider the ways in which contemporary sex-roles informed the criminal behaviour and experience of women, and shall demonstrate that a shift in historical perspective is essential if we are to further our understanding of the relative behaviour of men and women in this regard. As the majority of persons prosecuted were male, the predominant methodological and conceptual frameworks in which historians have examined criminality have perhaps not been the most useful or the most illuminating as far as criminal

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[4] Wiener, 'Sex-roles and Crime', passim.. Wiener continues to be cited in various sources as a useful introduction: Amy Louise Erickson, 'Introduction' to Alice Clark, Working Life of Women in the Seventeenth Century (London, 1992 edn), p. xxix; Gillespie, 'Women and Crime', p. 52 n. 19; Sharpe, Crime in Early Modern England, p. 207 n. 51.

[5] Beattie, Crime and the Courts, pp. 237-243; Beattie, 'Criminality of Women', pp. 80 116; Gillespie, 'Women and Crime', pp. 49-51; Shoemaker, Prosecution and Punishment, pp. 207 216; Sharpe, Crime in Early Modern England, pp. 108-9. Extreme versions of the concealment theory are predicated on a spurious account of female sexuality which claims that the ability of women to fake orgasm leads to their greater propensity to deceive men in every other area of life, including criminal behaviour. Such claims will be given no credence here: Otto Pollack, The Criminality of Women (Greenwood, Connecticut, 1950, repr. 1978), p. 10.

women are concerned.[6] In addition, the generalizations outlined above have been made on the basis of very few studies, most of which have not dealt with gender *per se*; the extent to which they are representative of female criminal experience must therefore be subject to scrutiny. The chapter falls into three sections. First, patterns of male and female criminal behaviour regarding both criminal association and theft will be considered. Secondly, judicial decision-making will be analyzed to determine the bearing that gender had on verdicts and sentencing. Thirdly, a discussion of female networks of exchange and interaction will disclose the important role played by women in theft and related activities.

Patterns of Criminal Behaviour

Women have been seen as dependent criminals in accordance with their supposed social role - dependent, that is, largely upon the guidance of men in illegal activity.[7] Yet the Cheshire evidence suggests that this was not universally so. Female participation in burglary and house-breaking, for instance, activities which involved a higher incidence of premeditation and which was more likely to involve groups of people working together than simple theft, might be expected to show a large proportion of women working as accomplices to male principals. Of the 97 men prosecuted in the 1620s' sample, almost a third were solitary agents. Of the 47 women, fewer than an eighth were acting alone.[8] At first sight, this would appear to bear out the commonly-held view.

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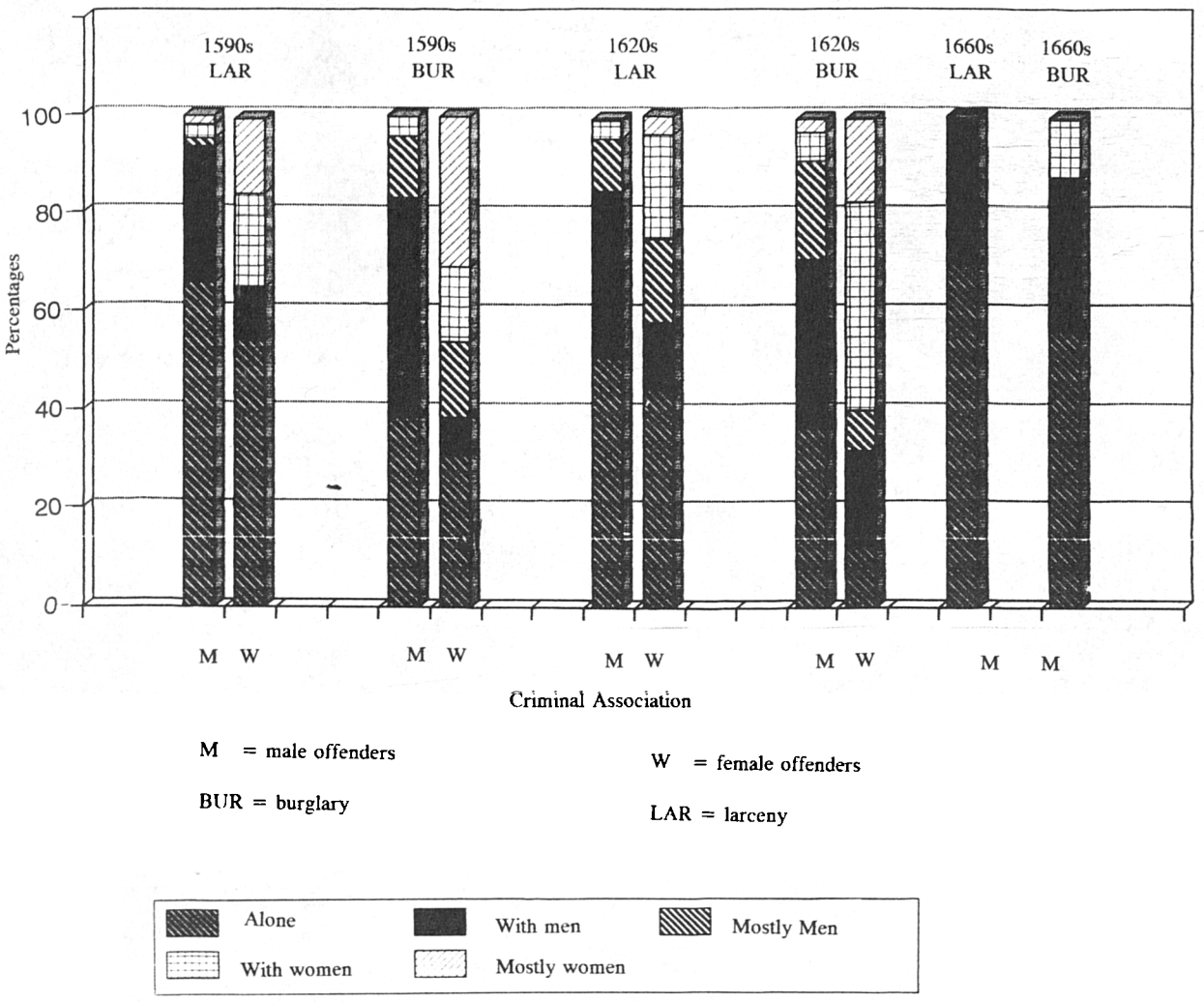
[6] Barbara Hanawalt makes this point in 'Female Felon', p. 253.

[7] Beattie, 'Criminality of women', p. 92; Gillespie, 'Women and Crime', pp. 48, 49; Hanawalt, 'Female Felon', p. 262; Hanawalt, Crime and Conflict, pp. 118-9; Sharpe, Crime in Early Modern England, p. 108-9.

[8] Thirty (31%) of the men, and 6 (12.8%) of the women were solitary defendants.

Figure 4.1 Criminal Association in Cheshire.



These figures are based on the following data; percentages are given in parentheses.
1590s Larceny: men acting alone 71 (65.7); with other men 30 (27.8); with mostly men 2 (1.9); with women only 3 (2.8); with mostly women 2 (1.9). Larceny: women acting alone 14 (53.8); with men only 3 (11.5); with other women 5 (19.2); with mostly women 4 (15.4). Burglary: men acting alone 18 (38.3); with other men 21 (44.7); with mostly men 6 (12.7); with women only 2 (2.4). Burglary: women acting alone 4 (30.8); with men only (7.7); with mostly men 2 (15.4); with other women 2 (15.4); with mostly women 4 (30.8).
1620s Larceny: men acting alone 92 (50.8); with other men 61 (33.7); with mostly men 20 (11); with women 7 (3.9); with mostly women 1 (0.6). Larceny: women acting alone 23 (44.2); with men only 7 (13.5); with mostly men 9 (17.3); with other women 11 (21.2); with mostly women 2 (3.8). Burglary: men acting alone 36 (36.4); with other men 34 (34.3); with mostly men 20 (20.2); with women only 6 (6.1); with mostly women 3 (3). Burglary: women acting alone 6 (12.8); with men only 9 (19.1); with mostly men 4 (8.5); with other women 20 (42.5); with mostly women 8 (17).
1660s Larceny: men acting alone 23 (69.7); with other men 10 (30.3). Larceny: women acting alone 7 (100). Burglary: men acting alone 9 (56.3); with men 5 (31.3); with women 2 (12.5). Burglary: women acting alone 2 (33.3); with men only 2 (33.3); with other women 2 (33.3).

Yet figure 4.1 reveals that men and women had gender-oriented patterns of criminal association. In burglaries, roughly a third of the men worked alone,

another third had male partners, and a further fifth were in mixed-sex groups where men predominated. Fewer than 10% of the male burglars took part in operations where women were actively involved. In contrast, approaching half of female burglars chose to work exclusively with other women, mainly in pairs; if we include those operating in groups in which women outnumbered men, almost two thirds worked with women, or mostly women. Only a quarter were apparently in league with a male partner or in a group in which men outnumbered women. Likewise, in both the 1590s and the 1660s most women committed burglaries either alone or in league with other women.[9] Larceny prosecutions similarly show that the majority of women did not engage in criminal activity as accomplices to men. In the 1620s only a third did so. Although this is a greater proportion than the fifth who combined with other women, approaching half were prosecuted as solitary offenders. In the 1590s, this pattern was even more acute: only a tenth were prosecuted solely with men; over half were solitary defendants, the figure being raised to just under three-quarters if we include women who worked exclusively with other women, and to about nine-tenths if we include those who worked in groups where women were more numerous than men.[10] The majority of women who were prosecuted for various types of theft appear to have been involved in their own culture of dishonest activity.

This is also suggested by the qualitative material of depositions. A common excuse given by men and women when caught red-handed with stolen

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[9] In the 1590s, less than 5% of male burglars committed the offence with women. In contrast under a quarter of the females were in league with men; almost half were either alone or had female partners; and a further third were in mixed-sex groups where women outnumbered men. Figures for Cheshire burglars of both sexes in the 1660s are too small to be statistically viable; nevertheless, whereas only a sixth of the men were apparently working with women, over half alone and about a third with other men, a third of the women worked alone, with men, or with other women in equal proportions. Although men were more likely to work alone, women were still more likely to work with other women than men were to work with women. Beattie says that many of the female burglars in his study were associated with men, but he does not provide statistical evidence: 'Criminality of Women', p. 92. Hanawalt states that 46.6% of women prosecuted for burglary were acting with an accomplice, "usually a male". Over half of the women were thus acting alone, and some were acting with other women. An accurate comparison with seventeenth-century Cheshire cannot be made as she does not indicate what "usually" means. However, even if all of the 46.6% were male accomplices, the majority of women were not working with men; 'Female Felon', p. 262.

[10] Every one of the seven women in the 1660s' sample were solitary agents; of the men, just over two-thirds were alone, the rest with other men. Cf. Hanawalt, 'Female Felon', p. 263. Hanawalt states that two-thirds of the women who stole small items in larcenies did so without accomplices.

goods, was that they had been either purchased from or left with them by a stranger.[11] Some of these tales were probably true, but certainly some were fabricated in often futile attempts to avoid prosecution. The sex of suspects appears to have been a decisive factor in the formation of such stories: men tended to blame unknown men; women tended to blame unknown women. When Alice Mannerall was apprehended in 1628, she explained her possession of stolen linens by the following story. After arriving in Chester that afternoon,

> she came into...a cellar, but does not know what street [it was in], and in there came a woman who was a stranger to her, and they drank together and spend 2*d* a peece and she told the woman the occasion of her coming there to look for service, and thereupon they went both together into the Castle lane and as they were going the woman told her that she had left her clothes where she did dwell before and wished her to stay while she went back for them...[and] the woman came back shortly with a little fardell under her arme. And then the woman said she had forgotten something, and told [Alice] to stay by the fardell while she went for them.

It was at this point that the fellow who apprehended Alice arrived, and suspected her of having stolen the goods. Alice's tale was not believed: she was subsequently tried, convicted and branded for the theft. Evidence given by a witness suggested that she was lying, and several points in her own examination were inconsistent and suspicious, including her inability to name a woman with whom she had allegedly spent enough time to have drunk two quarts of ale, and in the company of whom she presumably intended to spend longer, according to her own testimony.[12]

Whether such mysterious women thieves were real or not, constructions of criminality in suspected women's narratives reveal no tension in placing criminality within the sphere of female experience. This is also true of the many examinations by women in which other named women predominate, as is discussed below. Women constructed tales involving female criminal personae.

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[11] For a summary of common excuses given by defendants, see Herrup, Common Peace, pp. 146-149.

[12] CCRO QSF 73/2, ff. 71, 72. Other examples are CCRO QSF 73/1, f. 9; CCRO QSF 79/2, ff. 14, 63; CCRO QSF 73/1, ff. 11, 12; CCRO QSF 73/1, ff. 21; CCRO QSF 73/2, f. 50; CCRO QSF 73/2, f. 52. For exceptions, see CCRO QSF 73/2, f. 68, and QJF 53/4, f. 3. The majority of such tales are found in the City of Chester records, for obvious reasons regarding anonymity and so on.

These two points alone - that women worked predominantly with other women, and that the protagonists of their narratives were female - indicates that female criminality cannot be seen merely as a subsidiary of male criminality, but existed alongside it whilst being experienced differently.

Table 4.2. Value of Goods Stolen as a Percentage of Male and Female Theft: 1620s.[a]

Grand Larceny		Value	Burglary	
Men	Women		Men	Women
30.7	19.2	Less than 5s	17.9	19.4
16.0	23.1	5s-10s	17.9	9.7
33.3	38.5	10s-40s	30.3	38.8
16.0	19.2	40s-£5	17.9	19.4
2.7	-	£5-£10	1.8	6.4
1.3	-	Over £10	14.3	6.4
76	26	Gender Total (N)	56	31
101		GRAND TOTAL	87	

[a]As given on indictments at great sessions. The totals are smaller than the number of defendants overall as not all prosecutions resulted in indictments.

If we look at the value of goods stolen by men and women in Cheshire, indicated in table 4.2, it is clear that women were not necessarily prone to stealing goods of lower value than were men, as is regularly assumed.[13] In grand larceny cases prosecuted in the 1620s, over three-quarters of both the men and the women were prosecuted for thefts of items worth up to 40 shillings. This may be in part a reflection of goods being undervalued to allow men to plead benefit of clergy if they were found guilty. It does not, however, explain why women were in fact more likely than men to be prosecuted for goods valued within each of the three categories between 5*s* and £5, and less likely to be

[13] Cf. Beattie, Crime and the Courts, pp. 183-4 & table 4.8. Goods were sometimes devalued to less than 12d prior to or after the drafting of indictments. Women do not seem to have been the predominant beneficiaries of this practice in Cheshire. Cockburn, Introduction, pp. 66-9; Herrup, Common Peace, p. 47 & n.6; Sharpe, Essex, pp. 10, 92, 146. In areas where large livestock constituted a larger proportion of male thefts, one would expect the relative value of male and female thefts to be less similar. See, for example, Hanawalt, Crime and Conflict, p. 119.

accused of taking goods worth less than 5*s*.[14] The remaining fifth of female felons stole items valued at between 40 shillings and £5. This is a very similar pattern to male felons, the remainder of whom were also mostly in that category. Only three of the 76 men stole goods valued at over £5. Neither does the value of goods stolen during burglaries indicate that women were more timid or less concerned with profit-making than men. About two-thirds of both men and women were accused of taking items valued at up to 40 shillings. Only in the highest bracket do men predominate. But the discrepancy is not so great overall to suggest that men and women had overwhelmingly different patterns of criminality in terms of the value of their spoils.[15]

This is markedly different from the value of the money alleged to have been stolen by women and men when purses were cut and pockets picked. The actual numbers of felons prosecuted for cutpursing are too few for a statistical analysis to be significant. Yet in the 1620s, all but one of the women's thefts of this nature for which values are known were of five shillings or less; the exception was an incident in which a gang of two women and two men had stolen £7. In contrast, not one of the men had taken as little as 5 shillings.[16] Unless victims systematically undervalued their losses when they accused females, it would appear that women chose victims who carried far less money with them than their male counterparts. Although the exact amount which a purse contained

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[14] Until 1624, when a limited version of benefit of clergy was introduced for women, women's thefts might have been undervalued less often than men's as there would have been no technical reason for a victim to do so. Yet this alone is an unsatisfactory explanation as there was no significant change in the pattern of prosecution for larceny after branding for women was introduced as far as value was concerned. It may have had a bearing on the numbers of women prosecuted - the volume of female defendants almost doubled in the years after the act was passed.

[15] In the 1590s, larceny prosecutions do imply that women were less likely to be prosecuted for the more lucrative thefts, but a comparison of the value of goods taken by male and female burglars suggests otherwise. Although men do predominate in the upmost categories, such thefts were few and far between. Most men and women stole items which were valued relatively similarly. Available values for the 1660s are too few for a direct comparison to be made.

[16] The money contained in stolen purses is known for eleven of the men and six of the women prosecuted in the 1620s. The amounts were: for women, 11d, 23d, 3s 11d, 4s 10d, 5s, £7; for men, 5s, 5s 6d, 7s, 7s 4d, 10s, 11s 6d, 12s, 30s, £3, £7, £20. In the 1590s, three female cutpurses took 8*d*, 11s 11d, and 5s; their three male counterparts took 2s 6d ob, 10s 9d, and 33s 4d. In the 1660s, only two men and one women were accused; one man took 42s, the amounts taken by the others are unknown; the woman made off with £6 15s. In larcenies, however, women do not appear to have stolen smaller amounts of money than men. In Ireland, the average amount of money stolen by women was greater than that of men: Gillespie, 'Women and Crime', p. 48.

was to a certain extent arbitrary, one might suppose that victims were selected in part on appearance. There would be no point in targeting someone who looked as if they had only a few pence to steal. Yet given that so many more women were prosecuted for other types of property offence, and that in those offences women did not tend to steal items of less worth than men did, the discrepancy in the relative values of male and female cutpurses' gains cannot be taken to be representative of a general behavioural gender difference.

There are, however, perceivable differences in *what* men and women stole and in the gendered meanings of those items. Table 4.3 shows that although clothes and household linens were the most popular goods stolen by both sexes, women had a far greater propensity than men to steal these items over others.[17] Proportionately, household goods such as pewter dishes and cooking utensils, and cloth, wool and yarne were also particularly female targets.[18] This is consistently so in each of the courts and in every decade studied here. Furthermore, women were disproportionately prosecuted for clothes and linens: in the 1620s, for example, women were involved in over a third of larcenies in which these items were stolen, even though only one defendant in five was female.

Women's thefts, especially burglaries, also tended to be more piecemeal than men's. Margaret Foster took a child's coat, a pewter dish and four herrings when she committed a burglary on a butcher's house in 1624. When Elizabeth Chaddock and her two female partners stole many items of clothing from a husbandman's dwelling, they also took a remnant of new flaxen cloth, a purse valued at merely a penny, a pair of scissors which belonged to the maidservant, and a bunch of keys which belonged to the husbandman's wife. Although men did sometimes steal items in a similar fashion, it was usually when at least one

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[17] This is true of other areas also: Beattie, Crime and the Courts, pp. 186-89, & Table 4.9; Hanawalt, 'Female Felon', pp. 262-3; Gillespie, 'Women and Crime', pp. 48-9; Sharpe, Essex, ch.7, esp. table 2. In Essex, clothing and household linens were the second largest category of stolen item after sheep. Sheep farming was not widespread in Cheshire which may explain why sheep were not a commonly stolen item.

[18] See also Hanawalt, Crime and Conflict, pp. 121-22; Sharpe, Essex, p. 101.

woman was involved. Three women and a man supplemented their main booty of soft furnishings worth more than £10 by their taking a picture, a blanket, a brass pot and some gift boxes. In another incident involving five women and two men, all that was taken were two pewter dishes, three brass candlesticks, and a pair of boots.[19] Women were prone to stealing more than one type of item at a time, drawn from a smaller range of possible targets. The pattern of female theft was eclectic but clearly defined.

Table 4.3. Goods Stolen By Men and Women.[a]

Category of Goods	1590s				1620s				1660s			
	Men	%	Women	%	Men	%	Women	%	Men	%	Women	%
Clothes & Linens	49	21.4	25	36.8	99	26.9	55	39.0	18	16.8	14	34.1
Cloth, Wool, Etc.	11	4.8	5	7.3	31	8.4	20	14.2	4	3.7	7	17.1
Money	16	7.0	8	11.8	43	11.7	18	12.8	17	15.9	5	12.2
Household Goods	4	1.7	7	10.3	9	2.4	10	7.1	1	0.9	2	4.9
Food[b]	11	4.8	2	2.9	23	6.3	7	5.0	12	11.2	6	14.6
Corn, Grain, Etc.	19	8.4	2	2.9	22	6.0	6	4.3	5	4.7	2	4.9
Industrial Materials	9	3.9	4	5.9	12	3.3	5	3.5	3	2.8	2	4.9
Large Livestock	24	10.5	3	4.4	35	9.5	3	2.1	9	8.4	-	-
Small Livestock	14	6.1	1	1.5	28	7.6	4	2.8	6	5.6	-	-
Silver, Plate, Etc.[c]	11	4.8	5	7.4	15	4.1	6	4.3	1	0.9	2	4.9
Horses	23	10.0	-	-	29	7.9	-	-	13	12.1	1	2.4
Tools	4	1.7	1	1.5	7	1.9	-	-	5	4.7	-	-
Firewood, Timber	29	12.7	3	4.4	11	3.0	2	1.4	6	5.6	-	-
Books	1	0.4	1	1.5	-	-	1	0.7	4	3.7		
Miscellaneous	4	1.7	1	1.5	4	1.1	4	2.8	3	2.8		
Gender Total	229		68		368		141		107		41	
GRAND TOTAL	297				509				148			

[a]Prosecutions at Cheshire great sessions, quarter sessions and City of Chester quarter sessions and Crownmote.
[b]Includes fowl.
[c]Includes jewelry.

[19] PRO CHES 21/3, f. 98v., PRO CHES 24/117-2, Indictment and recognizance of Margaret Foster; PRO CHES 21/3, f. 144, PRO CHES 24/118-4, Indictment of Elizabeth Chaddock, et al.; PRO CHES 21/3, f. 97v., PRO CHES 24/117-2, Indictment and recognizance of Mary Williamson, et al.; PRO CHES 21/3, f. 172v., PRO CHES 24/119-3, Indictment of Anne Deykyn, et al.

The female concern with the theft of clothes, household linens and other household goods has been dismissed in various ways. Historians of crime have tended to associate it with opportunist and petty criminality: women's thefts of clothing have been presented as both the evidence for and the result of their place among "the less terrifying criminal elements".[20] Historians of consumption have relied heavily upon a model of emulation to explain women's motives for the legal acquisition of clothing in the late seventeenth and eighteenth centuries, following on from contemporary commentators who supposed that a labouring woman would starve herself and her family in order to acquire a secondhand gown and petticoat of a type worn by those above her station.[21] If this were true, female felons might also have been driven by such a desire, thus demonstrating that women were indeed "obsessed with petty materialism and ostentation".[22]

However, both of the above approaches are misleading. In the early modern period, clothes were valuable. Not only did they have a remarketable value akin to that of video and compact disc players today, but they constituted the largest single category of lawful household expenditure after food (and food production); in contrast, household goods were more durable and therefore less of the household finance was spent on replacing them.[23] Moreover, clothing expressed both social status and individuality for both sexes;[24] apparel was, after

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[20] See for example, Sharpe, Essex, p. 101; Hanawalt, however, does see the pattern of women's theft as a reflection of their economic interests, 'Female Felon', pp. 262-3, 264. Cf. Douglas Hay, 'War, Dearth and Theft in the Eighteenth Century: the Record of the English Courts'. Past & Present, 95 (1982), pp. 117-159.

[21] Mandeville, cited in Amanda Vickery, 'Women and the World of Goods: a Lancashire Consumer and her Possessions, 1751-81', in Consumption and the World of Goods, eds. John Brewer and Roy Porter, (London, 1991), p. 277.

[22] For a critique of 'social emulation' as a conceptual framework, see Vickery, 'World of Goods', passim; quotation at p. 274.

[23] Lorna Weatherill, 'Consumer Behaviour, Textiles and Dress in the Late Seventeenth- and Early Eighteenth-Centuries', Textile History, 22 (1991), p. 298.

[24] F.E. Baldwin, Sumptuary Legislation and Personal Regulation in England, (Baltimore, 1926); N.B. Harte, 'State control of dress and social change in pre-industrial England', in D.C. Coleman and A.H. John (eds), Trade, Government and Economy in Pre-Industrial England. Essays presented to F.J. Fisher (London, 1976).

all, a primary means of identification in criminal cases. One Charles Brown was prosecuted for burglary upon leaving his hat at the scene of the crime. The hat in question was a black felt with a twisted band wrought with silver thread, upon which Brown had been complimented in an alehouse. He had, he said, "silver thread of his owne with which he made up the hatband himself", and added that the present company "would little thinke that I had made it myself".[25] It is not suggested here that women had a monopoly of interest over the cultural value of clothing, as Brown's pride in his lovely hat demonstrates. But recent research on early modern wills, household accounts and diaries suggests that women had a more self-conscious, emotional investment in clothing, household goods, and personal effects, even when these were humble in origin and of little monetary value.[26] It is perhaps not surprising, then, that female victims appear to have furnished their narratives with a fuller description of colours and adornment than men did, even when the property in question had been retrieved, making this type of detail superfluous. Dorothy Woods, for example, described among other things her red petticoat, her laced riding safeguard, her shoes "with polonie heels and blew silk ties", and her silk caul with a gold lace. Even her stolen Bible was, she said, covered with green cloth.[27] Women's acquisition by theft is not adequately explained either by drawing on the supposed petty nature of their activities, or purely in terms of a consumer impulse, any more than is their purchase of new and secondhand goods.

There are far more tangible factors which provide a framework for female theft. The goods which women commonly stole were those which concerned them

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[25] CCRO QSF 69/1, ff. 44, 45, 46, 47, 48. Other examples in which apparel was the primary means of identifying suspects include QJF 53/4, f. 69, QJF 95/3, f. 124; CCRO QSF 69/1, f. 52, CCRO CCRO QSF 69/2, f. 53, CCRO QSF 73/1, f. 21; PRO CHES 24/133-1, Examinations concerning Dorothy Meadowes.

[26] Vickery, 'World of Goods', pp. 276, 274, 294; Erickson, 'Introduction', pp. xxxix-xl; Amy Louise Erickson, 'Common Law Versus Common Practice: the Use of Marriage Settlements in Early Modern England', Economic History Review, 2nd series, 43 (1990), , pp. 21-39; Beverly Lemire, 'Consumerism in Pre-Industrial and Early Industrial England: the Trade in Secondhand Clothes', Journal of British Studies, 27 (1988), pp. 1-2; Lorna Weatherill, 'Consumer Behaviour, Textiles and Dress', pp. 298-301, 306-7.

[27] CCRO QSF 73/1, ff. 8, 13.

in the normal run of things. The conversion of household linens and old clothes into other garments and linens was, after all, common practice for most women. In households of middling status, women presided over day-to-day purchasing.[28] There is no reason to suppose that in poorer ones this type of provision was any less a female concern, although the money or exchange value would have been less and the choice of commodities more limited. Women were more likely to be involved in the theft of household goods perhaps because they would have known the value invested in them in a more immediate sense than most men. When Jane Bower, a pawnbroker and evidently receiver of stolen goods, persuaded John Mounkes to bring her his mother-in-law's worldly possessions before seeking a better life in Ireland in 1622, she was dissatisfied when he brought only part of the goods "to the bedside where she laye in childbed". Mounkes explained his taking only two skillets, a hacking knife, a basket, and a sheet and blanket from the poor woman's bed by saying that his mother-in-law had nothing else but a coverlet, a small spade and an old kettle, and he was unwilling to take that because "she had nothing els to make her meal in". Unimpressed, Jane retorted that he "might as well take all as part" and sent him back again with a bag to put them in.[29] The old kettle in question was doubtless not worth much, but worth enough in terms of utility for a broker to perceive it in terms of value; and by the same token, for a considerable proportion of female criminals to concern themselves with stealing such items.

When such items were stolen, wives and female servants often reported the theft to Justices of the Peace, gave evidence at trials, and sometimes entered into recognizances to prosecute, even though property laws required their husbands and masters to be named as official owners of the goods. Maidservants added small lists of their stolen garments and effects to those of their masters and mistresses, and being *femes sole* sometimes entered into joint prosecution. Thus in the prosecution of Mary Smith, two indictments exist for one burglary: one

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[28] Vickery, 'World of Goods', p. 291.

[29] QJF 51/4, f. 5, Examinations concerning John Monkes.

was prosecuted by the householder, William Brereton, husbandman, and lists all the goods therein as his, although the recognizance lists over half of them as "belonging to and in the custody of Margaret Brereton his wife". The other was prosecuted by Brereton's servant, Margaret Olton, spinster, for several items of clothing, a remnant of new cloth, and a pair of scissors, "being her goods".[30]

Amy Erickson has shown that clothing and household goods comprised the mainstay of ordinary women's marriage portions, and on their husbands' deaths women often got back those goods. As Erickson says, women were likely to continue to regard such property as theirs for the duration of the marriage.[31] This is clear in disputes over inheritance where moveable property rather than land was the issue: women played out their grievances in the kitchen, and focused their attacks on other women; men were likely to become protagonists only when recourse to the courts was taken, and not always even then.[32] Discrepancies in probate documents which survive for both spouses are also instructive. One husbandman's inventory in 1682 amounted to £36, and included only 8s in household goods; that of his wife, who died just three weeks later, came to £66, and although it included all of her husband's goods valued at a slightly higher rate, her household goods were valued at £18.[33] Concerns and rights regarding property were not exclusively male, but were rooted in the family or household; yet neither the ideology of household ownership nor the legal framework of the common law precluded a popular understanding that some property belonged to women and some other to men.[34]

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[30] PRO CHES 21/3, f. 144r., PRO CHES 24/118-4, Indictments and recognizances concerning Elizabeth Chaddock, Ann Bate and Mary Smith. For similar instances, see CCRO QSF 73/1, ff. 11, 12, QSF 73/1, ff. 17, 18, 19.

[31] Amy Louise Erickson, Women and Property in Early Modern England (London, 1993), pp. 86, 162, 223, 226-7.

[32] For example, QJF 97/2, f. 158.

[33] Cited in Erickson, 'Common Law Versus Common Practice', p. 35.

[34] Erickson, Women and Property, passim.; Lyndal Roper, The Holy Household: Women and Morals in Reformation Augsburg (Oxford, 1989), pp. 171-4.

The mundanity of female theft should not therefore be interpreted in terms of pettiness or lack of bravado. Nor is this suggested by the high incidence of women in burglaries and house-breakings, especially given their patterns of criminal association.[35] The pattern of women's theft should be understood in its wider context. Women stole the kinds of goods about which they had knowledge and a means of disposal, as we shall see below. Moreover, many women as well as men appear to have shown initiative and courage in their unlawful practices. The odd example of feminine boldness cannot of course be taken as evidence of an absence of gendered behaviour, yet it is foolhardy to argue that women's criminal activity shows them to have been particularly timid and faint of heart.

Judicial Decision-making

Various studies have shown that the capital conviction rate of women was lower than that of men, which has lent weight to the usual theories that women were considered to be less criminally dangerous than men, dependant and inferior, in need of protection because of their vulnerability within the judicial system or *per se*, and the objects of judicial clemency.[36] Yet a crude differential based on the sex of offenders alone which does not allow for other equally quantifiable factors may be misleading. In the 1590s nearly two-thirds of the male defendants were convicted as opposed to just under half of the female ones; and, over half of the men but fewer than a third of the women were hanged. This may not, however, have been merely the result of women being favoured within the judicial process. Compounding all felonies against property is not perhaps the most useful means of identifying the relative treatment of men and women, for in any comparison

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[35] In fourteenth-century England, similar proportions of male and female felons to those in seventeenth-century Cheshire were involved in larcenies and burglaries. Hanawalt, 'Female Felon', p. 261.

[36] G.R. Elton, 'Introduction' to J.S. Cockburn (ed), Crime in England (London, 1977), p. 13; Hanawalt, 'Female Felon', p. 256; Herrup, Common Peace, pp. 149-51; Sharpe, Essex, p. 95, & table 5; Wiener, 'Sex-Roles and Crime', passim. For execution rates generally, see Cockburn, Introduction, p. 125; Herrup, Common Peace, ch. 7; Sharpe, Essex, pp. 96, 109, 134, 136; Sharpe, Crime in Early Modern England, pp. 64-5.

one obviously has to use comparable data. A distinction must be made between clergyable and non-clergyable felonies: women were rarely prosecuted for burglary, robbery, horse theft, or even cutpursing in these years - only 5 in fact, whereas there were as many men prosecuted for these crimes alone as there were women for all property offences.[37] The non-clergyable status of these crimes led to high execution rates, and by including them the differential treatment of men and women is at least exaggerated, if not distorted.[38]

If we exclude non-clergyable felonies, and consider grand larceny alone, just over half of both men and women received the death sentence; roughly a quarter of each sex were hanged in the event, and about a third were granted benefit of clergy and belly respectively.[39] Men were in fact more likely to have their charges reduced from grand to petty larceny than women. If like is compared with like, no special consideration appears to have been shown to women in either conviction or sentencing.[40] Yet to assume parity of treatment is itself optimistic, for women fared rather worse than men due to their ineligibility to claim benefit of clergy. Whilst almost a third of each group

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[37] The fact that women were proportionately under-represented in prosecutions for these offences may itself have been a result of positive gender discrimination on the part of plaintiffs. However, as women could not claim benefit of clergy at this time, any decision to prosecute for grand larceny would not have technically made the woman less vulnerable to a harsh sentence; this is indicated by the breakdown of sentencing for larceny, below. The absence of women as defendants for these offences does not, therefore, suggest leniency towards them.

[38] Thirty-three of the 44 men so accused received the death sentence; of the five women, three were acquitted.

[39] Cheshire had a higher execution rate for grand larceny in the 1590s and 1620s than eastern Sussex, where only 11% of total felons and a mere 7% of female felons were ordered to be hanged for that offence: Herrup, Common Peace, pp. 168, 176, and tables 7.1 & 7.3.

[40] Herrup found that where gender did not define punishment, as in cases of petty larceny, petty juries convicted men and women with about equal frequency. Her figures, shown on table 6.4, demonstrate that women had a conviction rate of 68% as opposed to a male conviction rate of 61%. However, the conviction rate for women in eastern Sussex was lower in cases of grand larceny, with about 40% of women and 63% of men being found guilty, and lower still for non-clergyable offences: Herrup, Common Peace, pp. 149-151. In Essex, in the period from 1620 to 1660, the gender differential was not so great, the conviction rate of those tried by jury being about 55% for women and 64% for men. Sentencing in Essex shows a greater degree of variance, as women were far more likely to be whipped than men, and men more likely to be branded or hanged (although very few felons were hanged for grand larceny). Sharpe, Essex, p. 94, table 5. Sharpe's figures are aggregates for a sixty year period: it may have been the case that the overall patterns of conviction and sentencing were not indicative of a constant differential in the treatment of men and women, but may have varied at particular points during the period of his study. Further research must be undertaken on other localities to test these findings before we can make firm assumptions about the role of gender in determining verdicts.

pleaded clergy and belly respectively, the former was almost universally successful in saving male felons from the gallows whereas the latter did not guarantee a pardon, as we shall see later.

In the 1620s, more women were prosecuted for non-clergyable offences, and branding was introduced as an option for female punishment.[41] If felonies against property are taken as a whole, similar proportions of men and women were hanged, branded or whipped, with a higher overall conviction rate for women.[42] Indeed, before branding was introduced, women convicted in the 1620s were almost twice as likely to be hanged as men; after its introduction women were three times less likely to be hanged than men. One might suppose that at the beginning of the decade women were being hanged because there was little alternative, but were subsequently punished in non-capital ways when they became available. But in order to discern the role of gender in influencing verdicts and sentencing, the distinction between clergyable and non-clergyable offences must remain.

As in the 1590s, the proportion of guilty verdicts in cases of grand larceny in the 1620s was virtually the same for men and women. Sentencing overall showed a similar pattern, although a slightly greater proportion of the charges against women were reduced to petty larceny, and a smaller proportion of women than men were branded. These discrepancies cancel each other out - neither women nor men were particularly vulnerable to hanging for this offence. The introduction of branding for women did however make a perceptible difference to sentencing.[43] Prior to the 1624 act, about half of the women tried for grand

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[41] Blackstone, Commentaries, Vol. 4, p. 369. Branding had been a means of punishing male felons since 1490; it was extended to women under the 1624 act concerning benefit of clergy.

[42] Of 120 convicted males, 39.2% were hanged, 30% were branded, and 30.8% were whipped; of the 51 convicted females, 37.3% were hanged, 27.4% were branded, and 35.3% were whipped. The conviction rate was 47% and 56% for men and women respectively.

[43] By the 1660s, Peter Leicester had annotated his manuscript handbooks to the effect that branding for women was the sentence as a matter of course for thefts between 1s and 10s. He appears to have considered that such thefts by women were no longer capital felonies. Thus, female branding was not merely the result of an extension of benefit of clergy to women. DLT/unlisted/16, Leceister-Warren of Tabley Collection, Concerning Endictments, p. 33; DLT/unlisted/18, Leicester Warren of Tabley

larceny had their charges reduced and were whipped, and the other half were sentenced to hang. Women were hardly the recipients of leniency, if we consider that the equivalent figure for men was about 15%. After the act was implemented, half continued to be found guilty of petty larceny only, and the other half were all branded. Not one of the women accused of larceny at the sessions examined for this study received the death penalty after branding became an alternative female punishment.[44] Yet even this cannot be interpreted as a simple indication that once the means were available, the disposition of the courts to women was one of compassion. Again, we have to consider the parameters of our comparison, and in doing so it is arguable that women in Cheshire in the 1620s received more serious penalties than their male counterparts.

If we break down sentencing by the value of the goods stolen, we can see that judicial decisions did not vary greatly according to the sex of the accused alone. Such a reduction of the scope of observation renders the statistical data inconclusive, yet it is instructive in that it bears out the findings above. Generally, the lower the value of the goods stolen, the greater the likelihood of the charge being reduced to one of petty larceny for both sexes. In the lowest category - goods valued at between one and ten shillings - no defendant of either sex was hanged for larceny alone.[45] Hanging was also rare for goods worth between 10 and 40 shillings. Women who stole goods in this second category were more likely to be whipped on reduced charges than men, and men more likely to be branded than women.[46] But on all grand larcenies in which the

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Collection, Briefe Notes, 'Of the Thinges which Justices of Peace have power to heare and what not', p. 20, 'A Charge to the Grand Jury...1660', p. 75.

[44] Guilty verdicts were returned for 84.1% of male and 85.7% female defendants. Proportions of those sentenced to be whipped (on a reduced charge), branded and hanged were respectively 49.1%, 35.8%, and 15.1% of men, and 55.6%, 27.8% and 16.6% of women.

[45] Those who were hanged for larceny of goods worth less than 10 shillings were also found guilty of house-breaking offences at the same sessions.

[46] For goods worth between 10 and 40 shillings, the percentages of convicted felons who were whipped, branded and hanged are respectively: for men, 16.7%, 75%, and 8.3%; and for women, 37.5%, 50%, 12.5%. These figures provide a rough guide only, as the actual number of convicted felons obviously becomes smaller by breaking down the sample not only by offence, but by the value of the theft and the sentence passed.

goods were valued at less than 40 shillings, charges were reduced for two-thirds of the male defendants, whereas merely half of the women were removed from the possibility of capital punishment in this way. This led to a greater proportion of women being branded or (before the 1624 act) hanged than men. For larcenies involving goods worth more than 40 shillings, the death penalty was more common, but not the norm: branding was still more common despite the fact that such offences were ostensibly non-clergyable.[47] The respective punishments of men and women for grand larceny tempers the general view of parity of treatment for felons. Whilst whipping was not a minor punishment by any stretch of the imagination, it was certainly the lesser of all evils in the long term, whatever the immediate ramifications on well-being and reputation. In contrast, the stigma attached to branding remained visibly manifest.[48] In the light of this it seems rather trite to suggest that women were the recipients of judicial clemency in cases of grand larceny.

As regards the non-clergyable felonies in which women were involved, the introduction of branding for women paradoxically appears to have had an effect on rates of prosecution. Offences such as house-breaking and burglary precluded eligibility for punishment by branding, yet the numbers of women relative to men

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[47] For grand larcenies of less than 40 shillings in value, 52.9% of the women were whipped, 29.4% were branded, and 17.6% were hanged; the comparative figures for men were 65%, 27.5% and 7.5%. Only one woman and 13 men were indicted for larcenies of over 40 shillings in value. Of these, all were branded except five of the men who were sentenced to hang. However, only two of these defendants were charged with larceny alone; one apparently was offered benefit of clergy and failed the reading test for some reason, the other had previously been branded, and so was denied clergy on this occasion but was reprieved and subsequently pardoned. The other three were found guilty of burglaries or horse-theft also. If we discount those who were also charged and convicted for non-clergyable offences, and the defendant who received a pardon, it is clear that women did indeed fare worse than their male counterparts in the punishment of grand larceny.

[48] It also technically precluded the chance to plead benefit of clergy a second time, although the letter of the law was not always strictly adhered to in this regard. To claim those who were branded were "released unpunished" shows a marked misunderstanding of the material reality of the punishment and possibly also of the nature of the early modern criminal justice system. Beattie, Crime and the Courts, pp. 486-87; Cockburn, Introduction, p. 119; Cockburn, 'Twelve Silly Men? The Trial Jury at Assizes, 1560-1670', in J.S. Cockburn and T.A. Green (eds), Twelve Good Men and True: the Criminal Trial Jury in England, 1200-1800, pp. 172; P.G. Lawson, 'Lawless Juries? The Composition and Behaviour of Hertfordshire Juries, 1573-1624', in Cockburn and Green (eds), Twelve Good Men and True, p. 152.

prosecuted for burglary almost tripled after 1624.[49] In any case, the new method of punishing women did not result in petty jurors convicting greater proportions of women on reduced charges. Whereas the male conviction rate was similar to that for men and women prosecuted for clergyable felonies in this decade, women were found guilty of burglary less often. The trial jury returned guilty verdicts for almost three-quarters of the female burglars; conversely, the rate of conviction for women was actually lower after the act was passed than it was earlier in the decade.[50] This cannot be explained by the view that women were treated more leniently as a counterpoint to their inability to manipulate the system through legal loopholes such as benefit of clergy. If this were so, the female conviction rate would have surely risen. Nor does the argument stand that women were beneficiaries of clemency due to their subordinate position as accomplices to men, rather than principal offenders. As we have seen, only a minority of female burglars were in this position.

The correlation between the value of the items stolen in larcenies and the sentence passed, also applies to burglaries, though to a lesser extent. The number of felons hanged increased proportionately with the value of goods stolen; and almost all those whose charges were reduced to larceny had stolen goods worth less than 40 shillings. Nevertheless, men were far more likely to be hanged for participation in burglaries than were women.[51] This is also true of the related offence of house-breaking. Although more men than women were accused of house-breaking, exactly the same numbers of each went to trial in the 1620s. The

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[49] Women accounted for 13.6% of those accused of burglary in the five sessions before the 1624 act, which is similar to the 10.2% in the 1590s. In the five subsequent sessions examined for the 1620s, women constituted 39% of accused burglars. For the whole decade, 28.2% of the total accused were female defendants. Cf. Sharpe, Essex, p. 107.

[50] The trial jury convicted 80.4% of men, and 72% of women. Only 68.2% of women tried after branding became available were found guilty.

[51] Capital punishment was carried out on 35.3% of women and 53.3% of men convicted of burglary. The nature of the offence, and its association with physical violation, may well have resulted in male burglars being perceived as having perpetrated greater damage than female burglars: see below, n. 54. In eastern Sussex, the rate of execution of convicts for non-clergyable thefts was higher for men at 68% and lower for women at 20%. Herrup found that profitability was connected with the conviction rate; execution was more likely if the felon had stolen goods worth £5 or more: Common Peace, table 7.3, and pp. 176, 171-2, 175; cf. Sharpe, Essex, pp. 107-110.

trial jury not only found guilty all but one of each sex, but reduced the charges to larceny for exactly the same number of men and women. There was thus no differential based on gender in the disposition of trial jury verdicts.[52] Sentencing though was weighted against men as it was in cases of burglary, especially after branding for women was introduced: in the 1620s, no woman was hanged for house-breaking once branding became a viable alternative, although they were proportionately more vulnerable to hanging beforehand. In the 1660s, this remained the case.[53] Very few men or women were tried for either offence, yet most of the male defendants were hanged, whilst the women who were found guilty were branded. With more serious felonies then, even those in which women and men were tried in comparable numbers, the chief justice of Chester did seem to have been less ready to send women to the gallows.[54] It is less easy to make a gender comparison for the other offences for which benefit of clergy could not be pleaded. Nevertheless, in cases of cutpursing and pocket-picking, unlike burglary and house-breaking, juries acquitted most of the defendants, especially females.[55] In robberies, all the defendants were male, but were mostly at large and not tried, although the available evidence suggests that when they were caught, hanging was the most likely outcome of a trial. The theft of horses was likewise seemingly a male preserve. A large proportion of suspects were not prosecuted; and the grand jury threw out about a quarter of those who were. In the 1620s, eight men were tried for this offence, of whom four were acquitted, and the rest hanged. In the 1660s, six of the seven men tried were found not

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[52] The grand jury likewise behaved accordingly - excluding those accused who were at large, indictments were returned ignoramus for one man and one woman.

[53] Cf. Beattie, 'Criminality of Women', p. 95.

[54] The greater likelihood of men hanging for burglary might be partly explained by the perceived nature of the offence. It was considered particularly heinous, because it was dependent upon darkness, premeditation, and violation; the vulnerability of the household who were supposedly asleep in bed at the time that the offence was committed was seen to be greater if the burglar was male. This may then have been a type of activity where women were seen to be less criminally dangerous than men, and this may be reflected in the conviction and sentencing rates. The other non-clergyable felonies were all believed to involve violation, but they were not dependent upon darkness, and the vulnerability of the victim was not so marked; consequently, other non-clergyable felonies were not perceived to be so very horrible.

[55] The same appears to have been true of other counties: Sharpe, Essex, p. 102; cf. Herrup, Common Peace, p. 167. In Cheshire the small amounts of money taken by the female cutpurses may have had a bearing on the outcome of the trial.

guilty. The one woman who was prosecuted with her husband was also found not guilty, but the case appears not to have been straightforward, as the couple claimed that they were in fact the true owners of the animal.[56]

Benefit of belly has been discussed as if it were in practice roughly a female equivalent of benefit of clergy, as if the granting of such pleas reflect a general sympathy towards women, or at least as if it provided a usually successful route by which clemency might be sought by and granted towards women.[57] The Cheshire material does not support these views. In the first place, as Herrup has remarked, the test for benefit of belly was "more complex, more humiliating and probably less open to manipulation than the test administered for benefit of clergy".[58] Moreover, juries of matrons in Cheshire returned verdicts of "not pregnant" on the majority of women they examined. Nor did a reprieve gained on the grounds of pregnancy guarantee a pardon. Of the 24 women who pleaded their belly in the 1620s' sample, only four were successful, and two of those were eventually hanged.[59] In the 1590s, three of the four women who were supposedly pregnant when they were convicted of property offences were hanged between six months and one year after their plea had been accepted. The fourth was pardoned two and a half years later, being the only one beside whose name the clerk had made a marginal note that she "is delivered". Yet a valid claim of pregnancy did not itself ensure a woman's life. The one woman who was

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[56] A smaller proportion of offences for which benefit of clergy was not available were returned billa vera by grand juries in eastern Sussex between 1625 and 1640; and a greater proportion of ignoramus returns based on the absence of defendants rather than of an a priori case: Herrup, Common Peace, pp. 124, 128-9. In Essex, robbers were not particularly harshly treated. Sharpe attributes this to the rarity of the offence, but highway robbers had a high conviction and execution rate: Essex, pp. 104-5.

[57] Cockburn, Introduction, ch. xi, sects. ii, iii, and iv, table II, and esp. p. 114; Green implies that women often avoided the gallows through false claims of pregnancy or by conceiving during their imprisonment: T.A. Green, Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800 (Chicago, 1985), p. 118, n. 50; Sharpe Crime in Early Modern England, pp. 68-9.

[58] Herrup, Common Peace, p. 143, n. 16. The best discussion of the role of the jury of matrons can be found in: James C. Oldham, 'On Pleading the Belly: A History of The Jury of Matrons', Criminal Justice History, 6 (1985), pp. 1-64.

[59] This may be a pessimistic impression. If we examine all women reprieved on the grounds of pregnancy for the entire decade rather than the sampled years alone, only three of the nine women concerned were hanged. However, five of the remaining six were all pardoned at the same sessions in 1627. PRO CHES 21/3, ff. 41v, 45, 49v, 66v, 117, 158, 158v, 165, 172, 187.

reprieved in the 1660s was also pregnant, her child being born three weeks after her trial; she was sent to the gallows six months later. Elinor Ratcliffe, on the other hand, was reprieved in 1623 not because she was pregnant but because she was nursing her infant. The court's generosity may have been as much due to sparing the expense of a wetnurse, as to a consideration of the well-being of mother and child: Ratcliffe, too, was hanged six months afterwards. In practice then, benefit of belly was hardly the "generous provision" which it has been claimed to be.[60]

In contrast, few men who applied for benefit of clergy were turned down. The minority who were unsuccessful had either been branded previously, or had allegedly failed the reading test, presumably for reasons other than their ineloquent delivery of the text.[61] Benefit of clergy was used as a standard method of mitigating the death sentence; benefit of belly was not. The use of pardons does not appear to have been particularly favourable to women either. Although general pardons affected men and women equally, those which were conditional on other factors, such as entry into military service did not extend to women. In the 1620s, five of thirteen condemned men who had committed property crimes escaped death by this means; a further seven were pardoned unconditionally apart from being bailed, and one more was discharged as the court ruled that his bill had been insufficiently drafted. Not one of the reprieved men was hanged. We have already seen that women reprieved after successfully claiming pregnancy were not pardoned as a matter of course. Women who failed the pregnancy test but who were subsequently reprieved by the Chief Justice did

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[60] PRO CHES 21/1 ff. 152v., 167, 177, 180, 182v., PRO CHES 21/4, ff. 20, 28; PRO CHES 21/3, ff. 81, 88. For reprieves and pardons of women accused of violent offences, see chapter three above. Hanawalt, 'Female Felon', p. 265.

[61] Six of 39 men who pleaded benefit of clergy were denied it in the 1620s' sample. One of these had been branded previously, but was reprieved and pardoned; the rest apparently could not read. Another man read successfully and was branded, but the king "denied his reading" nevertheless, and he was condemned at the next sessions. PRO CHES 21/3, ff. 66v, 71, 97, 97v, 108, 144. Cockburn found for the Home Circuit assizes between 1559 and 1589 that no man was denied clergy because he failed the reading test: 'Trial by the Book?', p. 77. For a further discussion of benefit of clergy being denied to male offenders, see pp. 123-125, above. For benefit of clergy in general, see Cockburn, Introduction, ch. xi, sect.ii.; Sharpe, Crime in Early Modern England, pp. 67-8; Leonora C. Gabel, Benefit of Clergy in England in the Later Middle Ages (Northampton, Mass., 1929, 1969 edn), ch. 5; Herrup, Common Peace, pp. 48-50.

not fare much better. Of four such women, one was discharged because she was a minor, another pardoned after four years of incarceration, and the other two were hanged six months after the reprieve was granted. An extensive study of the use of pardons, which would examine why and to whom they were granted, may well show that women were generally luckier than the few who appear in the Cheshire records of this study. Nevertheless, the fate of Elinor Ratcliffe and women like her should remind us that generalizing about women being regular beneficiaries of mercy is perpetuating a myth.

We have seen that the aggregate figures for a gender differential in jury returns and sentencing are sometimes misleading if each type of offence is considered separately. Breaking down the quantitative data demonstrates that the treatment of women before the courts was more complex than might at first appear, yet the numerical data on which conclusions may be drawn become too small to substantiate any counter-claim to be representative themselves. The shortcomings of the sources cause problems for a gender analysis. For instance, studies which have examined jury behaviour with regard to the suspect's social status have tended to categorize women as a homogenous category, and at most have created female sub-groups of wives, widows and spinsters. Yet it is largely impossible to discern the social status of widows and spinsters; and given the unreliability of additions noted on indictments, that of wives must be treated sceptically at least.[62] This means that comparing the treatment of women in court proceedings to that of men of various status categories tells us very little. If, as has been argued elsewhere, jurors had differing responses according to the status of male defendants, it is highly unlikely that they had one overarching response to the women they indicted or tried.[63] Furthermore, whilst social status was clearly relevant to decision-making, it has been noted that "it is impossible

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[62] For a discussion of the shortcomings of indictments as a historical source, see J.S. Cockburn, 'Early Modern Assize Records as Historical Evidence', Journal of the Society of Archivists, 5 (1975), pp. 215-31.

[63] For the effects the status of defendants and victims on grand jury behaviour, see: Herrup, Common Peace, pp. 115-18, and tables 5.4 and 5.5; on petty juries, Herrup, Common Peace, pp. 149-156, and tables 6.4 and 6.5.

to measure precisely the influence of such considerations".[64] The same is surely true of gender. Gender alone cannot be our key to understanding the treatment of women within the judicial process.

One way of negotiating this problem may be not to broaden the scope of the study to provide greater aggregates, but to narrow the focus still further. By examining in detail individual sittings of the courts, it becomes possible to identify contradictions in the wider view. Such anomalies tend to be overlooked, or subsumed within an oversimplified historical model. Many of the women who were hanged in the earlier part of the 1620s could have been saved from the gallows, for instance, if the grand or petty jury had decided to reduce the charge against them. In September 1620 Elizabeth Jackson, and Elizabeth Anglisey were tried as cutpurses, along with a Staffordshire labourer, William Heath alias Aston, who was charged with stealing 5*s* 6*d* from a man's pocket. Jackson was found not guilty but was whipped anyway. Heath alias Aston was branded after the charge was reduced to grand larceny. Anglisey was hanged, even though the purse she stole contained only 11*d*.[65] Undoubtedly Anglisey would have been ignorant of how little the purse contained; she might have been a suspected cutpurse long before she was finally caught; she might have been, without a shadow of a doubt, guilty. Whatever the factors which resulted in the jury returning their verdicts, or which led Job Charlton, the Chief Justice, to order Jackson's whipping but not to give Anglisey a reprieve, the influence of gender is elusive.

In October 1591, 14 men and 5 women were put on trial for grand larceny. Of these, one man and four women were sentenced to death. Five of the remaining men had their charges reduced to petty larceny by the petty jury, which was an option they could have easily chosen in the cases of at least three of the

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[64] Herrup, Common Peace, p. 118.

[65] PRO CHES 21/3, ff. 66v., 67. Sir Richard Grosvenor had among his sessions papers a copy of an order which stipulated that if known cutpurses "be not convicted of felony [they were to] be dealt with as Rogues and so punished": Eaton Hall Grosvenor MSS, Quarter Sessions Papers, Box 1/2/33. This may explain Jackson's whipping.

female offenders. One of the women, Ellen Burton, was subsequently pardoned for having stolen a silver spoon worth 3*s*. But Alice Tomlinson and Elizabeth Smythe were both hanged for the theft of a gown and other clothes valued at 3*s* 4*d*, while John Williamson was only whipped for clothes worth 4*s* 7*d*, and Richard Jennings for clothes worth 3*s*. In September 1624, four men and four women were found guilty of burglary. The women each applied for benefit of belly, but failed the pregnancy test. All eight offenders were thus sentenced to hang. Yet Barbara Deane was reprieved, whipped and set at large at the instigation of the jury and acquiesence of the Chief Justice of Chester. It comes as no surprise that the jury of matrons discovered she was not pregnant, for Deane was only a child, perhaps as young as seven years old if the indictment against her which describes her as "an infant" is legally precise. The clerk who drew up the jury return noted that she was "a young wench". Here, then, we have a case in which the defendant's age, not her sex, appears to have saved her life. Although the common law did not officially sanction preferential treatment for offenders over the age of seven, it may have been that children and adolescents, rather than women, were the most likely candidates for leniency by grand and petty juries in early modern England.[66]

Cases such as Barbara Deane's aside, much criminal justice appears to have been delivered in a somewhat random manner. As juries based their decisions upon the facts of a case, the relevant legal rules, and their perception of a defendant's character, the disparate treatment of the various women who came before them implies that the sex of an offender did not outweigh other considerations as a matter of course. The impression of randomness is to a great extent the result of the fact that "the idiosyncratic pressures of acquaintance and dependence, of prejudice and superstition, are largely unrecoverable", as Herrup has pointed out, in addition to the often difficult circumstances in which trials

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[66] Herrup, Common Peace, p. 129, & n. 49; William Blackstone, on the other hand, maintained that criminal responsibility was "not so much measured by years and days, as by the strength of the delinquent's understanding and judgement", Commentaries, Vol. 4, p. 23.

were held.[67] But the unrecoverable nature of the very phenomena which informed juries' and judges' decisions must modify much of the historical debate surrounding verdicts and sentencing. In recent years juries and their verdicts have been the focus of a great deal of research. The debate has centred around the notion of jury lawlessness: that is, whether jurors were instruments of the state, their criteria for returning guilty verdicts in capital cases being largely based on the requirements of exemplary punishment; or whether their decisions were predominantly informed by community norms, in which case the jury was a mitigating force which saved defendants from the full force of the law. Proponents of both views have arguably misrepresented the social context of the jury system, as both use a quantitative model to discern patterns in judicial decision-making which effectively treats "the jury" as if it were a static and homogenous entity.[68]

In Cheshire, both grand and petty jurors were drawn from "a coherent social group, the middling freeholders". Assize jurors in other counties were perhaps drawn from a broader social group than the lowest rank of gentlemen who served in Cheshire, yet despite local differences, jurors everywhere were drawn from "the better sort" and might have shared a range of social attitudes.[69] Juries were nevertheless made up of individuals. In the courtroom, moreover, they dealt with other individuals - individual defendants, victims, justices, judges,

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[67] Herrup, Common Peace, pp. 142, 144-5.

[68] Beattie, Crime and the Courts, chs. 8-10; Cockburn, Introduction, chs. 6 & 8, and conclusion; Cockburn, 'Twelve Silly Men?', pp. 158-181; Green, Verdict According to Conscience, ch. 4; Hay 'Property, Authority and the Criminal Law'; Herrup, Common Peace, ch. 7; Herrup, 'Law and Morality in seventeenth-century England', Past & Present 106 (February, 1985), pp. 102-23; P.J.R. King, ''Decision Makers and Decision Making', Historical Journal 27 (1984), pp. 25-58; John H. Langbein, 'Albion's Fatal Flaws', Past & Present 98 (February 1983), pp. 96-120; John H. Langbein, Prosecuting Crime in the Renaissance, pp. 104-28; Lawson, 'Lawless Juries?', pp. 117-157; Joel Samaha, 'Hanging for Felony: The Rule of Law in Elizabethan Colchester', Historical Journal 21 (1978), pp. 763-82; Keith Wrightson, 'Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-Century England', in J. Brewer and J. Styles (eds), An Ungovernable People: the English and their Law in the Seventeenth and Eighteenth Centuries (London, 1980), pp. 21-46.

[69] J.S. Morrill, The Cheshire Grand Jury 1625-1659, (Leceister, 1976), pp. 6, 9-10, 11, 12, 15-20, esp. pp. 6, 17-18. In Cheshire, grand and petty jurors appear to have been drawn from the same social group. Cf. Herrup, Common Peace, pp. 97-103; B. Manning, The English People and the English Revolution, 1640-1649 (London, 1976), p. 236; Stephen Roberts, Recovery and Restoration in an English County: Devon Local Administration, 1646-1670 (Exeter, 1985), pp. 67-81, 89; Samaha, Law and Order, pp. 49-52.

witnesses and members of the wider community who often intervened successfully on behalf of the accused. The Cheshire magistrate, Sir Richard Grosvenor, located his critique of the grand jury precisely in these terms when he lamented of the "three mayne enemies which hinder the perfection of this service":

> the first is feare to offend great men our superiors; the second is favoure and affection we beare towards our friends and neighbours; the third is foolish pitty extended where not deserved.[70]

Indeed, as Herrup has noted, since the grand jury should have weeded out cases which rested upon suspicion alone, circumstantial evidence could lead to many instances in which the decision rested upon the conflicting words of the individual parties and their witnesses. A defendant's attitude could itself lead to conviction if it suggested improbity on his or her part. And petty jurors often mitigated cases when it appeared that the crime was the consequence of necessity, immaturity or other circumstances which indicated that profit was not the motivating force. So, whilst gender partly informed the expectations of jurors, it would not have been the sole determinant of verdicts in cases with female defendants.[71] Breaking down an analysis of verdicts by individual sessions substantiates this view. There were simply so many variables that generalizations are misleading. In the light of the dynamics at play in interpersonal relationships, a consideration of verdicts purely on the basis of the legally precise category and nature of the offence, or the status and sex of offender or victim, is too rigid a model of analysis.

Legal categories of offence encompassed a wide range of behaviour. Even if such variations are taken into account wherever possible, a systematic analysis of the evidence may nevertheless present an over-simplified view of historical

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[70] Eaton Hall Grosvenor MSS, Quarter Sessions Papers, Box 1/2/51, Jury Charge, undated, c.1625.

[71] Similarly, Herrup found for eastern Sussex that "neither the gender nor the stated social position of a defendant or a victim had a statistically significant relationship to the behaviour of petty juries", despite her general claim that the rate of conviction for women was low: Common Peace, pp. 148-151; see also pp. 155, 157-8, and table 6.4; it should also be noted that as regards the word of one person against another in court, juries were less prone to returning guilty verdicts when witnesses other than the victim testified, p. 160.

reality.[72] One indication of the less tangible factors at play can be seen in popular perceptions of ownership and right action which are drawn upon and manipulated in examinations taken before magistrates and petitions to the sessions bench.[73] Just as notions of social order in early modern England were constantly renegotiated by deponents and supplicants in cases involving violence,[74] narratives about property offences were likewise dependent upon a certain amount of ambiguity regarding legality and probity.

Notions of what belonged to whom were generally based upon the practicalities of the household in early modern England, as far as moveable goods were concerned. Although in legal terms the ownership of property was weighted towards men, popular perceptions of ownership did not strictly adhere to legal definitions. Women clearly felt uninhibited in claiming the right to protect goods and chattels which they deemed to be theirs, either as their own personal possessions or as the property of the household of which they were a part.[75] A common manifestation of this was in disputes over inheritance, and in the many cases in which women physically fought bailiffs and constables who attempted to serve warrants on their goods and chattels. Yet the ambiguity between practice and legality did not necessarily operate to the disadvantage of women. Tensions within households and those which cut across relationships between households which resulted in prosecutions for theft could take many forms.

Anne Brownesworth's prosecution of John Meakin for the theft of her

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[72] This fact does not in any way undermine the excellent and sensitive analyses of the available evidence in work by historians such as Cynthia Herrup and John Beattie, for example. We do, however, need to be constantly reminded that the extant sources are constructed in ways which mask dynamics which themselves may have had a large bearing on the success and nature of prosecutions.

[73] By "right action" I mean the moral superiority on which examinants drew in their testimonies in order to place themselves in a stronger position than their adversary.

[74] See chapter 2, above.

[75] Legal definitions, especially those of the common law, have been taken by at face value by historians in general discussions of women's relationship to property. See for example, Ralphe A. Houlbrooke, The English Family 1450-1700 (London, 1984), pp. 229-247; Lawrence Stone, The Family, Sex and Marriage in England 1500-1800 (London, 1977), pp. 136-9; Louise A. Tilly & Joan W. Scott, Women, Work and Family (New York, 2nd edn, 1987), pp. 24-26; cf. Erickson, 'Common Law Versus Common Practice', pp. 24-5, and see also, Roper, Holy Household, pp. 173-76.

goods in 1624 seems to have been one step in a campaign to procure the separation of John and her daughter Ellen, who had married three years before. According to John, Anne had promised to give him "all her goodes Chattels and Chattells whatsoever" as her daughter's dowry, and delivered "parcell of the said goodes in name of the whole". Two years later, he "possessed himself of some other part of the said goodes (as he verylie thinketh he might lawfullie doe) and laide the same in his own house by consent of the same Anne". Afterwards, however, John found himself taken before Sir William Brereton by Anne's brother-in-law, Randle Brownesworth who was then constable, and charged with felony. Fortunately for John, Brereton believed the accusation to be false, and an indictment was never filed. Anne and Randle nevertheless found another means of separating John from his wife and Anne's goods. They forced John "by their threates and terryfyinges" to enter into a bond of £40 to Randle, the condition of which being,

> That [he] should remove himself within three dayes next after sealing of the...bond from inhabitinge within Newbold Astburie or the parish of Astbury, and should discontinue himself from thence, and from his wief and child for the space of four yeares next.[76]

In another case, Ellen Acton petitioned the bench at the great sessions held in September 1620. She had been indicted of the theft of some bacon from the house of the executor of her father's will, John Malbone a Halton yeoman. At the time of the indictment against Ellen, she was in the midst of a suit against him at the Exchequer Court of Chester, because he refused to give her her child's portion. It was apparently in retaliation that Malbone threatened that he would indict her, and did so. Ellen indignantly told the bench:

> And why my Lord[?], because she [Ellen] had cut a Collope of his bacon, and eaten it in his house, he and his wife being away. And she was a servant in his house, and as a child in his house...

The bacon was only worth sixpence. On her request, the Chief Justice of Chester allowed her to be discharged from the indictment, and referred the case to a local

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[76] QJF 53/1, ff. 64, 53.

Justice, Mr Dod.[77] Ellen's position within Malbone's household, and the nature of the alleged theft, invalidated his attempt to prosecute her. In both of the above cases, the household relationships of victim and suspect are not obvious in the formal documentation; it is only in the additional qualitative material that the dynamics and legitimizing notions are visibly manifest. Yet this type of background to a prosecution can go far in explaining why individual cases were unsuccessful at any stage of the legal process.

Sometimes the claim to rightful ownership was not based on notions of household order or of gender, but was located in economic relationships. Margaret Sharples, a married woman who "saith that she hath lived by her labour working with her needle as a seamester", was prosecuted in 1620 for the theft of cloth worth 22*s*, "which she had converted into a petticoat for her own wearinge". Being asked by two magistrates how she came by it, she said,

> she came to Mr Bennet's shop in Chester and she was contractinge and bargaininge with one of his servants for the same peece of kersey and havinge not moneye sufficient in her purse to pay for it, took it away with purpose to paye for it so soone as she Could: and that she afterwards agreed with Mr Bennett of a price for it.

Bennet's statement concurred with this: after agreeing that she should pay him 22*s*, Margaret "delivered a hamper with goods in it as a pawne for securyty of the money, And 4*s* 9*d* in money". However, he said that "soon after he disliked upon better consideration to hold agreement with her: and delivered the hamper and goods back", and commenced the formal proceedings against her which ended with her being convicted and condemned to hang.[78] Margaret Sharples did not consider her actions unlawful, whatever the likelihood of her paying the debt;

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[77] PRO CHES 24/115-4, Petition of Ellen Acton, Certiorari for Ellen Acton. The indictment had originally been filed at quarter sessions held in the previous October, but Acton had removed it by certiorari to the great sessions.

[78] Margaret was reprieved after successfully pleading pregnancy; whether she was subsequently pardoned is unknown. CCRO QSF 67, f. 4, Indictment of Margaret Sharples, CCRO QSF 67, f.10, Examination of Margaret Sharples, CCRO QSF 67, f. 11, Examination of Richard Bennet.

in the first instance, neither did Bennett nor his servant.[79]

The ambiguity over right action could, of course, extend beyond the law. One man who was taken before the local Justice for fishing without license in John Bradshaw's pit, claimed nonliability on the grounds that his fellow, Hugh Dod,

> said at that time that he cared not for John Bradshawe seeing him fishing for he owed him money, and thereupon this examinate fished with the said Hugh and took two little tenches.

Interestingly, Hugh himself did not adopt a similar stance - whether or not it was true, perhaps he realised that it was unlikely to have been a palliative to the magistrates. Hugh Dod, his brother John and another man, Richard Rhodes, all utterly denied having been fishing at Bradshaw's pit on the night in question. The Dod brothers said that Hugh just happened to have a tench in his hand when Bradshaw's neighbour met him at the stile leading from the pit. But no explanation for Hugh (or the fish) being there was offered.[80]

Disputes in the workplace might also be played out through recourse to the law. In regulated trades, institutional frameworks were already created which provided the means by which this could occur. In less formalized working relationships, other sanctions were used. John Roberts, a carpenter, employed two men who were also styled as carpenters as "his underworkmen at day wages and thereby [they] had the use of his tools". One Monday morning, Roberts was called away on other work, and left a message with the tenant of the premises in which they were working to tell them what work they were to do. On hearing this, the two men refused to do anything unless Roberts met with them,and immediately packed up all the tools in the house and went away, taking the tools with them, and effectively going on strike. Roberts' examination highlights the

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[79] Merchants and tradesmen regularly operated through credit systems in early modern England. For examples, see Heather Swanson, 'Artisans in the Urban Economy', p. 49; Spufford, The Great Reclothing of Rural England: Petty Chapmen and their Wares in the Seventeenth Century (London, 1984), pp. 158-60, 176-7. See also CCRO QSF 73/1, f.3 for an instance of some maidservants having farthing tokens.

[80] QJF 53/2, f. 101, Examinations concerning John Bradshawe's fish.

ambiguities of this sort of dispute: in answering an unrecorded question put to him by the magistrate, Roberts "denyeth he sold or lent these tools to them, and suspects them of feloniously taking the said tools". Roberts' answer suggests the opacity of notions of ownership of commonly-used tools in unregulated work.[81]

Contextual evidence of the type described above survives for only a minority of the cases involving stolen property. Yet the dynamics of such incidents were one factor, sometimes the most crucial, in the outcome of prosecutions. A consideration of the criminal justice process in terms of value of goods stolen, sex of offender, category of offence, and so on, must therefore be tempered by a recognition that the specific nature of an incident, if it were known, might alter the general picture. Bearing this in mind, a systematic examination of court records can nevertheless take us some way towards our understanding of the relative behaviour of men and women in early modern society if the easily quantifiable sources are used in conjunction with contextual information.[82] It is however, possible to go further. By shifting the parameters of the enquiry away from formalized documents such as indictments to the more discursive evidence contained within examinations and depositions, the nature of female criminal behaviour can be considered in context. It seems that women's experience of illegal ventures was not exactly the same as men's, but was certainly significant. For, just as female thieves operated with other women, the dynamics of the secondhand trade and other ways in which women disposed of their ill-gotten goods suggests that women operated within inimitable female networks. The nature of these networks is such that they are poorly documented in formal court records and have therefore remained largely unexplored by historians of crime.[83]

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[81] QJB 3/1, f. 176v., recognizances to prosecute and to answer, QJF 95/3, f. 122, Examinations concerning Thomas Swinnerton and Humphrey Pritchard.

[82] Herrup does this successfully, for example, with regard to the types of issues which gave strength to a case: Common Peace, pp. 121-124.

[83] It is hardly odd that women might have had alternative fora in which such disputes were worked through. In eastern Sussex, female plaintiffs prosecuting property offences were less successful than their male counterparts at the trial stage, although they were relatively more so in procuring billa vera indictments. Herrup puts this down to their exclusion from the legal process, which made them

Female Networks of Exchange and Interaction

An important and obvious ramification of theft was the existence of a market in which to sell stolen goods. Clothing was particularly easy to dispose of due to the ubiquity of both pawnbroking, which provided a credit system for a great part of the population, and a thriving market in used clothes. But most objects could be similarly exchanged.[84] By the mid-eighteenth century, one commentator was able to remark that pawnbrokers were so necessary to the labouring poor that "I cannot comprehend almost how they live without the Pawnbroker"; another claimed that "the Thief disposes of his Goodes with almost as much Safety as the honest Tradesman".[85] Whilst this market was not restricted to women, either as suppliers, traders or consumers, many of those who dealt in secondhand goods, who are visible in the depositional evidence of the Cheshire courts, were female.[86]

Women's role as receivers of stolen property has been noted by historians, but has been delegated to a subsidiary position. As studies of criminality have focused so heavily upon formal court proceedings, the lack of discussion is partly the result of the infrequency with which the offence was formally prosecuted:

"particularly dependent upon public sympathy for help in avenging wrongs", Common Peace, pp. 153-55, and table 6.5.

[84] On the respectable side of the secondhand clothes trade see, Beverly Lemire, 'Consumerism in Preindustrial and Early Industrial England: The Trade in Secondhand Clothes', Journal of British Studies, 27 (January 1988), pp. 1-24; Madeline Ginsburg, 'Rags to Riches: The Second Hand Clothes Trade, 1700-1978', Costume, 14 (1980); Spufford, The Great Reclothing of Rural England. On stolen clothes see, Beattie, Crime and the Courts, pp. 189-90; Anne Buck, 'Buying Clothes in Bedfordshire: Customers and Tradesmen, 1700-1800', Textile History, 22 (1991), p. 228; Beverly Lemire, 'Peddling Fashion: Salesmen, Pawnbrokers, Taylors, Thieves and the Second-hand Clothes Trade in England, c.1700-1800', Textile History, 22 (1991), pp. 67-82; John L. McMullan, The Canting Crew. London's Criminal Underworld 1550-1700 (Baltimore, 1984), pp. 23-5, 106; Roper, The Holy Household, p. 176.

[85] Cited in Lemire, 'Peddling Fashion', p. 78.

[86] This is unlikely to be solely the result of contemporary bias in a greater concern with women's disorder in this area of activity. The accounts of female involvement are often incidental rather than judgemental or troubled. Nevertheless, as Michael Roberts has noted, "everywhere there was a struggle to reconcile the ideal of the household with the wayward but necessary improvisations of working women": Michael Roberts, 'Women and Work in Sixteenth-Century English Towns', in P.J. Corfield and D. Keene (eds), Work in towns, 850-1850 (Leicester, 1990), pp. 93-95; Beattie, 'Criminality of Women', p. 93. For additional examples of female involvement in the second-hand and stolen clothes trade to those cited below, see QJF 51/4, ff. 62, 42; QJF 53/4, f. 4; CCRO QSF 73/1, f. 3; CCRO QSF 73/1, f. 9; CCRO QSF 73/2, f. 45.

there was no effective statute against receiving stolen goods until 1691, and it remained an offence which was particularly difficult to prosecute. It was, however, taken seriously by contemporaries. Ellen Hutchins defended herself against a charge of defamation at the consistory court by claiming that she had called Margaret Grice "the Egge of a whore and a Cuckolde birde" having been "provoked thereto by...[Margaret's] scandalouse and injurous speeches" against her. For, according to Ellen, Margaret had called her

> a Receipter and her children Thieves, and Ellen being so provoked replied in defence of her own Credit and the Credit of her said children and in her heat and choller said and spoke the words of defamation...[87]

Although the legal definition of receiving thieves was ambiguous, and did not necessarily include the receiving of stolen property, the two acts are linked by contemporary legal commentators. Receiving the goods was often synonomous with receiving the culprit.[88] Despite fundamental problems of sources and of definition, the importance of female involvement has been largely overlooked. By perceiving criminality through a lens focused upon men, female activity has been discussed as if it were peripheral to "real", that is, male criminality. Thus women's role as receivers of stolen goods has been linked to their position within the household, yet the association has largely been with notions of female dependence and familial obligation rather than with their own economic activities or their interactive social position within the community.[89]

The participation of women in pawnbroking and receiving and selling stolen goods should not, however, be underestimated, even when they were not officially prosecuted. Historians have recognized the crucial role that women played in businesses registered in their husbands' names. This was especially true

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[87] CDRO EDC 5(1624)5, Margaret Grice c. Ellen Hutchins. See also CDRO EDC 5(1624)37, John and Ellen Hollinworth c. Thomas and Margaret Hollinworth.

[88] For example, see Peter Leicester, Formes of endictments...1664, Leicester-Warren of Tabley Collection, DLT/unlisted/16; M. Dalton, Countrey justice (London, 1635 edn.), pp. 287-88.

[89] Beattie, Crime and the Courts, pp. 189-90; Gillespie, 'Women and Crime', p. 49; Hanawalt, 'Female Felon', pp. 256-7, 261, 266-7; Shoemaker, Prosecution and Punishment, pp. 133, 171-2. For the treatment of receivers according to law, see Blackstone, Commentaries, Vol. 4, pp. 37-38; Cockburn, 'Trial by the book', pp. 66-7; Dalton, Countrey Justice, pp. 287-88; Herrup, Common Peace, pp. 82, 152; J.F. Stephen, A History of the Criminal Law in England, Vol. 2 (London, 1883), pp. 229-38.

of alehouses and inns, where small-scale pawning was commonplace, and the retail trades which dealt in textiles and clothing, as well as small-wares and food.[90] One linen draper's criteria in the choosing of a wife was based upon her potential aptitude for the necessary involvement in the trade, which included "cutting out Pinners, Quoifs, Etc for the Pedlars", and "despens[ing] with the nauseous Impertinence, Insolence and Rusticity of the older part of our Female Customers the management of which lyes chiefly in the province of the wife..."[91] Women also had a high profile amongst petty chapmen and pedlars, both as independent traders and in partnership with male members of their families. There is every reason to suppose that whilst women constituted only a minority of named pawnbrokers and salesmen and women on insurance registers, wives and daughters were actively involved in the trade itself.[92] If it is true that "the majority of the population" were involved as buyers and sellers, women must have played a large role. Furthermore, the nature of the lower end of the trade itself, "with no barriers inhibiting entry in to the trade, with commodities readily available and so easily exchanged", must have been conducive to women.[93] Women's involvement in the second-hand trade should not, then,

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[90] Alice Clark, The Working Life of Women in the Seventeenth Century, pp. 197-209; Peter Clark, The English Alehouse: A Social History, 1200-1830 (London, 1983), pp. 145-7, 138-9, 229; W.H. Crawford, 'Women in the Domestic Linen Industry', in M. MacCurtain & M. O'Dowd (eds), Women in Early Modern Ireland, pp. 255-264; Nuala Cullen, 'Women and the Preparation of Food in Eighteenth-Century Ireland', in idem, pp. 265-275; Peter Earle, The Making of the English Middle Class (London, 1989), pp. 160-3, 166-74; Peter Earle, 'The female labour market in London', Economic History Review, 42 (1989), pp. 343, 350-1; C. Shammas, 'The World Women Knew: women workers in the north of England during the late seventeenth century', in R.S. Dunn and M.M. Dunn (eds), The World of William Penn, (Philadelphia, 1986), pp. 103, 105-9; Sharpe, Essex, p. 112.

[91] Cited in Buck, 'Buying Clothes in Bedfordshire', pp. 222, 229-30; quotation at p. 222.

[92] Spufford, The Great Reclothing of Early Modern England, passim. Research in progress suggests that about 11% of pawnbrokers and used clothes dealers were women: Beverly Lemire, 'Disorderly Women and the consumer market: women's work and the second-hand clothing trade in early modern England', paper presented to the Anglo-American Conference of Historians, Institute of Historical Research, 1993.

[93] Lemire, 'Peddling Fashion', pp. 67-8, 74, 76. As Michael Roberts has said, "household incomes ebbed and flowed across the threshold between cash and kind, and in the management of the associated pawns and credit dealings women were the experts": 'Women and Work', p. 95. For a discussion of the ways in which the market operated on trust and community values, see Craig Muldrew, 'Interpreting the market: the ethics of credit and community relations in early modern England', Social History, 18 (2, 1993), pp. 163-183; Muldrew points out that there has as yet been no attempt to write a social history of the market, which focuses on the language of credit and honesty, pp. 164, 177. Such a study, if undertaken, should include a consideration of the ways in which credit and honesty interrelated conceptually with gender if the "community values" on which the market was based is not to be an anachronistic term.

come as a surprise.

When in the summer of 1669, Aurelia Savage had clothes and linens to the value of 9*s* stolen, she had a good idea of where they might have turned up, even though she did not initially suspect Jane Care, the bricklayer's wife who took them. The following day she went to Arthur Fisher's alehouse, and found some of her goods in the possession of Fisher's wife, Elizabeth, and two of her maidservants. Elizabeth promised to compensate Aurelia for 2 aprons and a napkin no longer in her custody - presumably sold. Although Arthur was hovering about in the background, evidently aware of what was going on, Elizabeth was clearly the dealer. It was she who was prosecuted by recognizance for her part in this case; and when the Fishers refused to give Jane Care "some relief for to entertain her in prison" after her arrest, Care told the constable "she would open such a doore against...Elizabeth Fisher as should not please them". Other incidents in which stolen goods turned up at the Fisher's house tell a similar story. Having heard of Aurelia's success in recovering her goods, Ellen Sadler asked Elizabeth Fisher whether Care had taken her stolen yarn there. Elizabeth said that she might have done, but protested ignorance of what had become of it. Later however, yet another woman, Anne Wilkinson, took it upon herself to make a search in Elizabeth's presence; she discovered the yarn, and returned it to Ellen Sadler.[94]

There are other cases in which women and their servants seem to have been involved in independent and disreputable economic relationships. Ellen Cowper and her maids were all implicated when stolen clothes were allegedly pawned at her house, despite the male culprit's insistence that he only went there to buy a penny loaf. The extent of the female involvement is clear: the house in question was Robert Cowper's alehouse in the city of Chester, yet witnesses and magistrates were interested only in the activities of his wife and the maidservants. In addition, all of the several witnesses were female, and although one Thomas

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[94] QJF 97/2, ff. 82, 133, Examinations against Jane Care.

Lindopp was named on the indictment as the owner of the goods and prosecutor, it was his wife Margaret who went to the justices and was bound over to prosecute the bill.[95]

In addition to their involvement as victims, suspects, and agents in the disposal of stolen goods, the social and economic role of women often placed them in a strong position to detect and deal with thefts - especially those by other women.[96] Many women as well as men acted on their own authority before informing officials and male and female victims of thefts they believed they had uncovered. Elizabeth Welsh was visiting her neighbour Ellen Thomas when she observed what she deemed to be the suspicious behaviour of another visitor, Elizabeth Johnson. Perceiving that Johnson had something in her apron which "she desired to keep close", Welsh forced open the apron and uncovered some yarn. Demanding to know how Johnson had got it, she was told that it belonged to Johnson's employer, although in fact Johnson was out of service at the time of the incident. After leaving the house, and returning shortly afterwards, she found the door locked, which aroused her suspicions further. Eventually readmitted, she found Ellen Thomas and Johnson together in a chamber, at which point Johnson left the room. Elizabeth Welsh remained determined to discover any misdeeds, and being told by a little boy that there was a "false loft" in the house, she "caused Thomas Welsh a boy that [her] husband keeps to make serch with a candle"; on his doing so, Johnson was discovered lying down between the slates and the roof, and was dragged out. Having secured the audience of the two women, Welsh then demanded to know the whereabouts of the yarn. Both denied all knowledge of it, Johnson now saying that she had brought none into the house, so Welsh made a search, during which she found the yarn hidden in white cloth in a cradle in the room. Consequently, Ellen Thomas was to be prosecuted for receiving along with Johnson, although in the event only the latter was

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[95] CCRO QSF 73/1, ff. 11, 12; CDRO EDC 5(1620)1, Elizabeth Cowper c. William Heald.

[96] See Patricia Crawford, 'Review of Ian Archer's The Pursuit of Stability', in Continuity and Change, 8 (1993), pp. 129-31 for a brief discussion of the importance of women in neighbourhood and social relations.

indicted, found guilty and branded.[97] The offence was prosecuted by the male owner of the goods but female involvement in detection was of paramount importance.

Anne Stockton's theft of Mistress Tannat's four hens and silver spoons similarly came to light through female community networks. Anne asked Alice Buckley to sell the hens for her, bringing her a silver spoon - perhaps for her trouble. Having sent her sons to Chester to sell the hens, Alice asked Anne Alcocke and Mary Llewellen, servants to Mistress Tannat, whether some hens and spoons had been missed. When Mary said that they had, Alice replied, "Get Alice Stockton out of the house...for [Mistress Tannat] is wronged by her". Alice claimed that she spoke to the two women "to the end they might acquaint [their] Mistress...therewith to prevent any further mischief", which they then did. Tannat evidently chose to deal with Anne Stockton informally, which was probably commonplace in thefts by servants of both sexes. However, female involvement as thief, receiver, and informer is masked by the formal court records - only Alice's son was bound by recognizance for his part in selling the stolen poultry.[98]

That women were so involved in cases where clothes, linens and household goods were stolen reflects the preoccupations and concerns of women in early modern social and economic life. Such disputes were often played out within female circles, with their own structures of authority and responsibility, precisely because women often had a personal investment in such goods. Margaret Dod was indicted, along with her servantmaid Mary Catharall, for stealing an iron mortar and pestle, a kettle, and a pewter dish from the house of her deceased husband's brother, William Brocke, in what appears to have been

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[97] CCRO QSF 73/1, ff. 9, 10, 13.

[98] QJF 91/1, f. 119, Examinations of Alice Buckley, Anne Alcocke and Mary Llewellen; QJB 3/1, f. 74v. For thefts by servants, see J.H. Baker Introduction to Legal History (London, 3rd. edn., 1990), p. 607; Beattie, 'Criminality of Women', pp. 91-2; McMullan, Canting Crew, p. 23. See also CDRO EDC 5(1626)49, Margaret Hanford c. Eleanor Johnson, for an example of how theft by servants could be played out in other jurisdictions.

a dispute over inheritance.[99] Brocke was the official plaintiff on the indictment, and the goods were, of course, listed as his. The legal status of goods informed the rhetoric with which such items were described: when his servant, Elizabeth Parsonage, confronted Margaret, she asked why she was taking "her Master's goods". Yet in Elizabeth's examination, both the verbal argument and the physical fight that ensued between the women placed the parameters of the disputed ownership very firmly within a female sphere. In reply, Margaret

> swore they were her own and she would have them, and that she would go through the house and take what was her own.

Why then, Elizabeth asked, "would [Margaret] not fetch her goods when her mistress [Anne Brocke] was at home[?]"; whereupon Margaret replied she "would have the goods in spite of [Anne's] nose, giving her [Elizabeth] many ugly unseemly words".

The language is that of sexual slander: noses, with their cultural association with the phallus, were also physical signifiers of adultery in women. Indeed, references to noses were particularly linked to wives' revenge on their husbands' mistresses. Margaret's position was in part that of the wronged wife, not through usurpation in a sexual sense, but in the material basis of her household. That Margaret's verbal abuse should take this form is hardly surprising in itself. The language of whoredom was the most common form of sexual insult, and in referring to Anne in this way, Margaret establishes herself, in contrast, as the honest woman. As Laura Gowing has said, such arguments demonstrate that women had their own corpus of sanctions "which encompassed sexual sin in contexts as broad as the neighbourhood and as narrow as the household".[100] But they also indicate the areas of contention in which women

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[99] Erickson, 'Common Law and Common Practice'; F. Pollock and F.W. Maitland, The History of English Law Before the Time of Edward I, (2nd edn, Cambridge, 1968), Vol.II, pp. 348-56; Tim Stretton, 'Women, Custom and Equity in the Court of Requests', in J. Kermode and G. Walker (eds), Women, Crime and the Courts in Early Modern England (forthcoming).

[100] For other examples see QJF 89/3, ff. 196, 184; QJF 23/3, f. 47; QJF 23/1, ff. 16, 30, QJB 2/4, f. 7. For a discussion of the use of the term 'whore' and the significance of noses in defamation cases, see Laura Gowing, 'Language, Power and the Law: Women's Slander Litigation in Early Modern London', in Kermode and Walker, Women, Crime and the Courts; Laura Gowing, 'Gender and the Language of Insult in Early Modern London', History Workshop Journal, 35 (1993), p. 10.

felt an immediate investment, and in which they felt that their own authority and prerogatives were compromised and worth fighting for.[101]

Elizabeth Parsonage, Margaret Dod and Mary Catherall did have a fight over the goods in question. Elizabeth deposed that after Margaret (whom she referred to throughout as "she in the Black Bag" as Margaret carried one in which to put the seized goods, although Elizabeth knew both her name and her relationship to her master) had taken the kettle out of the house, she returned, and

> tooke up a greate Iron Morter with a Pessell, [Elizabeth] taking hold of one eare of it, and she in the black Bagge holding the other eare, [both] striving to get the mortar.

It was only when Mary joined in the fracas that Elizabeth was overcome, receiving such a blow on the arm and wrist that she was forced to let go. Later, Anne Brock had Margaret Dod and Mary Catherall bound over to keep the peace towards her and her children, who were allegedly "so fearful of these two persons that they dare not stay in the house alone for feare of them". Mary Catherall countered this by claiming that Anne Brocke had assaulted her, deposing that Anne "has broken her head and still threatens her". As in so many other incidents, the entire dispute over the rightful possession of these goods was played out between women - neither William Brocke nor Margaret Dod's new husband were apparently involved beyond the strictures of legal requirement. If they acted unofficially, it was presumably between themselves.

The separate patterns of relationships between women were characterized by conflict and cooperation, as one might expect. Consequently, relationships between households might appear rather different when viewed from a male perspective. It has recently been suggested that a study of women's visiting patterns in their neighbourhoods might provide evidence about sociability and

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[101] The parameters of women's perception of their own authority regarding the household can also be found in QJF 89/1, ff. 90, 91, 92, 114, 105-9, 222; QJF 89/2, f. 29, 45; QJF 93/1, f. 69. It is interesting that the cases in which this is most explicit are found in the 1660s. For a discussion of changes in female self-perception during the seventeenth century see chapter 2, above.

obligation across class boundaries.[102] The same might be true as regards women's working patterns. Roger Bosson's relationship with his landlord, Edward Stockley, and Stockley's sisters was very different from that between the women in the respective households. Bosson repeatedly claimed to his neighbours that Anne and Elizabeth Stockley constantly stole his milk, apples, turves, coals and the fire "from under his pot". In making the accusations, he aligned himself with male order, implying that it was this which the Stockley women transgressed. He presented a picture of women conspiring together to rob not only him, but their own brother of his corn, "and if they stole of their brother they might as well steal of him". His own transgression in speaking of his landlord's sisters in this way is deflected by his insistence that whilst he had "a mind to leave Mr Stockley's house", no other tenant would stay long unless the women were removed from the house. The manner in which he described them compromises the acknowledgement of their rank by manipulating the language of deference: they were, he said,

> light fingered Gentlewomen, and not fit to be called Gent, for there was nothing that was too hot or too heavy for them...

Yet there is also a sense of powerlessness in his position. They

> did repeatedly steal his milk out of the eashers, and...they steale his turves and hide them in the buttery, and [he] swore by God, he knew not where to lay his Coales, for they would take them and rob him.

Bosson's relationship with Mr Stockley was of tenant and social inferior. He said to witnesses and to Anne Stockley herself that "but for his landlord he would have had a warrant for her". And it was in fact Edward Stockley who had Bosson bound over to keep the peace towards him, not his sisters. The relationship between Bosson's wife and the women in the Stockley household was rather different, however. Since the public face of the household was not dependant on women's work, their associated social and economic relationships were more easily interactive. Bosson's servant Alice Brindley explained that Bosson's jug of milk was sometimes depleted and afterwards filled again because

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[102] Crawford, 'Review', pp. 130-31.

his wife and Anne Stockley sometimes exchanged milk. Another witness deposed that she had overheard Anne ask Bosson's wife whether she accused her of stealing her fire, and that the reply had been, "not she, for they [the Bossons] did burne M[r] Stockley's fire when they first came, and [Mr Stockley and his sisters] might burne of her husband's fire now it was come". Moreover, Alice Brindley deposed that she had never seen either of the Stockley sisters take turves or other fire from Bosson, but that "she herself hath sometimes taken a turfe or twoe that lay in her way or some...sticks and lay them to M[r] Stockley's fire".[103] Again, women were operating within female networks based on mutual concerns which did not necessarily correspond to those of their male counterparts.

The world of stolen clothes, linens and household goods was populated by women: women stealing, women receiving, women deposing, women searching, and women passing on information, as well as goods, to other women.[104] Although the husbands of the those in the above cases appear not to have actively participated in the events cited, Arthur Fisher's role makes clear that we are not talking about "separate spheres" as such, but networks, and the distinction is an important one. These networks were not gender-specific, but were gender-related. Men too had networks which contributed to the detection of criminals. When the dyer Frederick Dukesell had newly-dyed cloth stolen from him, William Pickering, a clothworker in the same town, told Dukesell of its whereabouts upon recognizing Dukesell's mark when the cloth was taken to him to be dressed.[105] Male affiliations are easier for the historian to detect as they often existed within visible occupational, institutional, and economic structures, from whose public realm women were largely excluded. Male occupational identity has been recognized as a form of political and cultural display, in accordance with men's role as the public face of the household; as such, it could have little bearing on

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[103] QJF 89/3, ff. 133, 194, Recognizance and Examinations concerning Roger Bosson.

[104] The same is apparent in trial pamphlets. See for example, the nature of the female involvement in A True and Impartiall Account of The Arraignment, Tryal, Examination, Confession and Condemnation of Col. James Turner... (London, 1663).

[105] QJF 53/4, f. 2, Information of Frederick Dukesell.

actual economic and "non-public" roles. Conversely, the absence of women from the public records of urban and rural communities belies the degree and nature of female economic activity.[106] Women were excluded from the skilled, paid work defended by urban guilds. Their appearance in records was usually as transgressors of the guild and borough regulations which sustained the male monopoly. Women rarely claimed for themselves or were identified by an occupational ascription. As their work was generally more socially cohesive and interactive and less well defined, we have to reconsider how gender influenced constructions of "public" and "private" by contemporaries and historians, and not to assume as some historians have done, that women's participation in public life involved stepping into the public roles of men.[107] Michael Roberts has recently called for a redefinition of women's "work", based upon the contemporary construct of work or labour in which it was located: the crucial contribution of women lay in "the reproduction of social relations, through their management of household, kin and community interaction".[108] And as Patricia Crawford has said, in neighbourhoods "women were of undoubted importance".[109] It is this which is reflected in the networks within which women operated, as we have seen in the pages above.

In view of this, historians of women's crime must practise a little lateral thinking, just as historians of women's work have done. By employing gender as an analytical tool, our definition of "criminality" must surely be redefined, as it is here, to include female participation in the various economic and social networks of exchange and interaction which provided the backdrop to

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[106] In addition to the records of urban trade guilds, etc., women are also largely absent in sources which can allow the "circles of sociability" or institutional bases of friendship to be reconstructed for men in rural communities: for example, lists of manorial court juries and equity court depositions, and to a lesser extent wills and probate inventories (with the exception of widows of course).

[107] For example, M. Abbott, Family Ties: English families 1540-1920, (London, 1993), pp. 93-94.

[108] Roberts, 'Women and Work', pp. 87-90; Crawford, 'Review', pp. 129-131; Roper, Holy Household, pp. 179-180; Weatherill, 'Consumer Behaviour, Textiles and Dress', p. 307.

[109] Crawford, 'Review', p. 130. Examples of the importance of female community networks may also be seen in CDRO EDC 5(1620)3, Mary Griffiths c. Edward Stones, CDRO EDC 5(1620)16, Joane Stockton c. Robert Whittingham, CDRO EDC 5(1620)23, Jane Leadbetter c. Elizabeth Sutton, CDRO EDC 5(1624)2, William & Anne Blanchard c. John & Margaret Blanchard.

prosecutions for property crime.[110] This is crucial if historians use the low incidence of female offenders prosecuted by indictment to contribute to theories about either the nature of women or their socio-economic position in early modern society. Nor can we interpret female experience of the type described above as a kind of subculture of female agency. Whatever the rhetoric of female inferiority, women existed at the nub of social life *alongside* men, not in some segregated enclosure outside the village. Women were often engaged in quasi-official activity in the return or custody of stolen goods. Katherine Lopus claimed that the piece of Scotch cloth she tried to sell had been pawned with her by a chapman who afterwards told her to sell it on his having no money to redeem the cloth. Her story was not believed and the cloth was kept in the Sheriff's custody for two months, during which time it was not claimed. It was therefore to be delivered to Lopus,

> upon the word of Bridgitt Waynewright, widow, who doth undertake the said cloth to be forth coming or els answer for the value thereof.[111]

In another case, Thomas Parre apprehended a woman whom he believed had stolen two carpets. Before taking her to the constable, he "delivered the carpets to William Rowends wife who dwells in the Nuns lane" for safe keeping.[112]

The existence of the kinds of female networks which I have described, and the nature of feminine theft outlined in this chapter, call into question the validity of simple quantification of women as both law-breakers and agents of law-enforcement. Studies of criminality and the formal records of the courts belie the extent to which women were involved, and the nature and value of that involvement. In order to gain a further understanding of the role of gender in influencing criminal behaviour in early modern England, we have to work with a far more fluid model of analysis. A methodology of crime which has leant so heavily upon the quantification of formal court records has masked the role which

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[110] Merely stating, as Raymond Gillespie does, that activities such as receiving and selling stolen goods "much depended on the perception of contemporaries as to what was criminal and what was not" does not go far enough: 'Women and Crime', p. 49.

[111] CCRO QSF 73/2, f. 68, Examination and Certificate concerning Katherine Lopus.

[112] CCRO QSF 73/2, f. 71, Examination of Thomas Parre.

women played in this sphere of activity. Moreover, the problem has been exacerbated by the manner in which gender has been considered simply as a binary model of comparison in quantification. It is by examining the dynamics of gender relations and human interaction that new questions can be asked and old ones answered more satisfactorily. In addition, more attention must be paid to the discrepancies between the findings for different localities and those between different periods in the same region. Making sweeping generalizations based on one constant, that women appear to have been a minority of defendants prosecuted in the criminal courts in any given period, has led to the marginalization of female criminality as a historical topic.

By shifting the focus of the analysis in a lateral manner, the dynamics of female criminality in early modern England reveal a far more complex and instructive view of gendered experience than historians of crime have hitherto acknowledged. Moreover, acknowledging that our historical understanding of female experience has been mediated through sources which reflect a public male world, challenges the implicit assumption in many primary sources and much historical interpretation that the social and economic position of women in the community was entirely derivative from their husbands. The role of gender in informing knowledge, authority and social relationships provides the conceptual and the practical context in which female behaviour, deviant or otherwise, may be understood.

CHAPTER FIVE

AUTHORITY, RESPONSIBILITY AND THE LAW

In 1636 Sir Richard Grosvenor, the Cheshire magistrate, fearing imminent death, wrote a letter to his son advising him "in the publick deportment as you stand in relation to authority, being a Justice in Commision off the peace". He concluded with the words:

> Remember that authority is a touchstone which trieth every mans mettall, and that Justice is the Summary and absolute beauty off all vertues. Abide this touch, blemish not this authority, staine not this virtue.[1]

Grosvenor, as a justice of the peace and as a leading member of the county elite, had a very clear notion of the manner and form which authority and justice should ideally take. But neither "authority" nor "justice" were static concepts in early modern England. Both were relative and subjective. On the one hand, authority was equated with official and legal supremacy, the body of persons or the individual who exercised the power to command and enforce obedience. On the other, the very essence of power relations meant that in any given situtation, authority might be inscribed or ascribed to persons who were not in positions of formal or structural power.

Authority was closely associated and invested with notions of rights and morality. Justice, too, invoked notions of morality and righteousness which added complexity to its relationship with judicial adminstration and the exercise of authority and power. It was measured upon a scale of conformity to truth, fact, and moral righteousness; yet the weights were not constant. Fair treatment, merit, extenuating circumstances, let alone truth and fact, are themselves loaded with ambiguity and subjectivity. There was no single criterion by which two or more persons might gauge the nature of justice in quite the same way. After all, the

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[1] Grosvenor Eaton Hall MSS, Box 1/2/22, Personal Papers, Memoranda Book, Letter to his son, 10 August 1636, pp. 37-55; quotations at pp. 51, 55.

infliction of punishment might lead the victim of a crime and the judiciary to believe that justice had been done, yet the convicted person might not share this view. Thus, as E.P. Thompson has noted, any analysis of authority, power and the law must offset that of the "cultural hegemony" in which he located eighteenth-century ruling class control, with a consideration of "the images of power and authority, the popular mentalities of subordination".[2]

In this chapter I wish to develop themes raised earlier in this thesis, and explore further the related concepts of authority and responsibility, and justice and the law. The bearing of gender in these conceptualizations, and in the practical application of and appeal to the law will be considered throughout. First of all, I wish to make some general points regarding the manner in which the law was the agency of elite authority and the place of patronage and deference. Next, I shall consider the nature of plebeian legalism and plebeian resistance. This will be followed by a detailed discussion of the ways in which men and women used the law and legal process in aspects of life which were subject to a marked degree of intervention from the state: bastardy and building cottages on commons and wastes.

On the surface, many of these themes fit neatly into Keith Wrightson's explanatory model of "two concepts of order" in which the concept of order is shown to have been ubiquitous but not monolithic. However, Wrightson's juxtaposition of a legislative/elite concept of order with an alternative village based one may be limiting. As he notes, order was a mutable concept which might have "different implications in different situations".[3] I have broached some of the ways in which shifting notions of order, culpability and authority were manifest in each of the previous chapters. Here, I wish to develop those strands. In doing so, I shall suggest that notions of lawfulness were drawn from a range

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[2] E.P. Thompson, 'The Patricians and the Plebs', in E.P. Thompson, Customs in Common, (London, 1991), pp. 42-43.

[3] Keith Wrightson, 'Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-Century England', in J. Brewer and J. Styles (eds), An Ungovernable People: the English and their Law in the Seventeenth and Eighteenth Centuries (London, 1980), passim., quotation at p. 22.

of specifics, and that in particular women ascribed to themselves degrees of lawfulness, honesty and authority accordingly.

The law as an agency of elite authority

It hardly needs to be said that the law could be used to reinforce or enforce the authority of the elite. George Booth, for example, the magistrate, knight and baronet, sent a message to the quarter sessions bench, desiring that one of his tenants be continued in his bonds to keep the peace, "in regard he uses threatening speeches against my officer whome I imploy in my busines in that place", in the confidence that his wishes would be carried out.[4] Secular and ecclesiastical officials regularly used the mechanisms of the law against those who were disrespectful towards them or with whom they otherwise disagreed. In effect, the law could be used to control public speech in a more overtly political sense than it was in cases of interpersonal disputes which were played out through suits of scolding, defamation, or threatening words, such as those which were discussed in chapter two. Speaking out against a minister or mayor, for instance, could be construed as "scandalous", "seditious" and "infamous" whatever the precise nature and tone of the words spoken.[5] Such figures of local authority had a greater purchase on the concept of a threatened social order than ordinary complainants who had to rely on more general notions of a broken communal peace. An official complainant had a particularly potent and politicized rhetoric at his disposal. His adversary was presented as not merely abusing him personally, but as potentially or actually undermining the entire social order.

Thomas Parnell, mayor of Congleton in 1620, along with the former mayor, Edward Drakeford, and some of the aldermen, was able to speak of John Stubbes, a shoemaker, and his brother Richard Stubbes being

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4 QJF 49/3, f. 121, Letter.

5 See for example, QJF 49/1, f. 74, Warrant for Robert Ouldham.

> two very irregular persons refusinge to be obedient to the rule and government of th'officers of [Congleton], common quarrellers, disturbers of the peace and such persons as former maiors and Constables were doutfull to intermedle with in cases wheare they deserved punishment.

According to Parnell, when he was to be sworn in as mayor on 25 September 1620, the two Stubbes,

> and great numbers of others rude barbarous and incyvill persons, some by their incytacions and others emboldened by their lewde misdemeanours raysed an incyvill tumult in the publique assemblie for the election of the newe Charter...made publike shoutes and raysed unfittinge opposicions drawinge [Parnell] by violence from takinge his oath, pulling him from the booke makinge publique proclamacons at that instant both in the Common hall and after at the high crosse...that [Parnell] was no maior neither was there any maior in the towne.

The Stubbes also allegedly went to Edward Drakeford's house that evening and, with knives and candlesticks, assaulted Drakeford, various members of his family, and some other local notables including the schoolmaster and preacher. They cut one William Drakeford's hat into pieces with knives, and tore his clothes - a symbolic as well as physical gesture of disrespect. A fortnight later, when a man was sent from the Earl of Derby on some business with the mayor, John Stubbes told him there was no mayor in the town and that the messenger could not enter the Common Hall without his consent. Parnell, "for feare of like tumultes, murthers...and misdemeanours amongst the multitudes...assembled,... was dryven to recall his license". Possible motives of the Stubbes and their followers were not mentioned by Parnell. The series of incidents which he reported may have been part of a local factional struggle for control of the Congleton Corporation. The events sound suspiciously like an election riot. Yet his elected position (however much disputed) meant that his use of a tumultous rhetoric had a great force before the law.[6]

Justices of the peace took such incidents extremely seriously. In 1661, Edward Warren, JP, wrote to the clerk of the peace that Thomas Wasse "has taken that desperate oath of the peace" against the mayor, constables and one of the aldermen of Stockport. On the one hand, the incident shows that ordinary

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[6] QJF 49/3, f. 63, Information of Thomas Parnell, et al.

people could use the law to protect them from those who abused their office. On the other, it is clear that the forces of authority coalesced against those who spoke or acted against them. Warren insisted that all the officers were "men of good and civil conversation, and of good estates and repute"; the alderman, moreover, was nearly 80 years old, and could not, it was implied, be taken to pose any mortal threat to Wasse. In contrast, Wasse was "a constant troubler of the peace", and one who had only recently been released from bonds himself. His grievance is presented as a result of *his* misbehaviour, not that of the officials concerned.

> Wasse lately abusing the mayor of Stockport in his Authority sitting in his Court with the Aldermen and Constables about him, the Mayor appointed his punishment which was performed forthwith by the Constable upon the mayor's command.

It was, Warren said, for this that Wasse had sworn the peace against them. Whatever the truth of the matter, the authority of the officials outweighed any which Wasse himself might have had in speaking against them. Warren ended his letter with their real concern:

> The practice...is a mischeivous example for those offenders who you, I, or any Justice of Peace shall punish may for the like revenge sweare the peace against such of us.

It was Wasse, not the officials whom he claimed had abused him, who was bound to his good behaviour.[7] Disobeying official authority was one criterion by which "dishonesty" was measured. Ordinary people were, therefore, often in a no-win situation. It was very difficult to speak out against powerful figures in the community when the very act of complaint was itself central to the elite's construction of disorder.

John Fletcher, the curate at the chapelries of Siddington and Pott Shrigley, likewise used the law against Richard Metier, who had "shamefully abused and Misused" him. In a petition to the bench, Fletcher claimed that during his sermons, Metier noisily cracked nuts and ate apples, and pretended to smoke tobacco. When Fletcher preached against "stoany notorious sinners" in his

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[7] QJF 89/3, f. 85, Letter. See also, QJF 89/2, ff. 31, 32, Examinations concerning Oliver Hulme; QJF 89/2, f. 49, Examination concerning Henry Dickenson alias Heywood.

sermon, such as drunkards and whoremongers, Metier spoke "openly in hearing of many with a most scornfull countenance, and thrusting out his toungue...Intimating theirby that [Fletcher] was a notorious Cuckold". Outside church he named the man with whom Fletcher's wife was supposed to have committed adultery. On Christmas day and on Palm Sunday, as well as at other times of divine service, Metier,

> to make his guests merry in his [Metier's] own [ale]house, did counterfaite the gesture, countenance, and behaviour of John Fletcher in the pulpit in a most ridiculous manner of demonstration thereby making [him] a laughing stocke amongst Metior's guests at drinking of their Ale.

Metier also said in the hearing of the dean that Fletcher was "a wolfe in sheeps cloathinge". In addition, Fletcher reported that Metier was an "Arrogant, Contencyous Quarrelor, whereby he hath bene maymed and beaten, and hath many times been complained of to the Justices"; he had been indicted for a common barrator; he had beaten a constable; he slandered many honest women; he spoke "opporbrious and most wicked words against some of the Justices which had daughters then livinge at London"; he persisted in running an unlicensed alehouse; he had "fearefully and dangerously offred at some tymes in his dronken rage to kill and murther his wief" who was "very deafe and almost blind". The bench, upon hearing of this catalogue of "abuses unto Mr Fletcher", ordered that Metier was to be imprisoned in Chester gaol for three months without bail or mainprise, and after his release was to be bound to his good behaviour and for appearance at several quarter sessions thereafter.[8] The severity of this punishment far surpassed that commonly meted out to people of comparable status who were involved in interpersonal disputes. When men of substance or those in positions of social and political importance were at variance with their less notable neighbours, the law was often used as an agency of elite authority.[9]

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[8] QJF 53/2, f. 152, Petition of John Fletcher. This punishment does not appear to have dissuaded Metior from his contemptuous behaviour. In February 1625, Fletcher filed a defamation suit against Metior and two other men, for many of the same abuses and some new ones. CDRO EDC 5(1624)7, John Fletcher c. Richard Metior, Richard Starkie, & Edward Morton.

[9] There is a wealth of evidence which could support this argument. However, the unoriginality of this position prohibits me from discussing the matter in detail. For use of the law by elite against poachers, see QJF 49/1, f. 167, Examination of William Hexon; QJF 51/2, f. 40, Examinations of John Gerrard and Katherine Crosse.

Disrespect which went unpunished obviously undermined the local elite's effectiveness.[10] For that reason, JPs were particularly sensitive to the derisive comments made by those beneath them. Mary Janson was furious when a constable came to her house with a warrant from Edward Legh to search for stolen goods. She said that she cared for the magistrate "no more than for a fart of her arse" and that he "had utterly undone both her and her children". Moreover, she fell upon her knees and formally cursed Thomas Timperley, the man who had suspected that his goods were there, saying that "she would be rotton of him if it ever lay in her power, and she would not leave him worth a groat". The warrant which required her to enter into recognizance was not issued because she had received stolen goods, but because she was of "evil fame and very bad behaviour and hath lately spoken and uttered divers opporbrious and scandalous words against Edward Legh of Baguley".[11] Janson responded to the potential damage done to her own reputation and "credit" with an assault on that of her accuser and the magistrate who issued the warrant. Her disrespect thus became of greater import than her involvement in any stolen clothes racket. Class hierarchy had to be on open display in early modern society if the gentry were to maintain their hold of their "cultural hegemony".[12]

In the late sixteenth- and seventeenth-centuries, as in the eighteenth, the law certainly provided an ideological underpinning of authority in elite minds. Early modern hierarchy was also propped up by a visual and public display of patronage and paternalism on the part of the gentry, and deference on the part of their social inferiors. Arguably, nowhere is this more apparant than in the public

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[10] Susan D. Amussen, An Ordered Society: Gender and Class in Early Modern England (Oxford, 1988), p. 144.

[11] QJF 95/2, f. 49, Examination concerning Mary Janson; QJF 95/2, f. 85, Warrant; QJF 95/2, f. 87, Recognizance.

[12] Thompson, 'The Patricians and the Plebs', pp. 16-96. For an alternative discussion of the verbal abuse of the authorities in the county, see Hindle, 'State and Society', pp. 266-272.

role of the gentry in their administration of the law.[13] The magistrate Peter Legh wrote to the bench on behalf of two of his tenants, James Hey and his mother who would, he assured them, appear "in humble manner to submit themselves to your fine". They and another woman had committed a riotous affray upon John Rowbotham. Yet the patronage of Legh in effect could rewrite events to turn their misdeed into that of their victim's. Legh wrote:

> ...consider the smalness of the offence and the troublesome nature of Roobothom in vexing them with this troublesome suit...And...impose some reasonable fine upon the Indictment.

Legh implied that John Rowbothom had exhibited his troublesome nature by prosecuting Hey and his mother at Macclesfield court as well as at the quarter sessions.[14] Magistrates did not magically transfer or mitigate culpability. They were able to do so by manipulating the fluid notions of order in the same way that their lesser neighbours did. But the word of a magistrate in such cases was invested with authority in every sense of the word: social, moral, legal and political. Their very position *vis-a-vis* the administration of the law was dependent upon maintaining this all-encompassing authority. Their patronage of their neighbours and tenants served to enforce this, both in the act itself, and in the manner in which their wishes were expressed to the bench. Just as in the examinations and petitions of the protagonists, in the letters of magistrates and other gentlemen seeking favours on behalf of others, versions of events were written or rewritten in order to present the recipient of such favour as worthy. Fines were reduced ostensibly because the adversary was "troublesome", because the man or woman in question was "innocent", or "ignorant", or because the business was "small".[15] There seemed to be no tension in questioning the findings of the legal process because there was no acknowledgement of any sense

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[13] Thompson, Customs in Common, especially pp. 47-49; E.P. Thompson, Whigs and Hunters: the Origins of the Black Act (London, 1975), pp. 219-169; Hay, 'Property, Authority and the Criminal Law', in in D. Hay et al. (eds), Albion's Fatal Tree: Crime and Society in Eighteenth-Century England (London, 1975), pp. 17-64. I intend to elaborate upon the themes of deference and paternalism as part of my post-doctoral study.

[14] QJF 55/1, f. 66, Letter.

[15] QJF 55/2, f. 59, Letter; QJF 55/2, f. 99, Letter; QJF 55/2, f. 147, Letter; QJF 55/2, f. 98; QJF 55/1, f. 76, Letter; QJF 55/2, f. 44, Letter; QJF 49/1, f. 108, Letter; QJF 49/1, f. 140, Letter, cf. QJF 49 1, ff. 18, 43, 110, Indictments, & Warrant; QJF 49/1, f. 148, Letter. These examples could be multiplied.

of impropriety. The elite framed their requests with a language which compounded legality and discrimination - what they wanted, after all, was a "lawful favour". The administration of the law was supposedly flexible rather than irregular.

Justices of the Peace were not neutral, impartial arbiters of the legal system. They often did fix cases in their own interests. Randle Mainwaring asked the clerk of the peace to mitigate a fine imposed on one of his brother's tenants for killing a hare in the snow, as his rent was in arrears.[16] Whether this was a truly paternalistic gesture or a concern over the non-payment of rent is a moot point. It is in this regard (amongst others) that the criminal justice system has to be seen in relation to class and power. Humble litigants to equity courts often referred to the "terrifying" use of the common law against them by lords who were also magistrates, or who had influence on the county bench. The demand that "no man should be his own governor" was a familiar refrain of the Levellers and attended to real concerns of ordinary people.[17] This is not to say that paternalism was feigned. Richard Grosvenor's concerns were probably genuine when he advised his son that

> When poore Snakes shall bee brought before you to examine beware that you Fere them not; neither triumph over nor trample upon the misery of such...And in your examinations labor to discover the truth, but intrapp not pore semple men in their own words.[18]

Nevertheless, patronage not simply in the gift of the elite. It was also a system used by ordinary people for their own ends. A woman whose daughter had given birth to a bastard child by William Crampe secured William Brereton's help in 1620 because she "was some thinge afraid of Sir Randle strait censure herein because he is brother in lawe to M^{r} Leicester who is Master to the said Crampe". Brereton wrote to Sir George Booth, requesting that he and Richard Grosvenor make the order for the maintenance of the child, adding "Although I

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[16] QJF 55/2, f. 61, Letter. And see Richard Grosvenor's concerns, Grosvenor Eaton Hall MSS, Box 1/2/22, Memoranda Book, pp. 51-52.

[17] Andy Wood, 'The Levellers and Plebeian Notions of the Law', unpublished paper, 1990.

[18] Grosvenor Eaton Hall MSS, Box 1/2/22, Memoranda Book, p. 52.

hope that there is noe cause that she should feare Sir Randle proceeding herein if he were one in the makinge of the order".[19]

People might play upon their youth and innocence, in both senses of the word, to procure favour from the bench. But claiming innocence or presenting mitigating circumstances alone often was not enough. It was still felt necessary to "humbly implore [the bench] in the Bowells of mercy and compassion to take [the petitioner's] deplorable condition into God's Mercy to consider [his or her] Innocentry...".[20] Mercy was itself a fiction to some extent, meeting the requirements of what James C. Scott has called the "public transcript". Petitions which appealed for mercy and which were cast in deferential language were manifestations of a dialogue of power.[21] Whilst it would be foolish to suggest that all deferential gestures were merely facades, there is no doubt that to some extent, formualic language was used self-consciously and strategically. Pragmatism was important in structuring the open relationships of rulers and ruled.

The legal and social authority vested in Justices of the Peace could, however, be successfully harnessed by others. When, for instance, four men petitioned against a "poore labourer", John Prince, they used notions of consensus and patronage to imply that their voice should be taken as the more authoritative. They claimed to speak on the behalf of "the other inhabitants of the towne" of Wimbolds Trafford, and alleged that Prince had presented his case to justices of the peace "unjustlie avowinge in his...peticon that all the neighbors or the most part of them weare consentinge thereunto". Therefore, they implied, the justices in that part of the county "gave waie and yeilded". Not only did they, and "the

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[19] QJF 49/1, f. 162, Letter. Possible favouritism on the part of Mainwaring towards his tenants was seen in the case involving Raphe and Margaret Nixon alias Buckley and Adam Cragge, which was discussed in chapter 2, above, pp. 66-67; and in another case, see above, p. 224, n.16. See also, QJF 55/2, f. 143, Letter.

[20] QJF 93/1, f. 124, Petition of John Hughes. See also QJF 55/3, f. 95, Petition of Nicholas Twisse.

[21] James C. Scott, Domination and the Arts of Resistance (London, 1990), passim., especially pp. 95-96.

greatest part of the Inhabitants there" not give their consent, but they were tenants to four named major landowners, including the Earl of Shrewsbury, "and other gentlemen of good worth and qualitie". Moreover, their landlords "by no meanes will give waie or consent...to the prejudice or hinderance of their tenants or neighbours there". The petitioners asked the bench to write to the justices concerned "that they would forbeare to give any leave or encouragement for...Prynce, or any other there to build any cottage thereaboutes until the chief lord of the soil be acquainted...".[22] While this request was in accordance with the law itself, the four men who presented the petition were claiming both that their request was sanctioned by patronage, and that their patrons would respect their wishes as inhabitants of the township.

The law also provided a handy tool for those of less notable status but who nevertheless stood in positions of authority over others. A woman who was pregnant with her master's child said that she was forced to father the child on another man, for her master "did threaten her to lay her in the House of Correction or to drive her out of her country".[23] One man seems to have procured spells in both the House of Correction and the Castle gaol for his "disorderly" ex-servant merely because he was consumed with jealousy, believing that the servant had been having an affair with his wife.[24] In effect, the law could be used as an extension of household authority. The potential tension inherent in the failure of heads of households to exert sufficient influence was usually avoided by emphasizing the extremity of the threat which such miscreants posed to the entire community. Such malefactors were inherently "evil". Thus the extent of the disorder served to enforce rather than to undermine the authority of

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[22] QJF 49/1, f. 158, Petition of the Inhabitants of Wimbolds Trafford.

[23] QJF 97/1, f. 105, Examination of William Morris.

[24] QJF 49/2, f. 144, Petition of Randle Houfield; QJF 49/3, f. 80, Petition of William Hough; QJF 49/4, f. 26, Letter.

the complainant.[25] Official authority was the last resort when order within the household was subverted or undermined.

For the most part, there appears to have been resentment of "public" or official interference in "private" or household matters. When Oliver Pollett threatened to kill his wife or her brother, after he found her drinking in an alehouse, the alehouse keeper, Joseph Palin said that as Sir Thomas [Mainwaring], the nearest JP, was not at home he would fetch the churchwarden, his next neighbour. Pollett replied:

> he cared not a fart for the churchwarden nor for [Mainwaring] neither, for he [Oliver]...would whip his wife to Sir Thomas's gates and from thence home with an Iron whip, what had Sir Thomas to do with that[?][26]

In the 1660s, assertions of household and individual authority over legal authority do appear to have been more common in the narrative evidence of the court. It is difficult, however, to judge the extent to which the evidence is of an increase in *de facto* assertions as opposed to a heightened sensitivity to such overt displays of subversion.

Co-tenancies could also result in tensions. Richard Filkin, a Tattenhall yeoman and constable, deposed against Richard Filkin the younger, who lived at one end of Filkin's house. Late one night, Filkin the younger came home drunk, heaving the door off its hinges. He then proceeded to beat his wife, who called out "murther!", and shortly afterwards entered Filkin's part of the house, assaulting Filkin's wife and her sister. Filkin, being constable, commanded him to keep the peace in the King's name; Filkin junior replied that he cared "not a fart for him nor the King", but retreated into his own end of the house. Presently, however, Filkin's wife said that she could hear the younger Filkin breaking a wheel which she had lent his wife, and asked her husband to prevent him from

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[25] See for example, QJF 49/1, f. 151, Petition of Thomas Starkey; QJF 49/2, f. 150, Letter; QJF 49/2, f. 161, Petition of Francis Jackson; QJF 97/3, f. 126, Petition of Robert Wright. For the inverse of this in complaints made by the parents of adolescents in service against masters, see QJF 57/1, f. 24, Order, & Petition of Anne Tricket; QJB 1/5, f. 110v.; QJF 57/2, f. 40, Petition of Ellen Ridgway.

[26] QJF 91/3, f. 44, Examinations of Joseph and Bridget Palin; QJF 91/3, f. 37, Recognizance of Oliver Pollett.

doing so. Filkin duly went and asked Filkin junior to be quiet, to which the latter replied, "what hast thou to do with mee in my own howse[?]", telling him that "if he spake another word he would do him some mischeef". Filkin resorted to fetching some male neighbours out of their beds to assist in quieting the young scoundrel who, by the time they arrived, was dragging the wheel out of his rooms. From the scant evidence, it seems that the object of Filkin junior's concern may have been the relationship of the women in the two households, much as it was in the Stockley case discussed in chapter four. Again, tensions of public and private are merged in the different levels of authority which Richard Filkin held over his younger adversary, which the women of the household may have transcended. More importantly, although he used his official position to lend weight to his attempt to quieten the younger man, he did not inititally take the matter further by reporting it to magistrates.[27] Nevertheless, the law and the mechanisms of "justice" provided an arena in which power relations could be extended and played out. This applied in both structural and conceptual terms.

Plebeian Legalism

The most obvious indication of plebeian legalism may be found in the sheer extent of litigation. The inhabitants of early modern England were a "law minded", litigious lot. Furthermore, it is has been suggested that a high level of popular participation in the legal process resulted in the ordinary inhabitants of early modern England accumulating "first-hand knowledge of how the law operated, albeit on a lowly level".[28] As J.A. Sharpe has said,

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[27] QJF 97/2, f. 151, Examinations concerning Richard Filkin the younger; QJF 97/2, f. 152, Recognizance. A letter was sent to the clerk of the peace by the binding magistrate in an attempt to mitigate the words which Filkin junior had said against the King. He was described as "a poore honest fellow being drunk" who had been a foot soldier for the King, "which much lessens the cryme, for if he had been a round head the words had bin more questionable, pray do him what favour you can". Filkin senior was also bound over, "for concealinge the words a month and never questioning him neclecting a magistrate, being very well-satisfied he had never done it but that they fell out afterward". QJF 97/2, f. 148, Letter.

[28] J.A. Sharpe, 'The People and the Law', in B. Reay (ed), Popular Culture in Seventeenth Century Eng and (London, 1985), p. 246; J.A. Sharpe, Crime in Early Modern England (London, 1984), pp. 45, 144-5; quotation at p. 144. M. Ingram, 'Communities and Courts', in J.S. Cockburn (ed), Crime in

> Through frequent contacts with the legal machine, whether as litigants, local government officers, witnesses, jurors, sureties, or, indeed, as malefactors, the everyday culture of the English, the way in which they acted and expected others to act, were informed by notions derived and at times adapted from the law.[29]

Moreover, the law entered peoples' lives in the form of marriage settlements, disputes over property and inheritance, matters pertaining to poor law, and numerous other forms, in addition to being a force by which the powerful groups in society could regulate others. Thus, the law has come to be seen as an integral, "internalized" part of "popular culture" and "a powerful cement of society".[30]

Within all this, the extent to which women "internalized" notions of the law has remained largely obscure. As their role in the legal process was less visible, women's relationship to the law has not been explored with the usual exceptions of those spheres of activity which have been labelled peculiarly feminine.[31] Yet women's lesser involvement both in administering the law and in most sorts of litigation did not preclude a healthy and often refined knowledge of either the law or the legal process. This is true even in areas which might be considered exclusively male domains. When widows became eligible for war pensions in the mid-seventeenth century, they displayed a knowledge of both the law itself and the means by which one might work the system which made them fierce rivals of the maimed soldiers with whom they competed for limited funds.[32] Early modern women in north west Derbyshire also displayed a sophisticated knowledge of mining law despite being called upon as deponents

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England (LondonEngland, 1977), pp. 122-44.

[29] Sharpe, 'The People and the Law', p. 256.

[30] Sharpe, 'The People and the Law', pp. 246, 247.

[31] Sharpe, 'The People and the Law', p. 249. Amy Erickson has recently exploded common assumptions about women's relationship to the law as regards property: 'Common Law Versus Common Practice: the Use of Marriage Settlements in Early Modern England', Economic History Review, 2nd series, 43 (1990), pp. 21-39; Women and Property in Early Modern England (London, 1993), passim.

[32] Geoffrey L. Hudson, 'Negotiating for Blood Money: War Widows and the Courts in Seventeenth-Century England', in Jenny Kermode and Garthine Walker (eds), Women, Crime and the Courts in Early Modern England (forthcoming).

only rarely in the very "male" barmote courts there.[33] And women have been found to have been active in important quasi-judicial capacities, such as in their role on juries of matrons or as those who searched for witch's marks.[34] To more fully understand the ways in which the law did imbue the culture of ordinary people, and especially women, we must consider not only how they used the law in material terms, but the ways in which the law was conceptualized. Notions of law, justice and equity provided a conceptual and linguistic range which was readily drawn upon by both men and women, as we shall see.

Poor men and women often stressed that they could not afford "to spend money to defend [themselves]" or bring suits against their wealthier adversaries.[35] Petitioning the bench at quarter sessions could be used as an alternative or addition to prosecution by other means. An order cost something in the region of 2*d*, compared to recognizances and indictments at several shillings.[36] In 1665, after Thomas Jackson had obtained permission to erect a cottage on common land, a landowner in the parish prosecuted him at the Westminster courts to prevent him from doing so. Jackson responded by petitioning the bench at quarter sessions. He alleged that he was "molested by M^{r} Edmund Pershall" because Jackson would not "turne and become his tenant". He complained of the great charge which this incurred, and asked them to confirm the order. Thomas Jackson used his petition as a countermeasure in an ongoing legal struggle which was largely played out in another jurisdiction.[37] Petitions were used regularly as a means of counteracting alleged molestation by social superiors and officials. In another case, a widow from the Wirral, Katherine Girtrey, accused the farmers of the excise for beer and ale of harrassment,

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[33] Andy Wood, 'Industrial Development, Social Change, and Popular Politics in the Mining Areas of North West Derbyshire', unpublished PhD thesis, University of Cambridge, 1993, chapter 3.

[34] J.A. Sharpe, 'Women, Witchcraft and the Legal Process', in Kermode and Walker (eds), Women, Crime and the Courts in Early Modern England. See also the role of women in extra-judicial capacities regarding theft in chapter 4, above.

[35] For example, see QJF 55/3, f. 95, Petition of Nicholas Twisse.

[36] QJF 95/1, f. 150.

[37] QJF 93/1, f. 127, Petition of Thomas Jackson.

making her pay more than she had agreed to pay them and then demanding payment after she had utterly ceased to brew and sell ale.[38] Such petitions were often successful. If direct orders were not made, the cases were usually at least referred to the nearest justices for arbitration.

In this sense, indeed, the law "did not belong to one group of men [and women]".[39] Even women such as Ellen Barlowe, "a poor widow having 5 small children, and nothing to maintain herself but what is allowed her as a pentioner from Overseers of Poore of Cheadle parish", could call upon the law to aid her in her search for her missing 17 year old daughter. Barlowe's request that she should be granted "Law and Justice without any charge" was successful. Her daughter had been a servant with Edward Asley when she had disappeared three months before. After making "diligent enquiry" after the whereabouts of the girl, Asley told her that her daughter was "in safety". Barlowe was not satisfied with this answer, and continued to press Asley for information, "which in regard of [Barlowe's] much impertundnes [impertinence/importunity?]", he confessed that he had got her with child. Barlowe then heard by "common report" that Asley had previously got several of his servants pregnant,

> and hath conveyed them out of the way when they Neere with child and also hath been questioned for his life upon the same account.

Consequently, she "craved assistance" from the magistrate Edward Legh, "who very worthily issued out receipts for the examining of several witnesses". But still she did not discover where her daughter was. Thus she wished to sue *in forma pauperis* " in regard it is a busines on the behalf of his majesties and in and through [her] poor and deplorable condition".[40] The potential seriousness of the case, along with the fact that she had evidently tried every other means possible to determine the whereabouts of the girl, was probably crucial in the decision of the bench to grant her request. The appeal to "law and justice" seemed entirely

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[38] QJF 95/4, f. 140, Petition of Katherine Girtrey.

[39] Anthony Fletcher & John Stevenson, 'Introduction' to A. FLetcher and J. Steveson (eds), Order and Disorder in Early Modern England (Cambridge, 1985), p. 15.

[40] QJF 95/4, f. 148, Petition of Ellen Barlowe; QJB 3/1, f. 186v.

valid. In lesser cases, poor people might not be so successful, especially if they wanted to prosecute against those who were of higher status and lacking Asley's suspicious fame.

Appealing to the bench was a popular means of countering legal suits. Anne Cleaton claimed in 1669 that four men had "wrongfully" cast her husband into prison. She said that neither she nor her husband were ever indebted to them, and that she in fact had sued them "for the great abuses done to me and my child", she now being in "a very deplorable Condition being as a widow". Since then, through their "inveterate malice against me and my husband" they had threatened "me and mine after such sort that I dare scarcely passe out of my house for feare of bodily harm and the burning of my house".[41] This type of tale invested the alleged miscreants with a degree of motivation, but it was unspecific. Such appeals to justice hinged upon a particular, if vague, construct of the malicious and unjust behaviour of the opponent. The teller's own credentials were measured against those of her adversaries, underscored by the fact that the law could be abused by malicious people who desired to destroy her household: her husband had been removed, her physical dwelling was in danger, and her own capacity to leave the house and tend to her daily occasions was limited. Both men and women complained that the legal or actual actions of others circumscribed their own ability to use the law to defend themselves or to carry out their "lawful business". They also invoked the "lawes of God and man" against their adversaries, or sought "remedye by lawe".[42] The quarter sessions files are peppered with similar examples.

There were many ways in which people drew upon legal forms in order to sanction their own potentially "disorderly" behaviour. In cases where abusive or accusatory words were spoken, for example, alleged defamers often said that

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[41] QJF 97/1, f. 125, Petition of Anne Cleaton.

[42] QJF 89/3, f. 231, Petition of Anne Lownes; QJF 49/1, f. 149, Petition of Robert Higham and Thomas Cheetham; QJF 49/2, f. 161, Petition of James Jackson; QJF 55/2, f. 111, Petition of John Turner.

they would "justify" the words which they uttered, meaning that they could prove the truth of what they had said in court.[43] A "great number" of Quakers threatened to set the constable in the stocks when he tried to break up their meeting and arreat the preacher.[44] Even "fortune tellers" aligned themselves with good order and the law, encouraging their clients to procure warrants after they had "discovered" miscreants through their "Art". One such was Richard Cope, who the magistrate Peter Dutton described as "a very rogue, [who] doth a great deale of mischeefe in the country". Cope, even after being taken before the county bench on at least two occasions, told Ann Aston that he knew who had taken her whisk: a friend of hers whom she little thought of. Having established between them that this must be Susan Edwards, Susan was sent for, whereupon Cope "told and declared to...Susan that she had the whisk, and that he would prove it, and if she did not go for a warrant he would fetch one and make it appear that she had taken it".[45] What is displayed here is more than the existence of two alternative versions of legality in terms of a conflict between elite and plebeian culture. Plebeian understandings and usage of the law were nuanced and complex.

Notions of justice might sometimes be in stark opposition to notions of the law and those who administered it. When Joan Okes was served with a warrant to have her bound over in 1663 she was reported to have said that she was "bound from lawe and could have no justice". Moreover, on the way to the magistrates monthly meeting, she said that if she had gone to London as she had intended two or three weeks beforehand, she "would have displaced all the justices in Cheshire and after them the Judge".[46] When Thomas and Mary Colley were reported for keeping a disorderly alehouse, Mary said that she "cared

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[43] See for example, QJF 95/2, f. 57, Examinations concerning Margaret Clark; QJF 95/1, f. 95, Examinations concerning Thomas Bathoe.

[44] QJF 97/2, f. 37, Examination of Richard Smale.

[45] QJF 97/2, f. 148, Letter; QJF 97/2, f. 38, Examinations concerning Richard Cope; QJF 97/2, f. 32, Indictment. See also QJF 95/2, f. 57, Examination of John Griffith.

[46] QJF 91/2, f. 76, Examination concerning Joan Okes.

not for all the gentlemen in Audlem parish nor all the Justices in the county for she would have justice".[47] Sometimes the conflict between law and justice was based in a perceived miscarriage of justice - in which case it was implied that the mechanisms of the law did not provide it. There was, for instance, apparently much alehouse talk about an assize case between two gentlemen, Robert Duckenfield and John Warren: it was said that Job Charlton "had not done justice in the said cause", having been bribed by Duckenfield.[48] In cases like these, plebeian respect for the legal process is paradoxically compounded with ideas of extra-legal justice and righteousness. "Justice" was, and is, a subjective concept. Invested with subjectivity, notions of justice, like those of order, were mutable.

One of the most interesting aspects of plebeian use of legalistic language to emerge from an analysis of examinations and depositions is the mutability of notions of authority at the point at which they intersected with those of lawfulness. A claim of lawfulness might be made in opposition to another's claim of authority. This could be so even when that authority was legal. Anne Bailey told justices that she had endeavoured to persuade the widowed Anne Hyde to obey Sir Fulke Lucy's warrant when she heard that Hyde had been sent for and had not gone. When Bailey found Hyde at Ellen Deane's house, she told her, "I advise you to get up early in the morning and go to him lest you come in further trouble". To this, Anne Hyde answered:

> she would not go and she would not abyde a second and a third warrant, and ere she would go to him Sir Fulke should draw her at a horses...tayle, and when he had her he must take heed of hurting her, or [words] to that effect.

We are not dealing here simply with an orderly woman trying to bring a disorderly one into line. Bailey's words firmly located the magistrate's warrant within the social and political hierarchy: after Hyde's outburst she told Hyde that "she must obey the King's laws". But Bailey was recounting her speech before a justice of the peace - before, in fact, Fulke Lucy himself. Her personal view

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[47] QJF 91/4, f. 75, Examinations concerning Thomas and Mary Colley.

[48] QJF 97/3, ff. 73, 74, Examinations concerning John Paulden.

of warrants and magistrates might not, therefore, be wholly or accurately reflected in her examination. In addition, in her relation of the incident, Bailey originally told Hyde to obey the warrant, not because the King's laws or even magistrates must be obeyed *per se*, but because if Hyde disobeyed, she would get into trouble. Nor do we have access to Bailey's motives. She might herself have taken the initiative to speak out against Hyde, or she might have been summoned to give evidence against her. The circumstances of her presence before the justice might well have coloured her relation of the words spoken, both her own and those of Anne Hyde.

Anne Hyde's alleged words indicate the fragility of the authority of individual gentlemen. Whilst the structures and ideology of the law undoubtedly bolstered and maintained the role of the gentry in local society, concepts of lawfulness were not homogenous. Hyde's defiance was not merely part of a "private transcript"; her refusal to appear before him was public and open. But, being told by Bailey that she must "obey the King's laws", Hyde did not disagree. She answered, "she must so do". Her disobedience was not to the King, for she claimed that she had done nothing wrong:

> she would not go [to Lucy], she had said nothing to any and she would not go. She would choose her justice of peace and not go to Sir Fulke Lucy.

Anne Hyde does appear to have chosen her justice: four days later she appeared before Sir John Arderne.[49] The interplay between orderly and disorderly behaviour was not one which can be typified by a simple paradigm.

The law was not merely the tool of central or local authority. Neither was it merely a set of concepts which belonged equally to "the people". Whilst acknowledging that "men at all levels of society felt entitled to assert their own notions of how the law represented the common good", Anthony Fletcher and John Stevenson have asserted that the law was "backed by norms of behaviour

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[49] QJF 97/1, f. 100, Examination of Anne Bailey; QJF 91/1, f. 49, Recognizance; QJB 3/1, f. 211v. Hyde is also referred to as Anne Parker. For a similar case, see QJF 97/3, f. 49, Examinations concerning Joan Cooke.

which men at all levels of society held to tenaciously".[50] This was undoubtedy so. Nevertheless, an emphasis upon shared assumptions and norms perhaps exaggerates the extent to which plebeian understandings of the law were homogenous. Notions of law and justice were informed by a conceptual and linguistic range which could be adopted by individuals - sometimes by those who were effectively undermining those same norms which notions of law might be exptected to uphold. For this reason, order and disorder must not be seen merely as conflicting facets of the participatory nature of plebeian assumptions about the law. Rather, order and disorder comprised one multifaceted composite. Subjectivity and context determined the side of the line upon which an individual incident might fall.

Plebeian Resistance

It has been argued throughout this thesis that the criteria upon which order and disorder were imagined were mutable and subjective. When people openly defied the law and its officers, they did not always perceive or their actions to be, or present them as, unlawful. Whether or not the excuses men and women offered for their resistance were truthful, resistance was often presented as "right" and "just". Thus, John Newport "violently" rescued cattle from a bailiff, saying "the cows I bought and paid for in the market and I will be killed before Ile lose them". His own claim of lawfulness underlined his rejection of the law: he said that he did not care for the sheriff or his warrant "nor would obey the law".[51] Lawfulness and the law were not synonymous in popular conceptualizations.

It follows that resistance to the law cannot always be seen in simple terms of blatant disorder. John and Anne Maddocke refused several demands for half a crown towards "Royal Aid and Additional Supply", and followed and beat one

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[50] Fletcher and Stevenson, 'Introduction', pp. 15-16.

[51] QJF 97/1, f. 113, Examinations concerning John Newport.

of the constables who eventually managed to distrain three pewter dishes in lieu of the money. Yet their case suggests a conflict between differing notions of lawfulness and righteousness. First of all, the form of their verbal abuse served to align themselves with lawfulness in contrast to that of the constables, who they said were "outcomling knaves" - Maddocke threatened to have those fined "for putting in two such knaves to be constables". Secondly, it is interesting that Maddock was in fact one of the assessors for the levy. He had not wanted to be one, "but was one, and assessed himself in the said half crown which he refused to pay"![52] These sorts of tensions between lawful and unlawful acts serve to remind us that the concept of order was fluid.

The law was not something to be blindly obeyed. It could also be a source of conflict within communities; as such, plebeian resistance could constitute a form of communal cohesion, just as plebeian legalism could. The tenants on some lands which were in the jointure of Mistress Cotton, the widow of a lesser gentleman, were "greatlie vexed and troubled" by reason of a quarter sessions order "whereby the churchwardens and overseers of the poore...have authoritie to distreyne theire Cattle for the Releefe of the said Mistress Cotton's children". As they had given security for payment of their rent, they argued that they were now "double charged".[53] Although their resistance was manifest through legal forms, their case was underpinned by notions of "right" and "wrong" which did not correspond to the order of the court. These men and women combined together to defy the court order and their landlady. The tension between lawful and unlawful behaviour was never likely to be resolved easily, yet communal action was an important step in appropriating an authoritative voice.

In anti-cottage petitions, the same ideas of community consensus were

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[52] QJF 95/4, f. 99, Examinations concerning John and Anne Maddocke.

[53] QJF 55/1, f. 89, Petition of several inhabitants of Sandbach. See also QJF 55/1, f. 90, Petition of Jane Alexander; QJF 55/2, f. 132, Petition of Richard Deane; QJF 55/2, f. 145, Petition of John Broome and other poor tenants "which hould land of Mistress Cotton's dower"; QJF 55/2, f. 56, Letter from Elizabeth Cotton to William Alexander; QJB 1/5, f. 162r. For another case, see QJF 55/2, f. 108, Petition of the Inhabitants of the township of Partington; QJF 55/2, f. 125, Petition of Margery Rowe; QJF 55/2, f. 140, Petition of Hamnet Warburton; QJB 1/5, ff. 122r., 149r.

used as in those requesting a licence to build,[54] but they were inverted. The inhabitants of various townships thwarted the attempts of would-be cottagers to be granted licences to build on common land. John Wilson, it was said, was "a man of verie evill behaviour and wastfull to make that awaye which he getteth by his harde labour with drinking"; his wife was a "verie able woman, but will not work". Moreover, Wilson allegedly frequently threatened to desert his wife and children, saying that the inhabitants there "will releive them whether we will or not, fore he will bringe them to the Constables house and there leyve them". They therefore wanted not only that Wilson should not be permitted to erect a cottage there, but that he should enter into a bond on condition that he would not desert his family and that "he and his wife maye worke being able to worke". The justices took this on board and ordered that unless Wilson provided sureties for the discharge of the parish, he was to be sent to the House of Correction and punished "as a sturdy wandering rogue".[55] In another case, the inhabitants of Chelford complained about two lesser gentlemen who "Erected and suffered to be erected some 10 or 11 servants' cottages...most to the great hinderences of us their neighbours". These gentlemen held lands which were "but 20*s*...and 25*s* 8*d* of the old rent", and rented the cottages to disorderly persons. The inhabitants there requested that the bench did not permit any more cottages to be built there when help ought to be given to those poor who already lived there.[56]

Inhabitants justified their obstructive behaviour by emphasizing the "obnoxious and hurtful" or otherwise disorderly behaviour of the potential cottager. Often such claims were bolstered by others that cottagers had no legal claim to settle in the parish in question, that they had previously "wandered abroad", or, that they had erected or rebuilt a cottage without "warrant or...due course of law". The overriding concern was that such people would breed up a

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54 This will be discussed in detail below, pp. 253-268.

55 QJF 49/1, f. 165, Petition concerning John Wilson and his wife; QJB 1 5, f. 69v.

56 QJF 51/1, f. 113, Petition of the Inhabitants of Chelford.

charge which would be met by the parish poor rate.[57] In such cases, the lack of consent of the other inhabitants seems to have carried some weight with the justices - these petitions were often, though not always, successful.

But resistance to the law was obviously not always played out in legal fora. Constables who attempted to apprehend bastard bearers, for instance, regularly met with resistance from both the men concerned and members of their households and communities. When one constable searched for William Wright in an alehouse, John Hope rushed out of that house and ran to another in the next township to warn Wright to "get...away for there is a warrant to take him!". The constable was threatened and obstructed from serving his warrant by John Low in whose house Wright was harboured. Wright's mother, Sarah, warned that she "would kill or be killed" if he entered, and said that she "neither cared for the warrant, nor for him that granted it, and if he [the JP] was there himself she would not obey it". When Wright made his escape, the constable was prevented from pursuing him by Low and Hope armed with a bill and a pickel, while Sarah Wright grabbed him by the hair from behind, and held him "until William Wright was gotten out of his sight". Low, Hope and Widow Wright were all bound to the peace for their parts in this, but Wright managed to flee.[58] In another case, it was the father of the pregnant girl who was obstructed not only by her erstwhile suitor, John Key, but also by the constable, John Young. Young "refused [to serve the warrant] and said he was no constable". Only when Key "was gone his way" would Young take the warrant from him.[59] Women generally played a major role in rescues. This is perhaps another indication of the wider role which women played in community regulation than has been commonly assumed.[60]

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[57] Examples include QJF 49/2, f. 175; QJB 1/5, f. 36r; QJF 57/2, f. 37; QJF 49/1, f. 158; QJF 95/2, f. 147; QJB 3/1, f. 134v.

[58] QJF 93/1, f. 95, Examinations of James Sproston and Daniel Beckett; QJF 93 1, ff. 92, 93, 94, Recognizances. For another case, see QJF 95/1, f. 61, Examinations of John Johnson and Richard Foster.

[59] QJF 89/1, f. 115, Examination of William Gibbons.

[60] See for example, QJF 95/3, f. 96, Examination of William Cowper.

Women were particularly active in resisting attempts by constables and bailiffs to distrain goods or collect taxation. This is so even when the goods or money in question belonged to their friends or relatives in other households. This area of female concern over household goods was apparently acknowledged by all and sundry, in spite of the male bias of formal court sources. The under-bailiff of the county arrived at Humphrey Worthington's house in October 1667 and attempted to seize three brass pots belonging to Margaret Golden, a widow. Mary Worthington, Humphrey's daughter, asked him "by what Authority" he did so, to which he cryptically answered "that which would beare him out". He then proceeded to charge Mary to keep the peace, and said that if any of the women present "spoke a word, he would knock them downe". Presumably, Mary did not keep quiet, as he hit her with the end of his staff and "bade her keep off".[61] On 22 October 1622, Henry Cheirye was beaten with sticks by five women when he tried to distrain three cows which belonged to one of them. Cheirye was the bailiff of the royal forest of Macclesfield, and was acting upon a writ issued out of the manor and forest court. The women - three married and one single - had set upon him in defence of the cattle. Cheirye went away empty handed and filed an indictment against them.[62]

When two constables went to Edward Hankinson's house to demand payment of a ley, Edward's wife, Mary, "bid them come in if they durst, and with that locked the door". Returning later, Edward being away from home, Mary "bid them get out of her house, for she would pay them none". When they tried to distrain some goods according to their warrant, Mary, her daughter Susannah, and her son William "fell upon" the constables "and carried them out of the house by force"; Mary and Susannah first dealing with one constable, and then Mary and William dealing with the other. Later, Mary allegedly told Anne Mather that "the Assessors had no right to assesse any lay unless her husband joyned with them, and that it was an easy thing for the Justices to sit on their

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[61] QJF 95/4, f. 35, Examinations of John Worthington and Mary Worthington.

[62] QJF 51/3, f. 22, Indictment of Margaret Slacke, Jane Slacke, Ann Cooke, Elizabeth Bennett and Jane Cooke.

arses to cause the poor commonaltie to pay lays needlessly".[63] The apposition of household and official authority is interesting. Mary's claim that she was within her rights in withholding payment in the absence of her husband is an acknowledgement that as head of the household, her husband was officially responsible for the pertinent goods and moneys. This is evidently a "fiction"; she did not defend her property merely because it was not hers to part with. Rather, the idea of spousal authority permitted an indignant legitimation of her actions, as did aligning herself with the "poor commonaltie". Official action, whether by JPs or constables acting for them, flew in the face of the "rights" of the people.

Whilst Andy Wood is surely right in saying that "the people" was a male construct, both in political discourse and in many popular uses of the term, women spoke in terms which simultaneously acknowledged exclusion and inclusion.[64] Women, as senior members or "joint governors" of households, had a stake in claiming the rights of "the people"; yet, as Mary Hankinson did, they often removed themselves to a supporting rather than leading role in legitimating those claims. The "poor commonaltie" no less than "the people" was constituted of households, not individuals. As a political unit, the household was a gendered concept: it was unashamedly male. The apparent actuality of women's actions does not, however, sit easily with that particular rhetorical and legal construction.

We have seen that in many ways the distinctions between what we might call plebeian legalism and plebeian resistance to the law were blurred. People regularly drew upon notions of legality and authority in resisting the law. I now wish to develop this theme with reference to particular aspects of court business which might be taken as evidence of the law providing a means of social control.

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[63] QJF 91/3, f. 90, Examinations concerning Edward and Mary Hankinson; QJF 91/3, ff. 86, 87, 88, 89, Recognizances.

[64] Andy Wood, 'The place of custom in plebeian political culture, 1550 1750', Unpublished paper, 1994.

The law as a means of "social control"?

There are several legislative and administrative areas in which the law can be seen as an overt means of "social control" in the early modern period. There were, for instance, 35 parliamentary bills concerning drunkenness, inns and alehouses, nine against the prophanation of the sabbath, nine on bastardy, and six against swearing between 1576 and 1610. If we add to this the numerous other pieces of sixteenth- and seventeenth-century legislation which combined to create the evolving poor law, the extent of moral, social and political control over the lower orders which was encapsulated in the law was far-reaching. Paul Slack has argued that by paying the poor rate householders became visible members of respectable society, distanced from the destitute and disorderly: "They had a vested interest in maintaining settlement rules, enforcing the laws against bastardy and unruly alehouses, and restricting relief to the evidently deserving". Yet, as Slack points out, the lines which demarcated the respectable from the disrespectable were fluid. Moreover, the law and the courts formalized charity; they constituted a mechanism by which the benevolence of the powers that be could be demonstrated and the deference which confirmed social hierarchy could be maintained. Thus Keith Wrightson has argued that the law in this respect provided "in its balance of communal identification and social differentiation, a powerful reinforcement of habits of deference and subordination".[65] This, however, is not the whole story. Ordinary people responded to these measures in a number of ways which give the lie to the assumption that the law was an effective means of social control.

The application of the laws against bastardy were weighted against the poor. Indeed, it was considered that "the bastard child of persons able to keep it and not like to be chargeable to the parish" did not come within the scope of the

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[65] Paul Slack, Poverty and Policy in Tudor and Stuart England, (London, 1988), p. 130, & passim; quotation at p. 208. Keith Wrightson, English Society, 1580-1680 (London, 1982), p. 181.

relevant statutes.[66] It is widely accepted, moreover, that the application of the law was particularly weighted against women in this regard. Whilst both parents might be ordered to maintain a child, with the father contributing a greater amount, women were more likely to be whipped, incarcerated in the House of Correction, or given some further punishment.[67] Thus in 1668, Jane Nevet was bound by recognizance under condition that "she shall not hereafter transgresse or offend in the same kind and nature", although the fathers of her two illegitimate children were not required to enter into similar bonds.[68] The reason for this lay partly in the material fact that single women who bore children were unlikely to be able to support both themselves and their offspring.[69] But the relative severity with which female bastard bearers were treated was also in part due to early modern conceptualizations of culpability for sexual offences. The Jacobean statute compounded lewdness with poverty to depict a particularly disorderly type of woman; a later Caroline statute juxtaposed the "putative" father with the "lewd" mother.[70] On the surface, then, bastardy regulation and application can be interpreted as an elite means of social control.

This view must be tempered by the use which bastard bearers themselves

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[66] Peter Leicester, Cases related to Sessions, DLT/unlisted/19, p. 156; Peter Leicester, Precedents, DLT/unlisted/16, p. 59, no. 60. The statutes referred to are 18 Elizabeth I, c.3. and 7 James I. c.4. For bastardy see, Peter Laslett, Karla Oosterveen and Richard M. Smith (eds), Bastardy and its Comparative History (London, 1980); Peter Laslett, Family Life and Illicit Love in Earlier Generations (Cambridge, 1977).

[67] Anne Lawrence, Women in England, 1500-1760: A Social History (London, 1994), pp. 47, 82. For example, see QJF 89/3, f. 112, Order concerning Randle Williamson and Christian Heppard, QJF 89/4, f. 150, Petition of Christian Heppard; QJF 89/4, f. 131, Petition of Martha Disbury.

[68] QJF 95/4, f. 82, Recognizance of Jane Nevet.

[69] The relative material wealth and earning potential of single men and women is also reflected in the lesser amounts which women were typically ordered to pay towards the costs of the maintenance and education of their bastard offspring. In one case, in which the mother was "so poore that she could be procured noe sureties to be bound for her", it was ordered that while she kept the child for its first five years, the father was to pay to her the hefty sum of 30 shillings; thereafter, he was to keep the child, and she to pay him a mere 6s 8d annually. QJF 51/2, f. 51, Recognizance; QJF 51/2, f. 52, Order.

[70] 7 James I., c.4; 14 Charles II, c.12; Peter Leicester, Briefe Notes, 1660, DLT/unlisted/18, pp. 122-23.

made of the law.[71] Women and men regularly appealed to magistrates on their own behalf. It was difficult for people to invest their own words with authority and legitimacy when they had either confessed or were accused of an unlawful, immoral, dishonest act. This was obviously especially so for women. There were, however, several means by which the mothers of bastards attempted to assume lawful, moral and honest personae before the courts.

One of these was the transference of liability onto the father of the child by the complaint being mediated through the woman's own parent or guardian. This might sometimes suggest a strategy in order to shift the focus away from the female bastard bearer, but at other times it might simply reflect the age of the girl.[72] In 1620, William Rafe appealed to the bench at quarter sessions after his daughter, Elizabeth, became pregnant by George Smallwood.[73] As with so many other bastardy cases, this was not instigated by a parish elite concerned with the size of their poor rate. William Rafe used the courts to transfer his own responsibility as father of the child-bearing Elizabeth Rafe onto George Smallwood, the father of the bastard child. Speaking as the head of the household in which Elizabeth lived, he was able to align himself with good order, bypassing any culpability on his daughter's part. Smallwood "hath gott with childe a daughter of [Rafe]"; Rafe was therefore able to appeal to the law "upon Complainte thereof", requesting "some good order for releaffe of the said Chylde

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[71] Moreover, in Cheshire, the full force of the law was rarely implemented in the first instance. It seems that the father was imprisoned and the mother whipped usually only after an intial order by the bench had been disobeyed. This has been found true for the 1630s also. Cheshire women appear to have had a reputation for being "fruitful in bearing children after they be married and sometimes before". G.P. Higgins, 'County Government and Society in Cheshire, c.1590-1640', unpublished M.A. thesis, University of Liverpool, 1973, pp. 90-91, 19.

[72] See also, QJF 49/3, f. 154, Recognizance of Robert Carrington; QJF 51/1, f. 120, Petition of Joan Roades; QJF 93/2, f. 155, Examination of Anne Swinley; QJF 93/2. f. 164, Examination of John Morgan. This was also likely to be the case when the reputed father was the woman's master, or the son of her master. See, for example, QJF 89/2, f. 216, Petition of Edward Nevett; QJF 89/2, f. 217, Examinations concerning John Wirral.

[73] Smallwood was in fact a servant to Mr Brereton of Ashley, an active justice of the peace. Rafe had originally gone to Brereton, who bound Smallwood over to appear at the first sessions after the birth of the child.

and the discharge of the...parish".[74]

Consequently, Smallwood was ordered to pay to Elizabeth Rafes 26*s* and 8*d* annually towards the maintenance of the child for a period of twelve years in the first instance. Yet at the next quarter sessions, William and Elizabeth Rafe jointly filed another petition in which they complained that

> Smallwood hath utterly refused and still doeth refuse notwithstanding he hath ben thereunto dyvers tymes required, contrary to all equity and right. And in Contempte and breche of the said Order.[75]

Smallwood's wrongful act is presented on two separate counts. On the one hand, he had defied the magistrates' order. On the other, he had transgressed natural justice. In saying that Smallwood had acted "contrary to all equity and right", William and Elizabeth Rafe drew upon notions of lawfulness and justice which went beyond the confines of the regulative business of the common law courts. Elizabeth Rafe expected payment from Smallwood because it was her natural right to have it, not merely because the law stipulated that putative fathers ought to maintain bastard children to keep the poor rates down.

This language of equity and natural law comes up time and time again in these sorts of petitions. A "very poore" widow with an already great charge of other children, Margaret Hinkley, drew upon similar notions when she appealed to the courts after John Cowper refused to take their child from her as he was ordered to do, "although the tyme is now expired contrarie to his promise and to equitie and conscience".[76] Notions of equity could provide another means whereby women might transcend the "lewd", disorderly stereotype of female bastard bearers.

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[74] He also said that he was "a very poore man, and not able any longer to keepe eyther his said daughter or the childe [who was by then about three months old]". Claims of poverty were essential if such petitions were to be successful. QJF 49/1, f. 137, Petition of William Rafe; QJF 49/1, ff. 61, 127, Recognizances.

[75] QJF 49/2, f. 67, Order; QJF 49/2, f. 176, Petition of William and Rafe and his daughter Elizabeth.

[76] QJF 51/2, f. 119, Petition of Margaret Hinckley. Hinckley evaded the question of her own part in having become pregnant by attributing the cause to her "hard fortune" rather than a lapse of morals.

Women also transferred responsibility onto the fathers of their children by inverting the sexual stereotypes of bastard bearers.[77] Alice Whisshall complained before magistrates that it was not she, but John Cotton, who was "of very ill behaviour" which he "hath shewed himself towardes [her]". She told them, moreover, that Cotton "hath heretofore used the like behaviour towardes one Isabell Moore (a woman of honest parentage) by begettinge her with Child, and used her so basely that he caused her to refuse her country by the lewd behaviour he shewed to her". Furthermore, Cotton "doth utterly deny to be father to the said Child begotten on [Whissall], and doth acost [her] with very opprobrious speeches".[78] The women within this narrative are presented as honest, lawful and abused. Whilst there is no detailed description of Cotton's dishonourable actions, throughout the account there is a juxtaposition of male dishonour and female honour. Thus Alice Whisshall used the common law against the man she accused of being the father of her bastard child.[79]

The dishonourable conduct of men is a constant refrain in the examinations and petitions. Whereas in cases of sexual insult Laura Gowing has found that women publicly gauged their honesty by comparison to other women, in bastardy cases women's honesty was often gauged according to the dishonesty of the men whom they held responsible for their pregnancy. Whilst it is true that these female tales of male sexual misconduct were intended to shift culpability onto the man concerned, they nevertheless reveal something about the sphere in which female honesty could be imagined. One of the most common claims which women made in bastardy narratives was that the man in question had broken a promise of marriage.[80] In 1622, Anne Williams laid culpability for her

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[77] The fathers of illegitimate children were sometimes, though rarely, described as "lewd". When such terminology was applied to men, it seems to have implied a continued dissolute style of living. See for example, QJF 51/2, f. 72, Recognizance of Thomas Wirral.

[78] QJF 49/1, f. 142, Petition of Alice Whisshall; QJF 49/1, f. 64, Recognizance.

[79] For a similar case, see QJF 49/2, f. 159, Petition of Katherine Morgan.

[80] A man's broken promise of marriage itself was enough to provide conceptual legitimation of a woman's claim that she was the injured party. Men's denials of such allegations may suggest this too: "[he] denies he ever promised her marriage, or at any time wronged her in thought, word, or deed". QJF 89/2. f. 191, Examination of Robert Deane.

pregnancy almost entirely upon her fellow servant, Thomas Prince:

> unto my misfortune having in companie...Thomas Prince, which with many cruell protestations and vowes promised [her] marriage, in so much that being overcome with his most lewd tongue I consented unto my utter undowinge unto his most unfortunate will in all, and now being with Child by him, and he going under suerties for his appearance...at this sessions, for the Answeringe of this so great awronge committed against me, which unto my shame and utter overthrow I have, and am, to sustaine at his handes, unless your worships commisserate...

Williams begged the justices to "be merciful unto me, that since my state is so very poore I am not able to maintain myself". But she did not merely request mercy. She demanded justice: "that in all right, since he hath this undone me, he may be bound in good sureties for my maintenance in my time of weakness and for taking the child after my deliverie".[81]

Sometimes the link between legality and honesty is even more explicit. Some women referred to contractual promises, having had the bans read out in church, or having arranged wedding days with the local minister. Alice Deane told magistrates of John Brownefield's pledge to her: he "swore that he wished the devil might take his soul if he did not marry her...and on midsomers day last she swore the same to him".[82] Elizabeth Ditchfield said that after her child was born, the father Jeffrey Williamson asked her to marry him. Afterwards,

> informynge his parence of the seayd Williamsones speeches, they all agreed upon the agrement, ...Williamsone and Dychfelld wente and thus publiclebye axed in the church accordinge to lawe, and the daye appointed for the marredge.

Williamson called the marriage off once Ditchfield had taken the child from the wetnurse (whom he was paying) to nurse it herself. She insisted that she had been duped: "by this means [he] sopposeth to dischardge himselfe of the child".[83]

Another woman, Katherine Lockett, said that she feared the father,

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[81] QJF 51/3, f. 112, Petition of Anne Williams.

[82] QJF 89/4, f. 76, Examination of Alice Deane.

[83] QJF 49/1, f. 139, Petition of Elizabeth Ditchfield; QJF 49/2, f. 104, Order; QJF 49/2, ff. 106, 107, Recognizances.

Thomas Torkington, would not take the child as he should "accordinge both to the law and honesty". Lockett reinforced her legality and honesty at Torkington's expense by emphasizing the non-sexual implications of dishonest acts. Not only did Torkington faithfully promise her marriage, and "continued this suit for a longtyme", until "through his manie persuasions so far wrought under color of marriage with [her] that he begott her with child"; but he then refused to take responsibility. Thus, Lockett "in ende was forced to flee to the consistorie...for releif"; according to law, she arranged to affiliate the child "with the handes of seven honest women". After Torkington and another man, a piper,[84] "did solicit the greatest part of the women for the filiacon not to be present att that tyme", Lockett arranged for another affiliation to take place. She, then, had acted within the law; Torkington attempted to pervert it.[85]

By aligning themselves with the legal process - whether in common or canon law - women had access to a concept of honesty which could eclipse the shadow that their sexual activity might otherwise have cast upon their testimonies. This is so even when the tales which women told seem bitter and desperate.[86] Anne Dawson swore that John Dunbarr was the only man she had ever lain with, and that

> she never deserved the like or was at every time guilty of the like abominable sinne and transgression but only with him...merely and only occassioned through his false deceitful and most desperate allurements.

She told justices that Dunbarr "hath kept [her] Company in the way of Love, or

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[84] This connection might itself have implied disorderliness and unlawfulness.

[85] QJF 51/4, f. 163, Petition of Katherine Lockett; QJF 51/4, f. 113, Warrant against Thomas Torkington. See also QJF 55/1, f. 88, Petition of Ellen Acton.

[86] There are, however, many poignant tales of men's broken promises to marry women who fell pregnant. Some women told their stories simply, merely stating the alleged bleak facts of what had happened. Margaret Gibbons said that John Key "did promise her marriage and that he would make her as good as he could" in 1661, but after she became pregnant he said he would have no more to do with her. In the same year, Alice Oliver alleged that Thomas Mason had promised to marry her. The woman in whose lodging house she gave birth deposed that the morning after the baby was born, Mason left saying he was gone to fetch Alice's clothes, "but did not return to her again though she staid almost a fortnight". Moreover, during the following nine months, he had given Alice almost nothing for the child's support: "only one shilling he gave...to the child to buy it a pair of shoes". QJF 89/1, f. 112, Examination of Margaret Gibbons, QJF 89/1, f. 114, Examination of William Gibbons, QJF 89/2, f. 152, Examination of Margaret Gibbons, QJF 89/2, f. 153, Examinations concerning John Key; QJF 89/2, f. 57, Examinations concerning Thomas Mason.

as a suitor for the space of three years last past", often promising to marry her, and

> as often times attempted her, hastily affirming and declaring that he would marry her, or otherwise set farr and plentifully provide for her that shee should never want, if she would but yeild and consent he might have the carnall use and knowledge of her body...

It was "by and through which deceitfull promises she did for want of grace permit and suffer him to have [his way]" on three occasions. When she told him she was pregnant "and moved him to take some course about it", Dunbarr endeavoured to persuade her to father the child on some other man - for which he offered her four nobles a year.[87] Dawson transcended corruption by refusing his money. By using the law to rightfully affiliate her child, she ascribed to herself a lawfulness, an honesty, at Dunbarr's expense which his rejection of her would otherwise have destroyed.

In such cases, women's honesty was not solely mediated through their sexuality; it could not be if their words were to have any force. Women who presented themselves as wronged by men who "pretended love and great affection", or who seemed "zealous and right" in their promises of marriage, drew upon particular constructs of righteousness and lawfulness.[88] Women who claimed that they had resisted the attempts to bribe or coerce them to father their illegitimate children on innocent men also aligned themselves with law and honesty,[89] as did the many women who made other complaints against the men whom they accused as the fathers of their children.[90] The law provided a means

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87 QJF 89/2, f. 190, Examination of Anne Dawson.

88 QJF 89/2, f. 192, Examination of Ellen Brownfort. For other examples of women's assertions that the men by whom they were pregnant had promised to marry them, see QJF 89/2, f. 191, Examination of Mary Wood; QJF 89/3, f. 76, Examination of Margaret Callcott; QJF 89/4, f. 75, Examination of Margaret Sheene; QJF 95/4, f. 55, Examination of Anne Pepper; QJF 97/1, f. 57, Examination concerning Elizabeth Swindells; QJF 97/1, f. 93, Examination of Katherine Tittle.

89 For example, see QJF 97/1, f. 57, Examination of Ann Barlow.

90 Women used the courts against men over a variety of related issues. In addition to the cases cited elsewhere in this chapter, for men's refusal to pay maintenance or to obey an order, see: QJF 49/2, f. 149, Petition of Ellin Frythe; QJF 49/3, f. 74, Letter to the Clerk of the Peace; QJF 55/1, f. 88, Petition of Ellen Acton; QJF 57/4, f. 13, Petition of Katherine Sharisbricke. For men who fled or who might fly the county, see: QJF 51/3, f. 96, Petition of Elizabeth Baker; QJF 53/2. f. 96, Recognizance of Roger Terrie, QJF 53/2, f. 97, Warrant; QJF 89/3, f. 233, Petition of Anne Whitgrave. To ensure that the father

whereby women had access to a public voice to consolidate those claims. In cases like these, the law provided a means through which women reinforced their own dignity, and reinscribed their own honesty. The use of the law itself provided an additional sphere through which female honesty might be imagined.

The contiguity of differing and contrasting notions of credit, along with those of honesty, was another central feature of these narratives. But men, with their economic, social and sexual advantage, appear to have used the language of credit to a greater extent than women did. The term "credit" was of course a loaded one: it could apply to both economic and social worth. Undermining women's reputations by accusing them of lewd behaviour was a common means whereby men attempted to elevate, in contrast, their own credit in order to give weight to their denials of fatherhood.

Arthur Blackemoore did this by offsetting his own "credit" against that of Jane Briscoe, who had fathered her child on him. Blackemoore claimed to be a gentleman with an inheritance worth forty marks per annum. His accuser was in comparison "a woman of very ill behaviour", who "hath had divers bastards", and who before the birth of the child "alleged another to be father by whom she had a former bastard". Moreover, he claimed that she kept him bound from sessions to sessions by pretending that she believed he would fly the county, and that she had not proceeded against him by "course of lawe" as she should have done. Nevertheless, Blackemoore's credit in monetary or social value did not outweigh that given to Briscoe's testimony. He was not released from his bond.[91] However, it is difficult to know how much one can make of such decisions taken by the bench. It may have been that in many cases, magistrates and parish elites were content if the child was provided for regardless of notions

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was held responsible or for relief, see: QJF 89/1, f. 245, Petition of Mary Fleete; QJF 51/4, f. 105, Letter.

[91] QJF 49/2, f. 156, Petition of Jane Briscoe, QJF 49/2, f. 163, Order, QJF 49/3, f. 58, Petition of Arthur Blackemoore. Jane Briscoe appealed to the court not only for the father to be bound to take and keep the child, but also for the expenses she incurred in her childbearing. This extra claim may be explained by the fact that Blackemoore was a man was of substantial means.

of natural justice.[92]

The petition of Robert Bertles alias Pedley suggests alternative ways in the concept of credit could be manipulated. Bertles reported that Mary Ryle was "a moste lewde woman for she hath had three basse children since the death of her husband". His own credit in the community was presumably little: he had only recently arrived in the parish of Mobberley, and he was a poor man. However, it was his very lack of substance in wealth and repute which Bertles believed led Ryley to father her child upon him. Such a man did not have the means, in every sense of the word, to counter accusations. Bertles merely claimed that he was most "wrongfully and unjustly" charged, and asked the bench to treat him favourably.[93] In another case, John Turner said that he "did earnestly solicit" the mother of his bastard child to marry him when he discovered that she was pregnant. She, however, refused and landed herself employment as wetnurse to a "Noble Family...where she lives in great plenty". Moreover, "she has a £20 portion left her by her friends, besides her great wages and gifts, and refuses to pay anything at all towards the maintenance of the child". In contrast, Turner was worth only £5 a year, and was likely to suffer "great want and misery and the child to starve".[94]

It is clear then that "credit", or lack of it, was not always used to women's disadvantage in bastardy cases. In another case, Elizabeth Rowson complained that during the past three years and four months since the birth of her child, John Martinscrofte had not observed the JPs' order that he should pay her

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[92] See also, QJF 51/1, f. 117, Petition of William Wright; QJF 49/3, f. 88, Petition on behalf of Alice Rowe; QJF 51/3, f. 99, Petition of Jane Deane. Constables who allowed the apprehended father to escape were sometimes held responsible for the maintenance of the child, as sometimes were those who had acted as sureties for absconding fathers. Examples may be found in QJF 57/3, f. 52, Order [constable]; QJB 3/1 f. 81r.; QJF 51/2, f. 135, Order [guardian]. However, others were luckier, and were successful in their requests that the child should be maintained on the poor rate. See, for example, QJF 91/2, f. 93, Petition of Roger Worthington. See also S. Hindle, 'Aspects of the Relationship of the State and Local Society in Early Modern England: with special reference to Cheshire, c.1590-c.1630', unpublished PhD thesis, University of Cambridge, 1993, pp. 422-429.

[93] QJF 55/1, f. 47, Petition of Robert Bertles alias Pedley. See also, QJF 55/3, f. 95, Petition of Nicholas Twisse; QJF 95/4, f. 68, Petition of Richard Ellams.

[94] QJF 89/2, f. 213, Petition of John Turner.

30 shillings *per annum*. Even if he now paid, she said, it "will not neere maintain the said child", because "[she] is growne very weak in body, and very poor and weak in estate for that she hath sould much of her apparell to maintain herself and the...child". In comparison, Martinscrofte was worth £50 *per annum*. Rowson therefore demanded that the justices order an increase in the maintenance payments and that "[she] may have the child". Martinscrofte was ordered to pay her 50 shillings annually in future, "and all arrears past". She had also, however, presented Martinscrofte as an unlawful, untrustworthy man, in stark contrast to her self-representation, of course. Elizabeth Rowson, like so many other women, *used* the law.[95]

The same can also be said of women who were married to men who were accused of fathering illegitimate children on other women. Some time after Anne Butten bore Richard Pancket's illegitimate child, she married Davie Jones, a Nantwich labourer. According to a former order, the child was living with Pancket, and Button was supposed to give him 12*s* per annum towards its maintenance. However, after Button's marriage, it was not Pancket but his wife Margery who applied to the bench to make Butten's husband financially responsible for the child. Margery Pancket complained that *she* "hathe kept the child hereunto and nowe of late came not by ayd accordinge to the order"; and she informed the justices of Butten's marriage, saying that "Jonnes...will not take the child or yeld to the order". She wanted a new order to compel Jones and his new wife to keep up the payments. With the exception of the stock final phrase, requesting the "tender consideration" of the bench, and the assurance that in return she would pray daily for the justices' well-being, Margery Pancket's petition is deviod of sycophantic and deferential language. Her position in her household, and the parallel between herself as good housewife and Butten as a disruptive force on that household economy, evidently provided her with the

[95] QJF 89/1, f. 230, Petition of Elizabeth Rowson. See also, QJF 93/3, f. 50, Petition concerning Edward Crowther; QJF 95/3, f. 137, Petition of Margaret Johnson.

authority she felt necessary to petition the justices on her own behalf.[96] In another case, Elizabeth Swindells went not to the man on whom she had falsely fathered her child, but to his wife, asking her not to be angry with her and seeking her forgiveness. Again, it was the wife of the accused man, not the man himself, who presented the case to magistrates.[97] The concerns of the law and the construction of formal legal documents tend to preclude many references to the authority and responsibility of women in most bastardy cases. It is therefore all the more interesting that women themselves felt that they had a right to seek redress through legal means.

Both men and women used contrasts of rich and poor, honest and dishonest, lawful and unlawful in their examinations and petitions concerning bastardy. The legal process - as an arena in which various kinds of conflict were played out - offered men and, more importantly, women a language and a set of shifting concepts of order, honesty and lawfulness which they could draw upon in order to invest their own words and actions with some kind of authority. This is the case for a vast array of concerns. Yet the fact that this language and these concepts were available to women who had borne, or who were about to bear, illegitimate children is revealing. For in the female bastard bearer we have a potent personification of disorder and dishonesty. The fact that such women used legal language and metaphors to reinforce their tales before justices of the peace illustrates that notions of the law were not exclusively "male". Rather, they were mutable, and however insignificant women's involvement in litigating or administering the law might have been, they certainly had a purchase upon the "popular consciousness" which "formulated its own ideas about the law".[98]

Another area in which the poor might be expected to have come into

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[96] QJF 49/2, f. 174, Petition of Margery Pancket. See also, QJF 95/4, f. 59, Examination of Margaret Bossen.

[97] QJF 97/1, f. 57, Examination of Ann Barlow, QJF 97/1, ff. 104, 105, Examinations concerning Elizabeth Swindells.

[98] Sharpe, 'The People and the Law', p. 248.

conflict with the law was the building of cottages on commons and wastes. Legislation of 1589 made it illegal to erect such buildings without a licence from quarter sessions or assizes, as well as the consent of the lord of the soil.[99] Consequently, petitions to justices of the peace requesting such licences provide instances of a dialogue between elite attitudes to poor cottagers and those of the poor themselves - the courts were again sites of negotiation. To be granted such a licence in part reflected that the petitioner was one of the "respectable" poor. Petitioners also usually claimed that they were legally entitled to build a cottage on the common land of a particular parish, especially after the Settlement Act of 1662. The petitions, then, reveal something of plebeian notions of entitlement and rights, as well as of legality and respectability.

The 80 petitions for cottages which were presented at quarter sessions in the 1620s and 1660s fall roughly into two categories: those which simply plead respectable poverty, and those which assert a range of additional factors which either explain the poverty of the petitioner or imply further reasons for their entitlement. The latter type of petition was more common, especially in the 1660s, and it is upon these that much of the following discussion will focus. Both types of petition invariably include much which is quite formulaic. Petitioners, on their own initiative and/or encouraged by a clerk or scrivenor, emphasized certain key themes: that they or other members of their family unit had been born in the parish or township in question, and/or the length of time they had been resident; the number of children they had, especially if they were "small" and could not yet contribute to the family economy; their age if they were "old"; and, of course, that they had hitherto maintained themselves and their families by their hard labour, but that they were now too poor to pay what was often referred to as the racked rent.[100] Reasons given for poverty varied from age or sickness in cases where simply impotence was pleaded, to circumstances such as fire or

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[99] Slack, Poverty and Policy, p. 63.

[100] See, for instance, QJF 49/1, f. 134; QJF 53/3, f. 52; QJF 55/4, f. 9; QJF 89/1, f. 238; QJF 89/2, f. 223; QJF 89/4, f. 140; QJF 93/4, f. 126; QJF 95/1, f. 157; QJF 95/2, f. 150; QJF 95/3, f. 140; QJF 97/1, f. 129.

logistical factors conspiring against them, to being unfairly cast out by evil landlords. All of these were common to both male and female petitioners - women were usually widows, and therefore additionally put their poverty down to the death of their husbands.[101] In other words, petitioners presented themselves as deserving, impotent poor.[102] Beyond these basic themes were additonal means by which petitioners constructed their worthiness.

One of the ways in which one's case was promoted was by having the consent and goodwill of one's community. In the 1660s, petitioners were more likely than they had been in the 1620s to procure the signatures of as many parishioners of repute as possible. They also placed greater emphasis upon the courtesy and helpfulness of their neighbours. The 26 people, including seven women, who put their names to James Woods' petition stated that they "shall be ready to put their helping hands to the cotes erection". The 79 year old John Watson "hopeth to have the good will and...furtherance of the neighboures towardes the erection of his cote being both loved and pitied by them". James Richardson said that his neighbours had encouraged him to apply to the courts for permission to build a cottage in their parish.[103] Other people told justices that from the charity of well-disposed friends and neighbours they had been given small poles, timber and other necessary building materials.[104] In some cases these details of the love and help of the community were no doubt intended to override the concerns of central government legislation. After the Act of Settlement - or as Slack has more appropriately termed it, the Act of Removal - was passed in 1662, consensus and neighbourliness may have become more important in substantiating claims of entitlement to erect a cottage on the

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[101] Examples may be found in QJF 49/1, f. 150; QJF 53/4, f. 86; QJF 89/4, f. 134; QJF 89/2, f. 231.

[102] For contemporary perceptions and distinctions of poverty, see Slack, Poverty and Policy, ch. 2.

[103] QJF 89/2, f. 225, Petition of James Woods; QJF 51/2, f. 110, Petition of John Watson; QJF 89/2, f. 207, Petition of James Richardson.

[104] See for example, QJF 89/2, f. 223, Petition of Robert Hassall; QJF 89/2, f.233, Petition of Edward Parkes.

commons.[105] The hardening of official attitudes to the poor may also have been reflected in the larger rate of denial of requests for licenses in the 1660s.[106]

A supportive petition of another inhabitant asked that the woman in question should be allowed to erect a cottage as "for many years she lived and behaved peacably amongst us...[despite having] little maintenance and a great charge".[107] Having the patronage of wealthy landowners or respected parishioners was a common means by which poorer people ascribed their own claims with authority, mediated though they were through the authority of others. Richard Bathoe said that he had the "free consent and the good liking" of parishioners and the lord of the manor. Jasper Griffin "moved divers gentlemen freeholders and charterers within the manor" to this end, and was given consent "upon the intreatie of the said gentlemen". One man told of how he was "much pittied" by the gentleman who allotted him a piece of land on which to build a cottage; another said that consent was given "in commiseration of his poor estate, knowing him honest".[108] Certificates by lords of manors sometimes explicity stated that the petitioner "is a true and painfull workman never addicted to any dissolute or disordered Courses".[109] Court orders stated that such a person was to be given a licence on similar grounds: "he behaving himself well", or "pittying his misery".[110] Thus licences for cottage-building were given within a particular rhetorical framework which linked ideas of order, neighbourliness and christian

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[105] The increased importance of named signaturies may also have been a consequence of a more marked social differentiation in the later seventeenth century. Keith Wrightson, English Society, pp. 140 42, 222-28. If this was so, then the "middling sort" in communities would have been more easily identifiable as appropriate supporters of the respectable poor. See also, Hindle, 'State and Local Society', pp. 418, 422-23.

[106] About three-quarters of the total number of sampled petitions presented were successful: 21 of 80 were refused. However, petitions were more likely to be denied in the 1660s. Roughly a sixth and a third of requests were refused in the 1620s and 1660s respectively.

[107] QJF 89/2, f. 215, Petition of the inhabitants of Tattenhall; see also QJF 89/2, f. 214, Petition of Katherine Wright.

[108] QJF 57/2, f. 38, Petition of Richard Bathoe; QJF 51/1, f. 122, Petition of Jasper Griffen; QJF 49/1, f. 165, Petition of John Wilson; QJF 55/2, f. 115, Petition of Raphe Parker.

[109] QJF 53/2, f. 162, Petition of William Shetwall, QJF 53/2, f. 110, Certificate of consent.

[110] QJB 1/5, f. 26r.; QJB 1/5, f. 174r.

charity. This rhetoric, however, should not be taken at face value. It operated on several levels.

Drawing on notions of good will or charity, either by neighbours or by the bench, was a major characteristic of petitions for cottages. In this way, petitioners placed themselves in a particular position before the law and those members of the county elite who administered it. They were poor supplicants, who presented themselves as needy of the beneficence of the authorities. Yet some petitions, whilst not disregarding the tactical language of deference, nevertheless indicate that the poor believed that they had some purchase on the law itself.

When John and Elizabeth Maddock petitioned the bench in 1622, they said that they needed a cottage in which to leave their two children while they "went forth to their labours to earn their sustenance". They informed the bench that they were both born and bred in Astbury parish, and that they did not think that they would become a charge to any if they had the court's assistance. Assistance is a very different concept from charity; it does not invest the elite with the same type of moral and material control over the licence which the Maddocks sought. Moreover, they ask for an order that they can build a cottage on the commons there "as to lawe and justice..."[111] Asking for a licence according to law, might not signify much about the Maddocks' own position; but asking for one according to justice incorporates the notion of entitlement.

The language of equity and "right" was frequently used in these petitions, often to great effect. John Vemstone claimed in 1622 that he had his "right" to a messuage and tenement taken from him by his master, who then gave it to another servant.[112] It was therefore unfair that he and his family should be driven from place to place, and he wanted an order to build a cottage on waste

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[111] QJF 51/2, f. 115, Petition of John and Elizabeth Maddock.

[112] This man was also called Vemstone and was perhaps a relative. The issue may have been a much narrower one of disputed property rights than at first appears.

land according to the statute "made and provided for the relief of habitatione of poorer people". Vemstone's petition too indicates a sense of his entitlement. The justices may have thought this was justified: the clerk noted that it was to be found out "if Mr Legh did give his Cottage away".[113] Jane Jackson said that she had been "defeated of her right" to a tenement in Church Hulme by one Gandy, which had created the "distress and want" of her and her three children: she was therefore meritous of a licence to build a cottage. Again, the justices agreed.[114]

Petitioners frequently claimed that they had been cast out by an unjust landlord, or were victimized by individuals in the community. Many petitions did not disguise the fact that poor people sought recourse to the courts as one way of offsetting the actions of such landlords.[115] These poor men and women did not present themselves as deserving because they were "impotent". Rather, they implied they were deserving because they had been mistreated by their peers or social superiors. Ellen Foster was given a licence after arguing that she and her eight children had been cast out of their abode "in most lamentable manner". The widowed Alice Howell informed the justices that she and her husband had been "unconsconably" thrown out of the cottage his father had built by a gentleman acting on behalf of their landlord. Now, in her widowhood she and her two small children had nowhere to live. So, she wanted either her old cottage back, or a new one built on the common. She evidently presented her case well: the bench thought that the landlord perhaps had not consented to putting her out, and ordered that she was to be allowed back in until "Sir Roland's mind is certenly known"; if he was unwilling, then she was to have a cottage on the waste.[116]

William Deane petitioned against his landlord in 1626. He told justices

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[113] QJF 49/2, f. 173, Petition of John Vemstone.

[114] QJF 53/2, f. 172, Petition of Jane Jackson, QJF 53/2, ff. 110, 112, Certificates of consent.

[115] For additional examples to those cited below, see: QJF 53/1, f. 69, Petition of Thomas Burrowes; QJF 55/2, f. 117, Petition of Humphrey Underwood; QJF 95/1, f. 145, Petition of Francis Bobton.

[116] QJF 53/2, f. 167, Petition of Ellen Foster. QJF 55/2, f. 130, Petition of Alice Howell; QJB 1/5, f. 160v.

that the cottage in which he lived had been lawfully built on the waste some years beforehand. The original tenant had died, and his daughter had continued to live there for some time, until she passed "her estate and right of that cottage" to one John Fisher. It was Fisher who leased the cottage to Deane himself. The problem arose when Mr Hurleston, the guardian of the young Mr Cotton who had inherited the lordship, threatened to indict Deane and "to debarr him of that small cottage which he hathe and must dearly pay for, which is to...[his and his family's] utter overthrowe". Deane requested that the bench take some course so that he might enjoy the cottage. But he was unsuccessful. The clerk of the court noted on Deane's petition that he had till "Saturdaie to remove the goodes, and the key to bee delivered unto Mr Hurleston, the churchwardens and overseers".[117]

William Gamwell and his wife Joyce petitioned the bench in 1624. They said that they had been cast out by Raphe Sutton and his wife Joane

> in most unwell and lamentable manner, along with their 6 children who are very yonge, which were carried forth of their beds and layd naked upon the ground in the heigh lane.

The moral implications in throwing them out was reinforced by the relation of physical abuse: at that time Sutton "did strike and wound one of the children in such sort that he lay for three days in danger of his life". For the two months since then, the Gamwells had, they claimed, been sleeping outside, with nothing but a fire made under a tree - with no cause of destitution other than Sutton's dealings with them. They now had the consent of the lord of the manor to build a small cottage on the commons there, for which they asked for a licence. But, Sutton

> doth altogether restaine them from the doinge thereof and will by no meanes permitt and suffer the same although it will not hurt him, nor neere to any ground he houldeth, neither will [he] suffer the petitioners nor their children to live in quiet where they now are but continually curseth and threatens them.

The Gamwells did not merely ask for a licence but desired that Sutton be bound

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[117] QJF 55/3, f. 87, Petition of William Deane.

to be of his good behaviour towards them. They were unsuccessful. It may have been that their petition was in fact an attempt to counteract prosecutions against them by Sutton. Not only had Sutton secured a recognizance against William Gamwell to keep the peace towards him, but he indicted both William and Joyce for having already built a cottage against the statute.[118]

Sometimes legitimation through mistreatment was implicit. One man complained in 1669 that he had gone "according to the usual custom unto the vale countrey to reape", but in his absence his house was seized and he had been kept out ever since. That he was unable or chose not to prosecute by indictment those who had disseized him may have been a major factor in the court's finding his petition wanting.[119] In 1665, John Hanna had taken a little house from Widow Burgesse in Clive, but when he had the chance of another house, she would not allow him to leave, saying that he should stand to his bargain with her and not remove for 20 years if she should live that long. So Hanna stayed, and now the widow "durst not let out the house any longer", thus making him destitute. Hanna had stuck to his side of the bargain; the implication is that Burgesse was entirely to blame for his predicament. But he had only lived in that parish for two years, and he had not been born, married or apprenticed there - this may have led the bench to the decision to deny his request.[120] Another man, William Smith, said that he was cast out of his cottage "by order of law". The copyhold had expired with the last of the three lives for which it had been leased. But Smith implied that this was itself unfair as two of the lives had been slain in the civil wars. Smith was granted a licence to build a cottage. The clerk wrote in the order book that the landlord had contracted with a stranger, "whereupon Smith was outed".[121]

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[118] QJF 53/2, f. 155, Petition of William and Joyce Gamwell; QJF 53/2, f. 113, Warrant, QJF 53/2, f. 16, Indictment; QJB 2/5, f. 45r. See also, QJF 89/3, f. 230, Petition of John Miller; QJB 2/5, f. 40v, Indictment.

[119] QJF 97/3, f. 122, Petition of Robert Duckworth.

[120] QJF 93/1, f. 132, Petition of John Hanna.

[121] QJF 89/2, f. 205, Petition of William Smith; QJB 3/1, f. 33r. For a similar case, see QJF 89/2, f. 207, Petition of James Richardson.

Another frequent and related complaint was that the inhabitants of a parish would not allow the petitioner "to take housing for his money". These adversaries might be the general inhabitants, individual characters, or "some persons of Authority or Interest". Faced with such opposition, a cottage on the commons might be the only way of providing a family with harbour. Petitions which stress this usually ask for either an order that some housing in the parish should be let to the petitioner, or that they might build a cottage on the waste.[122] The moral imperative was one way of conceptualizing entitlement. Amongst ordinary people just as amongst their rulers, notions of equity underwrote their understandings of the law.

Morality was also a legitimizing notion in those petitions which emphasized extreme need which served to underline impotence. One man claimed that he "hath bine infourced this weeke or there aboutes to lie in the streetes with his poore wife and three small Children", saying that if habitation was not provided they might "starve...for lacke of harbour and succour". An elderly couple lived in "a poor booth they had made under a tree". A widow and her two small children had been living in a hollow tree, and even that had fallen down. One family were living in a cowhouse; another had no habitation "but what they had digged in the earth covered over with Clodds upon Blackden heath" which, the petitioner added, was "very uncomfortable".[123] These two latter cases reveal how difficult it could sometimes be to procure a licence, especially after 1662. Neither were successful. The petition in which the supplicants were living on Blackden heath was presented jointly by John Hurdesfield and Francis, his son. They would appear to have had many of the necessary credentials to be given a licence: John and his wife were aged 50 and 60 respectively; both John and Francis had been born in the parish and had lived there all their lives; they had never been a burden on the parish poor rate, and their want of a dwelling was

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[122] See, for example, QJF 89/4, f. 139, Petition of John and Joan Foxe; QJF 89/1, f. 229, Petition of Robert White.

[123] QJF 49 1, f. 154, Petition of Robert Carmon; QJF 89/2, f. 233, Petition of Edward Parkes; QJF 55/2, f. 130, Petition of Alice Howell; QJF 95/3, f. 136, Petition of Richard Coppocke; QJF 95/2, f. 148, Petition of John Hurdesfield and Francis his son.

allegedly due to the lack of available accommodation for their money. Moreover, Francis's wife was heavily pregnant: with winter approaching, both she and the child would be in "much hazard" if they continued in their make-shift abode on the heath. The minister and churchwardens of Blackden certified that the contents of the petition were true, and offered the additional information that one of the men was a trained soldier there, and "the other carrying the Armes of a neighbour"; they were both "faithful subjects". Yet both patronage by the minister and an appeal to the charitable disposition of the bench, and their supposed good names, did not move the justices, who refused to give the family any help or licence whatsoever.[124] Although a man might state truthfully that he was forced to live in a cowhouse, or in a hole dug in the ground, the primary concern of justices does not seem to have been the material state of the petitioner. The crux of the matter may have been the causes of such conditions and wider claims to entitlement.

This may be seen in the case of Richard Keay. Keay complained to magistrates in 1622 after his cottage, which he had been allowed to build on the commons three or four years earlier, had been destroyed by fire. His petition outlined several points which he felt made good his case: he had lived in the township of Stoke for thirty years; his wife had been born there; both had come from "honest parentage", and "have gott out livinge with great industry and paynes"; he provided character testimony of local officers and neighbours; and for several months he, his wife, and their four children had "been compelled to lye under hedges in the night sometimes, for want of lodging". Keay evidently believed that he was entitled to build another cottage.

> Nevertheles, the lorde of the manor of Stoake...will not suffer [him] to build yt up againe because he sayth the lawes of the lande are verie strict agaynst yt, and he will not incurr the danger thereof.

Keay therefore asked the justices to appoint another place in any township within

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[124] QJF 95/2, f. 148, Petition of John and Francis Hurdesfield, QJF 95/2, f. 149, Certificate of minister and churchwardens.

the parish on which he could erect a "poore cottage".[125] Richard Keay used the courts as an alternative to patronage, as one way of voicing his own claims despite the opposition of his landlord (which may be have been only mild). The bench ordered that Keay could build on any of the wastes within the parish with consent of the lords there, thus removing him from dependence upon his previous landlord: there were another ten townships in the parish of Acton. Petitions like these involve more than a simple plea of respectability in poverty. The justification was not merely that the petitioner was impotent. Rather, notions of what construed a deserving case were imbued with hints of a wider entitlement.

Whilst some petitioners professed a knowledge of the law, others manipulated elite perceptions of plebeian ignorance in order to stake their claims. William Wiswall, in 1626, presented a petition in which he explained that the cottage on "little heath" (the common) in Woodchurch had been destroyed by "tempestuous weather" 18 months before. He said that for 20 years he had lived in that cottage, which had existed on the common for "time out of mind", and that he had erected a new cottage four or five yards from the old site with the consent of both the chief lord of the common and the charterers. However, a year later he was indicted for erecting the building, "whereby being a simple man and misled by some of his meighbours" he confessed to the charge. Now, he wished to traverse the bill. The fact that Wiswall obtained the consent of the appropriate authorities before he rebuilt his cottage, and the way in which he presented his case which he was now pursuing in his petition, do not suggest that he was a man completely ignorant of the legal process. Nor does his confession necessarily suggest this: he was indicted for building a cottage without it being assigned the statutory four acres of land, which his cottage would not have had. Assuming the position of a poor, ignorant man - whether he was such or not - allowed Wiswall to bend the legal rules. The bench ordered that if the new cottage was built with the consent of the lord there, Wiswall was permitted to traverse the indictment

[125] QJF 51/3, f. 98, Petition of Richard Keay.

"notwithstanding his confession".[126]

Wiswall's indictment was presumably not the result of a broad community bias against him - it is more likely that he was indicted as part of an interpersonal dispute between him and Robert Greene, the man who prosecuted him. We may assume that many poor cottagers did have the permission, if not always the encouragement, of other members of their communities to build small dwellings on commons and wastes. Nevertheless, despite there being relatively few complaints at quarter sessions against prospective cottagers, several instances of such conflict are apparent. Consensual opposition to those who desired to build on waste land often persuaded justices at quarter sessions not to grant a licence. Yet faced with opposition from substantial villagers the law itself could provide a forceful counter-measure. Raphe Parker erected a cottage in the lordship of Over Whitley in 1626, having received permission from the bench and the consent of the lords there, and the order being made known to the inhabitants there, "divers of which gave their consent". According to Parker, shortly afterwards, "Notwithstanding the said order", Thomas Turner alias Stockton and William Haukinson

> by the instigation of certen others...came to the said cottage, [Parker] being thatching it, and violently pulled it down, and afterwards cutt the timber in pieces, and although [Parker] did gently acquaint them with the order, and desired that they desist from so outragious and wicked a deed in disobeying the said order, they said they cared neither for Justices nor no bodie else.[127]

The petition began by establishing Parker's lawfulness and entitlement to build the cottage. The emphasis throughout was not on Turner and Haukinson's offence against him, but against law and order. Parker's allegedly "gentle" reprimand thus served to keep him on the right side of the line which demarcated orderly behaviour from the disorderly.[128] What these cases demonstrate is that the law,

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[126] QJF 55/4, f. 10, Petition of William Wiswall; QJF 55/1, f. 17, Indictment; QJB 2/5, f. 71r.

[127] QJF 55/3, f. 30, Indictment; QJF 55/3, f. 85, Letter; QJF 55/2, f. 115, Petition of Raphe Parker.

[128] For a similar case, see QJF 89/3, f. 215, Petition of Joseph Wood, QJF 89/3, f. 12, Indictment against churchwardens and contable for refusing to obey a warrant; QJB 3/1, f. 41v.

even that concerning the building of cottages on commons and wastes, was contested terrain.

It is clear from the preceding discussion that in most respects the content and emphasis of men's and women's petitions for cottages was extremely similar. There are nevertheless certain points which may be made as regards the position of women in such matters. One of these was that skilled men were able to use a language of skill and special rights which was exclusively male. When Thomas Webster applied for a cottage licence in 1620, he was merely going through the motions to sanction his right to build a cottage on the wasteland in Lymm, where he had lived for "divers yeares now last past, by reason there is a quarrie of stone there". Webster was a free mason, and like other extractive workers, not only did his occupation exempt him from the 1589 Act, but certain local customs also allowed special rights to miners and quarry workers. Moreover, his skilled status enabled his elite patrons to give added weight to their pleas on his behalf. These "worshipfull worthy friends" included three justices of the peace. They wrote not only to the lord of the manor who gave his consent for the cottage to be erected, but also to the clerk of the peace, saying that they "doubte not of [his] kindnesse" towards Webster in moving the justices at the sessions to grant a licence. They said that Webster was "a verie good workeman", and that if he could build a cottage near the quarry,

> he hopes not onelie, by his owne paines and labor to maintaine himselfe, and familie, but Also to doe verie much good in the Countrie aboute him, in the affairs of his occupacion.[129]

Women did not have a comparable purchase on the language or concept of such contributions to the good of the community. Although only a few men could make such explicit claims, other skilled groups such as blacksmiths, for example, appear to have been universally successful in their attempts to be granted permission to build smithy houses as well as cottages on commons.

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[129] QJF 49/1, f. 160, Petition of Thomas Webster, QJF 49/1, f. 159, Certificate and letter; QJB 1/5, f. 31v.

Skilled workmen did not only request somewhere to live, but also a place from which they could "apply [their] trade". And they were given that permission on particular grounds: "knowing him to be a good workman in his trade of blacksmith".[130] Men drawn from the labouring poor were also largely excluded from this sphere of entitlement and reciprocal good.[131] The most that they could hope for was that they would persuade the community and the bench that they were not likely to become chargable to the parish. Thus, petitions which draw upon notions of entitlement other than that of impotence often make the point that their hard labour and that of their wives was sufficient to maintain their families if they no longer had to pay "rent upon the rack".[132] Some women did this too. Martha Henshall said that she had taken "extraorinarie care and paines" to maintain herself and her five children since her husband's death; and her petition was subscribed by 13 inhabitants of her township, including the rector, churchwardens and two women.[133]

Henshall, though, was unusual. On the whole, it appears to have been very difficult for single women to make such claims when they had a family to support. Women did, of course, constitute a large proportion of those receiving poor relief.[134] Although a language of female skill and labour did exist, it corresponded neither to financial independence nor to the same rhetoric of communal good which was itself gauged in economic terms. Thus, the widowed Anne Lowe requested that her four children be kept upon the parish because she,

> not having anything in the world to subsist upon not so much as a garden place but hath laboured and endeavoured as much as in her lyeth which

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[130] For blacksmiths, see: QJF 89/3, f. 215, Petition of Joseph Wood, QJB 3/1, f. 41v.; QJF 97/1, f. 56, Petition of James Blackburne, QJF 97/1, f. 135, Certificate; QJF 97/3, f. 112, Petition of James Clayton, QJF 97/3, f. 115, Certificate, QJB 3/2, f. 10v.; QJF 97/3, f. 114, Petition of John Paulden; QJF 89/4, f. 148, Petition of Richard Renett, QJF 89/4, f. 149, Certificate.

[131] An exception may be found in QJF 53/2, f. 162, Petition of William Shetwall.

[132] See, for example, QJF 51/2, f. 115, Petition of John and Elizabeth Maddock; QJF 51/3, f. 98, Petition of Richard Keay; QJF 55/2, f. 131, Petition of Richard Hay; QJF 89/4, f. 139, Petition of John and Joan Foxe.

[133] QJF 89/2, f. 231, Petition of Martha Henshall.

[134] Slack, Poverty and Policy, pp. 75-6, 180.

falleth far short to maintain such a family.

If they granted her request, she swore that "having some little end she will be content to work day and night towards their maintenance".[135] Whilst women too stressed their hard labour, they were likely to end their petitions with words of desperation even when they had attributed their poverty to the mistreatment of others or had drawn on other notions of entitlement. In short, the petitions of widows and spinsters nearly always culminated in claims of impotence by virtue of their economic disadvantage. Isabel Harper said that since the death of her husband she was unable to maintain herself and her children, nor to provide houseroom for them "for want of means". Margaret Dutton was "overburdened" with the charge of her four children after the death of her mother, with whom she had lived. Frances Holford said simply that she would become a charge on the parish if she were not allowed to repair and continue in "her poor Cott". Jane Jackson, the widow who said that she had been "defeated of her right" asked not only for a cottage, but also for a weekly allowance.[136] Anne Smith, a single woman, explained that since the death of her parents, her brother "doth enjoy that whole estate both Real and personal which was her fathers and mothers". She was now

> unable to work for her living by reason of her great age [64 years] and infirmities which do greatly grow upon her daily, and utterly unable to travel and being removed from place to place Causeth great sorrowe and grief of hart.

She wanted the justices to order "her to have some place of abode to rest in and som wickely mainentaynances from her brother or out of that liberty where she was born". Her requests were unheeded by the bench.[137]

This is not merely a reflection of women falling more easily than men into the category of impotent poor who were considered the appropriate recipients of

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[135] QJF 89/3, f. 36, Petition of Anne Lowe.

[136] QJF 49/1, f. 150, Petition of Isabel Harper; QJF 89/2, f. 218, Petition of Margaret Dutton; QJF 95/1, f. 151, Petition of Frances Holford; QJF 53/2, f. 172, Petition of Jane Jackson. See also, QJF 53/4, f. 86, Petition of Anne Storye; QJF 53/2, f. 147, Petition of Elianor Tompkinson.

[137] QJF 89/3, f. 234, Petition of Anne Smith.

poor relief. Rather, excluded from a language of skill which had positive economic implications, women used the language of rights, entitlement, and natural justice as a way of reinforcing their claims.

Conclusion

The material discussed in this chapter demonstrates that assertions that "early modern Englishmen were more used to thinking in terms of duties than of rights" are misleading.[138] Rather, notions of duty and obligation were underpinned by notions of rights. Women were not wholly excluded from either the language of rights or the legal process. It is becoming increasingly clear that studies of crime which focus primarily upon felonies prosecuted at the courts of assize and quarter sessions under-represent the degree and nature of women's relationship to the law. Not only do the strictures of the common law often preclude official prosecution by women, but legal categories are not always coterminous with common practice and perceptions.

Given the ways in which women's lives were circumscribed and constrained, the ways in which they used the courts to bring their own concerns into an officially sanctioned arena is revealing. Within this male world of legality women claimed an authority derived from a variety of sources. It is no longer adequate to discuss their experiences within the simple paradigm of active/passive or public/private. We find women moving easily from one to the other, indeed exploiting the paradoxes between the two as they constructed stories which utilized or manipulated convention for their own ends. By exploring both the dynamics of female behaviour and the conceptual interrelation of gender and order, we dramatically expand our perception of the legal process, of women's engagement with it, and of the gendered attitudes of early modern England. A crucial challenge for historians is to understand the way in the whole of society,

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[138] Kevin Sharpe, Politics and Ideas in Early Stuart England (London, 1989), p. 14.

including women, constructed gender and allocated and imagined roles to either sex. By closely examining behaviour at points when individuals exhausted social tolerance or broke fundamental taboos we gain insights difficult to achieve by other means.

It is now widely accepted that female insults were invariably sexual in nature, whatever the actual motivation for or nature of the incident or circumstances which provoked the insult itself. Focussing upon the gendered meanings of sexual insult, Laura Gowing has concluded that "the blaming of women for sexual misconduct became the foundation for a vision in which the honour of women and men were wholly incommensurable". And indeed, assumptions about early modern notions of honour have remained those which locate female honour firmly in the sexual sphere, whilst male honour is imagined as a wider phenomenon.[139] I should like to suggest that women's honour was not a strictly sexual affair but was located in the daily occasions of their lives. We have seen in chapter four that women played a major role in regulating the dishonesty of other women in their neighbourhoods. In this chapter, we have seen that women inscribed their words and actions by using a language of equity and lawfulness to offset doubts about their sexual and non-sexual reputations. Both of these strategies were related to female notions of honour. Authority, honesty and honour were inter-related: any one concept could be enlisted as the foundation and evidence of the validity of each of the others.

Women were involved in many aspects of regulating the honesty of their communities informally. Whilst they played a special role *vis-a-vis* other women, they also confronted and dealt with men when their personal or household concerns were involved. In this way, we can see that the extent of women's authority was far wider than appears from an analysis of the formal records of the

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[139] Laura Gowing, 'Gender and the Language of Insult in Early Modern London', History Workshop Journal, no. 35 (1993), p. 19; Merry Wiesner, Women and Gender in Early Modern Europe (Cambridge, 1993), p. 34. Martin Ingram, however, has written that sexual "credit" and "honesty" were "the lower class equivalents of gentry notions of honour" for both sexes: Church Courts, Sex and Marriage in England, 1570-1640 (Cambridge, 1987), p. 165.

courts. After a hired servant Edward Caldwall was suspected of embezzling his ex-master's corn, he sought refuge with Robert Wright. In fact, it was to Wright that Caldwall had allegedly been taking the corn during the 18 months that he had worked for the Jacksons three nights a week. Yet it was Mistress Jackson, not her husband, who charged Wright with harbouring Caldwell.[140] Raphe Walker argued with John Ely's wife about the Ely's dog worrying his lambs.[141] Anne Taylor, the wife of a husbandman, "went to Edward Holland's house in Sproston to demand 3 shillings owed to her husband for ditching".[142] It would perhaps be easy to dismiss the activities of these women as extensions of their housewifely duties - they were after all protecting the interests of their households. Indeed, faced with Mistress Jackson's ire, Robert Wright called her "a malicious housewife" for whom he "cared not a turd". But - with the exceptions of those men acting in capacities pertaining to guild, legal or political offices - much of the concerns and activities of men might be similarly dismissed as "household" concerns if we had a mind to be pendantic. The household in early modern England was, after all, of central importance, both economically and socially.[143]

Many differences in the interrelationship of gender and social order can be found in early modern England. Notions of order and of gender were fluid constructs, subject to subtle and sometimes marked modification. A consideration of the gendered constructs of acceptable and unacceptable behaviour shows that "woman" was no more a homogenous category than "man", but that plurality cannot be understood merely in essentialist explanations. Women had very clearly defined ideas about their own rights and entitlement, materially and conceptually, as men did; but the areas in which these were manifest do not always correspond to the distinctions and dichotomies set up in recent historiography. The languages of order and, indeed, of deference were manipulated by men and women in

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140 QJF 91/1, f. 77, Examination of Richard Hatton.

141 QJF 91/1, ff. 89, 127, Examinations concerning John Ely and Raphe Walker.

142 QJF 91/3, f. 81, Examination of Anne Taylor.

143 This is one enduring aspect of Peter Laslett's The World We Have Lost (London, 1965).

sophisticated ways. This raises further questions which might be explored in future research. Concepts of ownership and communal obligation, notions of authority ascribed by both women and men within their communities, and the fluidity of the boundaries between "public" and "private" spheres each require further consideration. The extent to which notions of "class consciousness" have to be rewritten into early modern social history demands to be reconsidered.

The law of early modern England did not protect the rights and prerogatives of every man and woman. People often drew upon the law as a last resort, and only then if they could afford it. When meagre finances precluded voluntary involvement in the formal legal progress, the bench might be petitioned, or more substantial neighbours or landlords might be called upon to lend their support. Yet the fragility and particularist nature of interpersonal and power relations in local communities meant that the law could not act as a constant or dependable force in plebeian lives. As E.P. Thompson has noted, ordinary people might wish to struggle free from the immediate, daily, humiliations of dependency.

> But the larger outlines of power, station in life, political authority, appear to be as inevitable and irreversible as the earth and the sky. Cultural hegemony of this kind induces exactly such a state of mind in which the established structures of authority and modes of exploitation appear to be in the very course of nature. This does not preclude resentment or even surrepticious acts of protest or revenge; it does preclude affirmative rebellion.[144]

The legal process provided a means of reinforcing power relations which existed in early modern society. Yet at the same time, the law provided an arena for struggle "within which alternative notions of the law were fought out".[145] Despite their less obvious participation in the legal process, it has been shown here that that struggle was one in which women fought too.

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[144] Thompson, Customs in Common, p. 43.

[145] E.P. Thompson, The Poverty of Theory and Other Essays (London, 1978), p. 96.

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Correction Books	EDV 1, 1620-29, 1665-70

Public Record Office, London

Palatinate of Chester, Great Sessions Records

Crown Books:	CHES 21/1-5, 1591-1669
Gaol Files:	CHES 24/102-136, 1591-1669

City of Chester Record Office, Chester

City of Chester Quarter Sessions and Crownmote Records

Quarter Sessions Files:	QSF 40-73, 1590-1672
Examinations and Depositions:	QSE 14
Coroners' Inquisitions:	QCI/6, 1588-1595 QCI/7, 1594-95
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