

Social Crime in the Rural South in the Eighteenth and Early Nineteenth Centuries

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For the law they entertain respect in all cases, except those few in which the uprightness of their judgement is unhappily perverted by ancient and ignorant prejudice.

(on Cornish miners, 1841)¹

Social historians have recently begun to explore the nature and incidence of crime in eighteenth- and nineteenth-century Britain. Problems of measurement and definition have been explored. Superficially crime is a form of deviant behaviour which should be easy to define. If an action is in breach of the criminal law then in the legal sense at least it is a crime. In fact few forms of human behaviour are more complex than the criminal. The legal definition of what constitutes criminal action changes over time within any society, and can differ at the same moment from one society to another. As historians we can only understand changes in the nature and patterns of criminal behaviour if we are aware of changes in the criminal law itself. More especially is this so if we are concerned with those historical periods when a privileged minority had a near monopoly of law making and law enforcement. In such periods law can become ideology—an instrument of class power. In eighteenth-century England the law makers were a powerful propertied minority, and the interests of the unpropertied majority were not reflected in the massive property-protecting additions to the statute book. Furthermore, the new laws of the landed classes who formed the government often cut directly across the customary practices of the governed.²

¹ *Report of Committee of Council on Education*, Parliamentary Papers 1841, xx, p. 95.

² Among recent writings see: D. Hay, P. Linebaugh, J. G. Rule, E. P. Thompson and C. Winslow, *Albion's Fatal Tree* (1975); J. Cockburn (ed.), *Crime in England, 1500–1800* (1977); V. A. C. Gatrell and T. B. Hadden, 'Criminal Statistics and their Interpretation', in E. A. Wrigley (ed.), *Nineteenth Century Society* (1973), pp. 336–96. On the role of law as ideology see D. Hay, 'Property, Authority and the

Several years ago the writer was one of a group of historians who produced a book on eighteenth-century crime which was fortunate in attracting a wide range of reviews. Some reviewers thought that the work displayed a tendency to glamorise and excuse criminals as protesters. Even Professor Rudé, in a friendly and welcoming review, while recognising that there is 'a fairly close relationship between social protest and certain types of (mainly rural) crime', thought we were inclined to be 'overgenerous in giving the common-or-garden criminal the benefit of the doubt'.³ In introducing the volume in question the editors were at pains to stress that there were dangers inherent in any other than a careful and qualified use of the categorisation 'social crime'. This article argues that such a descriptive category is an essential one, if defined with care, in making sense of a range of popular attitudes and actions in the period under question.⁴

In eighteenth-century England many legal crimes were not regarded by the poor as crimes at all, and it is in this context that it is useful to think of 'social crime'. To make such a distinction between social and other crime is only one possible way of categorising criminal actions. Several other divisions may for certain purposes better serve to assist understanding. One, for example, would be to divide crime into casual and professional. It obviously has uses to be able to separate those for whom crime is a whole or even partial way of life from those who act in a moment of desperation, are driven by want into an atypical action, or give in just once to temptation. However, it is not always easy to place one criminal in this category and another in that. The mid-nineteenth-century criminologists certainly began to insist on the existence of a 'criminal class', but eighteenth-century writers did not tend to make this explicit separation, and neither do eighteenth-century historians find it easy to do so. Henry Fielding in his famous investigation of 1751 did not attempt to distinguish clearly the criminal poor from the poor in general, and did not see the problem of crime as one distinct from that of the general problems presented by 'the lower orders'. In the

Criminal Law', in *Albion's Fatal Tree*, pp. 17–63. On the vast increase in statutes protecting property with the death penalty see L. Radzinowicz, *A History of English Criminal Law and its Administration from 1750*. Vol. 1: *The Movement for Reform* (1948), p. 4. Professor Radzinowicz has counted an increase of 190 in the number of capital offences in the 160 years separating the Restoration from the death of George III.

³ G. Rudé, review of *Albion's Fatal Tree* in *Times Literary Supplement*, 30 January 1976, p. 105.

⁴ The views expressed are my own and would not necessarily be fully accepted by the other contributors to *Albion's Fatal Tree*.

autobiography of Francis Place (written in 1825) we can see the process by which among London tradesmen a 'culture of respectability' was gradually drawing away from a violent and more squalid culture of poverty, and in so doing defining a respectable artisan class. But it was a *process*; the poorer artisans held the underworld at arms-length away, and at no time in the eighteenth century should we expect to find it possible to draw a rigid line between a respectable and a criminal poor. Professor Rudé claimed respectability for many of his Gordon rioters by showing that they not only claimed a trade but in fact had served their time at such. Yet Peter Linebaugh has recently indicated that this test would work in the same proportion for felons executed at Tyburn. If we bear in mind the vast expansion of property-protecting law in the eighteenth century, transforming for example 'customs of the trade' into the embezzlement of materials and the gathering of firewood into a rural felony, then we can see the substance behind Edward Thompson's remark: 'Crime in the sense of being on the wrong side of the law was, for vast numbers of undifferentiated working people, normal'.⁵

Nevertheless there still seems to be much value in thinking of a category of crime as 'social crime'. Several historians have used the term, but it is by no means certain that they have all meant the same thing. Some view it as synonymous with protest crime; others as involving a wide grouping of collective as opposed to individual crime. Edward Thompson and others have expressed reservations about the validity of the distinction:

There are 'good' criminals, who are premature revolutionaries or reformers, forerunners of popular movements—all kinds of rioters, smugglers, poachers, primitive rebels in industry. This appears as 'social crime'. And there then are those who commit crime without qualification: thieves, robbers, highwaymen, forgers, arsonists and murderers.⁶

It is recognised that there is a real difference at each pole; the community and its culture were more ready to turn out and assist a smuggler, poacher, or food rioter than to inform on him, whereas they would like as not join the hue and cry in pursuit of a thief. But it is suggested that a close examination of the eighteenth-century evidence makes it less possible to sustain such a division:

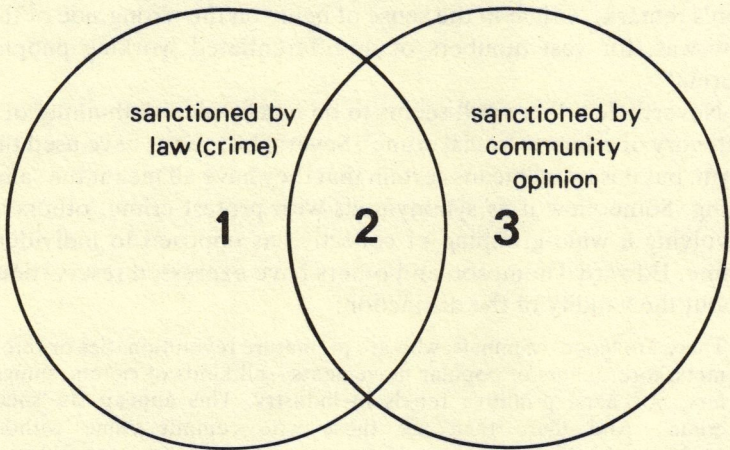
⁵ Henry Fielding, *Causes of the Late Increase in Robbers* (1751); *The Autobiography of Francis Place*, ed. M. Thale (1972); Conference Report on crime in *Bulletin of Society for the Study of Labour History*, no. 25 (Autumn 1972), summaries of papers by P. Linebaugh and E. P. Thompson.

⁶ Editors' introduction to *Albion's Fatal Tree*, p. 14.

At petty and quarter sessions the J.P.s sentenced for poaching, for assaults, for wood theft . . . , and for the theft of chickens. At assizes the judges sentenced coiners, rioters, sheep-stealers, and servant girls who had run off with their mistresses' silk and silver spoons. Research has not yet confirmed that they were sentencing different kinds of people, from different sub-cultures.⁷

Mr Thompson's point is that there is a distinction but that it must be used only with reservations and with great caution in the handling of evidence unless it not only obscures more than it reveals, but also suggests wrong social meanings. However it is in the rural districts where the narrower horizons of village life sharpened the definitions of what was and what was not 'crime' that the distinction has most validity. It is in this context of rural crime, largely in the south of England, that this paper will attempt a usable definition of social crime.⁸

Deviant Behaviour : negative sanctions operative



The accompanying diagram suggests a way in which the problem can be approached. This gives three categories of action:

1. criminal action which is legitimised by popular opinion;
2. criminal action which is both illegal and not legitimised by popular opinion; and
3. action which though not illegal is not acceptable to community mores.

⁷ E. P. Thompson in *B.S.S.L.H.*, no. 25 (Autumn 1972), p. 10.

⁸ With very few exceptions the examples used to support my argument have been drawn from the southern counties. I have concentrated on the rural districts but do not wish to imply that the concept could not be applicable in an urban context. See the paper by R. Samuel in *B.S.S.L.H.*, no. 25 (Autumn 1972), p. 7.

It is action in the first category which may be regarded as social crime. There is an obvious problem in determining the reference group by which such actions are regarded as acceptable. In the cases which will be discussed the reference group for the most part transcends social class to an extent and corresponds to something much larger than particular deviant sub-cultures. In poaching the line is most obviously drawn between those who under the Game Laws had the right to take game and those who did not, but in smuggling and wrecking whole communities seem to have supported, openly or tacitly, illegal activities. However, despite varying degrees of marginal or occasional involvement by the better-off, the basis of the reference group in all cases is simply the lower orders, 'the people'.⁹

Activities such as smuggling, poaching and wrecking will serve as examples of one of two categories of social crime (some reference for comparative purposes will also be made to illicit whiskey distilling in Ireland). The other category of social crime is of criminal actions committed as acts of explicit protest which represent collective grievances, but which are not in themselves regarded as legitimate actions in all circumstances and by whomsoever committed. The pulling down of fences following unpopular enclosures, rick burning, cattle maiming, and machine breaking are protest actions brought into being on specific occasions. Although smuggling and illicit distilling may be seen as protests against oppressive excise laws, and poaching as a protest against the tyranny of the game laws, they differ, along with wrecking, from explicit protest crimes in that they are continuing activities which are pursued as ways of getting or supplementing a living and in some cases can even be regarded as 'professional' activities. Crimes such as arson and cattle maiming were often used against individuals with the broad support of the populace. David Jones has provided a detailed examination of rural incendiarism in East Anglia in the 1840s, describing it along with 'poaching, maiming, the stealing of farm animals, machine breaking, the sending of threatening letters, and organised opposition to low wages, high prices and unpopular aspects of the Poor Law' as a traditional form of popular protest. Of course it was not confined to East Anglia. In many parts of England from time to time villagers could watch with satisfaction the burning down of barns of farmers against whom grievances were widely held. Thus the buildings of a Kent farmer were fired in 1844 because he had been the first in the district to cut wages and had been urging his neighbours to follow

⁹ Diagram based on T. Morris, *The Criminal Area* (1967), p. 32.

suit. In Gloucestershire in 1824 a barn was burned down because a farmer had been employing cheap Irish labour. Arson was only one possible form of protest crime. In Cornwall in 1801 a mob of 300 came to the home of the Reverend Dr Flamank armed with guns, axes, saws and weapons of every description. They shut off all the entrances and stopped all the travellers for half-a-mile around. They totally demolished his salmon weir, cut off the timber from his mill wheels, split the axle trees and pulled down the dams. 'They defied their King and the laws of their country and went off exulting in the depredations they had committed by huzzaing, firing of guns etc.' Clearly there was widespread resentment at the use the reverend gentleman was making of the river, depriving others downstream of its use to them. A. Peacock has recently claimed that in East Anglia after the failure of the Labourers' Revolt, sheep maiming and stealing reached levels and assumed forms which make them properly regarded as part of a guerilla war of protest against the farmers.¹⁰

It is no easy task for the historian to establish the actual extent and character of rural crime and determine when crime becomes protest, but there can be little doubt that much rural felony in the eighteenth and early nineteenth centuries comes within a broad definition of social crime in that the object was a particular target of community grievance and the action had broad-based community support. In such cases the actions were accepted and popularly justified precisely because they articulated widely felt grievances, but they were committed against specific persons at specific times for specific reasons. Arson, sheep stealing, cattle maiming and various forms of property destruction were not in themselves 'legitimate' activities.

On the other hand, smuggling, wrecking, poaching and related activities were not held to be crimes in the popular view, no matter by whom committed or in what circumstances. As George Crabbe put it:

... the smuggler cries
What guilt is his who pays for what he buys?
The poacher questions with perverted mind,
Were not the gifts of heaven for all design'd?¹¹

¹⁰ D. Jones, 'Thomas Campbell Foster and the Rural Labourer; Incendiarism in East Anglia in the 1840s', *Social History*, 1 (1976), p. 5; *West Briton* (Truro), 5 July 1844; 'A Gravedigger's Diary', in J. W. Robertson Scott (ed.), *The Countryman Book* (1948), p. 160; *Sherbourne Mercury*, 30 Nov. 1801; A. Peacock, 'Village Radicalism in East Anglia', in J. P. D. Dunbabin, (ed.), *Rural Discontent in Nineteenth Century Britain* (1974), pp. 27-61.

¹¹ George Crabbe, 'Tales of the Hall, Book xxi, Smugglers and Poachers' (1819) in A. J. and R. M. Carlyle, *The Poetical Works of George Crabbe* (1914), p. 487.

Here is a belief in a natural legitimacy strengthened by the feeling that custom sanctions what the law disbars. To whom should property cast up by the sea belong? What kind of law would prevent a man from making whiskey at the price and to the taste preferred by his customers? This kind of social crime is distinguishable not just from actions whose explicit purpose is protest, but also from the social banditry recently examined by Professor Hobsbawm. In the case of the latter the popular acceptance rests on the man and not on the action itself. Armed robbery and kidnapping can not in themselves be always acceptable. They are justified by the fact of their being committed by certain persons against certain persons or institutions. It is for this reason that elaborate mythologies of the Robin Hood kind grow up: they are intended to put their hero in the right, irrespective of the crimes committed. The bandit is seen as the victim of oppression and a justified rebel against authority.¹²

We can develop further our definition of social crime in this category by investigating how far our chosen examples meet the criteria thus far advanced. Were smuggling, poaching and wrecking regarded as legitimate activities by those who engaged in them? There seems little doubt that they were. The Duke of Richmond, a sworn opponent of smuggling in Sussex, complained in 1749: 'The common people of this country have no notion that smuggling is a crime.' Another contemporary remarked, 'the common people of England in general fancy there is nothing in the crime of smuggling.' Poaching was similarly regarded. A writer on the Game Laws in 1821 pointed out that every magistrate knew that it was the defence of the poacher that: 'it is very hard he should be punished for taking what he had as great a right to as any other man.' The Game Laws of the period reserved the right to hunt the wild creatures of the woods for very few persons. The qualification was £100 a year from a freehold estate. One writer has recently pointed out that this would have amounted to only 800 persons in the whole of Staffordshire in the mid-eighteenth century. Thus it was not only the poor, but many of the farmers as well who were excluded:

Ye sov'reigns of Manors in Verse
(Dull Prose would dishonour your name)
The Muse shall your triumph rehearse
High sounding the Laws of the Game
The farmer your sport shall supply
Your beagles his fences shall break
But 'touch not and taste not', you cry,
The Law with its talons awake

¹² E. J. Hobsbawm, *Bandits* (Penguin ed. 1972).

One Hundred a Year gives the right
 To challenge all Nature your own;
 Till short of the sum but a mite,
 And your ninety-nine pounds are as none.

This made the farmer too a disliker of the Game Laws, and if he did not indulge so often in poaching as the labourer, he and his kind formed the common juries described in 1790 as a 'professed enemy to all the Game Laws.' But any disinclination of juries did not prove too much of a problem for the landed gentry. Their law was changed to bring most poaching offences within the range of summary jurisdiction, and as magistrates they dealt with poachers from comfortable seats in their own houses.¹³

Eighteenth-century beliefs continued into the nineteenth century. A Bedfordshire justice told a select committee in 1826: 'The general opinion is that game is not private property. They say God has made the game of the land free and left it free.' A witness from Cambridge reported: 'They attach the idea of property to poultry, they do not to game.' Wreckers believed it was their right to take what they wanted from wrecked or stranded vessels. The Cornish miners were said to have inherited from their ancestors an opinion that: 'they have a right to such spoils as the ocean may place within their reach, many of the more enlightened inhabitants secure whatever they can seize without any remorse; and conclude without any hesitation, that nothing but injustice, supported by power and sanctioned by law, can wrench it from their hands.' But it was not only the Cornish. According to the magistrates of Glamorgan in 1837, wrecking had been carried out on their coast 'almost uninterruptedly from time immemorial' and was regarded by the common people as a right. In Denbighshire in 1824 the feeling that stealing from wrecks was 'no great moral offence' was said to be prevalent. The inhabitants of the Wirral peninsula of Cheshire thought themselves entitled to the effects of passengers and sailors. When a Lloyds agent tried to stop them plundering a wreck in 1838, the wreckers replied: 'We are not taking anything. I suppose every man has a right to take what is here, one as much as another.' From the southern counties the investigation of 1839 gathered instances of wrecking from Cornwall, Devon, Dorset, Isle of Wight, Sussex and Kent.¹⁴

¹³ C. Winslow, 'Sussex Smugglers', in *Albion's Fatal Tree*, pp. 148-9; D. Hay, 'Poaching and the Game Laws on Cannock Chase', *ibid.*, pp. 207-11.

¹⁴ *Select Committee on Criminal Convictions*, Parliamentary Papers 1826-7, vi, Report, p. 7; *ibid.*, Minutes of Evidence, p. 22; J. G. Rule, 'Wrecking and Coastal Plunder' in *Albion's Fatal Tree*, pp. 176-7.

It was clearly a hopeless law which tried to make the Irish pay 9s to 10s a gallon for 'parliament whiskey' when their social life was hinged to cheap drink; they knew how to make poteen and were not notably law abiding. As Professor K. H. Connell, who wrote with such authority and insight on the subject, pointed out, 'Poteen making provides a striking example of the proverbial reluctance of the Irish to accept the laws' definition of an offence.' The industry clearly depended upon the widespread sympathy felt for the illicit distiller. This reluctance to accept the law's definition of a crime was not confined to poteen making, or for that matter to Ireland.¹⁵

It would further emphasise the value of regarding some actions as social crime if it could be shown that most of those who engaged in them would not have engaged in activities which they regarded as criminal. Adam Smith described a smuggler as a person who would have been 'in every respect an excellent citizen had not the laws of his country made that a crime which nature never meant to be so.' Edward Gibbon Wakefield told a Commons committee that some men transported for a smuggling offence were 'exceedingly ignorant, but, except that they were smugglers, they were valuable men in any place.' Smugglers spoke of their trade much as others might speak of theirs, and surviving autobiographies provide us not with material for the study of 'deviant careers,' but with matter-of-fact descriptions of entry into an occupation. Jack Rattenbury of Beer in Devon, self-styled Rob Roy of the West, was once called to give evidence on a bill to improve the harbour at Beer. At Westminster he gave his profession as 'sometimes fishing, sometimes piloting, and sometimes smuggling.' Captain Harry Carter of Prussia Cove in Cornwall describes how he never went to school, but worked on his father's farm from an early age, then became a child worker at the mines and when he became seventeen 'went with my two oldest brothers a fishing and smuggling'. A witness from Christchurch asked in 1846 if the people there regarded smuggling as either a crime or a sin, firmly replied, 'Not in the least.'¹⁶

A Sussex witness in 1828 testified that many people who would feel no scruple in taking game would feel a scruple in taking poultry. Perhaps the matter was most clearly put by a farm labourer in 1845:

¹⁵ K. H. Connell, 'Illicit Distillation', in his *Irish Peasant Studies* (1968), p. 28.

¹⁶ Adam Smith, *Wealth of Nations* (Cannan edn 1904), vol. 2, p. 429; *Report of Select Committee on Secondary Punishments*, Parliamentary Papers 1831, vii, p. 100, Q. 1421; J. Rattenbury, *Memoirs of a Smuggler* (Sidmouth, 1837; repr. Newcastle, 1964), p. 42; J. B. Cornish (ed.), *The Autobiography of a Cornish Smuggler* (1894, repr. Truro, 1968), p. 3; *Report of Select Committee on the Game Laws*, Parliamentary Papers 1846, ix, pt 1, p. 166, Q. 3179.

There is a difference between poaching and stealing. I should not steal myself. . . Many people would be friends with a poacher, but would not like to be very great friends with a man convicted of felony.¹⁷

This is not to deny that night poachers would sometimes take a hen, or, much more rarely, a sheep. Nor is it to deny that villains of the deepest dye were involved in the smuggling trade. But it remains true that most persons who engaged in these activities did not regard themselves as criminals and would have withheld from activities which they did so regard. Jack Rattenbury imprisoned in Exeter gaol complained of being 'most unpleasantly associated' with persons who were to take their trial for 'every description of crime.' When these 'criminals' tried to effect an escape by knocking out a warder, Rattenbury and his fellow smugglers prevented their breaking out.¹⁸

We can further point our definition of social crime by emphasising in what ways it is not distinguishable from other forms of crime. It is not a distinction between 'professional' and 'casual' crime. Degrees of professionalism varied, but wrecking, smuggling and poaching, like illicit distilling, were largely engaged in as a means of getting or supplementing a living. This distinguishes them from the 'protest' category of social crime. Wrecking, despite some legends to the contrary, was not in the fullest sense a professional crime. Wrecks were unplanned but the property taken was not only used in wreckers' own homes but was frequently sold, sometimes through well-organised disposal networks involving marine store dealers. Smuggling was a way of earning a living from the entrepreneur at the top to the wage-earning carrier on land. These latter were so well paid in Sussex for their work in landing and clearing a cargo that the guinea a week paid had the effect of raising local farm wages in competition.¹⁹ The suburbs of Christchurch in 1846 were said to contain a population 'entirely supported by smuggling.' It seems that very large entrepreneurs were not characteristic of the English smuggling scene until after 1760, but at any time considerable sums were necessarily involved in purchasing or hiring a boat, paying for its crew, providing the large numbers of men and horses needed to

¹⁷ *Report of Select Committee on Criminal Commitments*, Parliamentary Papers 1828, vi, p. 34; quoted in J. J. Tobias, *Nineteenth-Century Crime: Prevention and Punishment* (Newton Abbot, 1972), p. 18.

¹⁸ Rattenbury, *Memoirs*, p. 42.

¹⁹ Arthur Young, *Report on the Agriculture of Sussex* (1797), quoted in William Marshall, *Review and Abstracts of the County Reports of the Board of Agriculture from the several agricultural departments of England*, vol. 5, *Southern and Peninsula Departments* (1818, repr. Newton Abbot, 1969), p. 471.

transport the landed cargo, and making the initial purchase of the tea, brandy or tobacco. Disposal networks had to be highly organised and developed. Such an accepted part of rural life did the 'fair trade' become that it was possible for sharp operators to capitalise on this very acceptance and defraud trusting rural populations. At Gravesend in 1741 a man pretending to be a customs officer seized goods from country people on the pretence that they had been smuggled, and in Plymouth in 1765 some men pretending to be smugglers with cargoes of tea and brandy to dispose of, but to be in want of funds to pay for the freight, bilked several farmers of cash. It was possible for one or two boatmen to get together and if they had a suitable craft arrange to run a cargo. If known and trusted they might even get credit from the continental suppliers, but that could not have been too often extended in such a risky trade. More usually syndicates put up the money. Some individuals became very wealthy and profits could be made in the distribution as well as in the running of cargoes. Sometimes extra profits seem to have been available. In 1773 a smuggler named Rushton operating in the Poole district was employing many people in the area around Wimborne in collecting elder leaves which were left to wither in barns and lofts and then wet in water in which sheep's dung had been steeped in order to colour them before being dried and mixed with smuggled tea. But this practice can hardly have been typical of a trade which depended for the success of its very widespread operations on the fact that its goods compared not only in price but also in quality with the duty-paid articles. Smuggling may have employed many different levels of operator, but as a whole it added up to big business with a large labour force and was supplier to a large section of the population of much-wanted commodities.²⁰

Poaching was not such a large-scale activity. Single poachers or loose groupings of village men were responsible for a large share of poaching activity. But it should not be imagined that they operated only to fill their pots, or hoped simply to make an odd sale here or there to private individuals. There was a flourishing black market in game, as might be expected since there was no proper legal trade. Many village poachers worked for the money they could get for hares or pheasants through this organised under-cover merchandising. There also existed large gangs, often from the towns who

²⁰ *Report of Select Committee on the Game Laws*, Parliamentary Papers 1846, ix, pt 1, p. 273 Q. 4959; *Sherbourne Mercury*, 23 June 1741 and 14 Oct. 1765; *Hampshire Chronicle*, 28 June 1773.

descended in force upon estates to carry away as much in a night as they could.²¹

Professor Connell has doubted that outside of legend there were very many large fortunes made from whiskey distilling. The typical producer remained small scale, but supply networks had to be organised, and co-operation was needed in order to ensure safe transit of large amounts of poteen. It did not require a large amount of capital to set up a still. Early in the nineteenth-century a good copper one could have been built for six to eight guineas and a tin one for two guineas less. More important for success was the choice of a good site, concealed, near water, where the process of first brewing then distilling the liquor could be carried out. Concealment not just from the revenue men, but also from the populace who esteemed the pot ale at the intermediate stage between brewing and distilling as stronger than porter and were not above 'discovering' it. To many illicit distilling was a necessary way of supplementing their living. Considered as a whole: 'poteen making was no amusing trifle in Irish life: when craftsmanship in Ireland was ill-regarded, her pot-stilled whiskey at its best was unexcelled; it was amongst the most widely distributed of Irish manufactures; few industries gave so much employment.' In the two years 1833 and 1834, 16,000 stills were seized, and in the following forty years seizures on average were between two and three thousand a year.²²

Social crime was not necessarily 'nice' crime. There is no distinction implied here between violent and non-violent crime. Violence, intimidation and corruption were all part of the smuggling trade. An atmosphere of romance and derring-do had tended to obscure the reality of smuggling. We must forget the quiet slipping with muffled oars into dark and secret creeks. That was not the way, at least in the eighteenth century, that many smugglers operated. They did not always avoid the revenue men with stealth, they as often outfaced them with force:

From Sussex we hear that the smugglers have grown so daring that a gang of 55 with their arms slung and their horses loaded with tea, at noon day rode through several towns in defiance of the Custom's House officers who durst not offer to molest them.²³

That was in 1742 in a period during which one historian has recently

²¹ Hay, in *Albion's Fatal Tree*, pp. 203-6; and evidence of several witnesses before *Select Committee on Game Laws*, Parliamentary Papers, 1846, ix, pt 1, Minutes of Evidence, p. 46, Q. 843; p. 127, Q. 2481.

²² Connell, *Irish Peasant Studies*, pp. 10-28; p. 49.

²³ *Sherbourne Mercury*, 15 June 1742.

written of a 'guerilla war' being waged in Sussex by the smugglers against the authorities. But such open defiance was not confined to the 1740s or to Sussex. The customs officer from Fowey in Cornwall faced a desperate situation in 1766:

... we are in danger of our lives by happening to meet with them; for whether we attack them or not, they seldom fail to attack us when their number and strength is so much superior.

He had twice recently met with gangs of tinnerns each with a horse load of brandy who because they worked in the mines some distance away had no fear of being recognised. He and his men had been badly beaten in one confrontation:

It is now two months since we having dared to venture out after them, we having been informed by very good authority that they carry firearms, and have given out threats that if ever they meet with us again they will kill us.²⁴

Around 1780 smugglers were said to be capable of assembling from 500 to 1,000 men on extraordinary occasions and even on ordinary occasions to be assembled in greater numbers than anything which could be brought to oppose them. These gangs sometimes carried firearms but more usually bludgeons or loaded whips. After landing the cargo they subdivided into smaller but still formidable groups to distribute it. It was no unusual thing to see groups of ten to twenty horsemen bringing the cargo through the streets of London in broad daylight without fear of obstruction. In 1783 'armies of smugglers' were said to be riding 'with impunity' through the counties upon the sea coast.²⁵

There are many examples of smuggling gangs not only resisting and routing excise officers, but of actually seeking confrontations with them. There were often successful attempts to rescue taken comrades and recover the cargoes taken with them. The best-known example of this is the attack on the customs warehouse at Poole by the notorious Hawkenhurst gang in 1747. This gang operated in the border area of Hampshire and West Sussex. Outraged by the capture at sea of a load of tea whose landing they had been awaiting, they marched from Sussex to Poole in a gang of between thirty and sixty strong. They broke open the warehouse and secured the tea. The following day they returned in triumph, breakfasting on the way in Fordingbridge where hundreds of people

²⁴ Public Record Office, War Office, W.O. 1/989, f. 333.

²⁵ A. L. Cross (ed.), *Eighteenth-Century Documents Relating to the Royal Forests, the Sheriffs and Smuggling* (New York, 1928), pp. 240, 290.

came out to watch the triumphal cavalcade, the whole being seen by the populace at large as a 'gallant expedition.'²⁶

What happened at Fordingbridge serves to link us with another aspect of smuggling violence. One of the gang recognised among the crowd a man named Chater with whom he had once worked. He shook his hand and threw him a bag of tea. Sadly for Chater this drew the attention of the authorities to him and he was taken up by the customs. Several months later with an officer named Galley he set out for Sussex for examination. On the way they were intercepted by the smugglers and, to cut a gruesome story short, were brutally tortured and murdered. Violence of this kind raises questions. Galley was a customs officer but Chater was not. Were the populace in the coastal districts acquiescent to smuggling only from fear? Chater was not the only informer harshly dealt with. Many were. A Hampshire blacksmith who stole some tea from a gang might have expected rough justice, but it was the fact that he was foolish enough to cry out that he recognised them when they came for the reckoning which explains why he was stabbed and thrashed and left for dead.²⁷

The activities of the Hawkenhurst gang certainly terrorised whole areas of Sussex and Hampshire. Their violence was extreme and it is only against them that we have a recorded instance of a citizens' vigilante band being formed. Violence may have been used more as a deterrent against locally *deviant* behaviour such as informing for money. It does not therefore follow that popular support rested on fear. Fear does not explain why a Cornish jury acquitted some smugglers who had fought off the customs on the grounds that sticks were not offensive weapons! Nor the testifying of a character witness called by a sheep stealer that he had known the man some time and although he had been in gaol, it had not been for a felony, but only for smuggling. Nor would it explain the hostile crowd reaction to informers. At Hastings in 1748 some informers were pursued into the country by an angry mob, while at Chatham two informers besieged in a house were surrounded by an angry mob yelling: 'Informers, they ought to be hanged! It is no sin to kill them.' Fear does not explain the action of a London crowd who on hearing that some strangers being conducted through the streets were smugglers, speedily effected their rescue. The populace was so heavily involved in the trade, as customers even if not as principals, that it

²⁶ This section is based on the account by Winslow in *Albion's Fatal Tree*, pp. 119-66.

²⁷ *Sherbourne Mercury*, 5 Jan. 1784.

was not surprising for a parliamentary committee to find 'the generality of the people on the coasts' better friends to the smugglers than they were to the customs officers.²⁸

Poaching activities often ended in armed affrays between poachers and gamekeepers, with the murder and wounding of the latter being frequently a matter for report in the local press. The Ellenburgh act of 1803 which made it a capital offence to be caught poaching armed had a worsening effect. It was in the nature of the poacher's trade that he carried a gun, and if he could be capitally sentenced for merely carrying it, then the likelihood that he would use it to avoid arrest was strong. Keepers and their assistants could be intimidated by the size of armed poaching gangs just as the customs officers were by smuggling gangs:

If you go back as far as 1819 we used to have fights with armed people with blackened faces and watch words and all ready to draw up in a line; they were regularly marshalled

recollected one Norfolk keeper.²⁹

Even if wreckers were not guilty in fact as they were in legend of deliberately luring ships onto rocks by displaying false lights, they sometimes used violence towards those who attempted to prevent their plundering, and sometimes even towards the survivors of shipwrecks. There are recorded instances of sailors being forcibly robbed of their effects, and even stripped of their clothing. Numbers were usually on the side of the wreckers. An agitated report from Cornwall in 1700 concluded: 'The number of the rioters was so great and their threatenings so high, and their proceedings so outrageous that the ordinary ministers of justice durst not attempt to suppress them.' In 1722 the Cornish wreckers overpowered thirty-five armed men placed on a wreck to protect it. From time to time such confrontations produced fatalities.³⁰

In Ireland in the early nineteenth-century poteen was made by gangs who were armed and able to confront the military. In 1815 in county Mayo a party of excise officers assisted by more than thirty soldiers were involved in a day-long battle with armed distillers. In the 1820s the traffic in poteen was ensured by force as well as by cunning. Gangs of around a dozen distillers would get together to

²⁸ C. G. Harper, *Smugglers* (1909; repr. Newcastle, 1966), p. 99; *West Briton*, 7 Aug. 1835 and 14 Aug. 1818; Winslow, in *Albion's Fatal Tree*, pp. 144-5 and 147; *Sherbourne Mercury*, 1 Dec. 1741.

²⁹ *Select Committee on Game Laws*, Parliamentary Papers 1846, ix, pt 1, p. 27, Q. 544.

³⁰ J. G. Rule, 'Wrecking', in *Albion's Fatal Tree*, pp. 174-6.

escort their produce to market with firearms and loaded whips.³¹

Finally, the distinction between social and other crime is not one between serious and non-serious crime. In important respects some social crime had to be taken especially seriously by the authorities. Smuggling meant not only a heavy loss in revenue, but the very fact that it involved the participation of whole areas of the country made it at times seem a threat to the very nature of government. 'Smuggling traders in these parts are grown to such a head that they bid defiance to all Law and Government', came a complaint from Dorset in 1717. Sixty years later it was feared that the extent to which it was carried on had acquired a vigour and consistency subversive both of law and government.³²

In 1783 a writer regarded the loss of revenue as only one of the problems the trade posed for government:

From the first landing of the goods to the final disposing of them, it exhibits such a source of violence, and every species of iniquity, as calls aloud for the interposition of Government, not only as an object of revenue, but as it substantially affects the morals of the people, and even the police of the kingdom. The frauds, forgeries and perjuries which accompany the circulation of smuggled goods to London and through the country, can be believed only by those whose business it is to be acquainted with them.³³

It was not that government had to fear open rebellion from the large gangs of smugglers, although there were times when it was not too sure about even that: a Sussex officer in 1720 urgently requested troops to be sent for 'in a short time they will rise in a rebellion, the number of them is not less than 200, every man of them for the Pretender'. The real concern for the authority of government lay in the simple fact that large areas lived to an extent under a different law: the smugglers' law. The subversion of authority in the following treatment of a crown officer is obvious: tea and brandy were recovered by an armed gang at Wimbledon in 1743 after they had been taken by the customs. On checking the gang found that some brandy had been kept back by the officers: 'for which fraud they were heartily drubbed and obliged on their knees to ask pardon, and promise never to offend in the like manner any more.' The Duke of Richmond clearly saw the implication of the unchecked activities of the Hawkenhurst gang:

³¹ Connell, *Irish Peasant Studies*, p. 11.

³² E. Carson, *The Ancient and Rightful Customs* (1972), pp. 63-4; Cross, *Documents on Smuggling etc.*, p. 239.

³³ Cross, *Documents on Smuggling etc.*, p. 308.

... for this is not only murders of the deepest dye attended with the most shocking circumstances of cruelty but also committed by whole gangs of villains in open defiance of the laws and all government whatsoever. So though it may not be treason in law, I am sure it is so in common sense.³⁴

Poaching has been described as an 'act of defiance and rebellion against constituted authority', although some poachers took game to live and others to sell. The Hammonds described the growing brutality of the Game Laws as the chief illustration of the extent to which poverty was driving the rural labourers to press upon law and order. In the three years between 1827 and 1830 one in seven of all criminal convictions were under the Game Laws, and the number of persons convicted was 8,502.³⁵

Wrecking was of less concern to government, although depredations on friendly foreign vessels were embarrassing enough. The pressure of merchants and insurers was real enough too, but of its nature wrecking was an ad hoc offence. The opportunities for plunder were fortuitous and it did not therefore bring about the existence of large permanent gangs. It was more of a crowd activity than an organised threat to law and order.

It has been argued in this article that it is useful to regard certain activities against the law in the eighteenth and early nineteenth-centuries as *social crimes*, but that it is a categorisation which must be used with caution and an awareness of its limitations. It has further been argued that the two main forms of social crime can be distinguished: crimes which draw their collective legitimation from their explicit protest, nature and actions which although against the law were not regarded as criminal by the large numbers who participated in them whether their purpose was to make a protest or not. It has not been suggested that crimes in the second category can not be viewed as crimes of protest to a certain degree. Smuggling and poaching lie within the traditions of resistance carried on by the poor to the laws and institutions of their rulers. But there is an area of distinction. A man might poach as an individual; he might poach as a member of a gang; he might be seeking meat for his own pot; he might want the shillings afforded by the black market in game; he might be consciously acting in defiance of the landed gentry; he might enjoy the excitement of the sport; or he might, like the grandfather of Joseph Ashby, be working off a personal grudge in

³⁴ East Sussex County Record Office, Sayer MSS 266; *Sherbourne Mercury*, 3 May 1743; Winslow in *Albion's Fatal Tree*, p. 138.

³⁵ J. L. and B. Hammond, *The Village Labourer* (paperback edn 1978), p. 140; Tobias, *Nineteenth-Century Crime*, p. 19.

poaching the lands of the person who foreclosed his mortgage. No matter, poaching is not a crime. In the case of arson or the killing or maiming of animals, the question of whose cattle or whose barn and for what reasons lies at the heart of the matter. A bad labourer, perhaps of violent disposition and quarrelsome in nature, who is dismissed by a well-regarded employer for reasons held justifiable by his fellows is no social criminal if he revenges himself by burning a barn. It is not possible to say with exactitude how much crime of the arson kind can be regarded as social crime in the sense of being a popularly supported protest action, but the trend of recent studies suggests that it has been seriously underestimated. The interactions of crime and protest in rural communities are at last beginning to receive from historians the attention which they have long merited.³⁶

Postscript

George Rudé in *Protest and Punishment. The story of the social and political protesters transported to Australia, 1788–1868* (Oxford, 1978) defines actions against the law connected with forms of collective protest such as trade unionism, machine-breaking, food rioting or radical politics as ‘protest crimes’ and regards activities such as poaching and smuggling along with incendiarism and similar acts as ‘marginal protest crimes’ (pp. 3–4 and chapter 6). In practice it is not as easy as he implies to distinguish between protest crime and crime as protest (p. 2). The problem seems to have been approached from the wrong end. The most important characteristic of ‘social crimes’ lies in positive popular sanction, not in the often present element of protest. Poaching and smuggling are ‘social crimes’ because they are not in any circumstances popularly regarded as criminal. I neglected persons convicted of manifest protest crimes such as trade unionists, machine-breakers or food rioters because they seemed to present little difficulty, but to have been self-evidently ‘social criminals’. I agree with Rudé that the protest elements in ‘marginal’ actions such as incendiarism have to be carefully distinguished before such actions can be safely regarded as ‘social’ or ‘protest’ crime, but do not agree that it is useful to seek distinctions in motivation for the actions of smugglers or poachers. One is uneasy when rigid definition of protest makes

³⁶ M. K. Ashby, *Joseph Ashby of Tysoe* (paperback ed. 1974), pp. 3–4.

ordinary criminals of Irish women who committed arson in order to join transported relatives or lovers (pp. 5, 147). For a critique of Rudé's methods see E. P. Thompson's important review in *New Society*, 14 December 1978, pp. 645-8.

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