

Securing Justice in Eighteenth-Century England: the Example of Berkshire

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A great deal of attention has focused on the matter of crime, punishment and policing in the past, and over the last twenty years a considerable amount of research has taken place in this area and a mass of published work has appeared, much of it from the eighteenth century through to the creation of professional policing in the nineteenth century.

This essay seeks to contribute to that research and in particular explores some of the ways in which justice was secured in eighteenth-century England. The study concentrates on Berkshire, a predominantly rural county. The victims of crime in this period had well-established mechanisms to call upon if they so wished. Policing crime and prosecuting suspects involved parish constables and justices of the peace, the Quarter Sessions Bench and the Judges of Assize. Incentives to prosecute included public financial assistance, largely private rewards, and the assistance of Associations for the Prosecution of Felons. However, it was not only to formal agencies that victims looked. To maximize the likelihood of the apprehension of a criminal and the recovery of stolen goods, the victim was as likely to call on the assistance of the local newspaper to advertise the crime, or speak to the local gossip, as he was to call on the parish constable or the magistracy. Here we explore some of the ways in which ordinary people, particularly the labouring population, secured justice, and suggest furthermore, that where the official machinery for law enforcement was found wanting, ordinary citizens took remedial action themselves.

The principal sources used for this study come from the Oxford Circuit Assize documentation and the Berkshire Quarter Session records. Depositions have been particularly useful, and these are supplemented by the excellent material in the county press, namely the *Reading Mercury* and *Oxford Gazette*.

I

The key to securing officially-sanctioned justice in the eighteenth century was the JP. For the majority of the population the arena for much of the pre-committal and pre-trial inquisition in criminal matters was the quasi-legal atmosphere of his parlour or study, or wherever else he chose.¹ Here the task of the Justice was crucial. He initially determined whether there was a case against the accused,² and if so, whether the trial was to be at the Assizes, Quarter Sessions, or summarily on the spot. The Justice acted as interrogator. If, in cases of felony, he decided there was a case to answer, he was obliged by statute to take in writing the examination of the accused, the victim/prosecutor, and witnesses. (1 and 2 Philip and Mary, c. 13, s. 4).³ He was then required to bind, by recognizance, prosecutor and witnesses to appear to give evidence at the next Quarter Sessions or Assize. (1 and 2 Philip and Mary, c. 13, s. 5). He also largely decided whether a suspect be bailed or committed to prison. In serious cases there was no question of bail, and this applied to most felonies.⁴

However, many of those brought before Justices were not subjected to the full rigours of the legal process. Evidence suggests that eighteenth-century magistrates did not commit all of those brought before them for trial, even though in some cases prisoners were quite obviously guilty. This can be seen clearly in the justicing career of the eighteenth-century West Riding magistrate, Samuel Lister of Little Horton, Bradford, and again in the diary of a Wiltshire Justice, William Hunt. The latter's contains numerous references to Hunt acting as intercessor in cases of assault and theft. No matter how violent the assault, Hunt seems to have persuaded the parties to agree their differences, sometimes requiring perpetrators to pay damages, costs and/or be bound over to keep the peace. At other times written or oral promises to behave in the future were sufficient. Even when suspected thieves were brought before him, Hunt seems to have commonly secured an agreement between the parties. He seems to have discouraged prosecution in a number of cases, and where the complaint was upheld he often succeeded in defusing the situation by persuading the defendant to pay damages or expenses, and sometimes even persuaded the plaintiff to 'withdraw his complaint, or (forgive) the defendant upon the latter begging pardon'.⁵ In some cases eighteenth-century Justices used their discretion to dissuade victims from going ahead with prosecutions.

On occasion Justices were more active in maintaining law and order, especially in the detection and capture of criminals. Some 'led constables on raids and arrests, followed suspects across county

boundaries, and encouraged prosecutors to act.' There is no doubt that individual Justices were active in all stages of the prosecution process, issuing warrants, directing pursuit, examining prisoners, and committing them to jail to await trial.⁶

To maintain effective law and order at the village level magistrates depended heavily on parish constables. The latter's duties were extensive, and not only involved matters of keeping the peace; Burn's 1797 handbook asserted that

There is a long form of constables oath, in Dalton . . . [an earlier authority] expressing his duty in many instances; but as that form doth not contain the hundredth part of the constable's [present] duty, nor indeed the most material instances of it, it may be more eligible . . . to swear him to the due execution of his office in general.⁷

It is difficult to assess how effectively or efficiently constables performed their various duties. Certainly substantial revision has taken place following recent work by J.A. Sharpe and Joan R. Kent on seventeenth-century village constables. Sharpe notes that 'the parish officers were more effective than earlier interpretations would have us believe', and David Philips confirms this for the eighteenth-century constable, and suggests that particularly in small rural parishes, 'the constables could operate fairly effectively as law-enforcement officers'.⁸

Constables were local men and they were also, in Berkshire at least, fairly substantial parishioners.⁹ The rather scattered and unsatisfactory evidence for Berkshire suggests that they came from the middling groups in rural society, small farmers, artisans, tradesmen and craftsmen. They were unpaid and therefore obliged to continue at their normal every-day work to earn a livelihood. This kept the constable in touch with the circumstances of his fellow parishioners. Furthermore, the cyclical nature of parish offices almost certainly ensured that individuals served in several such positions during their lifetime, giving them a useful overview of that society.¹⁰ The nature of the office itself, although low in the bureaucratic hierarchy of the county, undoubtedly conferred some status on its holder, and so too did the constable's easy and frequent access to magistrates. Taken together, such factors probably facilitated the constables' successful performance of their duties.

Constables at times found their duties onerous, and sometimes even dangerous. They were often assaulted while performing their duties. A typical example occurred in June 1738, when William Wells, Thomas Hood and Joseph Jatt, assaulted the constable of Wantage, who was

attempting to prevent them 'disturbing several of the Inhabitants at unseasonable hours of the night'.¹¹ The majority eagerly shed their responsibilities as soon as their year was up. However, some parishioners certainly thought them indispensable. Numbers of petitions to the Justices at the Berkshire Quarter Sessions suggest as much. In 1763 the inhabitants of the Liberty of Whitley petitioned the Epiphany Sessions for the appointment of a constable, as their's had died and there was 'no person executing the said office'.¹² Again, the inhabitants of Bucklebury were anxious to secure the appointment of a constable when they petitioned in 1765, on the grounds that constable Thomas Johnson had absconded.¹³

As to the constables' duties in maintaining law and order the manuals are clear. Both high and petty constables were 'by common law conservators of the peace'.¹⁴ In practise their responsibilities were extensive:

by ye breach of the peace, is understood, not onely that fighting, which wee commonly call the breach of the peace, but also that everie murder, rape, manslaughter, and felonie, whatsoever, and even affraying (or putting in fear) of the King's people . . . (and) assembling of people to do any unlawful act, are taken to be disturbances or breaches of the peace.¹⁵

The constable was expected to deal with a breach of the peace on his own initiative, particularly in cases of threatened violence and assault,¹⁶ and also when felonies were reported to him.¹⁷ When it was necessary the culprit was taken before a JP. Constables also acted on warrants from magistrates.¹⁸ In the process of maintaining law and order the two most regularly applied warrants were those of arrest and search.

The constable was therefore the grass-root representative of law and order, though he exercised considerable discretion. An example is reported by the *Reading Mercury* in 1764, when the Borough of Reading police, searching for vagrants, called at the Four Horse Shoes. John Holliday the ale-house keeper said that they arrived

between the Hours of Eleven and Twelve . . . to examine into the Order by me kept, and found several Labouring Men gaming therein, and the said Constables were opposed and insulted by me in endeavouring to disperse them, and thereupon they would have laid an Information against me for suffering Gaming in my House, the Penalty for which Offence would have been Forty Shillings; but they were so kind to decline the Information on my earnest Request, Therefore, I do hereby return them Thanks for their Lenity, and do promise never to be guilty of the like Offence for the future.¹⁹

Clearly, constables did not always strictly enforce the letter of the

law. While upholding a particular statute, they were not prepared to risk antagonism by its formal implementation. They used a much less formal procedure to elicit a promise of future good behaviour. All were thereby satisfied. The aim of the constable was to maintain his authority during his year of office, yet avoid antagonizing his fellow parishioners unnecessarily. Preserving harmony was also a priority.

II

Apprehending criminals in the eighteenth century also depended on the vigilance, initiative and initial detective work of the private citizen, particularly victims, who quite often set about finding their stolen goods and also, in many cases, apprehended the thief. Thomas Martin, a labourer of the parish of St. Giles, for example, on arriving for work on the estate of Lord Cadogan in Caversham in December 1755, found that his own shovel and pick axe had been stolen between his finishing work the previous evening and his arriving that morning. He suspected Arthur Foster and on receiving information of his whereabouts pursued and overtook him on the road to Maidenhead, and found the stolen goods in his possession.²⁰ This case is not untypical.

In apprehending and arresting a suspect, or even searching for stolen goods, the assistance of a constable was usually called upon, often immediately. However, on as many occasions the victim went initially to a magistrate to obtain a warrant for arrest or search. Sometimes there was little opportunity to secure a warrant, for apprehending the thief with the goods was of prime importance and the surest way of securing a conviction. Even in such cases the presence of a constable was still valuable, particularly as a witness to the events. In a large number of the cases where the thief was apprehended the suspect had been obvious, often a servant or an employee of some kind. The victim, or someone acting for him, had an idea who was responsible for theft and where to search. Also important was the preparedness of the public to assist, particularly with information about suspects' movements and whereabouts which was commonly based on their unusual and suspicious behaviour.

An alert general public played a significant role in the apprehension of criminals on the run. This can be seen clearly in a report in the *Reading Mercury* which also illustrates how important it was that notice of an offence, and the description of offenders, be distributed as widely as possible. Two men, arriving with three horses at the Lamb Inn at Wallingford, ate their supper and went immediately to bed. They must have aroused some suspicion, for a coachman arriving soon after

from Wantage was told about the men, and he immediately 'informed the Landlord that they answered to the description of two sharpers' involved in criminal activities a few days before at Wantage. However, the villains were equally vigilant, and before they could be apprehended 'made their escape, out of the window, by means of the sheets, which they fastened together and have not since been heard of'.²¹

The most certain way of identifying a thief and ensuring apprehension occurred when victims, or second parties, witnessed the crime. However, gossip also played an important part in this process. Some were extremely adept at piecing together tittle-tattle and chatter, leading to a thief's detention. In the small close-knit communities of rural counties like Berkshire, little was not in the public domain. Delinquents were well known, as were members of deprived families or parishioners fallen on hard times. News of thefts travelled fast and the grape-vine was efficient in rural areas. Once alerted people were on the look-out; stolen goods needed to be quickly or, at the very least, discreetly disposed of. Labourer John Sutton eschewed these priorities. Francis Head, on missing two bushels of oats from his employer's granary, was informed on enquiry by a number of people that Sutton of Twyford had been selling oats in the vicinity. Head, 'knowing he had no visible means of coming by the same honestly', searched Sutton's waggon and found the stolen goods.²² Prompt and positive action caught thieves, together with the great deal of personal courage in the case of Henry Pearce, a husbandman of Graseley who related in November 1766, that

about 2 o'clock in the night [his] Carthouse was robbed, and 2 Pulletts and a Cock was taken and stolen by John Baghurst of Sunning, Chair Bottomer, and Edward Ellis of Farnborough . . . Chair Bottomer. And this Examinant hearing a noise in his Yard got up and saw Baghurst and Ellis go out of his Yard with something in a sack, and this Examinant followed them and took them going to Reading, and found the 2 Pulletts and Cock in a sack.²³

Second-hand dealers and pawnbrokers were often useful in identifying thieves. A busy second-hand market operated in the eighteenth century and a great variety of goods, including clothes, metals, tools and all kinds of building materials, changed hands. The trade, for the most part, was legitimate and traders made great efforts to ensure that goods belonged to those who offered them for sale or for pawn. Some were only satisfied when transactions were agreed in public, as in the case of Nathan Solomon, a travelling Jew, who was offered the bowl of a silver spoon by George Mills. Solomon's caution

was not misplaced in the event, for the item was stolen. It was subsequently returned to its rightful owner.²⁴ In many of the cases examined, second-hand dealers whose suspicions were aroused, alerted the authorities. Elizabeth Fryar of Maidenhead, for example, suspecting that William Armstrong had stolen the hat he offered for sale, 'sent for a Constable and caused him to be apprehended'.²⁵ Dealers were often aware that items on offer were stolen and knew the legitimate owners. The great coat offered for sale to Robert Stevens was recognized by his son as the property of Joseph Pritchard, a servant at a local inn in Maidenhead, and an arrest followed.²⁶ It was expected that in the case of goods offered in suspicious circumstances enquiries would at least be made. Sometimes tradesmen went further and advertised possible stolen goods in the local press. A Reading goldsmith reported in the *Reading Mercury* that a boy had brought a silver tea spoon saying that his father wished to know if it was made of good silver 'as it bent so'. The boy on being asked how his father came by the item ran from the shop. The advertisement included a detailed description of the markings on the spoon.²⁷ The press was also used by the victims of crime in appeals to second-hand dealers and pawnbrokers. A typical advertisement concerned a screw-jack lost in 1759, and requesting that if 'offered to sale stop the Bearer and you shall receive . . . a Reward'.²⁸ Second-hand dealers were therefore important in the process of retrieving stolen goods and sometimes apprehending thieves.

However, dealers were not always helpful or law abiding. Many a blacksmith or glazier saw a quick profit to be made in old iron or lead offered to them for sale. The risks were great; the penalty for receiving stolen goods on conviction might be transportation for fourteen years. William Crook, a carpenter, was offered lead by James Tobey in 1788. He bought the lead and asked whether it belonged to Tobey, who replied 'he got it at different times by pieces when he was at work and that it was his property and he had a right to sell it'. Although Cook accepted this explanation, he declined to take more lead at a later date. Furthermore, dealers were seldom prepared to bluff it out if the legitimate owners of goods they had taken in turned up. They immediately insisted that they had bought the goods not knowing that they were stolen, and were quite prepared to identify the seller.²⁹ Regular receivers of stolen goods were not prepared to risk prosecution. When Aaron Dowle called at the Duke's Head and asked if a pair of stockings had been taken in pawn within the past week, the owner's wife said that she had not. However, after talking to her husband, she changed her story and told Dowle that 'Irish Jack meaning . . . John Quin . . . had pawned a pair for 2/-', and she produced them.³⁰ The records clearly show other second-hand traders

to be fences, prepared to risk accepting stolen items with no questions asked. Typical is the case of Ann Giles. She related that:

somewhat more than a quarter of a year ago, she took the ruffles from off a shirt that was hanging on a line in the drying place at Speenhamland, and carried them to Elizabeth Evans of Speenhamland who took them of her knowing the same to be stolen, and that about three Months since she stole out of the same place two Hockerback Napkins, and carried them to the said Elizabeth Evans who took them also knowing them to be stolen and on Monday last she stole and took out of the same place a Holland shift which she carried to the same woman who received it of her knowing it to be stolen.³¹

Second-hand dealers and pawn brokers made it difficult for victims to recover their stolen goods. Hence, they were regularly targeted by village constables.

These examples serve to illustrate some of the most consistently employed methods used in eighteenth-century Berkshire in the detection, identification and apprehension of criminals. They demonstrate the important part played by ordinary citizens in the capture of suspected thieves. Inexperienced thieves were often exposed by their own indiscretions. Victims played pivotal roles, as did observant parishioners, village gossips, and honest second-hand dealers. Calling on the assistance of a constable was wise. However, in the last resort, the good will of neighbours was commonly critical.

III

The role of the victim in bringing thieves to justice in the eighteenth century is beyond doubt. Over 90% of prosecutions in Berkshire were brought by victims.³² However, contemporaries were aware of many reasons why victims of crime did not go to the authorities.³³ The expense and loss of time involved in prosecuting a crime deterred many. Hence few labourers appear amongst prosecutors in the cases of theft which came before the Berkshire courts in the eighteenth century.

However, to compensate for this, legislation was introduced in 1752 which, for the first time, provided financial assistance to prosecutors.³⁴ The act empowered the courts to award expenses in cases of felony to certain prosecutors 'on consideration of [their] circumstances', a sum considered reasonable by the court 'in compensation for the expense, loss of time, and the trouble incurred in carrying on the prosecution.'³⁵ This was followed in 1754 with an act allowing expenses in the case of

poor persons bound to appear as witnesses in felony cases.³⁶ The Berkshire justices were pressed almost immediately to implement this legislation. In a letter to the Clerk of the Quarter Sessions, Bry Richards, a Berkshire justice, referring to one case expressed the hope that 'ye Court will allow the prosecutor and Evidences such Expenses as are adequate to the distance according to the statute which took place at Midsummer Last'.³⁷ Further legislation was passed in 1778 making it possible to award costs to prosecutors and witnesses irrespective of their means, irrespective of whether the suspect was convicted or not, and, in the case of witnesses, irrespective of whether the bill of indictment was eventually preferred.³⁸ The records for Berkshire suggest that until 1778 the payment of costs was rare, with only twenty-two made under Assize and Quarter Sessions orders together. In almost all of these cases costs were awarded either to those described as labourers or to prosecutors specifically referred to as 'poor' persons. Subsequent to the act of 1778 many more prosecutors in cases of felony were awarded expenses. At Quarter Sessions at least half of the prosecutors, and sometimes more, were awarded costs at every sessions. However, such an incentive should not be over-stressed. Douglas Hay has cautioned that the courts granted only part of the costs, often representing a mere one-third of the total incurred in prosecution.³⁹

Even with these incentives labourers represented only a small proportion of prosecutors, whose access to the Quarter Sessions and Assize courts was still restricted by other factors. These included the time involved for a prosecutor in overseeing the detection, apprehension and trial of a suspect, and the fear of reprisals by the accused, his friends, family or associates. Reprisals were not restricted to the threats of physical violence. One innkeeper was threatened with a charge of sodomy unless he withdrew a prosecution for pickpocketing.⁴⁰

Another incentive was the system of parliamentary rewards, or to use the colloquial pejorative 'blood money'. The earliest such rewards appeared in a statute of 1692 when £40 was offered for the apprehension and prosecution to conviction of highwaymen.⁴¹ Subsequent statutes in 1719⁴² and 1735⁴³ offered similar rewards over highway robbers, while others provided rewards on conviction for a range of further serious property offences, counterfeiting and uttering of false money⁴⁴; burglary and house-breaking in the day time⁴⁵; stealing and killing (when attempting to steal) any sheep, lamb, bull, cow, ox, steer, bullock, heifer, or calf⁴⁶; and finally those charged with compounding a felony.⁴⁷ In addition to a reward some of these offered what became known as the 'Tyburn Ticket' for the apprehension and

prosecution to conviction of burglars, housebreakers, and thieves stealing from shops, warehouses or coach houses to the value of 5/- or over. This was a certificate received from the Clerk of the Assizes and signed by the presiding judge exempting the holder from all parish and ward offices for life.⁴⁸

Rewards, and sometimes the certificates of exemption associated with them, were made intermittently in Berkshire throughout the period.⁴⁹ Rewards could be substantial, especially when several suspects were convicted of the same offence. A certificate granted in 1750 to the prosecutor on the conviction of four highway robbers amounted to £160, a reward of £40 for each conviction.⁵⁰ Sometimes the reward was divided amongst several people. The money seems to have been proportioned as the presiding judge thought fit, probably related to the precise part played by the individuals in securing the conviction. At the summer assizes of 1761, William Allen was convicted of burglary. A reward of £40 was distributed unequally amongst seven people, one of whom received more than the prosecutor.⁵¹ Certificates of exemption were transferable, although only once. Furthermore, they were in great demand and could command substantial sums. In 1780 John Smith of Newbury sold his certificate to John Winter, a corn dealer of the same town, for £14. 3. 6.⁵² Busy tradesmen and merchants were prepared to pay handsomely to escape compulsory parish office, and advertised occasionally in the press. However, it has been suggested that these rewards had little effect on the rate of prosecution.⁵³ This seems to have been the case for Berkshire, though under-reportage of crimes other than convictions for highway robbery, burglary and house-breaking obscures the picture relating to rewards.

Rewards were also offered privately. Victims commonly resorted to advertising crime through the medium of handbills. If the Berkshire evidence obscures the typicality of this resort, successes were certainly registered, for example, in the case of a 'Vagrant Lad' suspected of breaking into a stable in Uffington, Berkshire, and stealing clothes. Richard Durham, the proprietor of the Red Lion in Cassington, Oxfordshire, while on a visit to Eynsham, read a handbill describing the adolescent suspect as having 'a Mouth and Nose much disfigured'. Durham identified the character, and on returning to Cassington arrested the suspect on a neighbour's premises. The efficacy of the handbill is revealed by the fact that Uffington is some fourteen miles from Eynsham.⁵⁴

Newspapers provided parallel publicity. The detailed descriptions of absconded apprentices and fleeing criminals were commonly inserted in the *Reading Mercury*. Every issue contained advertisements offering

rewards for information about thefts and other offences. Success rates are problematic; only a small number of criminals in general were apprehended, and not all of those exposed through advertisements ended up being prosecuted. Fewer than 10% of thefts advertised led to recorded trials at Quarter Sessions and the Assizes. The press was particularly appropriate in cases of horse stealing, as values were often high, and mobility great. For example a horse stolen at Camberwell was sold within days at Newbury in 1759.⁵⁵ Newspapers were also regularly used to issue warnings, especially when Lords of Manors, fed up with constant depredations from unqualified fishermen, announced their intention to prosecute future law-breakers, those who 'presume to fish with Nets, Rod and Line, laying Night Hooks or catching Cray-fish, in the . . . River or Waters'.⁵⁶

Newspaper advertisements also offered a variety of inducements to informers. Private rewards were most common, varying from a few shillings to £10 or more. When appropriate, mention was also made of statutory rewards and pardons, if informed on accomplices, and appeared in evidence for the crown. However, advertisements were expensive; in the 1760's it cost 3/6 to insert one in the *Reading Mercury*. Victims from the middling ranks were able to afford advertisements offering modest rewards. Success depended on the amount offered and only the most wealthy were able to offer inducements that were certain of a response. Pardons could only be secured by men of prominence and influence. All of this was well beyond the reach of the poor labourer. Private rewards by advertisement in the *Reading Mercury* did not lead to the apprehension and conviction of a great many thieves.⁵⁷

Associations for the prosecution of felons played a very small part in the policing of Berkshire between 1740 and 1789, and almost no part at all until the 1770's.⁵⁸ The aim of these voluntary organisations was to assist in the apprehension and prosecution of thieves. The considerable cost which this entailed was met by subscription. The 'Aldermaston, Wasing and Padworth Association', formed in 1800, was typical in declaring itself

determined to prevent as much as possible any Robberies, Burglaries, Felonies and Thefts, from being committed [against subscribers] in these several Parishes, [and resolved] to enter into an Association, for the Purposes of defraying the Expenses of Advertising, Apprehending, and Prosecuting all such Persons, who may be found guilty thereof; and . . . the undermentioned Rewards, independent of what are allowed by Act of Parliament, will be paid for the apprehending any Person guilty of the following Offences, upon Conviction.⁵⁹

There followed a comprehensive list of offences and rewards, ranging from five guineas in cases of burglary, house-breaking and highway robbery, to a half guinea for the theft of turnips and carrots.⁶⁰

Associations were the preserve of the well-off, mainly landowners and tradesmen. Members of a Game Association which operated between 1748 and 1750 were almost entirely 'gentlemen', many of whom were JPs. The Wallingford Association, established in 1785, comprised 'Gentlemen, Farmers, Tradesmen, and Inhabitants of Wallingford'.⁶¹ The half-guinea subscription of most Associations was not the end of the matter, as their rules required further payments when funds were low. Labourers were unable to meet such costs. Only one, the Reading Association, founded in March 1759, claimed to assist victims who were too poor to shoulder the costs themselves.⁶² However, no case has been found where any Association has acted on behalf of a poor person.⁶³ There is evidence in certain cases, however, that parishes were paying the cost of prosecutions out of their accounts.⁶⁴

These Associations probably acted as effective deterrents, especially when lists of subscribers were published for all to see on handbills and in newspapers. Their rules rejected any compromise whatsoever with offenders. Their rhetoric at least was tough and uncompromising. Most Associations in Berkshire were short lived, and probably set-up on the initiative of individuals or small groups responding to a particular local crisis. As a general observation Peter King suggests that many 'were probably formed because members shared a general feeling that they must do something to protect themselves against crime'. Furthermore, it is likely that men of property depended to a far greater degree on their servants to protect their possessions and pursue an intruder.⁶⁵

If this is the case for men of property, then what of the countless others who had no property and little influence? There is evidence that on occasion parishoners dealt with delinquents on their own initiative. Two incidents of assault may help to illustrate this. On the 19 August 1839, and for the following seven evenings, William Goble, a small farmer living at Newland, was the target of 'rough music', for regularly beating his wife. One participant said that such action was 'always the rule when a man beats his wife'.⁶⁶ The second incident, in February 1787, concerning Martha Aubrey of Chieveley, was sparked-off when she told her husband to 'go to work and get something to help maintain the Family or to keep himself'. John Aubrey responded by jumping out of his chair, taking hold of a stool and swearing to dash out her brains, saying that 'he would be damn'd if he would be ruled by such a Bitch as her . . . and said he would not go to work'. Things became so heated that Martha was forced to leave the house 'till some of her neighbours

came home'. The records reveal a long-standing family quarrel. Mrs Aubrey said that her husband 'frequently and at several other different times . . . threatened to Murder [her] and has beat and otherwise ill treated her . . . and she has been in great terror.' Eventually she turned to the courts. At the Easter Quarter Sessions in 1787 she sought Articles of the Peace against him, and on his refusal to provide sureties the court ordered sixty year-old Aubrey remanded to the Reading House of Correction. He remained there until the following Michaelmas sessions, when he eventually provided a surety in £40.⁶⁷

These two incidents of wife beating were handled quite differently, the one outside the law, the other using the legal process. 'Rough music' was used against those who threatened to disrupt the harmony of the close-knit rural communities of the eighteenth century and was executed by a self-appointed group, usually from the lower ranks. Culprits were admonished. The process also acted as a warning to others. Wife beaters, child beaters, gossips and philanderers were targetted and like Goble, punished outside the law. On the other hand, with the irreconcilable Aubrey family, Martha appealed to the law for assistance. However, this was not her immediate recourse. Martha's response to her husband's tirade was not to rush off to the nearest justice of the peace or parish constable, but to make a tactical retreat, leaving the house for the time being and waiting 'till some of her neighbours came home'. This incident begs a number of important questions. Was this the usual response of Martha Aubrey, and others, to a domestic crisis of this sort? Were neighbours the protectors and arbitrators in such crises? It seems evident that her neighbours could do nothing on this occasion, and in fear for her safety, Mrs Aubrey sought protection through the law. That there was a range of informal options available to deal with local disputes seems in little doubt, and if these failed the law constituted the last resort.

Friends and neighbours not only provided refuge in times of need but were also important figures in the process of informal arbitration. An advertisement in the *Reading Mercury* in 1765 illustrates how successful mediation could be, and how readily aggrieved parties drew back if skilfully persuaded, even at the last moment, from using the law:

Whereas I John Allen, . . . of Tilehurst, some Time since went to the Dwelling-house of Mr. Timothy Pearce of Bradfield, and behaved towards him and his wife in such a Manner that he ordered a Prosecution at Law to be commenced against me, and which he fully intended to have carried into Execution, had not I immediately made Application to some Friends to intercede and prevail with him on my Behalf, whereupon he consented to

forbear and not to do it, upon my asking His and Mrs. Pearce's Pardon in this public Manner, which I hereby do, and promise not to be guilty or offend any more in the like Manner.⁶⁸

A great many public apologies such as this appeared in the local newspaper. They mainly concerned assault, slander and abusive behaviour. However, some property offences were settled in a similar way:

Whereas I Mary Smith, of Hurst, . . . (lately employed in spinning of Flax, Yarn etc. by Mr. Henry Nash of Hurst . . .) have reeled double, contrary to the Law; therefore, (as Mr. Smallbone of Reading, of whom Mr. Nash receives his Work, insists on my being prosecuted, unless I publicly acknowledge the same) I promise never to be guilty of the like Offence, and sincerely thank Mr. Nash and Mr. Smallbone for their lenity towards me.⁶⁹

This example provides evidence that the process of accommodation also existed in cases of theft, and, like many others, was made public through the costly mechanism of a press advertisement. It is likely, however, that similar procedures existed on a less formal basis and that a wide range of property thefts, particularly involving small and inexpensive items, were privately settled on the return of the stolen goods.

It was largely the response of the victims of crime that determined whether justice was done. Sometimes victims used the law. In these cases the identification and apprehension of suspects fell to them, although friends, servants, and neighbours all played an important part. There were problems however. Constables could not always be relied upon for immediate help, as they were often at work.⁷⁰ Some JPs were no more accessible, being pretty thinly spread throughout most English counties. All of this added to the victims' problems in summoning justice. The role of constables should not, however, be underplayed. Sources do not always identify them as policemen but merely record their occupational status. It seems reasonable to suppose that most people would have called on constables, unless they were in hot-pursuit of a thief with no time to call for help, or unless the constable was unavailable. The presence of a constable vested the whole process with authority and legitimacy, and he would have been an useful witness, especially if the stolen goods were recovered. These problems apart, the overall picture is of parish constables and JPs acting effectively and efficiently, using discretion when they believed it most appropriate, and, in the case of JPs, applying a range of official or unofficial sanctions to maintain order.

The regular application of private initiatives in the form of prosecution societies suggests unease with the formal process of detection and apprehension. The expense and time involved and the possibility of retribution discouraged many. This is especially the case with labourers, servants and the poor. It would be foolish to suggest that they were rarely troubled by the petty thief, or that they were complacent when their property went missing.⁷¹ However, taking the petty-thief, occasional, or needy offender before the courts risked disrupting community harmony and cohesion. In cases of anti-social behaviour, therefore, the 'skimmity ride', an aspect of rural popular culture, was sometimes called upon. When their possessions were stolen, labourers likewise took steps to identify culprits in attempts to ensure the recovery of their goods. An informal process existed enabling offender and victim to reach an accommodation and, on some occasions, even to punish the offender. This goes some considerable way to explaining why labourers, and others from the lower ranks of rural society, appear so rarely amongst prosecutors at Assizes and Quarter Sessions. It also perhaps explains why crime rates in general in eighteenth-century Berkshire were comparatively stable, particularly in comparison to urban areas where such community cohesion did not exist.

Notes

¹ The scene has been usefully animated by the Webb's. See S. and B. Webb, *English Local Government: The Parish and the County* (1906), p. 389.

² More precisely, his duty as examining magistrate was 'conceived to be not so much to see if the prosecutor, whether constable or private individual, could make out a "prima facie" case against the accused, as to enquire himself whether such a case could be made.' G.R.Y. Radcliffe, and G. Cross, *The English Legal System* (1977), p. 339.

³ Cynthia Herrup suggests that depositions were 'often recorded as spoken and the questioning seems to have been fairly open-ended.' C. Herrup, "'New Shoes and Mutton Pies": investigative responses to theft in seventeenth-century East Sussex', *The Historical Journal*, 27, No. 4, (1984), p. 812. Many Berkshire depositions from the eighteenth century give the same impression, although a greater proportion relate to the circumstances of the case, and more rarely its background, in a far more structured way than Herrup's informal approach would have allowed. Large numbers of depositions taken in cases referred to the Quarter Sessions and Assizes have a contextual and chronological structure which can only have resulted from the careful and patient questioning of the presiding justice. It is likely that many depositions were the result of a slow and ponderous interrogatory process, with equally deliberate replies. Depositions also reflect the particular approach of individual justices, which largely determined their style and content.

⁴ R. Burn, *The Justice of the Peace and Parish Officer* (1797 edition) [in future, Burn (1797)], vol. 1, pp. 172–78, for a discussion of justice's responsibilities over bail.

⁵ J. Styles, 'An eighteenth-century magistrate as detective: Samuel Lister of Little Horton', *The Bradford Antiquary*, new series, part 47, (1982), pp. 98–117. E. Critall, (ed.), *The Justicing Notebook of William Hunt, 1744–49* (Devizes, 1982), p. 14.

⁶ D. Hay, 'War, dearth and theft in the eighteenth century: the record of the English courts', *Past and Present*, 95 (1982), p. 148.

⁷ Burn (1797), 1, p. 467. For a more detailed discussion of the duties of a seventeenth-century parish constable, see W. Lambard, *The Duties of Constables* (1606 edition). To appreciate the range of responsibilities of the eighteenth century parish constable, see F.D. Price, *The Wiggington Constable's Book, 1691–1836* (Sussex, 1971). See also, Constable's Diary, Cookham Dean (Berkshire), 1800–1839, B[erkshire] R[ecord] O[ffice], D/P43/10/1, 2.

⁸ J.A. Sharpe, 'Policing the parish in early modern England', *Past and Present Colloquium on Police and Policing* (Oxford, 1983), p. 16. J.A. Sharpe, 'Enforcing the law in the seventeenth-century English village', 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* (1980). J.R. Kent, 'The English village constable, 1580–1642: the nature and dilemma of the office', *Journal of British Studies*, xx, 2, (Spring 1981). J.R. Kent, *The English Village Constable, 1580–1642: A Social and Administrative Study* (1986). D. Philips, 'A new engine of power and authority: the institutionalisation of law-enforcement in England, 1780–1830', in *Crime and the Law*, p. 160. J.M. Beattie, *Crime and the Courts in England 1660–1800* (Oxford, 1986), pp. 70–1, and particularly n. 91.

⁹ See Burn, (1791), 1, p. 461, as to advice on these matters.

¹⁰ See D.S. Stafford, 'A Gilbert Act Parish: the Relief and Treatment of the Poor in the Town and Parish of Hungerford, Berkshire, 1783–1834', (unpub. M.Phil. thesis, University of Reading 1983), p. 30. D. Vaisey, ed. *The Diary of Thomas Turner, 1754–1765* (Oxford, 1985), p. xxii.

¹¹ BRO. Q[uartern] S[ession] R[oll] 18, Midsummer 1738.

¹² BRO. Q/SR 116, Epiphany 1763.

¹³ BRO. Q/SR 125, Easter 1765.

¹⁴ Burn (1797), 1, p. 467.

¹⁵ Lambard, *Duties of Constables* (1606), p. 11.

¹⁶ *Ibid*, p. 14. Cf. Burn, (1797), 1, p. 467.

¹⁷ *Ibid*, pp. 16–17. G. Jacob, *The Modern Justice* (1716), p. 124.

¹⁸ Burn maintains that it had always been recognised that 'the constable is the proper officer to a justice of the peace, and bound to execute his warrants.' Burn (1797), 1, p. 468. See also Jacob, *op. cit.*, pp. 125–26.

¹⁹ *Reading Mercury*, 6 Feb. 1764,

²⁰ P[ublic] R[ecord] O[ffice], Assi. 5/76 pt.2, Summer 1756.

²¹ *Reading Mercury*, 8 Feb. 1768.

²² BRO. Q/SR 134, Midsummer 1767.

²³ BRO. Q/SR 132, Epiphany 1767.

²⁴ PRO. Assi. 5/78, Lent 1758.

²⁵ PRO. Assi. 5/78, Summer 1758.

²⁶ BRO. Q/SR 212, Epiphany 1787.

²⁷ *Reading Mercury*, 18 Oct. 1762.

²⁸ *Reading Mercury*, 5 Feb. 1759.

²⁹ PRO. Assi. 5/108 pt.1, Summer 1788.

³⁰ BRO. Q/SR 83, Michaelmas 1754.

³¹ BRO. Q/SR 93, Easter 1757.

³² Hay suggests a slightly lower figure for Staffordshire, and has calculated that only 12.8% of prosecutions were not brought by the victim of a crime. D. Hay, 'Crime,

Authority and the Criminal Law: Staffordshire 1750–1800', (unpub. Ph.D. thesis, University of Warwick 1975), p. 339.

³³ See H. Fielding, *An Enquiry into the Causes of the Late Increase in Robbers with some Proposals for Remedying this Growing Evil* (1751).

³⁴ Radzinowicz explains that prior to 1752 the 'general principle at Common Law was that the King neither paid nor received costs, and as an indictment, though carried on by an individual, was always considered as the King's suit, no costs were payable, whatever the result of the prosecution.' L. Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, 4 vols., (London, 1948–1968), 2, p. 76.

³⁵ 25 Geo. 11, c.36, s.5, and 11.

³⁶ 27 Geo. 11, c.3, s.3.

³⁷ Brookland to Bry Richards, 4 Oct. 1754. BRO. Q/SR 83.

³⁸ 18 Geo.111, c.19, s.s. 7–9.

³⁹ Hay, *op. cit.*, p. 354. See also D. Hay, 'War, dearth and theft in the eighteenth-century: the record of the English courts', *Past and Present*, 92 (1982), pp. 147–48.

⁴⁰ *Reading Mercury*, 19 Sept. 1748. Cf. Hay, 'Crime, Authority . . .', pp. 347–52.

⁴¹ William and Mary, c.8, s.2 and 6.

⁴² 6 Geo. 1, c.23, s.8.

⁴³ 8 Geo. 11, c.16, s.9.

⁴⁴ 6 and 7 William 111, c.17, s.9 ; 15 Geo.11, c.28, s.7.

⁴⁵ 10 and 11 William 111, c.23, s.2; 5 Anne, c.31, s.1.

⁴⁶ 14 Geo.11, c.6, s.2; 15 Geo.11, c.34.

⁴⁷ 6 Geo. 1, c.23, s.9. Radzinowicz remarks that these parliamentary rewards were 'appointed only for offences against property, and only for such offences as were accompanied by aggravating circumstances, were of frequent occurrence, easy to commit, but difficult to detect. They were all punishable with death.' Radzinowicz, *op. cit.*, 2, p. 59. For a detailed discussion see pp. 57–60.

⁴⁸ *Ibid.*, pp. 155–56. In cases of horse stealing only the certificate of exemption was offered.

⁴⁹ Details of rewards and certificates of exemption for Berkshire can be found in the Assize Crown Books, (PRO. Assi.2) and Enrolment Books of the Clerk of the Peace, BRO. Q/RZ.

⁵⁰ PRO. Assi. 2/15, Lent 1749/50.

⁵¹ PRO. Assi. 5/81, Summer 1761; Assi. 2/19, Summer 1761.

⁵² BRO. Q/RZ 1, pp. 158–59.

⁵³ J.M. Beattie, 'The pattern of crime in England, 1660–1800', *Past and Present*, 62, (1974), p. 57. Cf. Hay, 'War, dearth and theft', p. 148.

⁵⁴ BRO. Q/SR 216, Epiphany 1788.

⁵⁵ PRO. Assi. 5/79, Summer 1759.

⁵⁶ *Reading Mercury*, 16 July 1770.

⁵⁷ For a fuller account of the part played by the provincial press in the dissemination of criminal intelligence together with a discussion of its effectiveness as an instrument of detection, see J. Styles, 'Print and policing: crime advertising in eighteenth-century provincial England', in D. Hay, D. and F. Snyder, eds., *Policing and Prosecution in Britain 1750–1850* (1989).

⁵⁸ For a comprehensive discussion of all aspects of Associations for the prosecution of felons, see Hay, 'Crime, authority . . .', pp. 355–94. P.J.R. King, 'Prosecution associations and their impact in eighteenth-century Essex', and D. Philips, 'Good men to associate and bad men to conspire: associations for the prosecution of felons in England, 1760–1860', both in Hay and Snyder, *Policing and Prosecution*. A. Shubert, 'Private initiative in law enforcement: associations for the prosecution of felons, 1744–1856', in V. Bailey, ed. *Policing and Punishment in Nineteenth-Century Britain* (1981).

⁵⁹ BRO. D/P3/28/1.

⁶⁰ Burglary, house-breaking, or highway robbery, £5; setting fire to a building, hay or corn-stacks, £5; stealing or maiming any horse, mare, or gelding, £5; stealing a cow, calf or sheep, £2; receiving stolen goods, £2; stealing pigs or poultry, £1; cutting or cropping trees, stealing wood, underwood, gates, hedges, posts, rails, poles, or iron work, 10/6; stealing any implement of husbandry, or part thereof, hay, straw or corn thrashed or unthrashed, 10/6; stealing turnips, carrots, potatoes, cabbage, other roots, vegetables, or any sort of fruit, from any field, inclosed ground, garden, orchard, or other place, and for every other non-specified felonious act, 10/6. (BRO. D/P3/28/1.)

⁶¹ BRO. W/Z10/6.

⁶² *Reading Mercury*, 12 March 1759.

⁶³ Cf. Philips, 'Good men to associate', pp. 139–41, and King, 'Prosecution Associations', p. 202.

⁶⁴ See detailed accounts of the parish of Ashbury, 1766–1790, BRO. D/P9/12/2.

⁶⁵ P.J.R. King, 'Prosecution Associations, courts and community concerns in Essex, 1740–1800', (unpublished paper, 1982), p. 30.

⁶⁶ BRO. D/EW1, L3.

⁶⁷ *Ibid.*, and BRO. Q/SR 213, Easter 1787.

⁶⁸ BRO. Q/SMg6, Michaelmas 1787.

⁶⁹ *Reading Mercury*, 25 Nov. 1765.

⁷⁰ *Reading Mercury*, 8 April 1765.

⁷¹ See, PRO. Assi. 5/69, examination of Elizabeth, wife of James Jones of Longworth, 23 Aug. 1749.

⁷² Hay makes the important point that it was impossible to know whether a judge would grant costs at all even though he was able to do so by statute, and this undoubtedly deterred many poor victims from prosecution. Hay, 'Crime, Authority . . .', p. 375.