

The Maidstone Prison Mutiny of 1765: Aspects of Eighteenth-century Law Enforcement

Paul Muskett

I. The Mutiny

Describing it as 'the most stirring event in the history of the county gaol at Maidstone', Elizabeth Melling notes the absence of material in the county archives relating to the armed mutiny of 1765, 'in which the gaoler was killed, the chaplain seriously injured and the military called to restore order.'¹ The mutiny might be better described as a mass breakout, led by a group of prisoners facing the gallows or transportation. While there is a dearth of documentary evidence in the Kent Record Office, extensive reports appeared in the local and London newspapers. The break-out, and the two killings which accompanied it, also generated a considerable correspondence between the assize judges, the sheriff of Kent, and the Secretary of State. The events can be reconstructed, elite attitudes towards crime and punishment examined, and the evidence relating to pardons related to the current historical debate on the interconnections between administration of the law and maintenance of social control. The Maidstone mutiny raises other questions respecting law enforcement, providing an unusual insight into a local community's willingness and ability to provide a rapid and effective response when confronted with violent crime. The *Annual Register's* report raises questions respecting the nature of press reports, but it is a useful starting point:

On the 7th, about three in the evening, as five of the malefactors condemned at the last assizes at Maidstone were going to prayers, through a room where the arms hung, Simon Pingano, one of the Italians convicted of forgery, give the signal for executing a scheme formed by them to escape, by jumping into a chair, notwithstanding his fetters; and being without hand-cuffs, (as unfortunately they all

were), snatched a hanger from Mr Stephens the jailer, with which he mortally wounded him.

They then seized the pistols, blunderbusses and cutlasses kept in the gaol, freed the other prisoners, and 'obliged the turnkey to bring them both wine and beer, which was plentifully distributed amongst them'. The prison chaplain 'had bolted himself into an adjoining room where he could hear the felons consulting whether they should force the door and kill all.' Some of the townsmen, warned of what was happening, posted an armed guard outside the prison's main gate, while one of them set about breaking through the wall to reach the chaplain:

The town's people fired several shot into the prison, which was rather inconsiderate, as they could take no aim, whereas the prisoners, who could not fail being exasperated thereby, [threatened to] murder the first man that attempted to desert, and being intoxicated, fired at random, [killing a man in the street] and marched off.

The report goes on to describe a party of soldiers arriving from Chatham, and then tracking the escaped convicts to Rosewood, near Sevenoaks. Five were retaken without resistance, and brought back to Maidstone:

but the two Italians who would not surrender, and fired several times, were killed. Pingano, when wounded so as not to be able to stand, fought upon his knees, till he was shot through the head; five more were soon after fortunately retaken in different places.²

A mass prison break, accompanied by a double murder, and ending with the fatal shooting of two of the leading perpetrators, excited the same interest then as it would today, but the subsequent reports, detailing recaptures, the convicts' behaviour, and their appearances in court and on the gallows, should be set in context. Crime was of perennial interest, and editors were well aware of the potential for increased sales, but the desire for entertainment was accompanied by genuine concerns.³ When wars ended, crime rates rose, and there was a disproportionate increase in the more serious offences, such as highway robbery and horse-theft. It was feared that young men, trained in the use of arms, inured to violence, and accustomed to operating in disciplined units, were finding alternative outlets for their aggression, using their skills to nefarious ends.⁴ So great were the fears of highwaymen and footpads that in 1763, Sir John Fielding, chief magistrate for Westminster, secured government funding to renew the horse patrols policing the main roads into the capital.⁵ Kent had its own gangs in the armed smugglers escorting trains of pack-horses from the coast to the capital. The

savagery of the Hawkhurst gang, and their confrontations with the preventive forces in the 1740s, must have been in the minds of those administering the law in the 1760s. Seamen on the Kent and Sussex coasts combined piracy and contraband dealing during and after the Seven Years War, and there was evidence of a revival in violent smuggling at Deal.⁶

Disquiet over rising crime, and calls for more draconian punishments, have been linked to social changes occurring from the 1750s onward. Demographic change, urban growth, and developments in agriculture are seen as eroding long established ties of deference and dependence. Policing methods, which had proved sufficient when most offences were committed by local people, and the likely suspects were known to victims, constables, and justices of the peace, were no longer adequate. The Maidstone mutiny places the question of law enforcement in a different perspective. In the 1740s vigilante groups, like the Goudhurst and Ticehurst militias and the Cranbrook association, had organized themselves to oppose the smugglers; the Maidstone men demonstrated the same readiness to take action against violent crime in 1765.⁷

The *Annual Register* credited the army with the shootings of Simon Pingano and Andrea Benevenuto, and the recapture of the felons at Rosewood, but this is not corroborated in the other journals or by the documentary evidence. A request for military assistance was sent while the prisoners were still inside the gaol, and troops arrived from the Brompton barracks, but while the *Kentish Post* simply states that 'The Soldiers . . . came too late, though they used all possible Expedition', the *Annual Register* has them moving off in pursuit, tracking the escapees down, and bringing in those they did not kill.⁸ This version appeared months after the event, and there had been time to correct any errors, so the insistence on the army's contribution merits attention. Reconstructing events using other sources provides a possible explanation.⁹

After breaking out of Maidstone prison, the prisoners split-up, a party of seven making their way to Sevenoaks, where they 'were discovered by a Countryman' suspicious of a party of strangers carrying weapons:

He had heard of the prisoners escaping and of their cruelty, and soon raised the neighbourhood, who pursued them into a wood, where coming up with them about a dozen men presented their pieces commanding them to surrender, which five of them did, but the two foreigners were very resolute, and swore they would not be taken alive and fired at the countrymen several times, but one of them was soon killed; the other, said to be Pingalo [sic] got behind a tree, and though

he was much wounded, fought upon his knees until he was shot in the head.

Pingano and Benevenuto, were killed; Thomas Lockskegg, John Dugmore, John King, Thomas Molloy and James MacDonald were arrested and returned to Maidstone.¹⁰ This report corresponded more closely with the surviving documentary evidence than did the *Annual Register*'s, but there were still significant variations. Sir Richard Betenson, the sheriff of Kent, described how 'many persons went out in pursuit of them and the next morning a party of the Country People came up with Pingano, Benevenuto and three other of the felons'. When they refused to surrender, the pursuers opened fire, hitting one in the arm. Three were taken, but Pingano and Benevenuto retreated to a nearby wood, where they were surrounded until a party from Maidstone arrived and went in after them.¹¹ William Springate and Isaac Harrison, two of the Maidstone men, described what happened. Eight men had gone to the house of Lord Romney on Thursday, 8 August, obtained firearms and ammunition, and set off towards Sevenoaks. They reached Rose Wood on the Friday morning, and were told there were still two men free, 'who had declared they would not be brought out alive.' Springate and his party, along 'with three or four of the Country People . . . agreed to go in at one end of the Wood and traverse it to the other.' They entered line abreast, and opened fire when about 40 yards in. Benevenuto and Pingano were not sighted until the vigilantes were within fifteen feet of them. 'The posse fired again, retreated, then came forward, when Springate saw Benevenuto, lying on the Ground leaning on his Elbow and looking towards this Deponent with a Pistol in his Hand and as if he were priming it. That he this Deponent dropt on his Knee and fired again upon him and shot him dead on the spot'. Pingano was killed by Harrison, standing five feet away when the Genoese swung round with a pistol in his hand.¹² There were discrepancies in the details of various reports respecting the shootings and arrests, but it is the difference in the significance accorded the military which is most striking. The *Annual Register* seemed intent on promoting the authority of the central state, and the use of the army as a policing body.¹³ By contrast, community law enforcement was clearly frowned upon, the implication being that military intervention was preferable in the absence of properly appointed peace officers. There is no mention of the magistrates organising the attempt to block the prisoners' escape, nor do they seem to have been responsible for the posse which set out from Maidstone. In the circumstances, the local men showed considerable initiative; the Governor was fatally wounded, the prison was in the hands of armed felons,

the chaplain and turnkeys were trapped inside, and any military assistance was some hours away. But the *Annual Register* described them as 'inconsiderate', suggesting that it was their action that led to the death of William Fletcher, shot from inside the gaol when standing outside his shop. Stephen Cousins, one of the party keeping watch from East Lane, believed that Fletcher was killed by a ball from a blunderbuss hitting him in the head, said to have been fired by Pingano.¹⁴ All the press reports described how the Reverend Denne was rescued when a townsman succeeded in breaking through from the outside, despite the thickness of the wall and the shots fired by the felons.¹⁵ Only the *Annual Register* claimed that Denne was at risk from incoming fire, though Cousins maintained that their object in breaking in was in fact to prevent the prisoners getting hold of 'the Powder and Ball'. If they were already under fire, their efforts were too late, while the hole in the wall provided another line of fire for the defenders.¹⁶

II. The Inmates of Maidstone Gaol

The *Annual Register's* account was impersonal; Simon Pingano was the only convict named; even the 'model prisoner', Thomas Postlethwaite, who refused to join the escape, was simply referred to as a Quaker.¹⁷ They were described as 'malefactors', 'felons', and 'desperadoes', but the only specified offence, besides Postlethwaite's horse-stealing, was Pingano's forgery. Identifying the escapers and their crimes raises questions relating to the wider workings of the law in the eighteenth century. Simon Pingano was committed to Maidstone gaol on 6 April 1765, charged 'with procuring John Benevenuto to personate the Administrator of John Baptista Angroven (under letters of Administration falsely obtained) in order to receive the wages due to the said John Baptista Angroven aboard his Majesty's ship *Rochester*'.¹⁸ Andrea Benevenuto was accused of impersonating Joseph Lambert for the same purpose, and both men were sentenced to death at the summer assizes.¹⁹ Forgery and coining were the two non-violent capital offences where the prospects of reprieve were minimal, and the frequent fraudulent attempts to obtain sailors pay when ships returned to the Medway, meant Kent juries were unlikely to show sympathy.²⁰ Sam Matthews, John King and Thomas Rogers were with the two Genoese when Stephens was knifed. Rogers, convicted of highway robbery, faced death, but Matthews and King, concerned in the same offence, had their sentences commuted to transportation.²¹

Sixteen prisoners broke out on 7 August, but once clear of the gaol they separated, the largest group going with Pingano to Rose Wood.²²

This party consisted of Thomas Lockskegg and Thomas Molloy, convicted sheep stealers, John Dugmore, another highwayman, and James MacDonald sentenced to seven years for larceny. Lockskegg, Molloy and Dugmore had all been reprieved on condition of transportation; the fifth man was John King.²³ Three of the fugitives were discovered in a barn near Shoreham when a servant 'trod upon one of their Legs as they lay under the Straw'.²⁴ Thomas Dudney (or Dowdney), and Thomas Rogers had been brought to Maidstone from the Surrey county gaol in March that year, charged with robbing Thomas Matthew. Dudney was acquitted on that indictment, only to be convicted as a horse thief.²⁵ John Tisely was another sheep stealer, whose sentence was commuted, and William Perry had been sentenced to seven years transportation for grand larceny.²⁶ Thomas Bailey was committed after the assizes, but took part in the escape and was taken up at Grainey, near Faversham. William Godfrey, a reprieved horse thief, was convicted at the previous assize, but remained in gaol awaiting transportation; he made his way to London, but was arrested in Whitechapel. He gave an account of the escape to Sir John Fielding, and was committed to Newgate until September, when a warrant was issued for his removal to Maidstone to stand trial for Fletcher's murder.²⁷

Matthews and Rogers remained at large until early September, but John Jordan was brought in during the last week of August; he was thought to be aged between fourteen and seventeen, and had been sentenced to seven years transportation for stealing a watch. Jordan claimed to know where Rogers and Matthews were, but would not say where.²⁸ They were seen near Rye in early September 'lurking about Iden and Peasemars', but the next edition of the *Kentish Post* reported a messenger being sent from Maidstone to Winchester gaol, 'to take a view of the two fellows lately apprehended and brought to that prison as they were much suspected by the description of them . . . to be Rogers and Matthews'.²⁹ Stephens's brother confirmed the identification, and recognised the coat Rogers was wearing as one of the items of clothing stolen from the dead governor.³⁰ The two escapers had encompassed their own arrests by drawing attention to themselves when drinking at a local inn. They were followed and arrested once it was realised their pistols were defective; one had a missing flint and the other a broken lock.³¹

III. The Pardoning Process

Douglas Hay sees the pardoning process as integral to the maintenance and consolidation of ruling class hegemony.³² Prosecutors and grand juries could decide to bring lesser charges, trial juries recommended

mercy for capital convicts, and judges had the authority to issue reprieves. There were a number of reasons why they did so: the youth and previous good character of the prisoner, the circumstances of the case, or the belief that hanging would serve no exemplary purpose, could all affect the judges' decisions. Hay argues that the most important factor was the nature of the support given to any petition for mercy. One measure of standing within county society was the ability to secure pardons, demonstrating the importance of a man's connections and impressing both his clientage and the wider community; pardons were 'part of the currency of patronage'.³³ Peter King questions this emphasis on the role of the propertied elite, pointing out that prosecutors and jurymen were mainly of the 'middling sort', while an analysis of pardons indicates that judges were using rational criteria rather than simply responding to the expressed wishes of local notables. The offender's age and the nature of the offence were significant factors; in the period 1782-7, only a quarter of capital convicts under the age of sixteen were left to hang, while two-thirds of those between 21 and thirty were executed. Young offenders were seen as being led astray, to be capable of reform, and were reckoned to make more tractable indentured servants when sent to the colonies as indentured servants. Yet although the link between the youth of offenders and leniency of the courts applied across the range of capital offences, some crimes were considered more heinous than others; convicted burglars and highway robbers were twice as likely to be hanged as horse thieves.³⁴

Trends in convictions, sentences, and reprieves can only be discerned when the statistics are examined over time. Study of the prisoners held at Maidstone in 1765 produces no new conclusions respecting the overall workings of the criminal justice system, but looking at individual cases does show the 'personal and particularistic administration of the criminal law, especially the capital laws.' Enforcement of the law can also be examined using a bureaucratic model; the courts were hierarchically structured, bound by precedent, and marked by divisions into various specialist areas. With the institution of transportation, the pardoning process had 'become fully routinized by the third decade of the eighteenth century'.³⁵ The judges decided which convicts were to die, and which were to be transported to America; 'the condition that had become by then a virtually automatic consequence of a pardon.'³⁶ The circuit judges, when convinced execution was unnecessary 'pronounced the death sentences in court to make sure the prisoners were properly terrified', but afterwards recommended mercy, 'some favourable circumstance appearing in their respective cases.' This is often the only information available, the system requiring no elaboration. Circum-

stances sometimes obliged the judges to submit longer reports, as when influential figures supported petitions for clemency, and the Secretary of State sought the judges' views.³⁷ The fact that a number of the prisoners who escaped from Maidstone had had their sentences commuted, led to more detailed explanations. Sidney Stafford Smythe and Lord Mansfield were the assize judges at Maidstone that summer, and Smythe provided a special report for the Duke of Grafton, Secretary of State, 'in order to Obtain an Order for the Immediate Execution of Some Persons Capitally Convicted and Reprieved by me, who have since Joined in that Desperate Act of Breaking the Gaol at Maidstone'.³⁸

Samuel Matthews and John King were charged with robbing William Rosse as he rode through Aylesford on his way from London to Maidstone. King had caught hold of Rosse's mare by the bridle, then Matthews came up behind, his stick raised, and told Rosse to 'deliver all.' After more threats, and searching their victim's pockets, the highwaymen rode off with three and a half guineas in gold and eight shillings in silver:

as soon as Mr Rosse came to Maidstone he sent out Persons in pursuit of them, who took them that Night at an Alehouse at Wateringbury five Miles from Maidstone & found near the same Sum of Money on them as Mr Rosse lost, & a remarkable Shilling which he lost, in King's Pocket, & being light he had so full a View of their Faces as to Swear Positively to them, on this they were Convicted & I pronounced Judgement of Death on them & left them to be Executed with Three More.³⁹

Soon after sentencing, the prosecutor, feeling his assailants had suffered enough, approached Rose Fuller, from the Sussex family of landowners and gunfounders, and MP for Maidstone. He was asked to intercede with Baron Smythe, and secure reprieves 'to spare their Lives':

because Except the Act of Robbing him they did not use him ill, that they had both Confest the Robbery & Declared they Should not have done it had they not been Drove thereto by Hunger not having Eat anything for Two Days Before, which from Several Circumstances he had Reason to Think was True.⁴⁰

This petition was supported by 'Several of the Principal Persons in Maidstone', and Smythe signed a reprieve for both the condemned men, sending it to the Sheriff of Kent, ironically on the same day they broke out of gaol. If the critical factor influencing Smythe's decision was Fuller's intervention, these pardons could be used to show the importance of petitions enjoying the support of 'great men'.⁴¹ but the prosecu-

tor and local townspeople had also urged clemency. Some insight into Smythe's thinking is provided by a case he tried at the Surrey assizes in early August. Gilbert Ovins was sentenced to death for stopping a coach on Clapham Common and stealing money and a watch from a Mrs Castlefrane. Having parted with the cash, she was reluctant to hand over anything else, but 'he then Snapt his Pistol near her Face which only Flashed in the Pan which Frighting her She Immediately Gave him her Watch with two Cornelia Seals to it.' Ovins hocked the watch, but the pawnbroker recognised it in an advertisement and went to Sir John Fielding. When a woman tried to raise more money against the pledged watch, she was brought before Fielding, and then took a constable and the magistrates' clerk back to her lodging house, where Ovins tried to escape by jumping from an upstairs window. Eyewitnesses to the robbery could not positively identify him, and the prosecution case rested on Ovins's inability to explain his being in possession of stolen goods. The watch and a brace of pistols found in his room were supposed to have been entrusted to the prisoner by 'one Brown' but no witnesses were produced to support this, or 'to Prove his Character', and the jury found Ovins guilty:

Upon which Mrs Castlefrane the Prosecutrix Immediately begged of me, Very Earnestly, even with Tears, to Spare his Life, But I was Obligated to Refuse her Request Telling Her on Account of the Frequent Robberies Committed near London and the Great Abuse of Your Majesty's Mercy in That Audacious Attempt at Maidstone I had just then Heard, I could not Think my self Justified in Doing it & therefore if She Really desired to Save him She must apply to your Majesty who would do what was Right & Fit. I Therefore Pronounced Judgement of Death & Left Him for Execution.⁴²

The need for exemplary punishments to deter certain offences, provided part of the rationale for the award and denial of pardons, but Matthews and King had been reprieved, though guilty of the same offence as Ovins, and Judge Smythe was clearly reacting to the breakout and the two deaths that occurred.

Up to this stage of his account, the main distinction between the Maidstone and Croydon cases was that Ovins had no men of distinction urging his merits. Then, on 15 August, Mrs Castlefrane journeyed thirty miles to see Smythe at his house in Kent, maintained the pistol had been discharged by accident, and 'told me with Great Agitation She Should never have a Moments Ease of Mind if he was Executed'. The same day, William Gibson, Ovin's former employer called on Smythe, offering to arrange for his transportation to Virginia:

on Account of his former Good Character and Behaviour . . . where he was Sure he Wuld be Prevented from Ever Returning to England, & he Brought me a Recommendation of him to Mercy by Mr Onslow the Foreman & Two Other of the Grand Jury for Surrey.⁴³

Beattie describes the Grand Jury as 'the preserve of the county's social and political leaders', and again, the influence of representatives from the dominant elite might be considered critical, but isolating a single factor is problematic.⁴⁴ Mrs Castlefrane's pleas, and the late appearance of a credible character witness played some part, but events at Maidstone complicated Smythe's use of his discretionary powers. If attention is focused on the other prisoners who were reprieved, it is apparent that there was a 'narrowly legal' side to the granting of pardons, and that when judges applied legal criteria, they were not concerned solely with moderating 'the barbarity of the criminal law in the interests of humanity'.⁴⁵ Gatrell maintains that justice was the remotest of the judges' concerns and those administering the law 'were only approximately, subordinately, or even cosmetically concerned with guilt and innocence'.⁴⁶ Smythe provided detailed reports on four of those convicted at the Kent assizes, Samuel Matthews, John King, Thomas Rogers and Thomas Dudney. Dudney, acquitted of highway robbery, had then faced the separate charge of horse stealing. The robbery had taken place on 10 October 1764. Peter Adam's mare went missing from a field in Boughton-under-Blean on 16 October. Dudney and Rogers rode up to an alehouse in East Horsley two days later, one on a horse, and the other on a black mare. On 19 October they were arrested on suspicion of the highway robbery. Afterwards, the alehouse keeper could not say who had ridden the mare, though in court Dudney insisted Rogers was the culprit; the innkeeper would only say that he believed Dudney's greatcoat had been strapped to the saddle of the horse:

On this Evidence I Directed the Jury if they Believed Rogers rode the Mare & had Stolen her before he joined Company with Dudney, then to Find Dudney not Guilty, for Rogers only was Guilty, But if they Believed the Mare was Stolen by Rogers when Dudney was in Company with him & Consenting to it, then Dudney was likewise Guilty though he had not Rode the Mare himself but that she was Rode only by Rogers. The Jury Found him Guilty & I Pronounced Judgement of Death on Him with the other Prisoners.⁴⁷

Dudney might have joined up with Rogers a week after the highway robbery, and his conviction could have rested solely on the evidence presented with regard to the stolen mare, but the judge's summary sug-

gests there was a reasonable doubt concerning Dudney's guilt. Smythe issued a reprieve before he left Maidstone and it can be inferred he was not convinced the jury had made its decision on the basis of the facts presented at Dudney's second trial. The pardon was not because of powerful petitioners, the intercession of the prosecutor, the disproportionate nature of the penalty, nor a judicial assessment of the proper number of exemplary hangings required. It was because Smythe felt the conviction was unsafe in the light of the evidence.⁴⁸

There is sufficient information respecting the pardons granted to these prisoners to support the argument that the eighteenth-century legal system was personal and particular, but those charged and convicted of capital crimes could also look to the judges to uphold current notions of due legal process. These did not correspond with modern practice, and changes in the rules of evidence, the weight given to the testimony of informants, and the importance attached to character witnesses, make for a rewarding field of enquiry. Berating judges who carelessly consigned convicts to the colonies or the scaffold, directs attention away from the fact that reprieves depended on mitigating circumstances in a case, recognised by those same judges, or their insistence that verdicts were arrived at on the basis of the evidence.⁴⁹

Some of the prisoners convicted at the Kent summer assize were reprieved without explanation. John Dugmore and Samuel Barker, convicted of robbery on the highway, Godfrey and Postlethwaite, the horse thieves, Tiseley, MacDonald, Molloy and Lockskegg, were all sentenced to fourteen years transportation 'as a condition of their pardon'. Jane Smith, alias Whalebone, alias Monk, convicted of housebreaking, had her sentence commuted on the same terms, while John Jordan was sentenced to only seven years transportation, probably on account of his youth.⁵⁰ It does not follow that the absence of detailed reports on these individuals meant the judge exercised his discretionary powers casually or cynically and the aftermath of the breakout was to show just how seriously the pardoning process was regarded by those administering the law, and how firmly entrenched were some of the attitudes and beliefs concerning the sacerdotal nature of royal authority.⁵¹ Gatrell describes the sovereign's power to mitigate sentences as:

the chief and ancient emblem of his majesty as the Almighty's representative on earth. Mercy was likewise an emblem of his role as the bond of civil society, for the exchange between monarch and people was meant to be reciprocal. The prerogative blessed both 'him that gives and him that takes'. The felon who sought mercy from the king

exalted the king by repaying him with gratitude and deference, and the return was a world in which right order was affirmed.⁵²

In breaking out of prison, murdering Stephens and Fletcher, resisting recapture and re-offending, the Maidstone convicts had broken faith, challenging the established order and forfeiting any chance of redemption. Sir Richard Betenson, High Sheriff of Kent, applied to Baron Smythe, requesting him to submit a special report to the King: Smythe complied

in order to obtain an order for the Immediate Execution of Some Persons Capitally Convicted & Reprieved by me, who have since joined in that Desperate Act of Breaking the Goal at Maidstone & murdering the Keeper.⁵³

Matthews and Rogers were still at large, and Betenson pressed for the prompt despatch of the other two highwaymen. King and Dudney were depicted as violent men, prominent during the mutiny, and with a 'very Considerable personal share in the . . . Murders':

If therefore for an Outrage of such fatal Tendency to the Safety, Peace and good Order of Society, so signal in itself, so unfortunate in its Consequences and so Subversive of the very End of All Laws (the Punishment of the Guilty) it should in your Majesty's Wisdom seem expedient to make any immediate and striking Example, your Memorialist most humbly Begg leave to Submit to your Majesty's Consideration and Direction whether the said John King and Thomas Dudney (who have already so grossly trampled upon the Mercy of a Reprieve) would not be the proper Object of it.⁵⁴

Charles Yorke, the Attorney-General, later described King and Matthews as having 'certainly forfeited all claim to Mercy,' and the Kent magistrates wanted to see the pair of them 'executed as soon as may be, without further Reprieve.' The granting of pardons testified to the king's magnanimity and bound subject to monarch; petitioning was meant to reinforce the bonds of deference locally and nationally, 'to testify to the magnitude and benevolence of all who held power in the land.'⁵⁶

In the administration of justice, the corollary to the selection of proper objects of mercy was the choice of awful examples: to be simply hanged at the gallows, or additionally denied a Christian burial with corpses subsequently gibbeted or sent for dissection by the surgeons. Smythe's report shows satisfaction with the outcome of the Maidstone assize. Only three felons had been left to hang, demonstrating the law's mercy, while providing a sufficient spectacle on Penenden Heath to

serve as 'a terrible example of the consequences of falling into immoral habits and breaking the law.'⁵⁷

IV. Revenge and Retribution

Capital punishment was a sure preventative for recidivism, but its main purpose was to serve as 'the reminder of what eventually lay in store for those who strayed from the paths of duty and obedience.' There was no need for mass hangings, and no intention that the 'Bloody Code' should be enforced in all its severity. The number left for execution varied, 'depending on the state of crime and the present damage to the social order'.⁵⁸ Both aspects featured in deciding the mutineers' punishments, but it was the latter involvement which settled the fate of many of them, including those previously reprieved. The term 'mutiny' indicated that what had happened was a rebellion against the established order. The killings which accompanied it simplified the task for the authorities, since the prisoners could be indicted for murder, an offence generally felt to merit the death penalty.⁵⁹ The trial process provided the mechanism by which offenders were selected for hanging, but for Matthews, Rogers, and King, even the possibility of an acquittal was denied. They could have been charged with Stephen's murder, but there was no need to hold them until the assize, and the Kent justices wanted speedy retribution. Baron Smythe clarified the legal position for the Privy Council:

I Have Received from his Grace the Duke of Grafton your Majesty's Commands 'That I Should Point Out by what Course Justice can Legally be Executed on John King, Samuel Matthews & Thomas Rogers with that Expedition so Much Desired by the County of Kent'. As They Have Broke the Gaol & have been at Large Since Their Attainder, the Regular Method is not to award Execution against them till they can be Brought before some Court Having a Proper Jurisdiction & are asked what they Have to Say Why execution Should not be Awarded against them Pursuant to Their Sentence & if any of them Denys he is the Person Attainted that Fact must be Tried by a Jury to ascertain the Identity of the Man, If this is done at the Next Gaol Delivery for this County it will not be till March, the Usual Time of Holding it, But The Record of Their Several Attainders May be Removed by Certiorari into the Court of Kings Bench The Beginning of Next Term & the Prisoners Brought up by Habeas Corpus & That Court being the Supreme Court of Criminal Jurisdiction May Award Execution as was done in the Case of Mr Radcliffe Brother to the Late Earl of Derwentwater.⁶⁰

The prisoners were taken to London in late November 1765 and the Court of Kings Bench confirmed that they should suffer execution for their original offences. The formalities of identification over, the three were returned to Maidstone and executed at Penenden Heath on 28 November. All three had criminal records pre-dating the offences for which they were convicted in 1765. Matthews had run with gangs of street robbers in London, then turned to housebreaking, stealing money, plate, tea and tobacco, removing as much as £350 worth of goods at a time. The crime for which he was tried at Maidstone was either his fifth or sixth highway robbery. Rogers had been an undistinguished highwayman in Kent and Surrey, broken into houses at Shoreham and Brentford before his arrest, and carried out a further eleven break-ins with Matthews after their escape, along with one highway robbery. He admitted to stealing seven horses at different locations in Kent, Sussex, Surrey and Essex, including two mares at Boughton. John King had robbed a house in Bristol, a farm at Gosport, and his London lodging house. He committed seven highway robberies on the road between Bristol and London 'and at Times shot seven Horses and several more in Stepney Fields'.⁶¹

At the next Kent assize, eleven men were tried for breaking gaol and the murder of William Fletcher. According to Kent's new sheriff, William Wilson, most of them 'had a very considerable personal Share in . . . Mutiny and Murders'.⁶² All were convicted, but only six suffered the death penalty, Thomas Dudney, Thomas Molloy, William Godfrey, James MacDonald, John Jordan and William Perry. With the exception of Perry, these were the men depicted in the *Kentish Post* as hardened criminals and refractory prisoners, while the statements of witnesses taken within weeks of the breakout help explain the outcome of the trials in March 1766. William Grainger, a debtor, testified to the actions of King, Jordan and Pingano, stating that they had carried firearms, and that the Genoese had fired 'the Great Blunderbuss into the Street through a Hole made in the Wall of the Gaoler's Apartment.'

That . . . he saw . . . Thomas Dowdney with a Pistol in his Hand at the Window . . . at the top of the Stairs guarding the Top of the Wall next the Bridewell and heard him swear that he would blow out the Brains of any Persons who should dare to get up and look over.

Grainger saw Jordan 'fire several times', though not at any obvious target, and observed MacDonald with 'a large Pistol in his hand'. Stephen Barton, another debtor, witnessed the attack on Stephens and saw Rogers seize a blunderbuss, which was hanging over the mantle in the taproom. Retreating to his own room, Barton was threatened by

King, and then by Macdonald and Pingano. Barton had also seen Rogers pointing the blunderbuss out of the window, and Thomas Dowdney carrying a pistol. Dowdney told Barton he was acting under duress but Baron Smythe dismissed the claim and proposed he be tried for murder rather than executed for horse stealing.⁶³ When examined by Sir John Fielding, William Godfrey denied anything to do with Stephen's death, blaming Pingano and Benevenuto. The convicts sentenced to transportation had only left the gaol 'by Compulsion and Threats of the Convicts under Sentence, who had bound themselves to stand by each other to the last.' Godfrey's story that he was a reluctant escaper, had been instrumental in saving the Governor's sister, and had informed on previous escape plans, failed to impress the court.⁶⁴ The only prisoners given credence were Jane Smith, Thomas Postlethwaite, and Samuel Barker, who had all chosen to remain in the gaol; Smythe recommended they be given free pardons.⁶⁵ They were indebted to Grainger who testified to Postlethwaite having told MacDonald he would 'sooner be shot than have his Irons cut off', had witnessed Barker being pushed out of the gate and then returning, and was with Jane Smith, Richard Holder, the turnkey, and two other women prisoners, when King entered their room and ordered Grainger and Smith to strip:

and that she should put on this Deponents Cloaths, That this Deponent pulled off Coat and gave her and also a Waistcoat and a Pair of Breeches which he had in the . . . Ward which she put on, But she then desired . . . King to permit her to take them off and put her own Cloaths on again and after some expostulations he damn'd her for a Bitch and said she might, and might stay and be damn'd.⁶⁵

As he was leaving the room, King turned and fired his pistol, the ball passing under Grainger's arm and between Smith and Holder. The other escaped prisoners, Dugmore, Lockskegg, Tiseley and Matthew Hills, were convicted on capital charges, but reprieved on condition of transportation for life, while John Bailey, committed to Maidstone in the first week of August 1765, was acquitted.⁶⁶

In the first weeks after the escape the priority was to inflict exemplary punishments as quickly as possible, both to satisfy the Kent magistrates and to enforce the lesson that there was no escape from the machinery of justice. Matthews, Rogers and King were obvious choices, given their original offences, the part they played in the gaolbreak, and the ingratitude implicit in their actions. The rest of the escapers could have been charged with being at large while under sentence of transportation, a capital felony in itself, or with murder, even though Pingano was said to have fired the fatal shot. The Crown indicted the mutineers on both

counts, 'aiding, helping and abetting' in the murder of John Fletcher, and absconding from custody. The jury convicted them all on both charges; the selection of the six sent to the gallows seems to have rested on an assessment of each culprit's contribution to the mutiny. The original sentences imposed on John Jordan and William Perry indicate that the court did not consider them to have been serious offenders, and Jordan's youth could have saved him from execution, but not in this instance.

Any critique of the trial proceedings must be tentative, but there is evidence to support the argument that 'the criminal law was structured to achieve something like justice, if only because it was chronically vulnerable to accusations that it failed to live up to its own principles'.⁶⁷ Assuming the depositions filed among the State Papers provided the basis for the prosecution case, then certain objections might be raised. The witnesses were under confinement and under threat, seeing only glimpses of the action. Their testimony about which prisoners were armed and manning the walls may have been accurate, but the witnesses could see not all of the convicts. A common recourse, when faced with the problem of presenting testimony, was to encourage at least one defendant to give evidence against their fellows, known as King's Evidence, in return for a pardon. Despite this critical incentive, no 'turned' confederates feature in the surviving records of the trial. Judges sometimes made juries aware that such witnesses had a vested interest in convictions, and defence counsel invariably and often successfully used it to try and undermine the prosecution's case. However, notions of correctness probably ruled out the use of such testimony from the start of this case, though no matter how strictly the legal protocols were observed, the outcome was predictable. The trials were part of the process by which a number of selected culprits were conveyed from gaol to gallows with due process and proper expedition. The executions were carried out on Penenden Heath on March 15, the *Kentish Post* urging the case for condign punishment both before the trials and after the prisoners had been 'turned off': 'Three of them, at going out of Goal, gave away their Coats and Waistcoats to prevent Jack Ketch having them, and others at the Gallows kick'd off their Shoes', thereby depriving the hangman of his customary prerequisites.⁶⁸

Molloy, MacDonald and Perry were buried under the gallows, Godfrey and Jordan 'in an obscure Place in the Church Yard', while Dudney's corpse was despatched to the anatomists.⁶⁹ The *Post* ended its coverage of the Maidstone mutiny with a lurid account of how one spectator, a local apprentice, 'was so greatly affected on seeing the execution of the six malefactors', that once home he took a fatal dose of arsenic.⁷⁰

VI. Conclusions

It was 'necessary to the good order of society and to the reputation of government', that people believed convictions depended upon proof of guilt and that sentences were appropriate to the crime. Gatrell admits to being impressed 'by such justice as was achieved, because it was achieved against the odds' but suggests 'that the primary legal value to which all law has been dedicated has been order'.⁷¹ The retribution exacted at Maidstone in 1766 shows the governing elite's determination when using the law to demonstrate their power and authority, but too great a concentration on the courts as an instrument of class rule can divert attention from other important aspects of the administration of justice.⁷² The Kent magistrates urged prompt action against the escapers, and a grand jury of Kent dignitaries approved the indictments. The selection of suitable 'object lessons' would have been the task of the judges and the Secretary of State, but the verdict rested with the jury, and those making up the panel at Maidstone in the spring of 1766 were not members of the social and economic elite. Farmers made up the largest single occupational group, thirteen out of 51, and there were sixteen tradesmen including two blacksmiths, three shoemakers and a cordwainer. The building trade was represented by three carpenters and a joiner, two glaziers, a mason, a brickmaker, and a bricklayer. The list also included two mariners, a lighterman, a cooper and a gardener.⁷³ These small businessmen and craftsmen were probably linked to the gentry by ties of patronage and dependence, but this was a general feature of eighteenth-century society and Beattie's observations on the high levels of co-operation between judges and juries, reflecting shared assumptions concerning the purposes of the law, presents fewer difficulties than Linebaugh's picture of pusillanimous jurymen bowing to the authority of the court and setting aside personal conviction in their anxiety to please the powers-that-be.⁷⁴ The term 'judicial violence' is a useful reminder that the courts had the power to impose sanctions just as brutal as the offences they tried, but the law's hegemony rested on a more general acceptance of the legitimacy of punishment and retribution than is envisaged in notions of elite dominance of the legal system. The appearance of frequent items in the *Kentish Post*, relating to prison incidents, was clearly intended to draw attention to the enormity of the mutineers actions, and the need for exemplary punishment.⁷⁵ The hanging of five men and a youth for Fletcher's murder, when he was quite likely shot by Simon Pingano, already dead himself, shows the abhorrence in which the convicts were held, and fear for the social order surely lay behind this judicial vengeance.⁷⁶ The Maidstone Lent assize

had something of the nature of a state trial, yet the actions of the local men who laid siege to the gaol and hunted down the escapers indicates that it was not only members of the ruling elite who felt threatened when established authority was challenged. Douglas Hay maintains that the criminal law, 'more than any other social institution, made it possible to govern eighteenth-century England without a police force and without a large army'.⁷⁷ Respect for the law, and government with the consent of the governed, are major advantages when trying to maintain social order, and the courts were a means by which the ideology of the rule of law could be inculcated, but other aspects of law enforcement merit attention. There was no professional police force, and while the policing role of the army and the work of the parish constables can be underestimated, hegemony rested on a more general acceptance of the legitimacy of punishment and retribution than is envisaged in the concept of total elite dominance of the legal system.⁷⁸ Peter King's study of the Colchester 'crime-wave' brings out the way in which local people could organize their own policing when they felt their interests were threatened, and the response to the Maidstone mutiny showed a parallel capacity for communal policing actions.⁷⁹ Further local studies, using newspaper reports, court records, and judges' communications with the monarch's ministers, and focusing on the post-war periods, when crime waves at least in part deriving from rapid demobilisation, and contemporaneously seen as an urgent problem needing address, could help advance our understanding of this area of eighteenth-century law enforcement.

Notes

1. E. Melling (ed.), *Kentish Sources*, VI, *Crime and Punishment* (Maidstone, 1969), p. 210. For an earlier armed break-out, assisted by the prisoners' smuggling associates, see Paul Muskett, 'Gentlemen escape', *Kent Life*, (December 1973), based on the *Gentleman's Magazine*, November historical chronicle, (1747), and the Kent Quarter Session papers: Centre for Kentish Studies, QSB. 1747, questions to ask Thomas Prior and John Prior; confession of Thomas Prior, March 18 1747/48: QSB 1748, confessions of Samuel Pritchett, and Francis Marketman, 13 May 1748.
2. *Annual Register* (1765), pp. 121-2.
3. Peter King, 'Newspaper reporting, prosecution practice and perceptions of urban crime: the Colchester crime wave of 1765', *Continuity and Change*, 2 (3), (1987), pp. 423-54.
4. John Beattie, *Crime and the Courts in England, 1660-1800* (Oxford, 1986), pp. 213-24. Douglas Hay, 'War, dearth and theft in the eighteenth century: the record of the English courts,' *Past and Present*, 95, (1982), pp. 117-60.

5. Clive Emsley, *Policing and its Context, 1750-1870* (1983), pp. 127-8. For Fielding's attempts to improve the collection and distribution of information relating to crimes and criminals, see John Styles, 'Sir John Fielding and the problem of criminal investigation in eighteenth-century England', *Transactions of the Royal Society*, 33 (1983) pp. 127-49. Writing to Lord Bute and Charles Jenkinson on the success of the horse patrols in 1764, Fielding went on to describe a murderous attack on a foot patrol, sent to search the ditches around Tyburn and 'the Tottenham court roads.' They were fired on before they had even left their coach. He recorded highway robberies at Finchley, Paddington, Sion House, Turnham Green, Kentish Town, Hampstead, Hounslow Heath and Islington; eight incidents in one week. British Library, Add. Mss., 57809, ff. 111-5, June 26, 1764. Roger Wells suggested that the success of Fielding's measures could have contributed to the increase in highway robberies in Kent, which is supported by the records of some of those in Maidstone gaol in 1765.
6. Paul Muskett, 'Deal smugglers in the eighteenth century', *Southern History*, 8 (1986), pp. 46-72; *idem.*, 'The Hastings pirates, a cautionary tale', *Sussex History*, 28 (1988), pp. 17-27. Appearing at the 1766 Lent assize at Maidstone was Edward Atkinson of Sholden, charged with the murder of Samuel Brimstone at Sandown Castle, to the north of Deal; [Public] R[ecord] O[ffice], Ass[izes], 94/1008. What the assize papers do not tell us is that this was Lieutenant Atkinson, commander of HMS Winchester, who had intercepted a smuggling boat and shot one of the smugglers; P. Muskett, 'English Smuggling in the Eighteenth Century', (unpublished Ph.D thesis, Open University, 1997), p. 244. For the anti-smuggling militias, see pp. 365-6, 390-1; Neville Williams, *Contraband Cargoes* (1959), pp. 116-7; E. L. Sayers (ed.), 'The Collier papers', (copies of the Sayers typescript at the Custom House Library and the Centre for Kentish Studies), 27 October 1747.
7. For the inability of the system to cope with socio-economic change, see Malcolm Gaskill, 'The displacement of providence: policing and prosecution in seventeenth and eighteenth-century England', *Continuity and Change*, 11 (3) (1996) pp. 341-74; Cal Winslow, 'Sussex smugglers', in D. Hay *et. al.* (eds.), *Albion's Fatal Tree* (1979), pp. 135, 159; Muskett, thesis, pp. 213-4, 365-6.
8. *Annual Register*, (1765), pp. 121-2.
9. *Kentish Post*, 10-4 August 1765. It should not be assumed the *Kentish Post* was the more accurate, but there were a number of differences between its reports and the *Annual Register*. For example, Stephens had not died instantly, and, according to the *Kentish Post*, he escaped through a window and did not die until five o'clock the next morning.
10. *Kentish Post*, 10-4 August, 1765.
11. PRO. S[tate] P[apers, Domestic], 37/4, f. 222.
12. PRO. SP.37/4, ff. 218-20. The *Kentish Post* of 10-4 August, had confused Benevenuto and Pingano and the *St James Chronicle* of August 15-7 1765, used the same report but gave the impression that it was 'country people' from around Sevenoaks who were involved, not the townsmen from Maid-

- stone, as shown in the mss. source. *Gentlemen's Magazine*, (August, 1765), p. 392.
13. The *Annual Register* does appear to have been inclined to promote the policing role of the central state, using the military for that purpose. See Muskett, 'Deal smugglers', and 'The Hastings's pirates'.
14. PRO. SP.37/4, f. 222.
15. *St James Chronicle*, 6-8 August; *Kentish Post*, 7-10 August 1765.
16. *Annual Register*, (1765), pp. 121-3. PRO. SP.37/4, f. 222.
17. *Kentish Post*, 10-3 April, 31 July-3 August, 18-21 September 1765. PRO. SP.37/4, ff. 218-220, 222.
18. *Kentish Post*, 10-3 April 1765.
19. *Kentish Post*, 10-3 April, July 31-3 August 1765. PRO. Assi., 94/1008.
20. C. Emsley, *Crime and Society in England, 1750-1900* (1987), pp. 213-4; 'If, as has been argued, the threat of the gallows was employed during the eighteenth century to enforce an unequal division of property, it must, nevertheless, be recognised that the offenders least likely to escape the gallows were those guilty of offences against the persons of others. There is one significant exception to this; to modern eyes the most startling figures are probably the percentage executed out of those convicted of forgery.' Thomas McGee was committed to Maidstone in 1766, charged with 'feloniously personating and assuming the Name and Character of Thomas Wallace a Seaman, and receiving his pay': he was to hang alongside the six selected escapers. *Kentish Post*, 15-9 March 1766. PRO. SP.37/4, ff. 218-220.
21. *Kentish Post*, 31 July-3 August 1765. PRO. SP. 37/4, ff. 214-6, 218-20, 276.
22. *Kentish Post*, 14-7 August 1765.
23. *Kentish Post*, 10-4 August, 14-8 September: *St James Chronicle*, 10-4 August, 12-4 September 1765. PRO. SP.37/4, ff. 214-6, 222.
24. *Kentish Post*, 14-7 August 1765.
25. *Kentish Post*, 31 July-3 August, 1765.
26. *Ibid.*
27. *Kentish Post*, September 12-8, 1765.
28. *Kentish Post*, 17-21, 21-4 August, 4-7 September 1765.
29. *Kentish Post*, 7-11 September 1765.
30. *Kentish Post* 14-8 September 1765.
31. *Ibid.*
32. D. Hay, 'Property, authority and the criminal law,' in, Hay, *op.cit.*, p. 40.
33. *Ibid.*, pp. 43-5.
34. On the questions of prosecutions, convictions and sentences, see P. King, 'Decision-makers and decision-making in the English criminal law, 1750-1830,' *Historical Journal*, 27, 1 (1984), pp. 25-58, especially pp. 26-7.
35. Beattie, *op.cit.*, p. 402. Hay. *loc.cit.*, p. 38, makes the same point.
36. Beattie, *op.cit.*, p. 431.
37. V.A.C. Garrell, *The Hanging Tree: Execution and the English People, 1770-1880* (Oxford, 1994), p. 201.
38. PRO. SP.37/4, f. 214, 3 September 1765.
39. *Ibid.*

40. *Ibid.*
41. Hay, *op.cit.*, pp. 45–6.
42. PRO. SP.37/4, ff. 178–180.
43. *Ibid.*
44. Beattie, *op.cit.*, pp. 320–3, for an analysis of the composition of Surrey juries. Peter King establishes the high social status of the Essex Grand Juries; King, ‘Illiterate Plebeians, Easily Misled’; Jury composition, experience and behaviour in Essex, 1735–1815’, in J.S.Cockburn and Thomas H. Green, (eds.), *Twelve Good Men and True: the Criminal Trial Jury in England, 1200–1800* (Princeton NJ, 1988), pp. 254–304.
45. Hay, *op.cit.*, p. 43.
46. Gatrell, *op.cit.*, p. 519.
47. PRO. SP 37/4, ff. 214–6.
48. *Ibid.*
49. Gatrell, *op.cit.*, pp. 515–6.
50. *Kentish Post*, 23–7 March and 31 July–3 August 1765.
51. Hay, *op.cit.*, pp. 29–30, suggests that the law was replacing the church as the instrument of moral, as well as legal enforcement.
52. Gatrell, *op.cit.*, p. 200.
53. PRO. SP.37/4, ff. 214–6.
54. PRO. SP.37/4, ff. 222.
55. PRO. SP.37/4, f. 276.
56. Gatrell, *op.cit.*, p. 510.
57. Beattie, *op.cit.*, pp. 422–3.
58. *Ibid.*
59. *Ibid.*, pp. 433–4.
60. PRO. SP.37/4, f. 226.
61. *Kentish Post*, 30 November–3 December; *St James Chronicle*, 5–7 December; *Kentish Post*, 7–11 September 1765.
62. PRO. Treasury, 1/449, ff. 116–7, February 25 1766; Assi. 94/1008; SP.37/4, f. 222; Home Office, 49/1, 19 November 1765.
63. PRO.SP.37/4, ff. 214–6, 218–220.
64. *Ibid.*, ff. 218–220.
65. *Ibid.*, ff. 214–6.
66. Betenson’s memorial stated that, ‘when the Prisoners Concerned in the said Mutiny and Murders had got Possession of Powder and Ball as well as of the Arms, and a general Order was issued amongst them to load and fire upon the Populace in the Street, Postlethwayte ventured [through the Gates] to give Intimation of their Design, which was probably the means of saving the Lives of several innocent persons’. He was reported as saying, “‘That if he could die but once, and if he must die, it would be in his Irons’”. *Ibid.*, f. 222.
67. Gatrell, *op.cit.*, p. 202. See also King, ‘Decision-makers . . .’, p. 57; ‘If the law gained legitimacy mainly through its allegiance to important social values – such as the principles that strict procedural rules be adhered to, or that the weak and the young should be given more lenient treatment – it would lose that legitimacy if it were seen to depart from those values in practice.’ Hay, *op.cit.*, pp. 32–3, makes a similar point.

68. *Kentish Post*, 15–9 March 1766.
69. *Ibid.*, 19–22 March 1766.
70. *Ibid.*, 26–9 March 1766.
71. Gatrell, *op.cit.*, p. 519.
72. King, *op.cit.*, p. 44.
73. PRO. Assi. 94/1008.
74. Beattie, *op.cit.*, pp. 407–8. Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (1991), pp. 82–5. Clearly, the Old Bailey juries were a special case, given the multiple number of sessions annually, compared to the twice-yearly county assizes.
75. *Kentish Post*, 2–5, 12–6, and 23–6 October, 14–8 September, 27–30 November 1765, 5–8, and 19–21 February 1766.
76. PRO. Assi.94/1008. The jury at Fletcher's inquest decided that Pingano fired the fatal shot, but he was not named by any of the eye-witnesses recorded in PRO. SP.37/4, ff. 218–220.
77. Hay, *op.cit.*, p. 56.
78. For material on the army's role in policing, as opposed to riot control, see John Brewer, *The Sinews of Power* (1989), pp. 51–4 and Muskett, 'English Smuggling . . .', pp. 287–330.
79. King, 'Newspaper reporting . . .', pp. 423–54.