

'We do not come here ... to inquire into grievances; we come here to decide law': Prosecuting Swing in Norfolk and Somerset 1829–1832

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By the end of 1830, approximately 1,900 prisoners awaited trial for their part in the Swing disturbances that had affected over twenty English counties throughout the autumn and winter. In five counties, where machine-breaking and damage to property had been most prevalent, the government appointed Special Commissions to try Swing offenders outside the usual court schedule.¹ The repressive sentences meted out by these centrally appointed, irregular courts, have somewhat eclipsed the prosecution of Swing offenders at county quarter sessions and regular Assize courts. Little comment has been made on the process of prosecution in general: how the cases were selected and how the charges were framed. In neglecting this avenue of research, we overlook the opportunity to address the actions and attitudes of the authorities at a more local level. Carl Griffin's analysis of the trial of the first machine-breakers at Elham in Kent has shown how the actions of the magistracy impacted on the movement of the disturbances and on the attitudes of central government; it also highlights how the county authorities tempered their responses according to their immediate social contexts.² Eric Hobsbawm and George Rudé noted that in some county courts a Swing offender 'might expect a more reasonable chance of acquittal than in others', however, the breadth of their study precluded the depth necessary to understand why the judiciary appeared more lenient in some counties.³ This article investigates the ways in which the county

1 E.J. Hobsbawm and G. Rudé, *Captain Swing* (London, 2001), p. 258.

2 C. Griffin, "'Policy on the Hoof": Sir Robert Peel, Sir Edward Knatchbull and the Trial of the Elham Machine Breakers, 1830', *Rural History* 15 (2004), 127–28, 137.

3 Hobsbawm and Rudé, *Captain Swing*, p. 262.

commissions of the peace in Norfolk and Somerset structured the prosecution of Swing offenders at Assize and quarter sessions and contrasts them with the very different practice in Wiltshire.

Norfolk has been highlighted as one of those counties where, unlike Wiltshire, a Swing offender had a better than average chance of acquittal; indeed, the Home Secretary, Lord Melbourne, reproached the magistrates for the concessions they made to rioters during the disturbances.⁴ Griffin's discussion of the sentences passed on the Elham machine-breakers reveals that what Sir Robert Peel (Melbourne's predecessor) described as, the 'unparalleled lenity' of the local judiciary, was due in part to an awareness of the general unpopularity of threshing machines and local economic conditions, but also due to fear of popular reprisals. The perceived betrayal of the labourers by one justice had already caused him to be the victim of an incendiary attack.⁵ Similarly, in Norfolk, as we shall see, the magistracy's comparatively light handling was as much a consequence of a tactical decision to make examples than any expression of humanitarian leniency. Clearly we need to delve further into the local context of judicial decision-making to understand these discrepancies and how far they broke with the interests of central government. In stark contrast to Norfolk, Somerset remained largely undisturbed, but parallels can nevertheless be drawn between the two counties in the way prosecutions were structured and in the use made of exemplary justice. As well as grounding these trials within their immediate, local contexts, the practice of the courts in each county will be placed in the wider context of prosecutions for Swing offences elsewhere, and particularly with the Wiltshire Special Commission at Salisbury. First however, we should consider the incidence of related crimes and prosecutions over the broader period 1829–1832.

I

In the years immediately preceding the trials of 1831, the courts of Norfolk and Somerset, like those of Wiltshire, tried very few of those offences most closely associated with Swing: riot, machine breaking and arson. The counties' assize calendars for 1829 and 1830 contained just three cases of arson and one of riot, but in each case it appears that personal disputes, rather than social protest, underpinned the

4 Ibid, pp. 257–62.

5 Griffin, "Policy on the Hoof", 132–37.

prosecutions.⁶ The vast majority of cases put through the courts in the period immediately before Swing were for varieties of theft. It is difficult to assess how far appropriative crime serves as an indicator of social protest, but the magistracy in all three counties saw a distinct correlation between poverty and crime. In the South-West, wages were declining, while petty theft and poaching were perceived to be on the increase. At the Somerset Easter Sessions of 1830, the Chairman Henry Hobhouse observed with regret the number of prisoners for trial, in particular the prevalence of convictions for hay and fowl stealing. But 'Poverty', he claimed, 'cannot be admitted as an excuse for such offences' and he called for examples to be made.⁷

At the Summer Assizes in Somerset in 1830, one case stands out, not for the motives of the perpetrators but for the mode of their punishment, for here, three incendiaries were hanged in what was probably one of the last scene of crime executions in England. This grizzly affair was staged at Kenn in the north west of the county with great pomp and circumstance, and only weeks before the outbreak of Swing.

The three labourers had fired Farmer Benjamin Poole's wheat mows in retaliation for the prosecution of an unlicensed alehouse.⁸ At the behest of the High Sheriff, James Adam Gordon, the prisoners were executed on Kenn Moor, on 8 September 1830. They were not afforded the mercy of the drop-system, but suspended from a gallows and dropped from the back of a wagon in front of a crowd of over twelve thousand onlookers.⁹

Steve Poole has argued that the draconian response of the Somerset authorities had little to do with the circumstances of the crime, but more with the nature of the community in which it was committed. The punishment of the offenders was intended to 'create a lasting impression of judicial and hierarchical order on a poorly governed parish'.¹⁰ Despite the proximity of this case, it is difficult to tie the Kenn fires to the Swing agenda. However, it was an event orchestrated to show the troublesome inhabitants of Kenn, and the county at large, that authority reigned.

In Norfolk, the long-term antagonisms between the grandee landowners, tenant farmers, and labourers created different social

6 Wiltshire and Swindon History Centre, Chippenham [hereafter WSHC], A1/125/55 Calendar Prisoners Quarter Sessions 1829, A1/125/55 Calendar Prisoners Quarter Sessions 1830; *Devizes and Wiltshire Gazette*, 1829–1830.

7 *Bath Journal*, 26 April 1830; *Devizes and Wiltshire Gazette*, 12 and 19 March 1829; Hobshawm and Rudé, *Captain Swing*, pp. 76, 118.

8 S. Poole, "'A Lasting and Salutary Warning': Incendiarism, Rural Order and England's Last Scene of Crime Execution, *Rural History* 19 (2008), 1–15.

9 *Ibid.*, 4, 10; *Bath Journal*, 13 September 1830.

10 Poole, "'A Lasting and Salutary Warning'", 10.

tensions. In more sympathetic tones than those expressed by Hobhouse in Somerset, Lord Suffield addressed the Norfolk grand jury, claiming the situation of the agricultural labourer 'has become so wretched from the extreme depression of wages. The demoralising consequences, in the increase in poaching and theft, have become so alarming, that it is of the utmost consequence to apply a speedy remedy'. The grand jury, comprised of the county's yeomen, took offence at the implication that the current state of distress rested with their failure to pay a proper wage. The jurymen retorted that all solutions lay in the hands of landholders (many of whom – like Suffield – were listening from the bench) in the reduction of rents and the provision of allotments.¹¹

The business of the courts reveals some of the tensions between the county magistracy and the populace in the months before Swing; the distress of the agricultural poor and the incidence of crime was a pressing concern but the magistracy did not foresee the scale of the disturbances that would follow. If the 'salutary warning' from Kenn could be taken as an indicator, disorder in Somerset at least, would be met with sharp reprisals.

II

The Swing Special Commissions opened in mid-December 1830; by mid-January over 500 prisoners had been tried at Winchester and Salisbury. Leaving no doubt as to the purpose of the trials, Judge Alderson stated, '[w]e do not come here ... to inquire into grievances. We come here to decide law'.¹²

In ten days, the Special Commission at Salisbury tried 339 prisoners and convicted 206. Despite this being the largest group of prisoners to be tried in consequence of the disturbances, there is evidence to suggest that some cases were not selected for trial by the commission. Figures published in the press indicate that almost 400 people were held in Devizes and Fisherton, as well as 'several' more in the Bridewell at Marlborough.¹³ It was expected that the commission would try all capital offences as exemplary cases, and the minor ones would be dealt with by the local judiciary at quarter sessions.¹⁴ However, only five prisoners were scheduled for trial at the next quarter sessions, and four others were left

11 *Norwich Mercury*, 3 March 1830.

12 Hobsbawm and Rudé, *Captain Swing*, p. 259.

13 J. Chambers, *The Wiltshire Machine Breakers* (2 vols, Letchworth, 1993), I, p. 90.

14 *Ibid.*, p. 83; The National Archives, London [hereafter TNA], HO 52/11, fol. 49–50, Colonel Muir to the Home Secretary, 26 November 1830.

for trial at the Lent Assizes.¹⁵ The vast majority were tried, and tried by centrally appointed judges, either at the Special Commission or at the subsequent assizes.

The majority of cases tried by the Special Commission were for machine breaking or robbery. Due to the prevalence of the destruction of threshing machines – a non-capital offence – in the indictments, far fewer faced the death penalty than those tried at Winchester. However, the severity of the court can be seen in its unprecedented use of transportation. Over one hundred prisoners received the maximum penalty for breaking a threshing machine, seven years transportation.¹⁶ In the ten cases regarding the destruction of non-agricultural machinery the penalties were greater still: nine of the prisoners were found guilty and sentenced to death but their sentences were commuted to transportation for life.¹⁷ In all, 152 people were sentenced to be transported for terms of between seven years and life by the Special Commission, and all bar one reached Australia.¹⁸

The Wiltshire Commission appeared to be more sensitive to the age and circumstances of those brought before it than its predecessor in Hampshire; James Ford and Edward Looker, amongst others, both escaped the noose because of their 'tender years' and otherwise good character.¹⁹ Nonetheless, the court made potent examples of those involved in some of the bloodiest disturbances during Swing.

The first case tried by the Salisbury Commission concerned the destruction of a threshing machine belonging to John Bennett, Member of Parliament and foreman of the Grand Jury at the Special Commission. According to Mr Bennett, approximately 400 labourers had assembled and approached his farm, Pyt House, threatening to destroy 'all the thrashing machines in the country, and that they would have two shillings a day'. The Hindon troop of Yeomanry arrived too late at Mr Bennett's to prevent the destruction of his threshing machine but engaged the rioters and a battle ensued; the troop met the stones of the crowd with bullets. In the fray, Mr Bennett had his hat knocked off and

15 WSHC, A1/125/57 Calendar of Prisoners 1831, Quarter Sessions February 15 1831.

16 TNA, ASSI 24/18/3 Special Commission minute book; Hobbsbawm and Rudé, *Captain Swing*, p. 259.

17 TNA, ASSI 24/18/3 Special Commission minute book; Chambers, *The Wiltshire Machine Breakers*, I, pp. 104–211.

18 TNA, ASSI 24/18/3 Special Commission minute book; Hobbsbawm and Rudé, *Captain Swing*, Appendix II, pp. 308–9.

19 Hobbsbawm and Rudé, *Captain Swing*, p. 259; TNA, ASSI 24/18/3 Special Commission minute book; Chambers, *The Wiltshire Machine Breakers*, I, pp. 111–12, 196.

his nose bloodied; several of the rioters were wounded and one labourer, John Hardy, was shot dead.²⁰

Lord Arundel, testifying to the character of James Mould of Hatch, one of the defendants, described Mould's wretched existence. Having struggled to maintain his family, his wife and six children were left wholly unsupported after his incarceration. Whilst awaiting trial, the family had been struck by typhus killing two of the children. Despite such pitiful circumstances and reports of a good character, Mould, along with twelve others received the maximum penalty of seven years transportation; two others were acquitted and two were sentenced to twelve months in prison at hard labour. James Blandford, singled out by Bennett as a recidivist, received consecutive maximum sentences and was transported for 14 years.²¹

Peter Withers and James Lush were the two prisoners left for execution by the Special Commission.²² Their offences were marked additionally by accusations of violent conduct, in Withers' case throwing a hammer at a constable and speaking in terms 'to put down the Magistracy'. In passing sentence, Judge Vaughan commented on the 'lenity of Mr Bennett' without which those tried for the destruction of his threshing machine, might have found themselves in the same predicament as Withers. James Lush was capitally convicted for robbing Bartlett Pinnegar during a riot. When Pinnegar had drawn a pistol on the crowd and threatened to shoot, the crowd had rushed him, and a serious scuffle ensued. Both men were sentenced to hang on 25 January but the day before their execution, the sentence was reprieved and they were both transported for life.²³

The cases against Peter Withers, James Lush and James Blandford and his co-defendants concerned outright, physical conflict, and at Pyt House and in the case of Withers, attacks on authority. Perhaps in punishing the actions of the labourers so severely the court not only made an example of the most sensational incidents of disorder, but also mitigated the use of violence by the 'victims', and the authorities, as a proportionate response.

20 TNA, ASSI 24/18/3 Special Commission minute book January 1 1831; *The Morning Chronicle*, 3 January 1831; Hobsbawm and Rudé, *Captain Swing*, p. 126; Chambers, *The Wiltshire Machine Breakers*, I, p. 104.

21 Hobsbawm and Rudé, *Captain Swing*, p. 126; TNA, ASSI 24/18/3 Special Commission minute book 1 January 1831; *The Morning Chronicle*, 3 January 1831.

22 TNA, ASSI 24/18/3 Special Commission minute book 6 and 7 January 1831; *The Morning Chronicle*, 12 January 1831; Chambers, *The Wiltshire Machine Breakers*, I, pp. 216–17.

23 *The Morning Chronicle*, 12 January 1831; Chambers, *The Wiltshire Machine Breakers*, I, pp. 229–31.

The Salisbury Special Commission dominated the prosecution of Swing offenders in Wiltshire. Although some of those apprehended during the disturbances may never have faced the bench, it is clear that the majority were tried by 'this extraordinary exercise of the Royal authority'. The scale of the disturbances, and their character, warranted the use of the highest courts, and perhaps the county judiciary were not deemed capable of managing the cases at quarter sessions. Certainly concessionary measures had been taken during the riots, and Colonel Brotherton's correspondence with the Home Office betrayed a lack of confidence in the local magistracy in their suppression of the disturbances.²⁴ Through the unprecedented use of transportation, the Commission clearly tended towards the punishment of all, exercising central, judicial authority with indiscriminate force.

III

At the request of the Lord Lieutenant, Colonel John Wodehouse, the Home Secretary organised a Special Commission for Norfolk, but of a rather different form to those at Winchester or Salisbury. As Colonel Wodehouse explained, 'yet many of the Persons here probably heretofore borne of good Characters ... were compelled either by open violence or threats to commit the felonies with which they stand charged'. The Magistrates wished to review all cases 'and only send those to trial, who were seen and known to be Ringleaders and Active Agents in perpetrating the Outrages' which 'might fully answer the ends of justice, and be a great saving of Expense to the Country'.²⁵ Wodehouse made the case for a system of exemplary punishment rather than the punishment of all, seeing the use of exemplars as both financially and socially expedient.

In Norfolk therefore, the majority of 'Swing' cases were tried not by Special Commission, but at the January quarter sessions in 1831. 158 people stood accused of machine breaking and riot; 68 of them were discharged on their own recognizance or acquitted. In Somerset, the county judiciary tried all of the cases associated with Swing. At the Epiphany sessions, eight were charged in relation to the destruction of threshing machines, six of whom were convicted, and thirteen men were indicted for riot: five were convicted, the other eight were still to be

24 Chambers, *The Wiltshire Machine Breakers*, I, p. 99; Hobsbawm and Rudé, *Captain Swing*, pp. 127: Col. Brotherton's letter suggests that the judiciary were not as active in suppressing the disturbances as central government would have wished; A. Randall and E. Newman, 'Protest, Proletarians and Paternalists: Social Conflict in Rural Wiltshire, 1830-1850', *Rural History* 6 (1995), 211.

25 TNA, HO 52/9 Wodehouse to Melbourne, 10 December 1830.

apprehended.²⁶ Very few Norfolk cases were 'reserved for the higher tribunal' of the Assize courts but three cases of machine-breaking at the paper mills at Lyng were tried at the Thetford Assize and the eight prisoners held for arson were remanded for trial by Special Commission at Norwich.²⁷ In Somerset, there was no Special Commission, only one case was referred to the Assizes, and even that was thrown out.²⁸

The majority of cases heard at the Norfolk quarter sessions concerned machine breaking. In passing sentence on those accused, Sergeant Frere was clear in his purpose, 'to prevent a recurrence of such conduct, by the effects of example'. Those who received the most stringent sentence of transportation were a particularly necessary example. Having made a countywide recommendation for the disuse of threshing machines during the disturbances, the magistrates had been subjected to government criticism which placed the blame for ongoing disturbances with the over-conciliatory attitude of the bench.

The Home Secretary had 'sharply rebuked' all those who had 'approved uniform wage rates' or recommended the discontinuance of threshing machines, and instructed them to 'oppose a firm Resistance to all Demands' for wages and against agricultural machinery.²⁹ Stoically defending their conduct, Wodehouse however, was more inclined to blame poor wage rates:

[w]e could not forbear to admit, that wages had been generally too low, and that we thought that, under the actual difficulty of finding employment for the Labouring Poor, which has too long existed, Threshing Machines ought to be discontinued.³⁰

In court, more than one testimony claimed the prisoners' had said 'they had got an authority from the magistrates to break threshing machines'.³¹ Accordingly then, in passing the maximum penalty on men such as William Dow – a prominent figure in the round of machine breaking at Cawston – the magistracy checked suggestions that they had tacitly sanctioned criminal behaviour.³²

26 Norfolk Record Office, Norwich [hereafter NRO], C/S 1 MF 660 Quarter Sessions Minute Books, January 1831; *Norfolk Chronicle*, 22 January 1831; Somerset Record Office, Taunton [hereafter SRO], Q/SR/459 Quarter Sessions Rolls Epiphany 1831; *Bath Chronicle*, 6 and 13 January 1831.

27 *Norwich Mercury*, 22 January and March 12 1831; NRO, C/S 1 MF 660 January 1831; TNA, ASSI 94/ 2116, 94/2117

28 SRO, Q/SCS 60–86, January 1831, Q/SCA 1–30 Lent 1831; Hobsbawm and Rudé, *Captain Swing*, pp. 129–30.

29 Hobsbawm and Rudé, *Captain Swing*, pp. 257–58.

30 TNA, HO 52/9 ff. 14–15, Wodehouse to Melbourne 16 December 1830.

31 *Norwich Mercury*, 8 and 15 January 1831.

32 *Norwich Mercury*, 8 January 1831.

However, Sergeant Frere noted that the Norfolk disturbances lacked those 'flagrant acts of violence' that had accompanied other incidents of machine breaking; occasions, he continued, that 'imperiously call for much more severe examples than I am happy to say is requisite here'.³³ He attributed the more tempered response of Norfolk machine-breakers to the stringent example made of the Ely and Littleport rioters in 1816, whose violence had been met with severity. Of the 24 rioters sentenced to death by the Special Commission that sat at Ely in that year, five were executed and buried together with the epitaph 'May their awful fate be a warning to others'.³⁴ Only nine of the 65 prisoners charged with breaking threshing machines in 1830 received the maximum seven years transportation for it.³⁵

Four cases of riot were focussed on as particular examples; all of which were characterised by attacks on figures of authority. At Haddiscoe, Southrepps, Docking and Attleborough, the labourers sought redress from clergymen or magistrates and in all cases a confrontation ensued. Frere reproached the Docking rioters for their physical attack on law enforcement officials claiming it 'approached the crime of high treason', and, had their case been referred to the Assizes 'their lives would have been justly forfeited'. Despite the heavy terms of imprisonment handed down, the Docking rioters sentences were framed as an act of clemency.³⁶

The Attleborough rioters were also deemed an exceptional case. At a vestry meeting in the town, the Reverend Fairfax Franklin (also a member of the Commission of the Peace) had met with farmers to discuss a reduction in tithes and a concomitant advance of wages. When one farmer dissented from the proposed scheme the negotiations collapsed. The labourers gathered outside, clamoured for a greater reduction in the tithe, and the aged Reverend was held captive for several hours. Whilst escaping he was struck at by the crowd who eventually dispersed when the military arrived. The Reverend and his companion Mr Dover claimed they saw 'something like concert between some of the farmers and the labourers'.³⁷

The perceived ringleaders, labourers Robert Smith, Samuel Smith and John Stacey, were imprisoned for two and a half years, two years, and 18

33 *Norwich Mercury*, 15 January 1831.

34 F. Knight, 'Did Anticlericalism exist in the English Countryside in the Early Nineteenth-Century?' in N. Aston and M. Cragoe, *Anticlericalism in Britain c. 1500–1914* (Stroud, 2000), p. 164; C. Johnson, *An Account of the Ely and Littleport riots in 1816* (Ely, 1893, repr. 1948), pp. 66, 77.

35 *Norwich Mercury*, 15 January 1831.

36 *Norwich Mercury*, 22 January 1831.

37 *Norwich Mercury*, 15 January 1831.

months respectively.³⁸ Despite his ordeal, the Reverend Franklin appealed for the release of the Smith brothers, highlighting their previous good behaviour; but his petitions fell on deaf ears.³⁹ Sergeant Frere maintained that any farmers proved to have been complicit in the disturbances would be punished, sentiments which echoed those made by the Judges at the Salisbury Special Commission; however, little effort appeared to be made on this front by the Norfolk magistrates.⁴⁰

Two separate indictments were brought against two farmers at the county sessions in April 1831. The Crown attempted to prosecute John Carman and David Roll for 'exciting riot' the previous winter. Carman was acquitted because there was 'no venue laid' of the alleged incident in the indictment. The chief witness for the prosecution against Roll, Mr E. Wodehouse (also a member of the Commission of the Peace), wished to 'withdraw all further prosecution, with a view to putting an end to these cases, and in the hope the defendant would see the impropriety of his conduct and desist from such a course of proceeding in the future'.⁴¹

In both literal and symbolic terms, the Attleborough riot presented the most awful consequence of an alliance between the labourers and the yeomanry in a co-ordinated attack upon authority, but it was the labourers that bore the brunt of the reprisals, while the farmers were taken back into the fold. This selection of exemplary cases would eventually culminate in the capital cases tried by the Special Commission at Norwich.

IV

Somerset by no means shared the same level of tumult as Norfolk, but punishment was nevertheless comparatively robust. The most severe sentences were passed on Isaac Wheeler and George Eavis. Wheeler had threatened to burn a threshing machine in a minor riot at South Brewham on the county boundary shared with Wiltshire,⁴² and he received four months imprisonment for it. Only 21 of the prisoners tried at the equivalent court in Norfolk, for the actual destruction of threshing machines, received prison sentences of the same length or greater.⁴³

38 R. Lee, *Unquiet Country: voices of the rural poor, 1820-1880* (Bollington, 2005), p. 20.

39 NRO, C/Saa 1/15 F. Franklin to the Visiting Justices of the County Gaol 25 July 1831 and 22 September 1831.

40 *Norwich Mercury*, 8 January 1831; *Morning Chronicle*, 3 January 1831.

41 *Norwich Mercury*, 19 April 1831.

42 Hobsbawm and Rudé, *Captain Swing*, p. 129.

43 SRO, Q/SCS 60-86 January 1831; *Bath Journal*, 10 January 1831; NRO, C/S 1 MF 660 January 1831; *Norfolk Chronicle*, 22 January 1831.

George Eavis was involved in both incidents of actual machine breaking to occur in the county, and he was also indicted for riot. He was sentenced to the maximum penalty of seven years transportation. The disturbances occurred at Yenston and Henstridge, on the same day, and in close proximity to the Stalbridge riot in Dorset.⁴⁴ Although there was little public discussion of the sentencing of Eavis and Wheeler, the comparative severity of their sentences reflects an intolerance to disorder, even on a small scale in Somerset, and the magistracy made their position perfectly clear.

The rioters indicted at the same sessions were uniformly convicted for a disturbance that appeared to stem more from opportunity and inebriation rather than considered grievances. The Reverend Moncrieffe had postponed a meeting to swear in special constables at Banwell, being apprehensive that the measure might cause alarm. The men that had assembled for the meeting 'having been regaled with beer, were accordingly dismissed'. They did not go home however but 'became themselves the originators of a serious disturbance'. They demanded money, beer, bread and tobacco, all of which was supplied by local shopkeepers; a loaf was then placed on a pole and carried aloft, 'and they swore they would have a larger sized loaf and two shillings a day wages'. When one man was arrested, other members of the crowd broke into the house where he was incarcerated and freed him, subsequently parading him 'in triumph around the village, in a chair'.⁴⁵ The press reported the incident with little concern, attributing the 'disposition to riot' to the 'effects of intoxication.' Although the men had initially assembled at Banwell to show their willingness to assist the magistracy in the maintenance of order, their drunken antics had made a mockery of the proceedings; consequently all of those 'deluded men' apprehended for the disturbance were toughly dealt with and sentenced to terms of imprisonment and hard labour.⁴⁶

The only case reserved by Somerset's magistrates for the Assize was one regarding a threatening letter, and that was consequently dismissed as no true bill. In Wiltshire, a total of six cases relating to the disturbances were tried at the regular Assizes rather than by Special Commission.⁴⁷ Norfolk, as we have seen, removed very few cases to the higher courts but those cases that were, and the mode of their prosecution were orchestrated for

44 SRO, Q/SCS 60-86 January 1831; *Bath Journal*, 10 January 1831; Hobsbawm and Rudé, *Captain Swing*, p. 130.

45 *The Bath Weekly Chronicle*, 9 December 1830.

46 *The Bath Weekly Chronicle*, 9 and 13 January 1831.

47 WSHC, A1/125/57 Calendar of Prisoners 1831, Quarter Sessions February 15 1831; *Devizes and Wiltshire Gazette*, 10 March 1831.

maximum effect. The Assizes were usually held at Thetford but the Special Commission sat at Norwich to hear the cases of what the Assize judges described – in private correspondence – as a ‘particular class of prisoner’.⁴⁸ Of the eight on trial for the destruction of various ricks and agricultural property by arson, Richard Nockolds was the only person executed for a Swing offence in Norfolk.⁴⁹

Authority viewed arson with particular abhorrence: incendiaries worked in secrecy, with no other motive than injuring their victim through the destruction of property.⁵⁰ As Norfolk’s landowners publicly exclaimed, ‘It is for the honour of our country, it is for our credit as men, that we must find out and punish these cowardly miscreants. Englishmen were never assassins! Englishmen were never incendiaries ...’⁵¹

It was supposed by many at first that the disturbances were the work of foreign agents fomenting revolution. Justice Berney, writing to Lord Melbourne, was convinced that the fires were ‘entirely occasioned by foreign influence ... a set of Hell Hounds who are carrying devastation through every part of [the country]’.⁵² Nockolds was not a foreigner, but aspects of this xenophobic attitude permeated his case. In the words of Judge Alderson, he was ‘not an agricultural labourer ... driven to extremities’ but a weaver residing in Norwich. He had given up ‘the restraints of religion’ and been corrupted by Cobbett and Carlile; the Sunday reading-room he had established was seen as a nursery of dissent.⁵³ All legitimacy that could be derived from the plight of the labourers was denied Nockolds; the judge concluded, ‘you therefore committed this act for the purpose of exciting general confusion and alarm throughout the country’.⁵⁴ Nockolds’ trial and his execution were conducted in Norwich, his home and the county capital, as opposed to Thetford, where the assizes were usually held, to ensure maximum exposure. He was hanged in front of his family and a considerable crowd,

48 *Norwich Mercury*, 12 March 1831; TNA, HO44/ 52 4 and 8 March 1831

49 S. Evans, ‘The Life and Death of Richard Nockolds Hand Loom Weaver of Norwich’, in M. Holland (ed.) *Swing Unmasked: The Agricultural Riots of 1830 to 1832 and their Wider Implications* (Milton Keynes, 2005), pp. 170–84.

50 S. Poole, ‘“A Lasting and Salutary Warning”’, 4–5. The only prisoner to be executed in Wiltshire was Henry Wilkins, charged with burning down a cottage, *Devizes and Wiltshire Gazette*, 10 March 1831.

51 Reproduced in J.E. Archer, *By a Flash and a Scare: Incendiarism, Animal Maiming, and Poaching in East Anglia 1815–1870* (Oxford, 1990), p. 91; R.M. Bacon, *A Memoir of the Life of Edward Third Baron Suffield* (Norwich, 1838), p. 324.

52 TNA, HO 52/9 Justice Berney to Lord Melbourne, 2 December 1830.

53 *Norwich Mercury*, 2 and 16 April 1831.

54 *Norwich Mercury*, 2 April 1831.

who watched in silence. There had been only one other execution in Norwich in the previous nine years.⁵⁵

V

It is clear that Norfolk's magistrates dealt with Swing offenders in terms of exemplary cases. Their leniency must also be seen in the wider context of social conflict in Norfolk over a longer period, for local perceptions of Swing's relatively non-violent expression in the county were only so in comparison to the (by then) notorious Littleport and Ely riots of 1816. The magistracy of 1830 structured the prosecution of Swing offenders to restore a particular form of social peace. Their lenity does suggest they sympathised with the labourers' grievances, and this was betrayed by many in letters to the Home Secretary. Justice Berney, while convinced that foreign agitators perpetrated the fires, saw more overt disturbances as the result of genuine distress and 'that the demands of the labourers are but too just'.⁵⁶ Lord Suffield reported that the magistrates of North Walsham 'all avowed their disinclination to take severe measures against an oppressed class, until forced to do so for the preservation of life and property'.⁵⁷

Such reports would have done little to inspire the government's confidence in the Norfolk judiciary, but the harsh examples they made served to counter their original concessions and their association with the escalation of machine breaking. The Bench also aimed to prevent any continued alliance between the labourers and farmers. In the disturbances of 1816 and 1822, the magistracy had had to contend with riots and machine-breaking perpetrated by labourers, and in 1823, the authorities faced an unprecedented meeting of disgruntled farmers at Norwich. In 1830, Swing saw the cooperation of the labourers and their employers – as was the case at Attleborough – with dangerous consequences. As John Archer has argued, Norfolk's gentry 'could perhaps live with an angry work-force but to withstand the verbal attacks of their natural allies, their tenants, in the rural war was unthinkable and beyond them'.⁵⁸ Perhaps to satisfy government, but also perhaps to paper over long-term structural

55 *Norwich Mercury*, 25 April 1829: Richard Everett was hanged in April 1829 for horse-stealing. The press claimed that only one other execution had taken place in Norwich in the previous six years. From a survey of two local newspapers between 1829 and Nockolds' execution in 1831, no other execution is reported to have taken place in Norwich during that period.

56 TNA, HO 52/9 Justice Berney to Lord Melbourne, 2 December 1830.

57 TNA, HO 52/9 fol. 110–13 Lord Suffield to Melbourne, 27 November 1831.

58 Archer, *By a Flash and a Scare*, pp. 85–86.

problems in Norfolk society, Richard Nockolds' execution was intended to terrify but also to tie the most 'heinous' Swing offences to elements outside the agricultural community.

The trials in Norfolk did little to resolve the long-standing differences between labourers, farmers and landowners; threatening letters were sent to prosecutors, and throughout the trials and for the greater part of 1831, fires blazed.⁵⁹ The alliance between farmers and the labourers however, was extinguished. Any new 'Swing' incidents put through the courts from 1831 were generally for arson and machine breaking; at Brampton Hall near Aylsham, a farmer was praised by the courts for arming himself and resisting the demands of labourers; an example the court thoroughly recommended.⁶⁰ In December 1831, Justice Hoseason writing to the Home Office cited the same issues plaguing Norfolk agricultural society.⁶¹

Having so few cases, the Somerset magistrates had greater scope for the punishment of every offender in 1831. But their consistent prosecution of those involved in the disturbance was intended to signal that any signs of insurrection would be nipped in the bud. The Assize judge praised the county for having none of those cases 'of that deep moral dye' which he had tried in other parts of the country, 'and even on the last time I visited this town' when he alluded to the Kenn incendiaries.⁶² How far the terrifying spectacle of their execution impacted on the potential for conflict in Somerset cannot be accurately gauged; however, in an open letter to *The Times*, George Emery, deputy lieutenant of the county, recommended that terrible example as a means of successfully checking incendiarism.⁶³

Despite the lack of serious and widespread disturbances in Somerset, the magistracy had remained on their guard throughout the winter of 1830, suggesting that while there were few incidents of overt protest, the judiciary still saw the potential for disturbance. In the New Year, writing to the Clerk of the Peace, the Lord Lieutenant, the Marquis of Bath, hoped the convictions at Quarter Sessions would stop incendiaries, but he had received reports of a recent attack in his neighbourhood on the property of a prosecution witness in the late trials.⁶⁴ Although we cannot always equate the motives of incendiaries with social protest, Somerset's judiciary had to consider arson attacks focussed on agricultural property

59 *Norwich Mercury*, 22 January 1831; *Ibid.*, p. 95.

60 *Norwich Mercury*, July 1831.

61 TNA, HO 64/3 December 21 1831

62 *Bath Journal*, 4 April 1831.

63 *The Times*, 21 September 1830.

64 SRO, Q/JCP/7 Marquis of Bath to Edward Coles, 12 January 1831.

throughout the spring of 1831 and through the autumn and into the winter of 1832.⁶⁵

In neighbouring Wiltshire, incendiarism also continued to concern the authorities; and issues surrounding wages persisted in ongoing labourers disputes and strikes.⁶⁶ Perhaps the legacy of Swing can also be discerned in some of the prosecutions made in the aftermath of the disturbances. At the summer Assizes, Sarah Wheeler was found guilty of arson despite the clearly domestic circumstances of the crime. Refusing to consider the pleas of the defendant or her witnesses, the judge 'told them that circumstances had nothing to do with a case like the present'. Wheeler was spared the noose but the judge warned her that she would be more than likely transported for life. In the same court, Job Hetherall was sentenced to be transported for life for sending a threatening letter. In his summation to the jury, the judge went to considerable lengths to stress that proof was only required that the prisoner had *caused* the letter to be written or sent. The jury returned their verdict immediately.⁶⁷ Such stringent examples failed as a deterrent: in the Spring of 1832, the Assizes had to rule again, in cases concerning anonymous threats to burn farms, and actual acts of agricultural incendiarism.⁶⁸

VI

In his recent retrospective of the historiography on Swing, Adrian Randall stressed that 'close attention to the local is clearly essential if we are to really understand the social politics, normally hidden from the historian's sight, which was worked out in high relief only when riot or protest erupted'.⁶⁹ Studying the interactions of the local judiciary with those engaged in such phases of unrest is integral to reaching this understanding of social politics. Too frequently the repressive function of the magistracy and local justice systems are emphasised, neglecting to acknowledge fully that the administration of the law was a negotiated process. The suppression of disorder was framed by local social and political contexts, and local history, as much as by statute law and the demands of central government. By viewing the trials of Swing offenders within a wider context of prosecution, this investigation has aimed to provide a

65 *Bath Journal*, 11 April, 14 November, 12 December 1831, and 2 January 1832; TNA, HO 64/2 17 January, 14 April and 31 December 1831.

66 Chambers, *The Wiltshire Machine Breakers*, I, pp. 243–45.

67 *Devizes and Wiltshire Gazette*, 21 July 1831.

68 *Devizes and Wiltshire Gazette*, 8 March 1832.

69 A. Randall, 'Captain Swing: A Retrospect', *International Review of Social History* 54 (2009), 427.

more nuanced understanding of the responses of local authorities to the disturbances, and what those responses tell us about the social relations within which they occurred.

Although their management and structuring of the prosecutions varied, some attitudes were shared by the judiciary at every level. Attacks on property have been highlighted as the trigger for more stringent sentencing; in trials considered for this study, the magistrates and judges also made potent examples of those who attacked or subverted the authorities. Concern for the maintenance of social order, and social hierarchy, is also evident in the judiciary's 'xenophobic' expressions: not only were incendiaries excluded from the legitimacy of the labourer's cause, but at the Salisbury Special Commission, it was considered 'more inexcusable' for craftsmen and non-agricultural labourers to be the perpetrators of depredations.⁷⁰ Rather than acknowledge the structural causes of unrest, the authorities could blame a foreign element for the destruction of 'that bond of mutual interest and goodwill which ought ... to unite the higher and lower classes of the community'.⁷¹

The mass disturbances experienced in Wiltshire (and Hampshire) apparently warranted mass prosecutions in the centrally administered Special Commissions. Here, examples were made of the offenders on an unprecedented scale. Two-thirds of those tried were convicted, and more than half of those individuals were transported.⁷² What is most striking is the almost total delegation of responsibility for the prosecutions to the Special Commission. The cost of prosecution would certainly have been lessened by the government defraying the expenses of the Commission nationally, and it is clear that the central authorities wished to ensure the suppression of tumult in Wiltshire; but it also points to inadequacies or concerns about the ability of the provincial judiciary. Further research is required to confirm this apparent dominance of the Special Commissions, most significantly in Hampshire where both the courts and the level of disturbance were comparable. In stark contrast, the Norfolk Special Commission provided little more than an opportunity to stage the execution of Richard Nockolds as a classic example of judicial terror. On

70 Hobsbawm and Rudé, *Captain Swing*, p. 259. For example see the case of William Hayter, TNA, ASSI 24/18/3 Special Commission minute book, 4 January 1831; Chambers, *The Wiltshire Machine Breakers*, I, pp. 138–39. See also discussion of Nockolds above.

71 Justice Parke addressing the Wiltshire Special Commission, 1 January 1831; Chambers, *The Wiltshire Machine Breakers*, I, pp. 101–2.

72 TNA, ASSI 24/18/3 Special Commission minute book, January 1831; Hobsbawm and Rudé, *Captain Swing*, pp. 259, 262–63.

the whole, in Somerset and Norfolk, the magistrates preferred to keep the trials within the purview of local authority at the quarter sessions.

Although Somerset produced few disturbances, the majority of the county's offenders were tried and convicted, and received robust punishment. Norfolk experienced considerable unrest and made carefully selected examples. In structuring these prosecutions the magistracy were comparatively lenient: the precedents of the previous disturbances of 1816 and 1822 caused the justices to reflect more favourably on the Swing rioters. The magistracy also took into consideration the complex relationship between landowners, tenants and labourers – ensuring the interests of the former at the expense of the latter. By engaging in regional studies of the actions of the magistracy, it becomes clear that 'repression' by 'authority' as an abstract entity over-simplifies the ways in which crime and protest were dealt with. In examining the discrepancies in the prosecutions of offenders at a local level, we can see how both national contexts and local contingencies tempered the administration of the law.⁷³

73 This approach echoes Carl Griffin's call (with reference to Andrew Charlesworth) for the need to 'embed local and national administrative history within the local contexts in which they actually operated and gave shape to local events'. Griffin, "Policy on the Hoof", 131.